

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

Supreme Court Case No: 74808

v

District Court Case No.:
A-16-737120-C

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

APPELLANT'S APPENDIX VOLUME 3

Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
George O. West III Esq, State Bar No. 7951
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Telephone : (702) 318-6570
Email: gowesq@cox.net

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
Craig B. Friedberg, Esq, State Bar. No. 4606
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
Telephone: (702) 435-7968
Email: attcbf@cox.net

Attorneys for Appellant Derrick Poole

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1 Q. With respect to the diminished value
2 opinions that you made here, do you have an opinion as
3 to what -- how much less the vehicle was worth on
4 May 26th, 2014?

5 A. Correct.

6 Q. Hang on. Do you have an opinion?

7 A. I do.

8 Q. How much less was the vehicle worth at the
9 date of sale based upon the Diminished Value
10 Assessment that you made, based upon the nature and
11 extent of the previous collision?

12 A. In total, with the inherent diminished value
13 and the improper repairs on -- I'm sorry, yes, the
14 repair related diminished value, what we call, is
15 thirty-two ninety-seven. So the total would be the
16 sum of them both, which would be fifty-one zero two
17 and 32 is 83, 84.

18 Q. So is it your opinion that whatever the
19 vehicle was sold for by Sahara Chrysler to Mr. Poole
20 on May 26th, 2014, that car was inherently worth
21 \$8,000 less that day?

22 A. Yes. At least.

23 Q. Do you have any evidence or indication --
24 strike that.

25 You've heard a lot of terms thrown around

1 Q. Is that -- the questions I just asked you,
2 is that true for every single one of the remaining
3 points, 9 through 22? That's that same methodology?

4 A. Of snapping the picture with the camera?

5 Q. And then basing your statements off of your
6 personal observations?

7 A. And experience in the industry. My
8 background, inspecting vehicles for 25, 30 years.
9 More than that.

10 Q. Okay. But I'm just verifying. No specific
11 measurements for Items 8 through 22?

12 A. Correct.

13 Q. When you performed the inspection of the
14 vehicle on May 2016, do you know if any of those
15 wheels were reconditioned?

16 A. According to the estimate, they were.

17 Q. Just the one wheel?

18 A. The left front wheel as it's shown on the
19 estimate.

20 Q. Did you do any testing of that wheel?

21 A. I did not.

22 Q. Did you remove that wheel?

23 A. Second time. I did not.

24 Q. Just verifying.

25 Is it possible it was a different wheel?

1 insurance policy. I didn't get into the accident.
2 Our only duty is to put the car back together with the
3 monies we have. If the consumer doesn't want it, we
4 can't force them. What we would do is tell them what
5 the hazards would be, have them sign a liability
6 release, supply them with as much information as we
7 could for them to make an educated decision, and if
8 they decided to continue with the process, that would
9 be an issue they'd have to deal with, not me.

10 Q. But you were comfortable putting on a wheel
11 that you knew could create a public safety or hazard
12 issue?

13 MR. WEST: Objection. Argumentative.

14 THE WITNESS: Ma'am -- exactly. I just told
15 you my answer. You want me to repeat it again?

16 Q. (BY MS. SMITH) I just want a yes or no.

17 A. Listen what happens.

18 Q. I don't need your answer again. I would
19 just like a yes or no.

20 A. You asked me for the --

21 Q. Okay. So you would put the reconditioned
22 wheel on; is that correct?

23 A. I would put the reconditioned wheel on if
24 the consumer supplied and signed the release of
25 liability, was aware of what the repercussions might

1 be safetywise. And if they made that decision, I
2 can't force them to do anything else. I'm a collision
3 shop owner, not a gangster. Or was a collision shop
4 owner. No more.

5 MS. SMITH: Okay.

6 THE WITNESS: Pack it in.

7 MR. WEST: I have a couple follow-ups.
8 Sorry.

9 THE WITNESS: Boy, can you get me a check so
10 I can go home?

11 MR. WEST: She'll get it to you later.

12 THE WITNESS: Later?

13 MR. WEST: Yep.

14 THE WITNESS: What do you mean later?

15 MR. WEST: Stop arguing and just listen.

16 THE WITNESS: I don't do later.

17 MR. WEST: Well, that's the way the rules
18 work.

19 FURTHER EXAMINATION

20 BY MR. WEST:

21 Q. Mr. Avellini --

22 A. Later.

23 Q. -- counsel said in your experience as a body
24 shop collision repair owner if the insurance company
25 would deny a claim to repair a wheel as opposed to

Exhibit “4”

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)	
)	
Plaintiff,)	
)	
vs.)	No. A-16-737120-C
)	Dept. No. XXVII
NEVADA AUTO DEALERSHIP)	
INVESTMENTS, LLC, a)	
Nevada Limited Liability)	
Company d/b/a SAHARA)	
CHRYSLER, JEEP, DODGE,)	
WELLS FARGO DEALER)	
SERVICES, INC.,)	
COREPOINTE INSURANCE)	
COMPANY, and DOES 1)	
through 100, Inclusive,)	
)	
Defendants.)	
-----)	

VIDEOTAPED DEPOSITION OF JOSHUA GRANT
30(b)(6) Representative from Sahara Chrysler

Taken on Wednesday, December 14, 2016
By a Certified Court Reporter

At 9:34 a.m.

At Thorndal, Armstrong
1100 East Bridger
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

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JOINT APPENDIX 747

2

1 **APPEARANCES:**

2

3 For the Plaintiff, Derrick Poole:

4

5 **GEORGE O. WEST, III, ESQ.**
Law Offices of George O. West, III
10161 Park Run Drive
Suite 150
Las Vegas, NV 89145

7

8 For the Defendants, Nevada Auto Dealership
9 Investments, LLC:

10

11 **BRIAN TERRY, ESQ.**
Thondale Armstrong
1100 East Bridger Avenue
Las Vegas, NV 89101

13

14 For the Defendant, Wells Fargo Dealer Services, Inc.:

15

16 **NATHAN KANUTE, ESQ.**
Snell & Wilmer
3883 Howard Hughes Parkway
Suite 1100
Las Vegas, NV 89169

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21

22

23 **INFORMATION TO BE PROVIDED**

24 None

25

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4

1 (Court reporter's opening statement was waived.)

2 * * * * *

3 (Witness sworn.)

4 WHEREUPON:

5 JOSHUA GRANT

6 having been first duly sworn, was

7 examined and testified as follows:

8

9 EXAMINATION

10 BY MR. WEST:

11 Q. Can you please state and spell your

12 name for the record, please?

13 A. Joshua Grant. J-O-S-H-U-A, G-R-A-N-T.

14 Q. Mr. Grant, have you ever had your

15 deposition taken before?

16 A. No.

17 Q. I know that Mr. Terry has gone over

18 with you some of the rules and explained to you

19 what this process is all about, but I have to go

20 over a few of the ground rules with you so that

21 we have a clear understanding of what this

22 procedure is all about and so that you know

23 exactly what is going on here.

24 The person to your left is a Certified

25 Court Reporter. She is empowered under the laws

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5

1 of the State of Nevada to give you an oath to

2 tell the truth, which you just took. It is the

3 same oath you would take in a court of law as if

4 we were in front of a judge and jury. And even

5 though we are in an informal setting here today

6 and there is no judge and jury present, the oath

7 you took today carries the same penalties of

8 perjury and the same requirements to tell the

9 truth as if we were in court. Consequently, you

10 are giving sworn testimony in this case here

11 today as if we were in front of a judge and jury.

12 Because of that, it is extremely

13 important for you to give your best and most

14 accurate testimony here today with respect to the

15 questions that I have to ask.

16 As you sit here today, is there any

17 reason why you believe you cannot give your best

18 and most accurate testimony here today?

19 A. No.

20 Q. No issues with medications, no issues

21 with not getting enough sleep, anything like

22 that? You feel comfortable going forward here

23 today?

24 A. I do.

25 Q. So far, you are doing very well, but I

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1 **provided, yeah.**

2 **Q.** I just want to make sure, just for
3 clarity, that there is no policy, handbook, or
4 anything written down on paper or anything that
5 you generated or anybody in the dealership
6 generated that said this is how we are going to
7 make the decision to CPO cars, this is what has
8 to happen. Nothing like that?

9 **A. No. We follow the manufacturer's**
10 **guidelines to a T.**

11 **Q.** Item Number 2 to Exhibit 1 asks for
12 documents, any written policies, practices, or
13 procedures that were in effect at the time you,
14 Sahara Dodge, acquired the Plaintiff's vehicle
15 into Sahara Dodge's inventory that refer,
16 reflect, or relate to any requirement, process,
17 method, manner in which you are required to
18 undertake any inspection of the vehicle in which
19 you intend to display or sell as a certified
20 pre-owned identified in Exhibit 1.

21 With respect to the vehicle at issue
22 here again, there was nothing written with
23 respect at the time that the vehicle at issue
24 came into acquisition into your inventory, I
25 think it was in May of 2015, nothing written with

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1 respect to the decision to CPO that car, correct,
2 other than the manufacturer's recommendations,
3 correct?

4 **A. Correct.**

5 **Q.** Thank you.
6 Number 3 asks for any and all documents
7 generated by you, Sahara Dodge, that refer,
8 reflect, or relate to the CPO sale, CPO
9 inspection, CPO eligibility involving the
10 vehicle.

11 Your lawyer has given me a whole host
12 of documents relating to that. We are going to
13 go over those.

14 **A. Okay.**

15 **Q.** As you sit here today, do you believe
16 all responsive documents in Number 3 have been
17 provided?

18 **A. I believe so.**

19 **Q.** Before you came here to the deposition
20 today, other than talking with Mr. Terry, what
21 have you done to prepare for your deposition here
22 today? Have you talked to anybody other than
23 Mr. Terry, reviewed any documents, anything like
24 that?

25 **A. Met with the paralegal.**

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1 **Q.** I don't want to know what was said. I
2 just want to know --

3 **A. Yeah. There was a meeting with the**
4 **paralegal. They gathered documents and whatnot**
5 **that were going to relate to the trial, yes.**

6 **Q.** Before you came to the deposition here
7 today, did you review the deal file with respect
8 to Mr. Poole?

9 **A. Yes.**

10 **Q.** Did you review the deal file with
11 respect to Mr. Hinton who was the person who
12 traded in the car that was ultimately resold to
13 Mr. Poole?

14 **A. Yes.**

15 **Q.** Did you talk to anybody in service or
16 in sales regarding this particular case in
17 preparation for your deposition here today?

18 **A. No.**

19 **Q.** As you sit here today, do you have a
20 pretty good understanding based upon your review
21 of the documents as to the type of transaction
22 that occurred, how the vehicle at issue was
23 acquired into Sahara Dodge's inventory, how it
24 was CPO'd, that type of thing?

25 **A. Yes.**

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1 **Q.** And that testimony would be based on
2 both your review of those documents and your
3 personal familiarity and experience with that
4 process, correct?

5 **A. Yes.**

6 **Q.** Number 4 asks for all CarFax,
7 AutoChecks, or other similar report obtained by
8 you, Sahara Dodge, prior to certifying the
9 vehicle as CPO and given -- and presented to the
10 Plaintiff.

11 Are you aware that there were some
12 CarFax reports that were generated on the vehicle
13 that were given to Mr. Poole?

14 **A. Yes.**

15 **Q.** Have you reviewed those?

16 **A. Yes.**

17 **Q.** Based upon you being a used car manager
18 within the dealership industry for over ten
19 years, how many vehicles would you say,
20 estimating, that you have been responsible for
21 selling to the community throughout your tenure
22 in the industry?

23 **MR. TERRY:** Just any vehicle or CPO?

24 **MR. WEST:** Used vehicles. It is a big
25 number.

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1 **Q.** I'm sure they exist. But on the other
2 side, there are customers that might find those
3 things important, true?

4 **A. Maybe.**

5 **Q.** You as the used car manager, would you
6 deem those things important and require those
7 types of disclosures if those things existed on a
8 CPO vehicle prior to sale?

9 **A. Would I require them, no.**

10 **Q.** No?

11 **A. No.**

12 **Q.** Why not?

13 **A. It is not a requirement of the program.**

14 **Q.** Other than it not being a requirement
15 of the program as designated by the manufacturer,
16 would it be prudent business practice to make
17 full disclosure, as you testified previously, to
18 the consumer about things that might affect the
19 vehicle's value or safety? If it affects a
20 vehicle's value or safety it should be disclosed,
21 right?

22 **A. If it affected a vehicle's safety, it
23 would be listed here.**

24 **Q.** My question is: If it affects safety
25 or value, you previously testified that it is

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1 common practice and the custom and practice to
2 make full disclosure to the consumer about things
3 that might affect a vehicle's safety and value,
4 true?

5 **A. I don't know if I testified to that.**

6 **Q.** Let me ask the question again then.

7 **A. Okay.**

8 **Q.** Does Sahara Dodge, at the time this
9 vehicle was sold to a consumer within the
10 community, did they have a policy of making full
11 disclosure to the car buyer who is about to buy a
12 CPO vehicle about any information they may have
13 known about that might have affected a vehicle's
14 safety or value?

15 **A. Safety, yes. Value, no.**

16 **Q.** Well, isn't part of the entire reason
17 or underlying major reason why consumers are
18 drawn to CPO vehicles is because they have a
19 better value than non-CPO comparable vehicles?

20 **A. Because of certification, you mean?**

21 **Q.** Just in general, because they are
22 better quality cars. Value is part of the core
23 principle in the sales process for a CPO, true?

24 **A. Yes.**

25 **Q.** So if value is a core principle that is

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1 communicated to the community with respect to a
2 CPO vehicle inducing them to buy a CPO vehicle
3 because it is of a better value, if something
4 affects a vehicle's value, wouldn't that be
5 something important to disclose to a CPO consumer
6 before they sign their name to the contract?

7 **A. There was no policy for that, no.**

8 **Q.** My question wasn't whether there was a
9 policy. My question was: Did you as the person
10 here in the dealership to testify about these
11 things, did the dealership deem that important to
12 disclose to a car buyer within the community
13 prior to signing their name on the contract?

14 **A. No.**

15 **Q.** So your testimony here today is, just
16 so we have clarity, that items affecting a
17 vehicle's value involving a CPO vehicle is not
18 part of the full disclosure requirement that
19 Sahara Dodge had at the time when they sold the
20 vehicle to Mr. Poole?

21 **A. That's correct.**

22 **Q.** If all of these things that I just
23 listed, the frame bracket, et cetera, et cetera,
24 went through a 125 comprehensive, thorough CPO
25 inspection, would you have expected the service

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1 department to have discovered all of those
2 things?

3 **A. If they were damaged, yes.**

4 MR. TERRY: Let me just object. The
5 question is vague and ambiguous.

6 THE WITNESS: If they were damaged at
7 the time of inspection.

8 BY MR. WEST:

9 **Q.** Yes. My question would -- obviously if
10 they weren't damaged at the time of the
11 inspection, there wouldn't be any reason to
12 disclose them, correct?

13 **A. Correct.**

14 **Q.** So my question presupposes and assumes
15 that if these things existed that I just
16 listed --

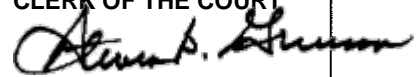
17 MR. TERRY: And had been repaired.

18 MR. WEST: Whether they were repaired
19 or not.

20 BY MR. WEST:

21 **Q.** My question is: Had those things
22 existed, and I did say whether they were repaired
23 or replaced. I went repaired, replaced,
24 repaired, replaced. So all of those items I
25 talked about, the repaired front frame end

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1 **MTS**
2 **JEFFERY A. BENDAVID, ESQ.**
3 Nevada Bar No. 6220
4 **STEPHANIE J. SMITH, ESQ.**
5 Nevada Bar No. 11280
6 **MORAN BRANDON BENDAVID MORAN**
7 630 South 4th Street
8 Las Vegas, Nevada 89101
9 (702) 384-8424
10 j.bendavid@moranlawfirm.com
11 s.smith@moranlawfirm.com
12 *Attorney for Defendants, Nevada Auto*
13 *Dealership Investments LLC d/b/a Sahara*
14 *Chrysler and Corepointe Insurance Co.*

ENTERED


10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DERRICK POOLE,

13 Plaintiff,

14 v.

15 NEVADA AUTO DEALERSHIP
16 INVESTMENTS LLC, a Nevada Limited
17 Liability Company d/b/a SAHARA
18 CHRYSLER; JEEP, DODGE, WELLS
19 FARGO DEALER SERVICES INC.,
20 COREPOINTE INSURANCE
21 COMPANY; and DOES 1 through 100,
22 Inclusive,

23 Defendant.

Case No.: A-16-737120-C
Dept. No.: XXVII

**MOTION TO STRIKE
DECLARATION OF ROCCO
AVELLINI ATTACHED TO
PLAINTIFF'S OPPOSITION ON
ORDER SHORTENING TIME**

Date: 11-9-17
Time: 10:30 am

23 COMES NOW, Defendant, NEVADA AUTO DEALERSHIP INVESTMENTS
24 d/b/a SAHARA CHRYSLER JEEP DODGE RAM ("Defendant" and/or "Nevada Auto"),
25 by and through its counsel of record, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J.
26 SMITH, ESQ. of MORAN BRANDON BENDAVID MORAN, and hereby submits its
27 Motion to Strike the Declaration of DERRICK POOLE'S ("Plaintiff" and/or "Poole")
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 expert, ROCCO AVELLINI, attached to Plaintiff's Opposition to Defendants' Motion for
2 Summary Judgment, on Order Shortening Time.

3 DATED this 2nd day of November, 2017.

4 MORAN BRANDON BENDAVID MORAN

5
6 /s/ Jeffery A. Bendavid,

7 JEFFERY A. BENDAVID, ESQ.

8 Nevada Bar No. 6220

9 STEPHANIE J. SMITH, ESQ.

10 Nevada Bar No. 11280

11 630 South 4th Street

12 Las Vegas, Nevada 89101

13 (702) 384-8424

14 Attorneys for Defendant, *Nevada Auto Dealership*
15 *Investments and Corepointe Insurance*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

ORDER SHORTENING TIME

This matter having come before this Court upon the Affidavit of Jeffery A. Bendavid, Esq. in Support of Order Shortening Time and the Court having reviewed all of the papers and pleadings on file herein, and for good cause shown, therefore;

IT IS HEREBY ORDERED that Motion to Strike the Declaration of DERRICK POOLE'S expert, ROCCO AVELLINI, attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment. shall be heard on Shortened Time, on the 9th day of November, at the hour of 10:30 (a.m.)/p.m. in the above-entitled Court, or as soon thereafter as counsel may be heard. *and give* *4:30 PM*

IT IS FURTHER ORDERED that Plaintiff shall file an Opposition on or before the 7th day of November, 2017; and Defendant shall file any Reply on or before the day of, 2017.

DATED this 3 day of Nov., 2017.

Nancy L. Alf
DISTRICT COURT JUDGE



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
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FAX: (702) 384-6568

**AFFIDAVIT OF JEFFERY A. BENDAVID, ESQ. IN SUPPORT OF MOTION ON
ORDER SHORTENING TIME**

COUNTY OF CLARK)
) ss:
STATE OF NEVADA)

I, JEFFERY BENDAVID, ESQ., declare under penalty of perjury that matters set forth herein are true to the best of my knowledge.

1. Affiant is an attorney duly licensed to practice law within the State of Nevada, and counsel for Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS, LLC and COREPOINTE INSURANCE in the above-captioned matter.

2. Initial expert reports were due on June 14, 2017, in this litigation.

3. Rebuttal expert reports were due on July 14, 2017.

4. Discovery in this matter is closed and closed officially on August 31, 2017.

5. Plaintiff did not proffer any rebuttal report on July 14, 2017, and did not otherwise supplement the initial expert disclosure.

6. On October 20, 2017, Plaintiff served an Opposition to Defendant's Motion for Summary Judgment. Attached to the Opposition was a 17 page "declaration" from Rocco Avellini, in which he supplements and tries to bolster his opinions that should have been complete and fully stated at the time for expert disclosures, and/or within a supplemental or rebuttal report.

7. Since discovery is closed, Plaintiff's expert should not now be able to supplement and substantiate his opinions beyond what was already within his expert report and Curriculum Vitae.

8. The hearing is set for November 9, 2017, and there is good cause to hear Defendant's Motion to Strike Fugitive Documents on shortened time to determine what




MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

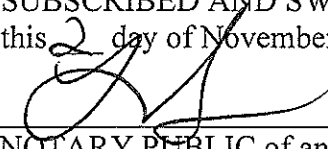
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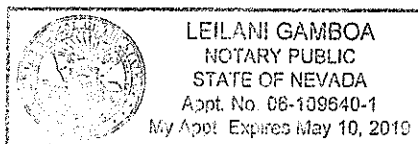
1 pleadings the Court is willing to consider and/or are actually permitted under the Nevada
2 Rules of Civil Procedure and/or Eighth Judicial District Court Rules.

3 FURTHER AFFIANT SAYETH NAUGHT.

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6 
7 JEFFERY A. BENDAUID, ESQ.

8 SUBSCRIBED AND SWORN to before me
9 this 2 day of November, 2017.

10 
11 NOTARY PUBLIC of and for said County and State



MORAN BRANDON
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LAS VEGAS, NEVADA 89101
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Rocco Avellini's ("Mr. Avellini") supplemental "17 page declaration" should be
5 stricken in its entirety, as it is untimely and improperly attempts to supplement and bolster
6 his opinions and findings within his report. Additionally, Mr. Avellini's 17 page declaration
7 attempts to introduce a safety issue to which he also attempted to improperly introduce
8 during his deposition, regarding a wheel on the subject Vehicle. Lastly, Mr. Avellini's 17
9 page declaration is irrelevant and immaterial, as Plaintiff could have attached Mr. Avellini's
10 expert report, however, it is improper for Mr. Avellini to rebut opinions and facts at this
11 juncture. Accordingly, all of Mr. Avellini's 17 page declaration opinions should be stricken
12 as untimely and irrelevant.
13

14 **II. FACTS**

15 Pursuant to a mutual agreement by Defendant's and Plaintiff's (the "Parties")
16 counsel, the initial expert designation to be on or before June 14, 2017. Plaintiff served his
17 initial expert designation on June 12, 2017. Defendant served its initial expert designation
18 on June 14, 2017 and a rebuttal report on July 14, 2017. Plaintiff never served a rebuttal
19 expert report, and Mr. Avellini testified that he was not asked to prepare one. *Exhibit 1-*
20 *Excerpts of Deposition of Rocco Avellini ("Avellini Depo."), 79:16-18.* Plaintiff never
21 served any supplemental reports regarding Mr. Avellini's findings and/or opinions, and
22 discovery closed on August 31, 2017. *See Scheduling Order.*
23

24 Mr. Avellini was deposed on September 22, 2017, and also made no attempt to
25 actually supplement his report, however he did improperly testify to things beyond the
26 actual findings within his report. On October 20, 2017, Plaintiff attempted to file an 89 page
27
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BENDAVID MORAN
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1 Opposition to Defendants' Motion for Summary Judgment, without exhibits, attached
2 thereto, was a seventeen (17) page declaration for Mr. Avellini which purportedly is based
3 on his reading of Defendants' Motion for Summary Judgment and Motion to Strike him as
4 an expert. *Exhibit 2- attached hereto*. Based on the untimely disclosure and the irrelevant
5 and superfluous 17 page declaration, it should be stricken.
6

7 **III.**

8 **LEGAL ARGUMENT**

9 **A. Mr. Avellini's 17 page Declaration Should be Stricken as it is Untimely, and**
10 **in Contravention of NRCP 16.1.**

11 Mr. Avellini's additional 17 pages of declaratory testimony is entirely self-serving,
12 sets forth speculative information, and attempts to include additional opinions and testimony
13 regarding a "reconditioned" wheel. *See Exhibit A, ¶14-17*. Mr. Avellini also sets forth
14 opinions that appear to improperly rebut opinions by Ray Gongora (Defendant's mechanic,
15 whom Plaintiff designated as an expert), however, any such opinions and rebuttals should
16 have been contained wholly in Mr. Avellini's report. NRCP 16.1(a)(2)(B) provides, in
17 pertinent part:
18

19
20 Except as otherwise stipulated or directed by the court, this disclosure shall,
21 with respect to a witness who is retained or specially employed to provide
22 expert testimony in the case or whose duties as an employee of the party
regularly involve giving expert testimony, be accompanied by a written report
prepared and signed by the witness...

23 The report shall contain a complete statement of all opinions to be expressed
24 and the basis and reasons therefor; the data or other information considered
25 by the witness in forming the opinions; any exhibits to be used as a
26 summary of or support for the opinions; the qualifications of the witness,
including a list of all publications authored by the witness within the
preceding 10 years; the compensation to be paid for the study and testimony;
27 and a listing of any other cases in which the witness has testified as an expert
at trial or by deposition within the preceding four years.
28



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1 Furthermore, NRCp 16.1(a)(2)(C) provides that:

2
3 (C) These disclosures shall be made at the times and in the sequence directed by the court.

4 (i) In the absence of extraordinary circumstances, and except as otherwise
5 provided in subdivision (2), the court shall direct that the disclosures shall be
6 made at least 90 days before the discovery cut-off date.

7 (ii) If the evidence is intended solely to contradict or rebut evidence on the same
8 subject matter identified by another party under paragraph (2)(B), the
9 disclosures shall be made within 30 days after the disclosure made by the
10 other party. This later disclosure deadline does not apply to any party's
11 witness whose purpose is to contradict a portion of another party's case in
12 chief that should have been expected and anticipated by the disclosing party,
13 or to present any opinions outside of the scope of another party's disclosure.

14 Here, by the Court's order and a subsequent stipulation between Plaintiff and
15 Defendants, expert disclosures were due on June 14, 2017. Plaintiff did not serve any other
16 supplemental and/or rebuttal reports. Discovery closed on August 31, 2017. As such, any
17 disclosure of new opinions and/or opinions which "contradict a portion of another party's
18 case in chief that should have been expected and anticipated by the disclosing party..." is
19 not permitted. *Id.* Indeed, to allow supplemental declarations at any time, including after the
20 close of discovery, from an expert would create a never-ending cycle of expert disclosures.
21 *See Hologram USA, Inc., v. Pulse Evolution Corp.*, 2016 U.S. Dist. LEXIS 95974 (July 21,
22 2016). In *Hologram*, although dealing with NRCp's federal counterpart, FRCP 26.1, the
23 Court found:

24 Supplementation "means correcting inaccuracies, or filling the interstices of an
25 incomplete report based on information that was not available at the time of the
26 initial disclosure." (citing *Keener v. United States*, 181 F.R.D. 639, 640 (D.
27 Mont. 1998)). It is not "a loophole through which a party who submits partial
28 expert witness disclosures, or who wishes to revise her disclosures in light of
her opponent's challenges to the analysis and conclusions therein, can add to
them to her advantage after the court's deadline for doing so has passed.
(internal citations omitted.)



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1 Mr. Avellini's 17 page declaration directly addresses and attempts to contradict
2 portions of Defendants' case in chief, primarily the deposition testimony of Ray Gongora,
3 the mechanic previously employed by Defendant, Nevada Auto Dealership Investments
4 LLC. *See Exhibit 2.* George West, Esq., Plaintiff's counsel, took the deposition of Ray
5 Gongora on December 14, 2016, six (6) months prior to initial expert disclosures.
6 Accordingly, Mr. Avellini had the deposition of Mr. Gongora in his possession and was free
7 to put forth any opinions regarding Mr. Gongora or his techniques, or the Certified Pre-
8 Owned inspection in his original report.

9 Adding additional opinions and attempting to rebut information which was known to
10 Plaintiff, well prior to the preparation of his expert's report and which was plainly part of
11 Defendants' case in chief, is in direct contravention to NRCP 16.1. Mr. Avellini should not
12 be permitted to supplement and enhance his opinions at this juncture, well after the
13 disclosure of his report and after the close of discovery. Again, discovery closed on August
14 31, 2017. As such, the 17 pages of opinions of Mr. Avellini are entirely untimely, and
15 should be stricken in its entirety.

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19 **B. Mr. Avellini's 17 page Declaration Should be Stricken as it is Redundant and**
20 **Immaterial.**

21 Mr. Avellini sets forth significant additions such as stating additional background
22 information which could and should have been set forth in his original report and/or
23 *curriculum vitae* in his June 14, 2017 disclosure. *See Exhibit 2.* Regardless, additional
24 information regarding Mr. Avellini's qualifications and/or background are irrelevant to the
25 Motion for Summary Judgment. Accordingly, this additional information should be stricken
26 pursuant to NRCP 12(f).
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28



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BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
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1 NRCP 12(f) provides, in pertinent part, that, "[U]pon motion made by a party before
2 responding to a pleading... the court may order stricken from any pleading any insufficient
3 defense or any redundant, immaterial, impertinent, or scandalous matter." Here, Plaintiff
4 provides redundant information to the extent that Mr. Avellini was afforded the opportunity
5 to include his Curriculum Vitae and also testify as to his experience and qualifications, and
6 as such his inclusion of additional information and expansion on previous information is
7 redundant and immaterial. In particular, Defendants' Motion for Summary Judgment does
8 not argue directly against Plaintiff's expert's qualifications as the basis for their seeking
9 summary judgment. As such, this information should be stricken in its entirety.
10

11
12 **IV.**
CONCLUSION

13 Based upon the above and foregoing, Defendants, *Nevada Auto Dealership Investments*
14 *LLC d/b/a Sahara Chrysler and Corepointe Insurance Co*, requests that the supplemental 17
15 page declaration and testimony of Rocco Avellini be stricken from the record and not
16 considered by this Court as evidence with respect to Plaintiff's Opposition.
17

18 DATED this 2nd day of November, 2017.
19

20 **MORAN BRANDON BENDAVID MORAN**

21 /s/: Jeffery A. Bendavid, Esq.

22 **JEFFERY A. BENDAVID, ESQ.**

23 Nevada Bar No. 6220

24 **STEPHANIE J. SMITH, ESQ.**

25 Nevada Bar No. 11280

26 630 South 4th Street

27 Las Vegas, NV 89101

28 Attorney for *Nevada Auto Dealership Investments LLC and*
Corepointe Insurance



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
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Exhibit “1”

DECLARATION OF ROCCO AVELLINI

I, Rocco Avellini, declare:

1. That I have been retained by Plaintiff in this case to give certain opinions regarding a 2013 Dodge Ram 1500 ("subject vehicle") that was sold to the Plaintiff, Mr. Poole. This declaration is made in opposition to Defendant Nevada Auto Dealership Investments LLC's ("SAHARA") motion to exclude me from rendering expert opinions in this case. I have read Defendant SAHARA's motion to attempt to prevent me from testifying in this case, as well as SAHARA's Motion for Summary Judgment as it relates to me. **This declaration is being submitted in opposition to Defendant's Motion for Summary Judgment.**

2. I have personal knowledge of the matters set forth herein, except those matters of which I have gained such knowledge based upon my review of certain documents, records, information and data relating to the subject vehicle in this case or relating to the general subject matter that would be relevant to this case and my opinions. My opinions were based on my specialized knowledge, training, experience, and continuing education, and keeping abreast of the latest advances and changes relating to the collision damage and repair of vehicles, including but not limited to the new aluminum vehicles and hybrid vehicles, in addition to assessing diminished value of vehicles. The documents specifically involving the subject vehicle and other comparable vehicles, in addition to other documents and sources of information identified or referred to in both my Vehicle Condition Assessment and Diminished Value Assessment, and based on my experience within my of area of expertise, **are documents and information that other experts in my field of expertise would reasonably rely upon in forming opinions in this case** concerning the subject matters that I have been retained to render opinions about; and if called as a witness, I would and could competently testify:

VEHICLE CONDITION REPORT OPINIONS

3. Regarding my Vehicle Condition Assessment, the report consisted of seven pages and it is attached as Exhibit 22 without exhibits. I clearly set forth in my report what materials and information I reviewed and relied upon in formulating my opinions at pages 3 and 4 of my Vehicle Condition Assessment at Exhibit 22. I also produced at my deposition

additional materials, including the the portions of deposition transcripts of Mr. Gongora, SAHARA's CPO mechanic, and Joshua Grant, SAHARA's used car director, that I reviewed.

With respect to my condition report, I was asked to formulate the following opinions:

- Were the previous repairs to the vehicle done correctly and were they to manufacturer's specifications?
- Should the subject vehicle have been sold as a Chrysler/Dodge CPO vehicle?
- Did SAHARA know or should they have known the extent of the collision damage caused by the previous collision, as well as the extent of the repairs as a result of the previous collision when SAHARA sold the CPO vehicle to Mr. Poole?
- Did the vehicle sustain diminished value as a result of the March 26, 2014 collision?

4. From my review of the facts and information given to me, this case is about four primary issues involving areas of my expertise, of which my opinions are based. First, what was the extent of the damage caused to the subject vehicle as a result of the previous collision/accident the subject vehicle was involved in on March 26, 2014. Second, were the repairs to the subject vehicle resulting from the March 26, 2014 previous collision done properly, meaning were they within manufacturer specifications? Third, based on the thorough and comprehensive nature of SAHARA's 125 Point CPO inspection undertaken by SAHARA's certified and trained mechanic on May 8, 2014, did SAHARA know or should they have known the extent of the previous collision damage? Fourth, based upon that CPO inspection, should SAHARA have known that not all of the previous repairs to the vehicle were done properly, (meaning not to manufacturer's specifications), and knowing, or should have knowing that, should the subject vehicle have been certified as a Dodge CPO? All of the documents and information I reviewed is listed on page 3 and 4 of my assessment at Exhibit 22, (without exhibits), and would be relevant and relied upon by any other expert in my area of expertise in rendering the opinions. I will address the basis for my diminished value opinions later in this declaration.

5. My area of expertise for the last 30 years has been in automotive collision and mechanical repairs, insurance claims manager, vehicle appraisals, post collision and mechanical repair inspections, evaluating vehicle values and collision monitoring. A very large

part of my expertise is performing and assessing the extent of damage to vehicles caused by all types of collisions and accidents, performing or supervising the proper repairs on those vehicles to return the vehicle to manufacturer specifications, quality control over the repair to vehicles to ensure they meet manufacturer specifications after being repaired, and assessing whether repairs performed on the vehicles were done properly and within manufacturer specifications. **This case primarily centers around automotive collision and repair. This case also primarily involves the extent of a previous collision that the subject vehicle was involved in just prior to selling that same vehicle to Mr. Poole approximately sixty days later as a Dodge CPO vehicle.** The case involves assessment of whether those previous repairs to the subject vehicle were completed properly and according to manufacturer specifications. This case is also about if those previous repairs were not done properly and according to manufacturers specifications, should the vehicle have been certified as a Dodge CPO vehicle? This case is about whether the subject vehicle sustained diminished value as a result of the previous collision.

6. In reading SAHARA's motion to exclude me from testifying they argue that I do not have the required "formal or informal schooling, training, licensing or experience" to testify in this case. My CV is attached as Exhibit 23 to this declaration and I believe it speaks for itself that I am qualified to render the opinions I have been asked to make in this case. Most of the cases I have been involved with concern auto/dealer fraud usually involving improper automotive repairs, hidden/undisclosed damage or repairs, total loss evaluations, appraisals and diminished value. Sometimes my services don't have anything to do with dealer fraud. For example many people want a second opinion regarding a total loss evaluation to insure that the amount that an insurance company is offering is correct. While SAHARA's counsel never bothered to ask me a single question at my deposition about my qualifications, I feel compelled to set forth this information in a little more detail, which tracks my CV.

7. I began my automotive career in 1969 as a body man in Brooklyn, NY and worked myself to the front office to become an estimator and then the shop manager. I also managed the tow truck operation for the same repair facility. I also was an owner of a tow

truck company and then became a manager of an automotive salvage yard. I was the manager of an automobile salvage yard supervising a total of 10 – 15 yardmen, delivery drivers and office support staff. In the early 1980, I began working in the insurance industry, starting as an independent automobile estimator. I was promoted to the supervisor of this small independent appraisal company (that employed from 9 – 15 appraisers), which completed estimate and total loss evaluations for numerous insurance companies. My next insurance related position was as a heavy equipment adjuster for Empire Mutual Insurance, my duties included estimating damage to trucks, motorhomes, water craft trucks and trailers. **I then went to work for the Hertz Corporation as a National Property Damage Reinspector & Manager.** My duties included supervising eight (8) Regional offices with approximately 100 property damage adjusters. I conducted a national re-inspection program for the 390 independent appraisal companies. I conducted open and close file audits at our regional offices **and supervised our direct repair program facilities for our fleet vehicle repairs.** I then became partners in an auto sales business that operated at Rocco's Collision Center ("RCC"), that included buying, selling and inspections of vehicles. I then opened Rocco's Sports Car Emporium in 1988 where I personally restored and repaired exotic vehicles and muscle cars. Rocco's Sports Car Emporium evolved into RCC. RCC was a state of the art facility that offered collision and full mechanical repair and maintenance involving almost every domestic and foreign vehicle on the market. I owned, operated and personally supervised all repairs and then did the majority of the quality control inspections after the collision repair process was complete. **I owned and operated RCC for fifteen years.**

8. While operating RCC I became involved with Wreck Check a company that offered diminished value assessments and many other Value Added Services [VAS]. In 1997, I created Wreck Check Car Scan Centers ("WCCSC") that offers VAS services to the public, including but not limited to, expert witness testimony, improper repairs, hidden and non-disclosed damage or repairs, post repair inspections, diminished value assessments, total loss assessments, collision monitoring and other automotive related assistance. I have approximately 40 licensees nationwide that offer the WCCSC VAS services in their area. Over the course of my career in the auto collision industry, I have personally appraised, evaluated,

repaired, inspected for quality control of repairs, or supervised the repair in the high tens of thousands of vehicles and probably over 100,000. After opening WCCSC, I have personally appraised, evaluated and inspected over thousands of vehicles. **What I did to assess the subject vehicle in this case in rendering my opinions is no different from what I have been trained to do for over the last 30 years as a collision damage repair professional.**

9. As an auto collision and repair professional with over three decades in the industry, I have extensive familiarity and specialized knowledge, experience, skill, training and technical education in assessing and evaluating collision damage, the extent of that collision damage, proper and improper repairs and diminished value to vehicles. I do not have an engineering background, nor do I have any academic background in vehicle design or engineering. I am not a designer of vehicles. I was not involved in the development of the Dodge CPO standards nor was I involved in the development of the manufacturer's repair specifications for the subject vehicle. However, what I do have is extensive and intimate familiarity and specialized knowledge, experience, skill, training and technical education involving the inspection, valuation, appraisal, estimation, assessment and proper repair of vehicles, including the subject vehicle.

10. Based on my over three decades in the auto collision and repair industry as auto collision and repair professional and based upon that experience, technical training and expertise, technical education in the field of collision repair, in either preparing or reviewing collision estimates in at least the high tens of thousands, I would **not** have to be present or actually see the repair process to a vehicle to know, opine or evaluate the extent of the damage to that vehicle. All that is required is the body shop estimate, which in this case is the Allstate Collision Estimate of Record ("ACE"), which I reviewed and is attached as Exhibit 2. In assessing whether the repairs to the subject vehicle were properly completed according to the manufacturers' specifications. However, my subsequent inspection of the vehicle would also assist me in rendering my opinions in assessing if the repairs were completed correctly, which I also conducted on the vehicle. **This is precisely what I have been trained to do and know**, which is to properly inspect and evaluate the repairs to vehicles.

11. SAHARA makes much to-do about the fact that my inspection occurred two years after the previous collision in March of 2014; and that somehow my opinions are not reliable due to the passage of time. The passage of time in this case does **not** affect my opinions at all in this case because I am not aware of, nor have I seen any information or evidence that there were any subsequent repairs or changes to the vehicle between the time of the previous collision on March of 2014 and the time I inspected it in June of 2016. In fact, in reviewing SAHARA's motion for summary judgment, which also mentioned my opinions, at undisputed fact number 18 in SAHARA's motion, **SAHARA agrees and states that there were no repairs performed to the vehicle during the time Mr. Poole purchased the subject vehicle and the time I inspected the vehicle.** The subsequent accident the subject vehicle was involved in on May of 2017 does not affect my opinions in any way because my opinions are based upon, limited to and focused on the repairs undertaken to the vehicle as a result of the March 2014 accident. **Based upon what I was requested to do, my focus would be on what were the state of the repairs on the subject vehicle when it underwent and "passed" the 125 Point CPO inspection that was completed by SAHARA's certified and trained technician on May 8, 2014.**

12. It is appropriate to point out the obvious here. When a vehicle is damaged and it needs to be properly repaired according to manufacturer specifications, if it can be restored to those specifications, the vehicle is not brought to the manufacturer or to a design engineer, or to a metallurgist. The vehicle is brought to a independent collision damage professional. An auto collision and repair professional does not have to have an engineering degree, or any other scientific or academic degree to be able to undertake a proper inspection, valuation or assessment about whether previous repairs to the vehicle were properly done within manufacturer's specifications. If having an academic degree in engineering, metallurgy or other related academic degree were a requirement, based on my over three decades experience in this industry, then nearly no body shop collision professional would be competent to do their job -- which is to repair the vehicle, if possible, to the manufacturer's repair specifications. In over 30 years, I have yet to meet a trained auto collision and repair professional that possesses that type of academic degree in design or

engineering of vehicles and components of a vehicle.

13. If having some sort of academic degree or background in engineering or car design were required to repair collision damaged vehicles, that would mean that consumers, insurance companies and most importantly, **the governmental agencies that regulate the collision industry**, allow unqualified and incompetent people to attempt to return collision damaged vehicles to the road in a safe condition. It is common knowledge in the collision industry that education and training offered by a combination of manufacturers, providers of information that specialized in the aftermarket repair industry such as I-CAR and ASE, All Data and others, are the benchmark for collecting data and information for the proper repair of collision-damaged vehicles. These entities and organizations have all the most up-to-date data that is **utilized on a daily basis** with respect to any information involving the proper repair of collision damages vehicles, which I also stay up-to-date on.

14. Manufacturers will also quite commonly issue technical updates or position statements on proper repairs to vehicles, all of which any authorized franchised dealership such as SAHARA would have or should be familiar with.. These manufacturer's position statements sometimes are also easily accessible to the public like with Chrysler/Dodge at <https://www.moparrepairconnection.com/collision/position-statements/>. To secure access to these position statements you can establish an account simply as a "vehicle owner" or a "do-it-yourselfer." This is where I obtained a Fiat Chrysler official factory position statement on "reconditioned" wheels attached as Exhibit 8 in doing my research in this case. This position statement was attached to my assessment, and of which I testified to in my deposition with respect to my opinions that the subject vehicle was not properly repaired according to manufacturer's specifications; and because of that, the vehicle was not only improperly certified as a CPO vehicle, but it created a major safety risk to the community. **The ACE at Exhibit 2 at pages 2 and 3, lines 29 to 34, clearly indicates that the left front wheel to the vehicle was replaced with a "reconditioned" wheel which was sublet to a wheel repair company to complete the process, or, the left front wheel was replaced with a "recycled" wheel, which means according to the definitions in the ACE, is a "used" part, and based on my experience, that can also mean the wheel could come from salvaged vehicle**

from a junkyard. According to the FCA official position statement:

FCA US LLC does **not** recommend that customers use “reconditioned” wheels (wheels that have been damaged and repaired) **because they can result in a sudden catastrophic wheel failure which could cause loss of control and result in injury or death.**

Damaged wheels are those which have been bent, **broken, cracked or sustained some other physical damage** which may have compromised the wheel structure.

Repaired indicates that the wheel has been modified through bending, welding, heating, straightening, or material removal to rectify damage.

Re-plating of chrome plated wheels, or chrome plating of original equipment painted or polished wheels is **not an acceptable procedure as this may alter mechanical properties and affect fatigue life.**

15. This information on “reconditioned” wheels is entirely accessible to the public. Based upon my experience, since most auto body collision facilities would most certainly know or should know and have access to this information, it is my opinion that this information was not only within the knowledge of SAHARA as a authorized and franchised Chrysler/Dodge dealership, but at a bare minimum, this FCA position statement should have been known to SAHARA, given this is a manufacturing standard involving damaged wheels to Dodge vehicles. Wheels are damaged on a regular basis and brought to franchised dealers, who can order OEM wheels to properly replace damaged OEM wheels.

16. As part of my opinions in this case, I also reviewed photographs of the vehicle in being repaired during the collision repair process. The photographs included various parts that were being repaired or replaced, all of which were entirely consistent with the repairs reflected on the ACE, and are of the same make, model year and color of the subject vehicle. Additionally one of photos identifies the same VIN number of the subject vehicle. Some of those I reviewed are attached as Exhibit 14. I am informed and believe that these photos were identified and produced by SAHARA in discovery and that the photographs are in fact those of the vehicle being repaired from the March 26, 2014 collision. The photo of the front left wheel from the vehicle, as identified in the ACE, is attached as Exhibit 13. It clearly depicts a chip taken out of the wheel’s rim as a result of the previous collision. In my

opinion, this wheel would meet the FCA definition of a “damaged” wheel as stated in the FCA position statement. Furthermore, based on my experience, which I also testified to in my deposition, I have dealt with hundreds of these types of wheels (and this type of damage to these types of wheels), and these wheels need to be replaced as new and not reconditioned or repaired because of the exact reasons stated in the FCA position statement. A chip like the one depicted in Exhibit 13 could easily propagate a crack into the wheel, and as the FCA position statement says, **it could cause sudden loss of control to the vehicle causing serious injury or death.** and that is why FCA does not recommend reconditioned wheels be used on their vehicles. Based on the ACE, the vehicle’s front left wheel was either “reconditioned” or was replaced with a “recycled” or “salvaged” wheel. Neither of these repairs to the front wheel would meet factory repair specifications, and therefore this vehicle should have never been certified as a CPO vehicle.

17. I reviewed Mr. Gongora’s deposition. He was SAHARA’s CPO technician who undertook the CPO inspection on the subject vehicle. He testified in his deposition at pages 50 and 51, which I reviewed, that as long as the subject vehicle met specifications, there was no need to notate it on the CPO inspection report he prepared. The CPO inspection report is attached as Exhibit 6, which I also reviewed as part of the information I received in formulating my opinions. Based on the ACE, based upon Exhibit 13 (the photograph of the damage to the wheel), and based upon Mr. Gongora’s deposition, this vehicle did not meet manufacturer’s repair specifications and should not have been certified as a CPO vehicle. It is my opinion that if Chrysler/Dodge collision repair specifications requires that reconditioned wheels should not be used than that requirement must be equally applicable to the CPO process.

18. With respect to my opinions about whether SAHARA knew or should have known the extent of the previous collision, based on my experience, my review of the deposition of Mr. Gongora, and reviewing the CPO inspection manual, **(which does not require any measurements to be taken by the CPO technician other than for fluids, brakes and other wear items)**, it is entirely achievable to determine the approximate severity of the impact solely by a visual inspection. These are the same procedures that a qualified collision damage technician

would use to analyze collision damage and to properly repair the subject vehicle. Mr. Gongora, SAHARA's certified and trained CPO technician, inspected the subject vehicle and determined that the vehicle was CPO eligible.

19. Mr. Gongora testified in his deposition that he did not make any comment on the Chrysler CPO checklist regarding the prior collision damage because he was able to look at the prior damage and determine if all the repairs were completed to OEM specifications. **Again, keep in mind that his determination was rendered without taking measurements on the vehicle.** I identified the prior collision damage and repairs by utilizing the same visual procedures that any qualified collision repair technician or post repair inspector would use to analyze collision damage and to repair the subject vehicle according to those manufacturer specifications. **According to the Dodge CPO Manual, item 103 on the CPO list under the heading "Body Panel," the CPO technician, (Mr. Gongora), is also trained and required to inspect the "body surface and panel alignment and fit."** The collision technician, like me, would look for ***misaligned exterior panels***, damage and movement of structural components and secure points such as bolts, hood, door and luggage hinges. My descriptions of the photos I attached to my report show these, and I describe them in detail at pages 3 and 4 of my report. I took a total of 110 photos for my inspection, which further supports my opinions, which I am informed were all provided to SAHARA's counsel, but I took a smattering of the ones that I believed best supported my opinions.

20. Taken as a whole, which I testified to at my deposition, (as opposed to any one thing in isolation such as the misalignment of one bolt which SAHARA attempts to do in the motion), given my experience, because of misalignment of the bumper, tires, wheels, panels, gaps, the repaired left front frame end bracket, and other items set forth in my report at pages 3 to 7, and based upon my observations, the subject vehicle was not repaired according to manufacturer specifications, including but not limited to the front wheel, based on the FCA position statement. Although I did take some measurements showing the uneven space between the right and left front wheels in relation to the bumper, which were part of the other photographs that I took and of which were produced to SAHARA, my opinions in this case that the vehicle was not repaired according to manufacturer's specifications were in large part

based upon my visual observations upon my inspection, in conjunction with the ACE, which experts in my field of expertise would use in formulating their opinions. Again, there is no evidence of which I am aware of that any repairs or other accidents or collision the subject vehicle was involved in between March of 2014, when the previous collision occurred and when I inspected the vehicle in June of 2016. To a person with training, all of what I have just described are signs and indications that the vehicle was involved in a previous collision in addition to the fact that the vehicle was not repaired according to manufacturer's specifications; because if the subject vehicle was fixed according to those specifications, the vehicle would not have all the gaps in between the panels and the other things I just describe and opine about in my report.

DIMINISHED VALUE REPORT OPINIONS

21. I incorporate all of my qualifications and experience mentioned at paragraph 7 in addition to my CV attached as Exhibit 1. With respect to my opinions regarding diminished value of the subject vehicle, my opinions are based upon my numerous years of experience in doing automotive appraisals for insurance companies, my many years of experience with Hertz Rent-A-Car as their National Property Damage Reinspector & Manager, my numerous years of experience in the auto body collision repair business, and my experiences with countless professionals in the field, including auto dealers and auto auctions. I have personally appraised tens of thousands of vehicles, evaluated damage and repaired damage to tens of thousands of vehicles in my personal and supervisory capacity, and I have over 25 years of experience in performing automotive inherent diminished value appraisals. For many years insurance companies claimed they were not liable for diminished value to a damaged vehicle. Over the years that has changed and most jurisdictions in the United States, including Nevada, allow for diminished value damage claims. I have been involved in numerous diminished value claims against Nevada insurance companies on behalf of consumers, and Nevada insurers have paid those claims. My information is also based upon my professional experience in California as well as in talking to WCCSC licensees around the country. I have testified on the amount and existence of diminished value to vehicles in both litigated cases in court and in arbitration; and courts and arbitrators have ordered that diminished value be paid.

22. It is important to note that even if a vehicle can be properly repaired according to manufacturer's specifications, a loss of value remains. There is a significant difference between inherent diminished value and depreciation. Simply put, diminished value is the **immediate** loss of inherent value a vehicle suffers due to an collision or accident. This loss of value occurs at the time a vehicle has been involved in a collision. **Diminished value is measured by the difference in the market value of the vehicle immediately before the collision damage occurred and immediately after the collision damage has been repaired.** Diminished value can have varying degrees. A car with light cosmetic damage or is involved in a very minor collision will not reflect the same loss as the subject vehicle as reflected in the ACE. Diminished value is different from traditional depreciation. Depreciation is an expected and anticipated and measurable reduction or loss of value sustained over a pre-determined time frame, however, like diminished value, Depreciation also takes into account many "objective" factors in calculating the "depreciated" value of a vehicle. These two types of appraisals are similar with respect to the **objective factors** that are taken into account.

23. In determining the existence of, and the amount of, diminished value, I used various relevant sources of information, which is the same information any competent expert in my area of expertise would use in determining diminished value. I use the repair estimate such as the ACE and any reports of prior damage, such as the Carfax run by SAHARA, if available. From these records I take the mileage, year, make and model of the vehicle, as well as the general condition and the options on the vehicle as equipped and the cost of the repairs. The repair estimate shows the type, amount and extent of the damage to the vehicle. I can then easily determine the vehicle's pre-loss value by using comparables or the National Automobile Dealers Association ("NADA") values. It is my opinion, based upon my years of experience, that on line research of vehicle values from dealers and private sellers are more accurate because they represents what consumers and dealers are asking for their vehicles. In addition, when insurance companies evaluate and settle total losses, they use the same on line research information. With this information, I then use comparable car sales to evaluate and determine the diminished value. I find comparables through auction and/or sales data from dealers, public auctions and private sellers across the nation. The above described methodology for

calculating diminished value is commonly accepted in my field of expertise.

24. Vehicles that are in the original condition will typically bring a higher price than vehicles of the same make, model year, and mileage that have been damaged in the manner reflected in the ACE. Inherent diminished value exists across geographic regions and across all types of vehicles. Vehicles that have not been damaged are more sought after by the general public. As a general rule, automotive professionals and dealers will pay more for vehicles that have not been damaged than they will pay for damaged vehicles. **Of course, the extent of the collision, if known, will greatly influence what will be paid by dealer and the consumer.** As I previously stated, there is a big difference with respect to diminished value between a very small collision with very little or cosmetic damage, versus the extent of the damage caused to the subject vehicle by the previous collision reflected in the ACE. This information was known to SAHARA, because Mr. Grant testified that he received the ACE from the private seller approximately three weeks prior reselling the vehicle as a CPO vehicle to Mr. Poole.

25. The difference in value is well recognized in the automobile sales profession. Joshua Grant, SAHARA'S Director of Used Car Sales corroborated this fact in his deposition at page 42 and 43. Most leasing companies charge a lessee an accident penalty. Auction disclosure rules, such as those at Manheim and Adesa require that certain types of damage to vehicles sold at the auction be disclosed. Auction rules, such as those at Mannheim and Adesa allow buyer's of vehicles with undisclosed prior repair damage to return the vehicle and get their money back, or alternatively, have their price adjusted. **These market factors are all indicative and reflective of the uniform existence of diminished value.**

26. SAHARA makes much to do about the comparables in my report were from across the country as opposed to being "local" comparables. The reason why it is best to take a cross section of the country (lower 48) into account with respect to comparables is because it gives me a better overview of the the value of the vehicle. In the case the national search located comparable vehicle within a \$4,000.00 range which is not uncommon and would be similar to the amounts if completing a local search. SAHARA then argues that the "numbers for comparable vehicles inserted appear to be taken from 2017 printouts." SAHARA's argument is misguided. In my deposition I explained the incorrect date is a result of a typo and the

calculation for arriving at the vehicle value at the time of purchase in 2014 and is explained in my diminished value assessment very clearly in exhibit 19 at page five. I utilize this 5% calculation which represents the amount of money the vehicle would increase or decrease in value during the course of a calendar. This percentage in the 25 years as a diminished value expert has been universally accepted in the insurance industry in hundreds of diminished value and total loss claims I have been involved in as an expert. As reflected on my CV in the arbitrations on behalf of consumers for diminished value and total loss, insurers have agreed to the same percentage. In addition in cases where comparables are used from older vehicle value publications I have found in my years of experience in this area of expertise and being involving in numerous cases as identified in my CV at Exhibit 23, after applying the five percent per year calculations the vehicle values are close in value to the 5% calculation. SAHARA next claims there is no basis for the 12.6% or how I utilized that figure. The 12.6% is a damage severity percentage, which is calculated by taking a percentage of the repair cost, (which was \$4,088.70), to the actual cash value of the vehicle, (which was \$32,384.61) This precisely what I testified to in my deposition. The total cost of repairs based on the ACE was \$4,088.73 at Exhibit 2. The Actual Cash Value ("ACV") of the vehicle is reflected on top of page five of my report which is \$32,384.61 based upon the comparables. **\$4,088.70 is 12.6% of \$32,384.61 which is the ACV of the subject vehicle.** The significance of that percentage is that the higher the percentage the less likely it would be for a person to purchase the vehicle.

27. Additionally, In evaluating diminished value it is important to identify the severity of the damage to the subject vehicle which is similar to the steps taken by insurance companies when considering if a vehicle should be deemed a total loss. Because the closer the cost of repairs are to the actual cash value [ACV] the more economically unfeasible it is the continue with the repairs process. It is similar when evaluating diminished value, the greater the percentage of damage is to the ACV of the vehicle the greater the diminished value.

28. It should be noted that in arriving at the loss of inherent diminished value it is not necessary to inspect the subject vehicle, and many experts in this field of expertise can, and often do, rely on the sources of information set forth in this declaration without inspecting the vehicle; however, in this case, I did complete an inspection of the vehicle. This may seem

counter intuitive, but the primary source of information to the existence and amount of a diminished value assessment is the collision damage report from the collision shop. In fact, it is not even necessary to repair the vehicle before I can determine the amount of diminished value that has resulted from the vehicle having been damaged. It is also not necessary to sell the vehicle before I can determine the amount of diminished value. The diminished value exists as of the time the vehicle is damaged. Mr. Pool's vehicle incurred inherent diminished value as set forth and explained in my report at Exhibit 19.

29. SAHARA infers that I engaged in some sort of hocus focus in arriving at my diminished value amounts and that my opinion was not based upon any specifics of the subject vehicle and that my opinion is nothing but speculation and conjecture. Nothing could be further from the truth. Diminished value is not some new or unrecognized or "cutting edge" field of expertise. Per my report, my diminished value assessments are based upon the **same objective factors** and criteria that any other diminished value expert and automobile dealership takes into account. These objective factors include year, make, model, condition, options, mileage and the cost of repairs. In addition, an assessment of the extent of the vehicle's damage including the amount of damage, the type of damage, the area of the damage and the extent of the damage are considered thus the reason for calculating the percentage of damage.

30. With respect to the computer software program WCCSC uses that SAHARA takes issue with, I am not aware that I am required to have a computer programing degree to use a software program in my area of expertise with respect to my opinions on diminished value, or that I have to have been the one who actually designed or wrote the code for the program. There are a myriad of websites available on the internet where a consumer can enter certain information into a web-based application, and the program will come up with a diminished value. In my opinion, these types of evaluations are not reliable with just this limited information. However, many diminished value experts in my area of expertise who undertake a diminished value assessment do in fact use a computer algorithm, **in conjunction with** their review of other **independent information** that was reviewed in the course of their evaluation.

31. The WCCSC software program considers the **same objective criteria** as any other diminished value professional would, such as the year, make, model, mileage, options, type of damage and the cost of the repair and comparable vehicles to arrive at the diminished value of the subject vehicle. The basis for the algorithms and the objective criteria in the WCCSC software were generated as the result of years of extensive research involving a myriad of business and professions across the automobile industry who deal with vehicle appraisals and valuations on a daily basis, including discussions with hundreds of automobile dealerships, new and used cars general managers and sales personnel, other diminished value experts, insurance company appraisers, independent appraisers, and also attending hundreds of automobile auctions. The **objective factors** set forth in this declaration were designed and programmed into the WCCSC software program which I paid a professional software company to develop. When stating in my deposition that I made several revisions to the software it appears that was misunderstood in the context of the statement. I personally advised a professional software programmer of what changes I need and a professional software programmer completes the task within the program. The operator/licensee enters the information into the appropriate fields and the software will determine the amount of loss value to the vehicle, in conjunction with independent information and assessment regarding the diminished value vehicle itself. Additionally, an important component in evaluating diminished value is to have the ability to review any collision estimates, invoices, repair orders, contracts and pertinent documents relating to the repair of the vehicle, which does not occur with many strictly internet-based diminished value software. I find that utilizing strictly internet-based diminished value websites is not reliable or accurate. The reason that the WCCSC Diminished Value Assessment [DVA] evolved into its current form is because of the resistance over the years from the insurance industry in an attempt to deny diminished value recovery. Our DVA addresses denial based on there is no inherent diminished value, diminished value is not owed, diminished value does not occur until the subject vehicle is sold and the consumer actually suffers a loss, diminished value is not owed unless your vehicle suffered a certain amount of damage etc... and many more attempts to deny diminished value recovery.

I certify that the aforementioned is true and accurate under penalty of perjury under the laws of the state of Nevada

Executed this 19th day of October 2017 at Las Vegas, Nevada.



Rocco Avellini

Exhibit “2”

Poole v. Nevada Auto Dealership Investments, LLC, et al.

Deposition of:
Rocco J. Avellini

September 22, 2017



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Telephone **702.474.6255**
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DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

vs.

) Case No. A-16-737120-C

NEVADA AUTO DEALERSHIP

INVESTMENTS LLC, a Nevada

Limited Liability Company d/b/a)

SAHARA CHRYSLER, JEEP, DODGE,

WELLS FARGO DEALER SERVICES

INC., COREPOINTE INSURANCE

COMPANY, and DOES 1 through

100, Inclusive,

Defendants.

DEPOSITION OF ROCCO J. AVELLINI

Taken on Friday, September 22, 2017

At 1:36 p.m.

At 630 South Fourth Street

Las Vegas, Nevada

Reported by: Marnita J. Goddard, RPR, CCR No. 344

A P P E A R A N C E S

FOR THE PLAINTIFF:

GEORGE O. WEST III, ESQ.

ATTORNEY AT LAW

10161 Park Run Drive

Suite 150

Las Vegas, Nevada 89145

FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS, LLC,
DOING BUSINESS AS SAHARA CHRYSLER, JEEP, DODGE, RAM,
AND COREPOINTE INSURANCE COMPANY:

STEPHANIE J. SMITH, ESQ.

MORAN BRANDON BENDAVID MORAN

630 South Fourth Street

Las Vegas, Nevada 89101

I N D E X

WITNESS

EXAMINATION

ROCCO J. AVELLINI:

(BY MS. SMITH)

4, 195, 217

(BY MR. WEST)

162, 214

1 Q. Were you aware that defendant, my client in
2 this matter, made their initial expert disclosure on
3 June 14th?

4 A. Of what year?

5 Q. Of 2017.

6 A. I don't know that, no.

7 Q. I'm just trying to understand if there was a
8 different report that was supposed to be attached.
9 Because you just testified that you had Mr. Lepper's
10 initial report while you were finishing your initial
11 report?

12 A. I don't know what date I received it.

13 Q. Okay.

14 A. I'm just making comments on Mr. Lepper's
15 report. That's all.

16 Q. Has someone asked you to prepare a rebuttal
17 report to Mr. Lepper's initial report?

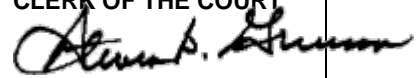
18 A. No.

19 Q. Have you prepared one?

20 A. No.

21 Q. So aside from gaps referenced by
22 Mr. Lepper's report, you do not -- you do not have
23 independent knowledge of a gap allowance for exterior
24 body panels for a 2013 Dodge Ram?

25 A. There are gap allowances that manufacturers



OPPS

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
gowesq@cox.net
www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

CRAIG B. FRIEDBERG [SBN 4601]
Law Offices of Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
(702) 435-7968
Fax: (702) 946-0887
Email: attcbf@cox.net
Website: www.consumerlaw.justia.net

Attorneys for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

NEVADA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
Inclusive,

Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO
STRIKE "FUGITIVE" DOCUMENTS
ON OST

DATE : November 9, 2017

TIME : 10:30 a.m.

[To be heard concurrently with Defendants'
Motion for Summary Judgment]

I

**PLAINTIFF’S SEPARATE STATEMENT OF UNDISPUTED
MATERIAL FACTS, PLAINTIFF’S RESPONSE TO DEFENDANT’S
SEPARATE STATEMENT OF UNDISPUTED FACTS AND
PLAINTIFF’S ERRATA ARE NOT “FUGITIVE” DOCUMENTS**

As a threshold matter, this Court *granted* Plaintiff’s Application for Leave to Increase the Page Limitation to his Opposition, as well as with respect to Defendant’s reply brief. Plaintiff’s Application was filed on October 24, 2017. *See Exhibit 1.* On that same day, Plaintiff lodged his Application with the Court along with: **1)** a file stamped Opposition to Defendants’ MSJ, **2)** a file stamped Plaintiff’s Separate Statement of Material Undisputed Facts in Support of his Opposition, **3)** a file stamped Plaintiff’s Response to Defendant’s Separate Statement of Material Undisputed Facts, **4)** a file stamped Plaintiff’s Exhibits in Support of his Opposition to Defendants’ MSJ, and **5)** a file stamped Plaintiff’s Errata on his Separate Statement. In granting Plaintiff’s Application the Court accepted Plaintiff’s Opposition of 49 pages and also *knew* at that time that Plaintiff had filed his Separate Statement and his response to Defendants’ Separate Statement in support of his Opposition to Defendants’ MSJ as separate documents.

Defendants’ entire argument with respect to this motion is based on the erroneous position that an opposing party to a summary judgment is “required” to include any separate statement in compliance with Rule 56(c) within the body of the opposing papers, writ large. Indeed, as set forth in the *Nevada Civil Practice Manual*, such is not the case and it is “better practice” to file the separate statement **as a separate document**. *See infra.* Because Plaintiff filed his Separate Statement of Material Undisputed Facts in a separately filed document, Defendants claim that

1 Plaintiff has essentially filed a “90 page opposition,” and based upon that, Defendants
2 seek to strike Plaintiff’s Separate Statement as a “fugitive” document.

3 Failing to specifically dispute the material facts set forth in a moving party’s
4 separate statement can cause and/or allow a Court to deem those material facts as being
5 undisputed, and based upon that, grant the moving party’s motion for summary
6 judgment. Essentially, Defendants are upset that Plaintiff, via his *Response* to
7 Defendants’ Separate Statement and via this own separate statement, have concisely and
8 succinctly pointed out to the Court with pin point citations to the record, what material
9 facts were still legitimately in dispute, and those that were not. Indeed, as set forth in
10 the *Nevada Civil Practice Manual*, the purpose of the separate statement under Rule
11 56(c) is to :
12

13 “[C]onserve judicial time and resources by assisting the trial judge in
14 ruling upon a summary judgment motion by eliminating the need for the
15 trial judge to search the entire records for a genuine issue of material fact.”
16 “[The separate statement] allows the trial court to only look at the portions
17 or the record cited by the parties in their separate statement **and**
response to quickly and effectively identify the disputed and undisputed
facts, [citations omitted].”

18 Doesn’t Plaintiff’s *Response* to Defendant’s Separate Statement and Plaintiff’s own
19 Separate Statement do just that?

20 Furthermore, the critical importance and requirement under Rule 56(c) for an
21 opposing to *respond to* the moving party’s separate statement of undisputed material
22 facts, and/or filing their own Separate Statement of Undisputed Material facts *in*
23 *support of* a party’s Opposition to a motion for summary judgment cannot be
24 overstated. See *Schuck v. Signature Flight Support of Nevada, Inc.*, 126 Nev. 434, 437,
25 245 P.3d 542, 544 (2010) wherein this lesson was painfully learned when an opposing
26 party to an MSJ failed to do either.
27
28

1 In *Schuck* the Court upheld the trial court's grant of summary judgment. The
2 *Shuck* Court found and held that Defendant properly moved for summary judgment
3 which included a concise separate statement setting forth each undisputed material fact
4 material to the disposition of each of Plaintiff's claims, with pin point citations to the
5 record in support each undisputed fact. Because the Plaintiff **failed** to respond to
6 Defendant's separate statement, and/or provide his own separate statement, the
7 Defendant in *Shuck* was entitled summary judgment once the Defendant met their
8 initial burden of persuasion under Rule 56. The *Schuck* Court held :

10 ***[Plaintiff] did not specify the disputed issues of fact [contained***
11 ***in Defendant's separate statement], much less provide his own***
12 ***"concise statement" of material facts claimed to be "genuinely***
13 ***in issue,*** citing the particular portions of any pleading, affidavit,
deposition, interrogatory, answer, admission, or other evidence upon which
[he] relies," which NRCP 56(c) obligated him to do.

14 ***Like its federal counterpart, NRCP 56(e) requires the party***
15 ***opposing a properly presented and supported summary***
16 ***judgment motion to "set forth specific facts showing that there***
17 ***is a genuine issue for trial." "If the adverse party does not so***
18 ***respond, summary judgment, if appropriate, shall be***
19 ***entered."*** *Id.* ... As the cases that have interpreted the federal cognate to
20 NRCP 56 have held, "a district court is not obligated to wade through and
21 search the entire record for some specific facts which might support the
22 nonmoving party's claim." *Jaurequi v. Carter Mfg. Co., Inc.*, 173 F.3d 1076,
23 1085 (8th Cir.1999) (quotation omitted). We agree with the cases to have
24 held that "requiring the district court to search the entire record, ***even***
25 ***though the adverse party's response does not set out the specific***
26 ***facts or disclose where in the record the evidence for them can***
27 ***be found, is unfair.***

28 Below are the pertinent portions of the current version of the *Nevada Practice*
Manual Lexis Nexus ("NPM") on this exact issue.

There is an issue of whether the concise statement must be a document
separate from the motion and points and authorities. In view of the fact
that Rule 56, in some jurisdictions, expressly requires the concise
statement to be in a separate document, see *Bradley v. Work*, 154 F.3d
704 (7th Cir. 1998), it appears that the Nevada rules do not require a
separate document. That is also true with respect to the federal rule.
Consejo De Desarrollo Economico D_e Mexicali, AC v. United States, 438

1 F. Supp. 2d 1207, 1223 (D. Nev. 2006), *vacated and remanded on other*
2 *grounds*, 482 F.3d 1157 (9th Cir. 2007). **Because the purpose of the**
3 **concise statement, however, is to assist the court in concluding**
4 **that there are—or are not—material facts genuinely in dispute,**
5 **the better practice may be to submit the concise fact statement**
6 **in a separate document to make it easier for the court to**
7 **review the record and reach the desired conclusion.**

8 1-19 Nevada Civil Practice Manual § 19.22

9 **However, the party opposing summary judgment has a duty to**
10 **call the trial court’s attention to the material—preferably by**
11 **attaching it to the opposition,** or at least advising the court in the
12 opposition papers where else the material is in the record. The trial court is
13 not required to “comb the record” for materials establishing a genuine issue
14 of material fact that are not brought to the court’s attention by the party
15 opposing the motion—and the trial court will not be reversed on appeal
16 when the appellant *then* brings such materials to the attention of the
17 appellate court. *Carmen v. San Francisco Unified Sch. Dist.*, 237 F.3d 1026
18 (9th Cir. 2001)

19 Essentially Defendants did not appreciate Plaintiff concisely and succinctly
20 pointing out the to the Court via his response to Defendant’s Separate Statement and in
21 his own separate statement, which material facts were and/or were not in dispute. This
22 is **not** a basis to seek to strike any of Plaintiff’s separately filed documents as a “fugitive”
23 document, especially on a motion for summary judgment. Defendant’s motion takes on
24 even more significance when a moving party attempts to “cherry pick” or otherwise
25 “omit” certain material facts in their own separate statement in an attempt to preclude
26 the opposing party from raising additional material facts, supported by pin point
27 citations to the record, that would otherwise compel denial of the moving party’s
28 motion.

Dated this 6th day of November, 2017

By/s/ George O. West III
GEORGE O. WEST III
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
Attorney for Plaintiff
DERRICK POOLE

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PROOF OF SERVICE

STATE OF NEVADA)
)
COUNTY OF CLARK)

On November 6, 2017 I served the forgoing document(s) described as 1)
PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE
FUGITIVE DOCUMENTS ON OST on interested party(ies) in this action by either
fax and/or email, or by placing a true and correct copy and/or original thereof addressed
as follows:

JEFF BENDAVID, ESQ
Moran, Brandon, Bendavid, Moran
630 South Fourth Street
Las Vegas, NV 89101
j.bendavid@moranlawfirm.com

NATHAN KANUTE, ESQ
Snell & Wilmer
3883 Howard Hughes Pkwy
Suite 1100
Lass Vegas, NV 89169
nkanute@swlaw.com

[] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of
collection and processing correspondence for mailing. Under that practice it would be
deposited with the U.S. Postal service on that same day with first class postage thereon
fully prepaid at Las Vegas, NV in the ordinary course of business.

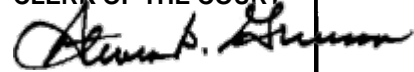
[] **(BY PERSONAL SERVICE)** I delivered such envelope by hand to the office,
and/or to the attorney listed as the addressee below.

[] **(BY FAX SERVICE)** Pursuant to consent under NRCP, Rule 5(b), I hereby certify
that service of the aforementioned document(s) via facsimile, pursuant to EDCR Rule
7.26(a), as set forth herein.

[x] **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and
the EDCR on electronic service, I hereby certify that service of the aforementioned
document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and
NRCP, as set forth herein.

Executed on this 6th day of November, 2017

/s/ George O. West III
GEORGE O. WEST III



OPPS

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

CRAIG B. FRIEDBERG [SBN 4601]
Law Offices of Craig B. Friedberg, Esq.
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
(702) 435-7968
Fax: (702) 946-0887
Email: attcbf@cox.net
Website: www.consumerlaw.justia.net

Attorneys for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)
)
)
Plaintiff,)
)
)
v)
)
)
)
)
)
NEVADA AUTO DEALERSHIP INVEST-)
MENTS LLC a Nevada Limited Liability)
Company d/b/a SAHARA CHRYSLER,)
JEEP, DODGE, WELLS FARGO DEALER)
SERVICES INC., COREPOINTE INSUR-)
ANCE COMPANY, and DOES 1 through 100,)
Inclusive,)
)
Defendants,)
)

CASE NO : A-16-737120-C
DEPT : XXVII

**PLAINTIFF'S OPPOSITION TO
DEFENDANT'S MOTION TO STRIKE
DECLARATION OF ROCCO AVILLINI
IN SUPPORT OF PLAINTIFF'S
OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDG-
MENT ON OST**

DATE : November 9, 2017
TIME : 10:30 a.m.

[To be heard concurrently with Defendants'
Motion for Summary Judgment]

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I

**MR. AVILLINI'S EXPERT DECLARATION IS ENTIRELY
PROPER FOR USE IN OPPOSITION TO DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

Defendant SAHARA contends that Mr. Avillini's declaration is improper "rebuttal" opinion with respect to Mr. Gongora, and therefore should be stricken. Mr. Gongora is Defendant SAHARA's former employee who was the certified and trained technician who performed the CPO inspection on the Plaintiff's vehicle prior to SAHARA reselling the vehicle to the Plaintiff as a Dodge CPO vehicle. It should be further noted that Mr. Gongora had severed his employment relationship with SAHARA prior to the time Plaintiff took his deposition in December of 2016. SAHARA's contentions are patently erroneous, specious and frankly disingenuous for several reasons.

**A. MR. AVILLINI'S DECLARATION IS NOT "REBUTTAL" IN NATURE
DUE TO SAHARA'S UTTER FAILURE TO PROPERLY DESIGNATE
MR. GONGORA AS A NON RETAINED EXPERT**

First and foremost, Mr. Gongora was *not* hired or specially retained by SAHARA to render any expert opinions in this case. *See Exhibit 1; copy of SAHARA's initial expt. design. The first portion* of Rule 16.1(a)(2)(B) states in pertinent part :

Except as otherwise stipulated or directed by the court, this disclosure shall, with respect to a witness *who is retained or specially employed to provide expert testimony in the case* or whose duties as an employee of the party regularly involve giving expert testimony, *be accompanied by a written report prepared and signed by the witness...*

The first portion of Rule 16.1(a)(2)(B) involves "retained experts." Mr. Gongora was not designated by SAHARA in their expert designation pursuant to Rule 16.1(a)(2)(B). *See Exhibit 1; Def's Initial Exp. Disc.* Mr. Gongora did *not* prepare or submit any expert report in this case for SAHARA. *See Exhibit 1; Def's Initial Exp. Disc.* Consequently, Mr. Gongora cannot be a retained expert.

1 Given Mr. Gongora was not a retained expert, if Mr. Gongora were to render any
2 expert opinions at time of trial he would be a ***non-retained expert***. SAHARA
3 contends that Mr. Avillini's declaration is improper "rebuttal" opinion, but Mr. Avillini's
4 declaration can not be considered "rebuttal" opinion because rebuttal opinion is limited
5 to "rebutting" the opinions of the side's ***properly designated*** experts under
6 16.1(a)(2)(B). Rule 16.1(a)(2)(C)(ii) defines "rebuttal" evidence with respect to
7 disclosures made under Rule 16.1(a)(2)(B) as "... evidence [that] is intended solely to
8 contradict or rebut evidence ***on the same subject matter identified by another***
9 ***party under paragraph (2)(B) ...***

11 For Mr. Avillini's declaration to be considered as "rebuttal" opinion under Rule
12 16.1(a)(2)(C)(ii), SAHARA was required to comply with the specific disclosure
13 requirements found in the second portion of 16.1(a)(2)(B), *infra*. However SAHARA
14 never identified or properly designated Mr. Gongora as a non-retained expert pursuant
15 to the *second portion* of 16.1(a)(2)(B), which was *conspicuously "omitted"* from
16 SAHARA's moving papers. The *second portion* of Rule 16.1(a)(2)(B) involving
17 disclosure of non-retained experts states :

19 Unless otherwise stipulated or ordered by the court, ***if the witness is***
20 ***not required to provide a written report***, the initial disclosure must
21 state the subject matter on which the witness is expected to present
22 evidence under NRS 50.275, 50.285 and 50.305; a summary of the facts
23 and opinions to which the witness is expected to testify; the qualifications
24 of that witness to present evidence under NRS 50.275, 50.285 and 50.305,
25 which may be satisfied by the production of a resume or curriculum vitae;
26 and the compensation of the witness for providing testimony at deposition
27 and trial, which is satisfied by production of a fee schedule.

24 SAHARA never complied with these disclosure requirements. *See Exhibits 1, 2*
25 *and 3*. SAHARA ***never designated*** or identified Mr. Gongora as either a retained or
26 non-retained expert in this case from whom SAHARA intended on eliciting any expert
27 opinions from at time of trial. Mr. Gongora could not have been properly designated as
28

1 non-retained expert by SAHARA because SAHARA never complied, even tacitly, with
2 the mandated disclosure requirements found in the second portion of Rule
3 16.1(a)(2)(B), *id.* SAHARA never identified or designated Mr. Gongora as a non-
4 retained expert in SAHARA's initial disclosures or in any supplements thereto, or even
5 in their formal expert disclosures. *See Exhibits 1, 2 and 3.* All SAHARA did was disclose
6 Mr. Gongora as "testifying regarding the certified-pre owned inspection of the vehicle."
7 *See Exhibit 3; SAHARA's 5th Supp.*

8
9 Consequently, based on the aforementioned, Mr. Avillini's declaration could not
10 be construed or deemed as "rebuttal" expert opinion because Mr. Gongora was never
11 properly designated or identified by SAHARA as a non-retained expert under Rule
12 16.1(a)(2)(B), from whom SAHARA could elicit expert opinions "in their case in chief."
13 Defendants' motion should be denied.

14
15 **B. THE FIAT CHRYSLER POSITION STATEMENT ON THE USE OF**
16 **RECONDITIONED ("DAMAGED") WHEELS WAS ATTACHED TO MR.**
17 **AVILLINI'S REPORT, WAS TESTIFIED TO AT LENGTH AT HIS**
DEPOSITION AND IS DIRECTLY RELEVANT TO WHETHER THE
VEHICLE AT ISSUE SHOULD HAVE BEEN CERTIFIED AND SOLD AS
A DODGE CPO VEHICLE

18 One of the opinions Mr. Avillini was asked to give was whether the previous
19 repairs undertaken on the vehicle were done according to factory specifications. *See*
20 *Exhibit 6; Exp. Rpt. at page 7.* Mr. Avillini reviewed the Allstate Collision Report
21 ("ACE") on the vehicle, and reviewed the photos of the vehicle depicting the damaged
22 components, parts and repairs to the vehicle as a result of the prior collision. Based on
23 the ACE and the damage photos of the vehicle, the left front wheel on the Plaintiff's
24 vehicle was damaged, and was then either "rechromed," or it was replaced with a
25 "recycled" wheel. *See Exhibits 2, 8, 13 and 14 to Plntf's Exhibits in Opposition to*
26 *Defendants' MSJ.* Doing so is not compliant with FCA factory specifications, as such a
27 repair would not comply with FCA's position statement on damaged wheels, **which**
28

1 **was included in and attached to his report. See Exhibit 8 to Plntf's Exhibits in**
2 **Opp. to Def's MSJ.**

3 What SAHARA does not mention anywhere in their motion is that Mr. Avillini
4 **testified at length at this deposition** regarding the improper repairs to the vehicle,
5 including left front wheel, the photos of the repairs to the vehicle, (including the wheel),
6 and the FCA position statement vis-à-vis reconditioned wheels. *See Exhibits 2, 8, 13*
7 *and 14 to Plntf's Exhibits in Opposition to Defendants' MSJ.* Some of this took place on
8 redirect by Plaintiff's counsel. As Mr. Avillini testified at length in his deposition, as well
9 as in his declaration, and consistent with his opinions in his report and the attachments
10 to that report, the prior repairs to the Plaintiff's vehicle did **not** meet factory
11 specifications, the because the vehicle did not meet manufacturer repair specifications,
12 the Plaintiff's vehicle should **not** have passed and been resold as a certified Dodge CPO
13 vehicle to the community.
14

15 **C. MR. GONGORA WAS DESIGNATED AS PLAINTIFF'S NON RETAINED**
16 **EXPERT WITH RESPECT TO PLAINTIFF'S CASE IN CHIEF**

17 To be clear, Mr. Gongora is **Plaintiff's** non-retained expert witness in this case.
18 He is **not** SAHARA's non-retained expert witness. Plaintiff fully identified and
19 designated Mr. Gongora as such and who Plaintiff still intends on calling **in Plaintiff's**
20 **case in chief.** Plaintiff's initial expert disclosures, (Exhibit 4 *which served on June 12,*
21 *2017 well before discovery cut off*), stated with respect to Mr. Gongora:
22

23 ***This witness has been a trained mechanic for approximately***
24 ***30 years.*** He will offer testimony about various matters, including but
25 not limited to his CPO inspection on the vehicle at issue, as well as on
26 other CPO Dodge vehicles he has inspected in the past, his training and
27 experience on undertaking CPO inspections on Dodge Vehicles, his filling
28 out of CPO reports, information he would like to know prior to conducting
these inspections if it is available, ***his opinion as to why he certified***
this vehicle as a Dodge CPO vehicle, given his training and
experience, and the CPO standards in effect at the time, along
with his observations, findings and conclusions from his

1 ***inspection, among other opinions.***

2 Plaintiff clearly laid the foundation for Mr. Gongora's expertise, set forth the
3 subject matters of his testimony as well as the opinions and/or scope of the opinions he
4 would be testifying to at time of trial, (including his percipient observations). Plaintiff
5 clearly complied with the requirements of Rule 16.1(a)(2)(B) for non-retained expert
6 witnesses, and put SAHARA on clear notice of Plaintiff's intention on eliciting expert
7 opinions from Mr. Gongora in his case in chief.
8

9 Consequently, given Mr. Gongora's was specifically designated ***as Plaintiff's***
10 non- retained expert witness in his case in chief, and given SAHARA's complete failure
11 to designate Mr. Gongora as SAHARA's non-retained expert, Mr. Avillini's declaration
12 could not possibly be construed as "rebuttal" opinion with respect to Mr. Gongora -- it
13 cannot as as matter of law. Defendants' motion should be denied.¹
14

15 **D. BECAUSE SAHARA FAILED TO COMPLY WITH THE DESIGNATION**
16 **REQUIREMENTS OF 16.1(a)(2)(B) WITH RESPECT TO NON-**
17 **RETAINED EXPERTS, SAHARA IS PRECLUDED FROM EVEN**
18 **ELICITING ANY EXPERT OPINIONS FROM MR. GONGORA IN**
19 **THEIR CASE IN CHIEF**

20 Because SAHARA has failed to properly designate Mr. Gongora under Rule
21 16.1(a)(2)(B) as a non-retained expert witness, SAHARA would be ***precluded*** from
22 even calling Mr. Gongora in their case in chief in any expert capacity whatsoever. At
23 most SAHARA might be able to elicit Mr. Gongora's percipient observations in their
24 case in chief, but certainty no expert opinions. Contrary to SAHARA's arguments, any
25 expert testimony that would be elicited from Mr. Gongora at time of trial *would be*
26 *elicited by Plaintiff in Plaintiff's case in chief, not* in SAHARA's case in chief. Based on
the aforementioned, Defendant's motion should be denied.

27 ¹ While SAHARA did ***not*** identify Mr. Gongora in their initial disclosures, (Exhibit 3), when
28 Plaintiff ascertained the identity of Mr. Gongora in December of 2016, Plaintiff submitted his supplement
identifying Mr. Gongora, and then specifically designated him as a non retained expert witness for the
Plaintiff at time of trial. See Exhibits 4 & 5.

1 E. BECAUSE MR. AVILLINI CONSIDERED MR. GONGORA'S
2 DEPOSITION TESTIMONY IN RENDERING HIS OPINIONS IN THIS
3 CASE, REFERENCE TO MR. GONGORA'S TESTIMONY IN HIS
4 DECLARATION IS ENTIRELY PROPER IN OPPOSING SAHARA'S
5 MOTION FOR SUMMARY JUDGMENT

6 Mr. Gongora's deposition testimony in this case was one of the sources of
7 information from which Mr. Avillini based his opinions in this case. Indeed, Mr.
8 Gongora was SAHARA's mechanic who preformed the CPO inspection on the vehicle, so
9 his testimony, as well as any opinions he gave in his deposition, would be relevant and
10 important information for Mr. Avillini to consider in formulating his expert opinions in
11 this case. SAHARA makes much to do about the fact that Mr. Avillini had Mr.
12 Gongora's deposition testimony prior to submitting his report. How is this fact even
13 material with respect to this motion when Mr. Gongora could *not* be part of any expert
14 opinion offered by SAHARA in their case in chief given it was SAHARA's failure to
15 properly designate Mr. Gongora as a non-retained expert?

16 Experts formulate their opinions within their area of expertise by reviewing and
17 relying on information, including deposition testimony of other percipient or other
18 expert witnesses, documents, data and/or records prepared and/or compiled by others,
19 which other experts in that same field of expertise would reasonably rely on in
20 formulating opinions. Furthermore, these other documents or sources of information
21 do *not* have to be in and of themselves admissible evidence. NRS 50.285 states :

- 22 1. The facts or data in the particular case upon which an expert bases an
23 opinion or inference may be those perceived by or made known to the
24 expert at or before the hearing.
25 2. *If of a type reasonably relied upon by experts in forming*
26 *opinions or inferences upon the subject, the facts or data*
27 *need NOT be admissible in evidence.*
28

1 Essentially, it is SAHARA's position that Mr. Avillini cannot make any reference
2 to any of the portions of Mr. Gongora's sworn deposition testimony that Mr. Avillini
3 took into consideration and relied upon in rendering his opinions in this case -- either
4 in the form his declaration in opposition to SAHARA's motion for summary judgment or
5 at time of trial. Given the painstaking foundation that was laid in Mr. Avillini's
6 declaration regarding his experience and expertise vis-à-vis his opinions in this case,
7 SAHARA's position is simply not tenable and their motion should be denied.
8

9 Notwithstanding the previous reasons to deny SAHARA's motion, as SAHARA
10 points out in their motion, Mr. Gongora's deposition was taken and completed in
11 December of 2016, six (6) months prior to the expert disclosures in this case. SAHARA
12 was **also fully aware** of the contents of Mr. Gongora's deposition testimony. Yet it is
13 SAHARA, who at the 11th hour contends that Plaintiff is the party who improperly
14 submitted "rebuttal" opinion, which as a matter of law could not have been considered
15 rebuttal opinion because it was SAHARA who failed to follow the rules. Based on the
16 aforementioned SAHARA's motion should be denied.
17

18 **F. MR. AVILLINI'S DECLARATION DID NOT ADD ANY "ADDITIONAL"**
19 **OR "SUPPLEMENTAL" BACKGROUND INFORMATION DIFFERENT**
20 **FROM WHAT WAS ALREADY DISCLOSED IN HIS CV**

21 Mr. Avillini's CV that was attached to his report is attached hereto as Exhibit 7,
22 and also as Exhibit 23 to Plaintiff's Exhibits in Opposition to Defendants' MSJ. Mr.
23 Avillini's declaration is clear. He tracked the same experience and background that was
24 disclosed in his CV. See paragraph 6 to his declaration attached to Defendant's moving
25 papers. Contrary to SAHARA's contention, Mr. Avillini did **not** add any "additional"
26 information regarding his experience. SAHARA's counsel did **not** ask a single question
27 about Mr. Avillini's qualifications or experience in his deposition based on his CV. All
28 Mr. Avillini did in his declaration was to render more specifically detailed information

relating to the ***same job experience*** set forth in his CV, which would be entirely appropriate at trial. SAHARA's contention lacks any merit and their motion should be denied.

G. MR. AVILLINI'S DECLARATION IS ENTIRELY GERMANE AND RELEVANT TO THE ISSUES RAISED BY SAHARA TO WHICH THEY SEEK SUMMARY JUDGMENT

Finally, SAHARA contends that Mr. Avillini's background and qualifications are "not relevant" to their motion for summary judgment. Mot. 9: 25-26. SAHARA is moving for summary judgment based upon many arguments, one of which is that the Plaintiff's vehicle was properly certified as a Dodge CPO vehicle, and also contend that the previous repairs to the vehicle were all properly done and met factory specifications. SAHARA also contends Plaintiff was not damaged. Mr. Avillini's declaration directly addresses these issues, as well as others. Defendant's contention lacks merit and their motion should be denied.

Dated this 6th day of November, 2017

By/s/ George O. West III
 GEORGE O. WEST III
 Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
 Attorney for Plaintiff
DERRICK POOLE

1
2 **PROOF OF SERVICE**

3 STATE OF NEVADA)

4 COUNTY OF CLARK)

5 On November 6, 2017 I served the forgoing document(s) described as 1)
6 **PLAINTIFF'S OPPOSITION TO DEFENDANT'S MOTION TO STRIKE**
7 **DECLARATION OF ROCCO AVILLINI IN SUPPORT OF PLAINTIFF'S OPPOSITION**
8 **TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT ON OST** on interested
9 party(ies) in this action by either fax and/or email, or by placing a true and correct copy
10 and/or original thereof addressed as follows:

11 **JEFF BENDAVID, ESQ**

12 Moran, Brandon, Bendavid, Moran
13 630 South Fourth Street
14 Las Vegas, NV 89101
15 j.bendavid@moranlawfirm.com

16 **NATHAN KANUTE, ESQ**

17 Snell & Wilmer
18 3883 Howard Hughes Pkwy
19 Suite 1100
20 Las Vegas, NV 89169
21 nkanute@swlaw.com

22 [] **(BY FIRST CLASS MAIL)** I am readily familiar with the firm's practice of
23 collection and processing correspondence for mailing. Under that practice it would be
24 deposited with the U.S. Postal service on that same day with first class postage thereon
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[x] **(BY EMAIL SERVICE) (Wiznet/email)** Pursuant NRCP, Rule 5(b)(2)(D), and
the EDCR on electronic service, I hereby certify that service of the aforementioned
document(s) via email to pursuant to the relevant and pertinent provisions of EDCR and
NRCP, as set forth herein.

Executed on this 6th day of November, 2017

/s/ George O. West III
GEORGE O. WEST III

EXHIBIT 1

1 **JEFFERY A. BENDAVID, ESQ.**
Nevada Bar No. 6220
2 **STEPHANIE J. SMITH, ESQ.**
Nevada Bar No. 11280
3 **MORAN BRANDON BENDAVID MORAN**
4 630 South 4th Street
Las Vegas, Nevada 89101
5 (702) 384-8424
6 j.bendavid@moranlawfirm.com
Attorney for Defendants, Nevada Auto
7 Dealership Investments LLC d/b/a Sahara
Chrysler and Corepointe Insurance Co.
8

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 DERRICK POOLE,

12
13 Plaintiff,

14 v.

Case No.: A-16-737120-C

Dept. No.: XXVII

15 NEVADA AUTO DEALERSHIP
16 INVESTMENTS LLC, a Nevada Limited
Liability Company d/b/a SAHARA
17 CHRYSLER; JEEP, DODGE, WELLS
FARGO DEALER SERVICES INC.,
18 COREPOINTE INSURANCE COMPANY;
and DOES 1 through 100, Inclusive,

19
20 Defendant.

**DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO.'S INITIAL
EXPERT WITNESSES
DISCLOSURE**

21
22
23 Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a
24 SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and
25 through their counsel of record, JEFFERY A. BENDAVID, ESQ. and STEPHANIE J.
26 SMITH, ESQ. of Moran Brandon Bendavid Moran, hereby discloses the following experts
27 in accordance with NRCP 16.1(a)(2):
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 1. THOMAS LEPPER, CFEI
2 Thomas Lepper Associates
3 810 Rose Drive
4 Benicia, CA 94510
5 (707) 751-3836

6 Mr. Lepper is a Certified Fire and Explosion Investigator and is a forensic
7 automotive expert. He will be providing opinions regarding the Certified Pre-Owned
8 Vehicle (CPO) status of plaintiff's vehicle as detailed in his expert report attached hereto as
9 Exhibit A. His curriculum vitae, fee schedule, and testimony list are attached hereto as
10 Exhibit B.

11 DATED this 14th day of June 2017.

12
13 MORAN BRANDON BENDAVID MORAN

14
15 /s/: Jeffery A. Bendavid, Esq.
16 **JEFFERY A. BENDAVID, ESQ.**
17 Nevada Bar No. 6220
18 **STEPHANIE J. SMITH, ESQ.**
19 Nevada Bar No. 11280
20 630 South 4th Street
21 Las Vegas, NV 89101
22 Attorney for Defendants, Nevada Auto
23 Dealership Investments LLC d/b/a Sahara
24 Chrysler and Corepointe Insurance Co.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

EXHIBIT 2

1 **DDW**
2 **BRIAN K. TERRY, ESQ.**
3 Nevada Bar No. 3171
4 **THORNDAL ARMSTRONG DELK**
5 **BALKENBUSH & EISINGER**
6 1100 East Bridger Avenue
7 Las Vegas, NV 89101-5315
8 Mail To:
9 P.O. Box 2070
10 Las Vegas, NV 89125-2070
11 Tel.: (702) 366-0622
12 Fax: (702) 366-0327
13 E-Mail: bterry@thorndal.com

14 Attorney for Defendants, Nevada Auto
15 Dealership Investments LLC d/b/a Sahara
16 Chrysler and Corepointe Insurance Co.

17 **DISTRICT COURT**
18 **CLARK COUNTY, NEVADA**

19 **DERRICK POOLE,**

20 Plaintiff,

21 v.

22 **NEVADA AUTO DEALERSHIP**
23 **INVESTMENTS LLC, a Nevada Limited**
24 **Liability Company d/b/a SAHARA**
25 **CHRYSLER; JEEP, DODGE, WELLS FARGO**
26 **DEALER SERVICES INC., COREPOINTE**
27 **INSURANCE COMPANY; and DOES 1**
28 through 100, Inclusive,

Defendant.

Case No.: A-16-737120-C

Dept. No.: XXVII

**DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO.'S INITIAL NRCP 16.1
DISCLOSURE OF WITNESSES AND
DOCUMENTS**

29 Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a SAHARA
30 CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and through their
31 counsel of record, the Law Offices of Thorndal Armstrong Delk Balkenbush & Eisinger, and
32 hereby submit their Early Case Conference Initial List of Witnesses and Documents as follows:

33 ///

I.

WITNESSES

1. DERRICK POOLE
3311 Heavenly View Court
Las Vegas, NV 89117

Mr. Poole will testify concerning his personal knowledge regarding the incident at issue.

2. 30(b)(6) Designee
NEVADA AUTO DEALERSHIP INVESTMENTS LLC
5050 W. Sahara Avenue
Las Vegas, NV 89146

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

3. 30(b)(6) Designee
COREPOINT INSURANCE CO.
1000 Chrysler Drive
Auburn Hills, MI 48326

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

4. 30(b)(6) Designee
WELLS FARGO DEALER SERVICES, INC.
15750 Anton Pkwy.
Irvine, CA 92618

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

5. Travis Spruell, Sales Consultant
Sahara Chrysler
5050 W. Sahara Avenue
Las Vegas, NV 89146

Mr. Spruell will testify concerning his personal knowledge regarding the incident at issue.

6. Brian Francis, Sales Manager
Sahara Chrysler
5050 W. Sahara Avenue
Las Vegas, NV 89146

Mr. Francis will testify concerning his personal knowledge regarding the incident at issue.

7. Noah Grant, F&I Manager
Sahara Chrysler
5050 W. Sahara Avenue
Las Vegas, NV 89146

Mr. Grant will testify concerning his personal knowledge regarding the incident at issue.

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8. Nathaniel Petti, Service Advisor
Desert 215 Superstore
8030 Rafael Rivera Way
Las Vegas, NV 89113

Mr. Petti will testify concerning his personal knowledge of servicing to the vehicle made at plaintiff's request.

9. Dale Hinton
2315 Malaga Peak Street
Las Vegas, NV 89135

Mr. Hinton will testify concerning the maintenance and accident history of the vehicle.

II.

DOCUMENTS

1. Purchase documents Re: Dale Hinton for 2013 Ram Truck 1500, VIN 1C6RR6GT8DS558275, NVAUTO000001-16.
2. Estimate of Record for 2013 Ram Truck 1500, VIN1C6RR6GT8DS558275 by Allstate Fire and Casualty Ins. Co. for date of loss 3/26/14, NVAUTO000017-24.
3. Thirty-one (31) photos of Ram Truck damages, NVAUTO000025-55.
4. Nineteen (19) photos of Jeep damage, NV000056-74.
5. Certified Pre-Owned Vehicle Inspection Checklist for 2013 Ram Truck 1500, VIN1C6RR6GT8DS558275 dated 5/8/14, NVAUTO000075-76.
6. Mechanical Repair Service Contract for Manufacturer Certified Vehicles for 2013 Ram Truck 1500, VIN 1C6RR6GT8DS558275 dated 5/8/14, NVAUTO000077-78.
7. CARFAX Vehicle History Report for 2013 Ram Truck 1500, VIN 1C6RR6GT8DS558275 dated 5/10/14 and signed by Plaintiff, NVAUTO000079-86.
8. Service Order from Desert 215 Superstore for 2013 Ram Truck 1500, VIN 1C6RR6GT8DS558275 dated 5/12/15, NVAUTO000087-91.
9. Service Order from Sahara Chrysler Jeep Dodge Ram for 2013 Ram Truck 1500, VIN 1C6RR6GT8DS558275 dated 5/12/15, NVAUTO000092-94.
10. Certified Pre-Owned Vehicle Delivery Check Sheet for 2013 Ram Truck 1500, VIN1C6RR6GT8DS558275 dated 5/26/14, NVAUTO000095-99.

///

1 11. Simple Interest Vehicle Contract for Sale and Security Agreement between
2 Plaintiff and Sahara Chrysler Jeep Dodge Ram for 2013 Ram Truck 1500 SLT, VIN
3 1C6RR6GT8DS558275 dated 5/26/14, NVAUTO000100-107.

4 12. Plaintiff's Application and financing/purchasing documents for 2013 Ram Truck
5 1500 SLT, VIN 1C6RR6GT8DS558275, NVAUTO000108-185.

6 13. ACORD General Liability Notice of Occurrence/Claim dated 6/9/15,
7 NVAUTO000186-189.

8 14. Maintenance by Desert 215 Superstore for 2013 Ram Truck 1500 dated 2/15/16,
9 NVAUTO000190-192.

10 15. Dealer Operations Manual for CPO Certification, NVAUTO000193-249.
11 DATED this 30th day of September, 2016.

12 THORNDAL ARMSTRONG DELK
13 BALKENBUSH & EISINGER

14 /s/ Brian K. Terry

15 _____
16 Brian K. Terry, Esq.
17 Nevada Bar No. 003171
18 1100 East Bridger Avenue
19 Las Vegas, NV 89101-5315
20 Mail To:
21 P.O. Box 2070
22 Las Vegas, NV 89125-2070
23 Tel.: (702) 366-0622
24 Fax: (702) 366-0327
25 E-Mail: bterry@thorndal.com

26 Attorney for Defendant, Nevada Auto
27 Dealership Investments LLC d/b/a
28 Sahara Chrysler and Corepointe Insurance
 Co.

EXHIBIT 3

1 **JEFFERY A. BENDAVID, ESQ.**
Nevada Bar No. 6220
2 **STEPHANIE J. SMITH, ESQ.**
Nevada Bar No. 11280
3 **MORAN BRANDON BENDAVID MORAN**
4 630 South 4th Street
Las Vegas, Nevada 89101
5 (702) 384-8424
6 j.bendavid@moranlawfirm.com
7 *Attorney for Defendants, Nevada Auto*
8 *Dealership Investments LLC d/b/a Sahara*
Chrysler and Corepointe Insurance Co.

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 **DERRICK POOLE,**

12
13 Plaintiff,

14 v.

Case No.: A-16-737120-C
Dept. No.: XXVII

15 **NEVADA AUTO DEALERSHIP**
16 **INVESTMENTS LLC, a Nevada Limited**
17 **Liability Company d/b/a SAHARA**
18 **CHRYSLER; JEEP, DODGE, WELLS**
19 **FARGO DEALER SERVICES INC.,**
COREPOINTE INSURANCE COMPANY;
and DOES 1 through 100, Inclusive,

20 Defendant.

DEFENDANT NEVADA AUTO
DEALERSHIP INVESTMENTS LLC
D/B/A SAHARA CHRYSLER, JEEP,
DODGE AND COREPOINTE
INSURANCE CO.'s FIFTH
SUPPLEMENTAL LIST OF
WITNESSES AND DOCUMENTS

21
22 Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC d/b/a
23 SAHARA CHRYSLER, JEEP, DODGE AND COREPOINTE INSURANCE CO., by and
24 through their counsel of record, the Law Offices of Thorndal Armstrong Delk Balkenbush &
25 Eisinger, and hereby submit their Early Case Conference Fifth Supplemental List of
26 Witnesses and Documents as follows (supplemental material in bold):
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
E-MAIL: jbm@mbbm.com

I.

WITNESSES

1. DERRICK POOLE
3311 Heavenly View Court
Las Vegas, NV 89117

c/o George O. West, III, Esq.
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145

Mr. Poole will testify concerning his personal knowledge regarding the incident at issue.

2. 30(b)(6) Designee
NEVADA AUTO DEALERSHIP INVESTMENTS LLC
c/o Jeffery A. Bendavid, Esq.
630 South Fourth
Las Vegas, NV 89101

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

3. 30(b)(6) Designee
COREPOINT INSURANCE CO.
c/o Jeffery A. Bendavid, Esq.
630 South Fourth
Las Vegas, NV 89101

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

4. 30(b)(6) Designee
WELLS FARGO DEALER SERVICES, INC.
15750 Anton Pkwy.
Irvine, CA 92618

c/o Snell & Wilmer
3883 Howard Hughes Pkwy.
Las Vegas, NV 89169

The 30(b)(6) Designee is expected to testify regarding the incident at issue.

5. Travis Spruell, Sales Consultant for Sahara Chrysler
c/o Jeffery A. Bendavid, Esq.
630 South Fourth
Las Vegas, NV 89101

Mr. Spruell will testify concerning his personal knowledge regarding the incident at issue.

6. Brian Francis, Sales Manager for Sahara Chrysler
c/o Jeffery A. Bendavid, Esq.
630 South Fourth
Las Vegas, NV 89101



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8588

1 Mr. Francis will testify concerning his personal knowledge regarding the incident at
2 issue.

3 7. Noah Grant, F&I Manager at Sahara Chrysler
4 c/o Jeffery A. Bendavid, Esq.
5 630 South Fourth
6 Las Vegas, NV 89101

7 Mr. Grant will testify concerning his personal knowledge regarding the incident at
8 issue.

9 8. Nathaniel Petti, Service Advisor at Desert 215 Superstore
10 c/o Jeffery A. Bendavid, Esq.
11 630 South Fourth
12 Las Vegas, NV 89101

13 Mr. Petti will testify concerning his personal knowledge of servicing to the vehicle
14 made at plaintiff's request.

15 9. Dale Hinton
16 2315 Malaga Peak Street
17 Las Vegas, NV 89135

18 Mr. Hinton will testify concerning the maintenance and accident history of the vehicle.

19 10. Ray Gongora
20 331 Erie Avenue
21 Las Vegas, NV 89183
22 (702) 466-3899

23 Mr. Gongora will testify regarding the certified -pre-owned inspection of the vehicle.

24 11. Josh Grant, General Manager, Desert 215 Superstore
25 c/o Jeffery A. Bendavid, Esq.
26 630 South Fourth
27 Las Vegas, NV 89101

28 Mr. Grant will testify regarding the topics included in Plaintiff's notice of deposition
of Sahara Chrysler Jeep Dodge's NRCP Rule 30(b)(6) designated witness.

12. Defendant reserves the right to call any witnesses listed in Plaintiff's
Initial Disclosures to their List of Documents and Witnesses pursuant to 16.1;

13. Defendant also reserves the right to call any rebuttal witnesses as a result
of any exhibits or witnesses listed or presented by Plaintiff; and



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-8424

EXHIBIT 4

1 GEORGE O. WEST III [SBN 7951]
2 Law Offices of George O. West III
3 **Consumer Attorneys Against Auto Fraud**
4 10161 Park Run Drive, Suite 150
5 Las Vegas, NV 89145
6 Email : gowesq@cox.net
7 www.nevadasautofraudattorney.com
8 www.americasautofraudattorney.com
9 (702) 318-6570
10 (702) 664-0459 [fax]

11 Attorney for Plaintiffs
12 **DERRICK POOLE**

13 **DISTRICT COURT**
14 **CLARK COUNTY, NEVADA**

15 DERRICK POOLE,

16 Plaintiff,

17 v

18 NEVADA AUTO DEALERSHIP INVEST-
19 MENTS LLC a Nevada Limited Liability
20 Company d/b/a SAHARA CHRYSLER,
21 JEEP, DODGE, WELLS FARGO DEALER
22 SERVICES INC., COREPOINTE INSUR-
23 ANCE COMPANY, and DOES 1 through 100,
24 Inclusive,

25 Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

**PLAINTIFF'S INITIAL EXPERT
DESIGNATION**

1 Plaintiff, pursuant to Rule 16.1 and the written stipulation of the parties
2 extending the initial and rebuttal disclosure deadlines, hereby makes his initial expert
3 disclosures as follows :

4 1. Attached as Exhibit "A" is Mr. Avillini's Vehicle Condition Report, and at
5 Exhibit "B" Mr. Avillini's Diminished Value Report. Mr. Avellini's hourly
6 rate for deposition and trial is \$ 350.00 per hour. He has billed \$ 1,350.00
7 currently for both reports.

8 2. Raymond Gongora
9 Address information known to Defendant
10 Technician for Defendant SAHARA CHRYSLER, JEEP DODGE

11 This witness has been a trained mechanic for approximately 30 years. He
12 will offer testimony about various matters, including but not limited to his
13 CPO inspection on the vehicle at issue, as well as on other CPO Dodge
14 vehicles he has inspected in the past, his training and experience on
15 undertaking CPO inspections on Dodge Vehicles, his filling out of CPO
16 reports, information he would like to know prior to conducting these
17 inspections if it is available, his opinion as to why he certified this vehicle
18 as a Dodge CPO vehicle, given his training and experience, and the CPO
19 standards in effect at the time, along with his observations, findings and
20 conclusions from his inspection, among other opinions.

21 Dated this 12th day of June, 2017

22 /s/ George O. West III
23 George O. West III
24 Consumer Attorneys Against Auto Fraud
25 Attorney for Plaintiff
26 **DERRICK POOLE**
27
28

EXHIBIT 5

SUPP

GEORGE O. WEST III [SBN 7951]
Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Email : gowesq@cox.net
Websites : www.caaaf.net
www.americasautofraudattorney.com
(702) 318-6570
(702) 664-0459 [fax]

Attorney for Plaintiffs
DERRICK POOLE

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

v

NEVADA AUTO DEALERSHIP INVEST-
MENTS LLC a Nevada Limited Liability
Company d/b/a SAHARA CHRYSLER,
JEEP, DODGE, WELLS FARGO DEALER
SERVICES INC., COREPOINTE INSUR-
ANCE COMPANY, and DOES 1 through 100,
Inclusive,

Defendants,

CASE NO : A-16-737120-C
DEPT : XXVII

PLAINTIFF'S SECOND SUPPLEMENT

1 Plaintiff, by and through his attorney of record, pursuant to NRCP, Rule 16.1,
2 hereby makes his supplemental disclosures of witnesses and documents.

3
4 **WITNESS LIST**

- 5 1. Plaintiffs **DERRICK POOLE**
6 c/o George O. West III, Esq

7 Plaintiff will testify about the circumstances of the transaction. What was
8 said and represented or not disclosed about the CPO vehicle he purchased
9 and the subsequently discovered frame damage, among other topics

- 10 2. PMK/COR from SAHARA CHRYSLER
11 c/o Thorndale Armstrong

12 Plaintiffs anticipate these witnesses will testify about the documents in
13 Plaintiff's file, Defendant's customs and practices of how Defendant sells
14 and inspects CPO vehicles sold to the community, how said Defendant
15 prepares and fills out sales documents and CPO inspection documents,
16 how said Defendant how it prepares and maintains its service records, the
17 work and inspection done on the vehicle prior to the sale of the vehicle to
18 the Plaintiff, any inspection that were undertaken on the vehicle by
19 Defendant prior to selling it to the Plaintiff, among other topics

- 20 3. Sales person(s) involved in the sale of the vehicle from SAHARA
21 CHRYSLER
22 c/o Thorndale Armstrong

23 Plaintiffs does not know the name of names of these people at this time.
24 They are anticipated on testifying about the subject transaction, what was
25 disclosed to the Plaintiff involving the CPO vehicle.

- 26 4. Sales and F&I employee(s) from SAHARA CHRYSLER
27 c/o Thorndale Armstrong

28 Plaintiff does not know the names of these employees or other persons
employed by Defendant who were involved document preparation and
signing regarding the vehicle at time of sale. Plaintiffs anticipate these
witnesses will testify as the circumstances of the sale of the vehicle and
document preparation for the vehicle, among other subject matters.

- Service Director and mechanic from SAHARA CHRYSLER service dept.
c/o Thorndale Armstrong

Plaintiff does not know the names of these employees or other persons
employed by Defendant who were involved or have relevant knowledge of
the actual CPO inspection undertaken on the vehicle, but are expected to
testify about any reports filled out by the service department, any service
or repairs done to the vehicle, among other subject matters.

1 6. PMK/COR from FCA

2 1000 Chrysler Drive
3 Auburn Hills, MI 48326

4 Plaintiff anticipates this witness will testify about the training FCA
5 requires and/or gives to FCA certified technicians at franchised
6 dealerships with respect to standards, policies, practices, methods,
7 protocols needed to be followed with CPO inspections. FCA's written
8 policies practices, procedures or criteria with respect to a franchised
9 dealership certifying a vehicle as a CPO. This witness will also testify
 about whether the Plaintiff's vehicle would qualify as a CPO as well as the
 underlying objectives and reasons behind the CPO program. This witness
 will also testify about any training, information seminars or other
 information communicated to franchised dealerships relating to CPO sales
 of CHRYSLER vehicles that a sold to the community, among other subject
 matters.

10 7. PMK from WELLS FARGO DEALER SERVICES

11 15750 Anton Pkwy
12 Irvine, CA 92618

13 Plaintiff anticipates this witness will testify about any policies, practices or
14 procedures WFB had in effect or had implemented in 2014 regarding the
15 retail financed sale of used vehicles that have or are suspected to have any
16 frame or unibody damage to them, the reasons behind those policies and
17 practices, the reasons why they do or do not finance used retail vehicles
18 when they have or are suspected to have frame or unibody damage,
19 including any steps WFB takes, if any, to ascertain if a vehicle they are
20 financing has actual or previously sustained frame damage prior to making
21 a credit decision. Among other subject matters.

22 8. Plaintiff's Auto Expert(s)

23 This witness(es) will testify about the following, including, but not limited
24 to the diminished value of the vehicle due to the frame damage, whether
25 the vehicle should have or met CPO standards for such certification, the
26 vehicle's intrinsic worth, how frame damage affects a vehicle's value, how
27 frame damage affects vehicle's safety, and will testify with respect to the
28 Defendant's knowledge, actual or constructive, of the frame damage at
 time of sale, based in his review of documents and his inspection of the
 vehicle, among other issues.

 9. Any other witness identified by any other party in this action

 10. **The technician who undertook the CPO inspection on the
Vehicle**

Raymond Gongora
 Address & phone known to Defendants

**This person is anticipated to testify about how he conducted the
inspection, what he observed, his policy and practice in
conducting these inspections.**

EXHIBIT 6

Wreck Check Car Scan Centers

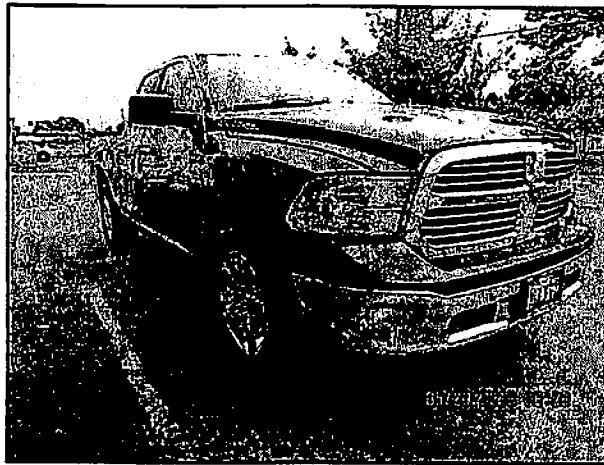
A CONSUMER PROTECTION COMPANY

**#1 IN THE DETECTION OF IMPROPER COLLISION AND MECHANICAL REPAIRS AND
THE LEADER IN THE EVALUATION OF DIMINISHED VALUE !**

VEHICLE CONDITION ASSESSMENT

Prepared For

Derrick Poole



Due to condition the vehicle illustrated in this
photograph may not be the subject vehicle

2013 Dodge Ram 1500
Quad Cab Blue

Nevada Office & **Mailing Address**
5258 S. Eastern Ave. Ste. 207
Las Vegas, NV 89119

Phone: 800 762-2671 • Fax: 310 241-0337
wreckcheckcarscan.com
rocco@wreckcheckcarscan.com

California Office
217 N. Irena St. Ste. A
Redondo Beach, CA 90277

REPORT EXHIBIT INDEX

Exhibit	Report Description <small>The Items Listed Below Will Appear In Order In The Report</small>	# of Pgs
1	Vehicle Condition Report	7
2	22 Photographs of the 110 Photograph Subject Vehicle	4
3	Allstate Fire & Casualty Ins. Estimate Dated March 31 2014 [Prior Collision]	6
4	WCCSC Paint-Structural Information	8
5	Poor Quality Collision Repairs Alters Timing Of Air Bag Deployment	3
6	Current Curriculum Vitae for Rocco J. Avellini.	8

VCR	Vehicle Condition Report.
OEM	Original Equipment Manufacturers.
DVA	Diminished value Assessment.
TSB	Technical Service Bulletins.
R&I	Remove & Install parts needed to complete subject repairs.
R&R	Remove & Replace parts needed to complete subject repairs.
S.U.M.	Set Up & Measurement of the frame/unibody to determine Sway, Sag, Mash and/or Diamond conditions.
PTR	Product Thickness Reading which measures the Mils of product such as bondo/body filler, corrosion protection, primers and top coat. The gauge measures from 0 – 40 mils of product and the gauge will read - - - - means the product exceeds 40 mils. Any reading above 4 – 6 Mils of product is evidence that repairs were completed to the body panel.
Sway	Uni – body/Frame condition occurs when the structure of a vehicle is moved to the right and/or left.
Sag	Uni – body/Frame condition occurs when the structure of a vehicle is moved up and/or down.
Mash	Uni – body/Frame condition occurs when the structure of a vehicle is moved forward and/or backward.
Diamond	Uni – body/Frame condition occurs when either the right or left side of the structure of the vehicle is moved forward or backward and the opposite side remains stationary.

1 IN THE DETECTION OF IMPROPER COLLISION & MECHANICAL REPAIRS
AND THE LEADER IN THE EVALUATION OF DIMINISHED VALUE

0


A CONSUMER PROTECTION COMPANY

June 28, 2016

CLIENT INFORMATION		VEHICLE INFORMATION			
NAME	Derrick Poole	YEAR/MAKE	2013 Dodge		
ADDRESS	9311 Heavenly View Ct.	MODEL	Ram 1500 4x2 4 Dr. SLT Blue		
CITY	Las Vegas	VIN	1C5RR6GT8DS558275		
STATE/ZIP	NV/89117	MILEAGE	17,468 @ DOL		
		ENGINE	8 Cyl/5.7L/FI		
		TRANSMISSION	AUTO	Y	MANUAL
		DRIVE	2WD	Y	4WD AWD

VEHICLE OPTIONS							
ABS	Y	Cassette		Leather Seats		P/Seats Dual	Towing Package Y
A/Conditioning	Y	CD Multi		Moon Roof		P/Steering	Y Traction Control Y
A/Cond. Dual Zone	Y	CD Single	Y	MP3	Y	P/Door Locks	Y Wheels Alloy Y
Air Bags Dual	Y	Cruise Control	Y	Navigation		P/Windows	Y Wheels Prem.
Air Bags Side	Y	DVD		Prkg. Sensors	Y	Rear Defrost	Wheels 19"
A/B Cut Off Sensor	Y	Entertainmt Syst.		Prem. Package		Rear Spoiler	Wheels 20"
Anti-Theft System	Y	Heated Mirrors		Prem. Sound	Y	Sport Package	3rd Row Seats
Back Up Camera		Heated Seats		Privacy Glass		Stability Control	Y
Blue Tooth	Y	Integrated Ph.		P/Seats	Y	Tinted Glass	Y

The following is my initial Vehicle Condition Report [VCR] outlining my findings after the inspection of the subject vehicle.

Additional Inspection Information

Please be advised that due to the nature of damage to improperly repaired collision or mechanically damaged vehicles it is sometimes necessary to conduct additional inspections and/or to dismantle certain parts to verify and analyze all remaining damage to the subject vehicle. In many instances when dealing with your original repairer or dealer this VCR may be sufficient information for them to complete a re-repair estimate for your review and authorization before any corrective measures begin. Please be advised that the re-repair process to a prior collision or mechanically damaged vehicle is different than the process that took place during the initial repair. All corrective measures must be performed by a facility familiar with the re-repair process of improperly repaired collision or mechanically damaged vehicles.

ASSIGNMENT:

I was retained by Mr. Derrick Poole to complete a Vehicle Condition Assessment for the subject vehicle listed above. This report contains my expert opinions as to the quality of the completed repairs, whether this vehicle should have been advertised, displayed and sold as a Chrysler CPO vehicle by the dealer. The nature and extent of the vehicle's deficiencies that existed at time of sale that was actually known or should have been known by the dealer, and the vehicle's inherent loss in value as a result of the subject accident.

INSPECTION AND LOCATION:

I inspected the subject vehicle at the office of Wreck Check Car Scan Center on May 20, 2016 at approximately 9:00 AM. My inspection included photographing the subject vehicle, product thickness readings of all exterior panels, inspecting the engine and trunk area, interior, underside and the front and rear suspensions.

QUALIFICATIONS:

My curriculum vitae is attached to this report. I am recognized in the automotive community as an expert in inspecting vehicles for the purpose of determining quality of collision and mechanical repair work, how collisions, and the damage caused by a particular collision or improper or substandard repairs can affect a vehicle's safety and safety systems, any deficiencies in repairs, and calculating vehicle inherent and repair related diminished value. In addition my experience extends to the evaluation of Actual Cash Value of vehicle, collision monitoring, determining total loss of damaged vehicles, dealer fraud and lemon law.

I have been qualified to testify in arbitration and trial on a multitude of occasions on the issues stated in the paragraph immediately herein above.

RESEARCH AND INVESTIGATION CONDUCTED:

Our office communicated with the vehicle owner and the Law Office of George O. West several days prior to my inspection at which time they briefly discussed the overall condition of the vehicle at the time after the purchase and also scheduled my inspection.

My inspection revealed several issues surrounding the vehicle condition that resulted in improper repairs and remaining damage due to the previous collision, which is also reflected on the Allstate body shop estimate dated March 26, 2017 that are listed below:

1. Improper alignment of the right and left wheel and tires. See photographs 7 & 8.
2. Improper gaps between exterior body panels. See photographs 9, 13, 14, 15 & 16.
3. Improper alignment of frame to body supports. See photographs 10, 11, 19, 20 & 22.
4. Witness marks on bolts. See photographs 12, 17.
5. Improper & abnormal tire wear. See photographs 21.

Also, my inspection revealed that it was evident that the subject vehicle suffered an impact to the left front and front causing damage, repair and/or replacement of the items listed on the Allstate Insurance damage estimate dated March 26, 2016, attached at Exhibit 3.

The damage was photographed without removing any shields or body parts and in clear view during my inspection.

It is also my opinion that any automotive professional in the business of selling Certified Pre-Owned vehicles to the community who undertook the CPO inspection, and who had the body shop estimate in their possession, knew or should have known the nature and extent of the prior collision damage and the nature and extent of subsequent repairs. Furthermore, when Mr. Poole discloses the prior collision damage to any potential buyer he will never be able to recover financially to be made whole as the car has also sustained diminished value.

ITEMS REVIEWED AND RELIED UPON TO DATE:

1. All photographs taken upon my inspection, which are produced with this report, including those specifically identified and attached to this report.
2. 17 Photographs of new 2017 Dodge Ram 1500s taken by Rocco Avellini at 215 Dodge's dealership on August 31, 2016 at approximately 7:30AM depicting no offset of any beds to such vehicles.
3. The Allstate Insurance estimate dated March 26, 2014, which I am informed and believe was prepared approximately two months prior to the dealer entering the subject vehicle into its inventory and three months prior to purchase date of June 26, 2016.
4. Photographs of the repair to the subject vehicle, which I am informed were produced by the dealer in discovery process in this case, that were undertaken to the vehicle based upon the March 26, 2014 Insurance Estimate, which are attached to this report as Exhibit 3.
5. Portions of the deposition transcripts of Joshua Grant and Raymond Gongora.
6. The Chrysler CPO Inspection checklist relating to the subject vehicle.
7. The Chrysler CPO Manual dated September 2013, which I am informed and believe was the CPO manual in effect at the time the vehicle was put in the dealer's inventory and sold to Mr. Poole. It is also my understanding that the 2013 CPO manual was produced and identified by the dealer in discovery as the CPO manual that was in effect at the relevant time period.
8. Carmax vehicle history report dated May 10, 2014 involving the subject vehicle.

DESCRIPTION OF PHOTOGRAPHS:

My findings are explained below and the photographs attached to this report will outline my opinions and the issues surrounding the improper repairs, safety issues and remaining damage to the subject vehicle:

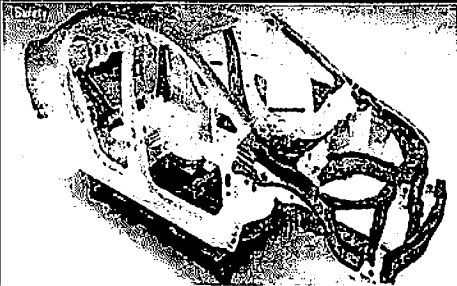
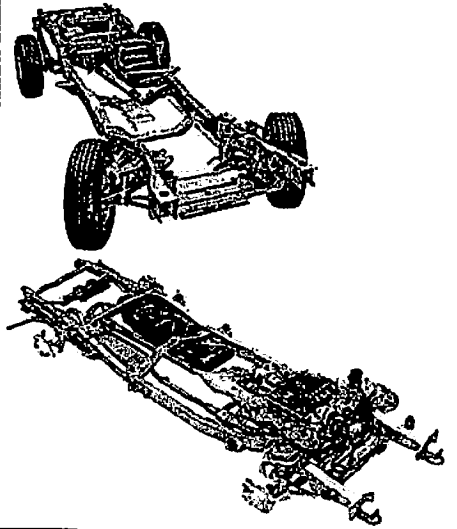
1. Left front and side view.
2. Right front and side view.
3. Left rear and side view.
4. Right rear and side view.
5. View of the instrument cluster showing the vehicle's current mileage.
6. View of the manufacturers information label showing the production date and the vehicle identification number.
7. Overview of the left front wheel and tire showing the position to the left front fender. Note that the [Yellow Arrow] wheel and tire is recessed into the fender wheel house. The position of the left front wheel and tire is different from the position of the right front wheel and tire shown at in the following photograph.

8. Overview of the right front wheel and tire showing the position to the right front fender. Note that the [Red Arrow] right front wheel and tire extends further from the right front fender which is evidence that the front portion of the frame and upper structure has a remaining sway condition.
9. Overview of the improper gap between the left front fender and the left front door which is evidence that the front portion of the frame and the upper structure has a remaining sway condition.
10. Overview of the misaligned right center body to frame support which is evidence of a remaining structural sway condition.
11. Overview of the left center body to frame support showing minor misalignment. This support is opposite of the support shown in photograph 10.
12. Rust forming on the witness marks on the front bumper nuts which is evidence that the front bumper was replaced as outlined on line 5 of exhibit 3.
13. Improper gap between the left portion of the front bumper and front grill which is evidence of the front portion of the frame having a remaining sag condition.
14. Improper gap between the right portion of the front bumper and front grill which is evidence of the front portion of the frame having a remaining sag condition.
15. Overview of the left portion of the subject vehicle. Note that the alignment of the pick-up bed and the rear portion of the cab assembly [yellow box – red arrow] is flush as opposed to the same area on the right side.
16. Overview of the right portion of the subject vehicle. Note that the alignment of the pick-up bed and the rear portion of the cab assembly [red box – yellow arrow] is not in alignment which is evidence that the center portion of the frame and cab assembly has a remaining structural condition. The passenger cabin extends further than the pick – up box.
17. Overview of the front bumper extension and support. Note that the position of the bolt and washing is misaligned [yellow box & arrow] and the witness marks on the bolt head.
18. Overview of the underside of the left front suspension showing a new part label on the strut assembly.
19. Overview of the misaligned frame to body support which is evidence of a remaining structural condition.
20. Overview of the misaligned body to frame support which is evidence of a remaining structural condition.
21. Improper & abnormal tire wear to the outer portion which is due to the misaligned front frame and structure.
22. Overview of the one of the properly aligned body to frame on the subject vehicle.

EXTENT OF DAMAGE AS THE RESULT OF THE MARCH 26, 2016 ACCIDENT:

AREAS OF DAMAGE	
Structural Components <i>Incl: Sidemembers, Rails, Floors, Rocker Panels, Hinge, Pillars, Roof Panels</i>	Major Welded on Body Panels: <i>Incl: Aprons, Radiator Support, Rear Body Panel, Quarter Panels, Inner & Outer</i>
1.	1. Front cooling radiator support replaced.
Major Bolted on Body Parts: <i>Incl: All Bolted On Body Parts</i>	Major Suspension & Mechanical Components:
1. Front bumper chrome replaced w/reconditioned part. 2. Upper bumper cover replaced. 3. Right front bumper bracket replaced. 4. Left front headlamp assembly. 5. Left front fender replaced.	1. Left front wheel replaced w/reconditioned part. 2. Two wheel alignment. 3. Left front stabilizer bar link replaced w/imitation part. 4. Left outer tie rod replaced. 5. Left inner tie rod replaced.
Frame/Uni-body Damage: <i>See Diagrams Below</i>	# of Panels Requiring Paint: <i>Incl: Inner & Outer Panels</i>
1.	1. Front bumper upper cover. 2. Left front fender.
Supplemental Restraint System Deployment	
Drivers Side:	Passenger Side:
1.	1.

Areas of damage marked unknown will need an additional inspection or further testing due to the inability to fully view or diagnose the damage.

THE SUBJECT VEHICLE IS A			
	N	UNI-BODY CONSTRUCTION	Many structural and body parts welded together to construction UNI-BODY. Attached to the Uni-body are front and rear suspension cross members.
	Y	FULL FRAME CONSTRUCTION	Frame is a component consisting of steel beams which houses the engine and passenger compartment.
Over the years there has been some confusion regarding the words used to identify the two types of vehicle construction. Prior to popularity of uni-body construction the majority of the vehicle were assembled utilizing full frame construction however even after the majority of the vehicles were assembled utilizing uni-body construction the use of the word "frame" continued. There should be no confusion regarding the two types of vehicle construction, a uni-body vehicle does not have a full frame.			

CERTIFICATION GENERAL INFORMATION:

Due to the nature and extent of the subject accident and the nature and extent of the repairs to the vehicle, this vehicle should not have been considered as or sold as a "Certified Pre-Owned" vehicle which will decrease the amount of money the vehicle owner can recover upon resale or trade in.

OPINIONS BASED UPON INFORMATION REVIEWED TO DATE:

1. The dealer knew or should have known the precise nature and extent of the collision damage caused by the previous collision, as well as the precise nature and extent and the repairs to the vehicle as a result of the previous collision when the dealer sold the CPO to Mr. Poole.

2. The dealer should not have never displayed or sold the vehicle as a Chrysler/Dodge CPO vehicle.
3. The vehicle has sustained diminished value due to the previous collision to the vehicle in or about March of 2013, which the dealer knew or should have known about at time of sale. This is addressed in a separate diminished value report submitted with this vehicle condition report.
4. The previous repairs done to the vehicle were not done correctly and were not to factory specifications.

The opinions expressed in this report are based on my experience, education, training, research and information supplied to me for review in regards to this matter to date. I may conduct additional analysis on this matter if I am presented with supplemental information, such as from any rebuttal report submitted by the opposing party, and therefore, I reserve the right to revise, delete, or change my opinions expressed in this report based upon such supplemental information. All opinions, conclusions and or recommendations included in this report are intended for the use in potential litigation or settling this matter and not for other purpose and can not be duplicated without the permission of Rocco J. Avellini.

Sincerely:



Rocco J. Avellini
Wreck Check Car Scan Centers

EXHIBIT 7

ROCCO J. AVELLINI
CURRICULUM VITAE

TOLL FREE 800 762-2671 - LOCAL 702 463-7743
 EMAIL rocco @wreckcheckcarscan.com - www.wreckcheckcarscan.com

POSITION:

AUTOMOTIVE INSPECTOR SPECIALIZING IN POST REPAIR INSPECTIONS, DIMINISHED VALUE ASSESSMENTS, IMPROPER COLLISION REPAIRS, TOTAL LOSS EVALUATIONS, USED CAR CERTIFICATION, COLLISION REPAIR CERTIFICATION, 3-D VEHICLE DIMENSIONING, DEALER FRAUD AND COLLISION MONITORING.

EXPERIENCE	
AUTO COLLISION & FRAME TECHNICIAN 1. REPAIRED COLLISION DAMAGED VEHICLES	1969 – 1973
COLLISION REPAIR FACILITY MANAGER/ESTIMATOR 1. SUPERVISED THE DAILY FUNCTIONS OF VERRAZANO COLLISION CENTER 2. DUTIES INCLUDED: • PREPARING ESTIMATES • ORDERING PARTS & SUPPLIES • QUALITY CONTROL • PAYROLL	1973 – 1976
TOW TRUCK DRIVER & OWNER 1. TOWING COLLISION DAMAGED VEHICLES 2. TOWING CONSUMER RELATED VEHICLES 3. MANAGED & SERVICED ACCOUNT'S • DEALERSHIPS • INSURANCE COMPANIES • ROAD ASSISTANCE PROGRAMS • SALVAGE YARDS	1974 – 1976
AUTOMOBILE SALVAGE – MANAGER 1. SUPERVISED A TOTAL OF 10 – 15 YARDMAN, DRIVERS AND OFFICE SUPPORT STAFF. 2. DISMANTLING VEHICLES AND STOCKING PARTS. 3. INSPECTIONS AND EVALUATING VEHICLES FOR INSURANCE COMPANIES. 4. MARKETING TO COLLISION REPAIR FACILITIES AND INSURANCE COMPANIES.	1976 – 1980
SUPERVISOR, INDEPENDENT AUTOMOBILE APPRAISERS [INSURANCE] 1. SUPERVISED 9 – 15 INDEPENDENT APPRAISER 2. PREPARED ESTIMATES FOR COLLISION DAMAGED VEHICLES, TOTAL LOSS ASSESSMENTS CLASSIC CAR APPRAISALS.	1980 – 1982
ADJUSTER, HEAVY EQUIPMENT [INSURANCE] 1. INSPECTED, PREPARED ESTIMATE & SETTLED CLAIMS FOR MOTOR HOMES & WATER CRAFT, TRUCKS & TRAILERS	1982 – 1984
NATIONAL PROPERTY DAMAGE RE-INSPECTOR [INSURANCE] 1. SUPERVISED 8 REGIONAL OFFICES WITH APPROXIMATELY 100 PROPERTY DAMAGE ADJUSTORS. 2. CONDUCTED A NATIONAL RE-INSPECTION PROGRAM FOR THE 390 INDEPENDENT APPRAISAL COMPANIES. 3. CONDUCTED OPEN & CLOSED FILE AUDITS AT OUR REGIONAL OFFICES. 4. SUPERVISED OUR DIRECT REPAIR PROGRAM FACILITIES FOR VEHICLE REPAIRS .	1984 – 1987
REGIONAL PROPERTY MANAGER [INSURANCE] 1. SAME AS ABOVE ON A REGIONAL LEVEL 2. \$150,000.00 SIGNING AUTHORITY.	1987 – 1988

USED CAR DEALER/PARKER AUTO SALES [PARTNER] 1. PURCHASED USED VEHICLES AT AUCTION 2. INSPECTED VEHICLE FOR PRIOR COLLISION DAMAGE & MECHANICAL ISSUES 3. DETAILED VEHICLE FOR SHOW & DELIVERY TO PURCHASER 4. PERFORMED SAFETY INSPECTIONS ON VEHICLES	1994 – 1997
VEHICLE RESTORATION [ROCCO'S SPORTS CAR EMPORIUM] 1. RESTORED & REPAIRED EXOTIC VEHICLES & MUSCLE CARS <ul style="list-style-type: none"> • EXTERIOR PANELS • COMPLETE REFINISH • INTERIORS • MECHANICAL • UNIBODY & FRAMES REPAIRS 	1988 – 1991
COLLISION & MECHANICAL REPAIR FACILITY OWNER [ROCCO'S COLLISION CENTER] 1. REPAIRED COLLISION DAMAGED 2. COMPLETE MECHANICAL REPAIRS TO INCLUDE <ul style="list-style-type: none"> • THE COLLISION DAMAGED VEHICLE • COMPLETE MECHANICAL REPAIRS & MAINTENANCE TO THE GENERAL PUBLIC 3. WHEEL & TIRE SALES 4. AUTO & TRUCK ACCESSORIES 5. CUSTOM PAINT 6. BETA REPAIR FACILITY FOR PPG PAINT COMPANY <ul style="list-style-type: none"> • TESTED INDUSTRY RELATED COMPUTER SYSTEMS FOR PAINT USAGE, MIXING & VOC COMPLIANCE. • TESTED NEW PAINT LINES – I.E. WATER BASED PAINTS • TESTED NEW PRIMERS, CORROSION PROTECTION PRODUCTS • TESTED ABRASIVES USED AFTER THE PAINTING PROCESS WAS COMPLETED – I.E. COMPOUNDS, BUFFING PADS, SAND PAPER AND CLEANING /DETAILING PRODUCTS. 7. U-HAUL RENTAL LOCATION AND TRAILER HITCH INSTALLATION	1991 – 2002
POST REPAIR INSPECTOR/WRECK CHECK CONSUMER PROTECTION FACILITY 1. PREPARED DIMINISHED VALUE ASSESSMENTS. 2. POST REPAIR INSPECTIONS. 3. RE-REPAIRED PREVIOUSLY COLLISION DAMAGED VEHICLE THAT WERE REPAIRED INCORRECTLY.	1993 – 2002
CONSULTANT, MONTEBELLO HOUSING DEVELOPMENT CORP. DIRECTOR OF OPERATIONS. 1. SUPERVISED 10 OFFICE PERSONAL. 2. INSTALLED AND MAINTAINED NETWORK COMPUTER SYSTEM AND INSTALLED AND SUPPORTED SOFTWARE. 3. SUPERVISED ACCOUNTING AND BOOKKEEPING DEPARTMENT. 4. IMPLEMENTED MARKETING PROGRAM FOR MONTEBELLO RESIDENCE.	2002 - 2003
POST REPAIR INSPECTOR/COLLISION REPAIR CONSULTING-WRECK CHECK, OWNER. 1. REVISED & IMPLEMENTED INDUSTRY LEADING DIMINISHED VALUE SOFTWARE TO WCCSC LICENSEES 2. POST REPAIR INSPECTIONS 3. TOTAL LOSS EVALUATIONS 4. COLLISION MONITORING 5. PRE & POST PURCHASE INSPECTIONS	1996 – 2006
POST REPAIR INSPECTOR/WRECK CHECK CAR SCAN CENTER, OWNER 1. REVISED & IMPLEMENTED INDUSTRY LEADING DIMINISHED VALUE SOFTWARE TO WCCSC LICENSEES 2. POST REPAIR INSPECTIONS 3. TOTAL LOSS EVALUATIONS 4. COLLISION MONITORING 5. PRE & POST PURCHASE INSPECTIONS	1998 – PRESENT

10/05 – 12/05	1. COLLISION DAMAGE ESTIMATE FOR 5 VEHICLE BRANDS 2. TRAINING ESTIMATORS CONSULTANT/DESERT AUTO GROUP COLLISION CENTER
1/06 – 12/06	1. SUPERVISED 5 OFFICE PERSONAL. 2. INSTALLED AND MAINTAINED NETWORK COMPUTER SYSTEM AND INSTALLED AND SUPPORTED SOFTWARE. 3. SUPERVISED ACCOUNTING AND BOOKKEEPING DEPARTMENT. 4. IMPLEMENTED MARKETING PROGRAM FOR HERCULES RESIDENCE. CONSULTANT/RISING PHOENIX BUILDING AND DEVELOPMENT
3/07 – 9/07	1. SUPERVISED ACCOUNTING AND BOOKKEEPING DEPARTMENT. 2. DEVELOPED ACCOUNTING PROCEDURES. 3. CREATED WORK FLOW PROCEDURES FOR A/P & A/R CONSULTANT/UPDATE AUTO COLLISION
11/07 – 2/08	1. TRAINED COLLISION DAMAGE ESTIMATORS 2. IMPLEMENTED WORK FLOW PROGRAMS 3. MANAGED OFFICE AND TECHNICIANS PALMORE APPRAISAL OF NEVADA [PARTNER]
1/07 – 10/08	1. PREPARED ESTIMATES AND TOTAL LOSS EVALUATIONS FOR INSURANCE CARRIERS

TRAINING & CERTIFICATION:

TEXUS	COLLISION REPAIR & REFINISH
CALIFORNIA	LICENSED AIR CONDITION TECHNICIAN
NEW YORK	LICENSED WELDER
I-CAR	8 PART & ELECTRONIC
BEAR	WHEEL ALIGNMENT EQUIPMENT 5 DAY COURSE
BEAR	ENGINE ANALYZER 5 DAY COURSE
ADP	COMPUTERIZED ESTIMATING
CAR-O-LINER	UNI-BODY & FRAME 3 DAY COURSE
ARN	COLLISION SAFETY INSTITUTE – 28 HOUR CRASH CONFERENCE COURSE 2005
KANSAS JACK	HEAVY EQUIPMENT FRAME & STRUCTURE COLLISION CORRECTION TRAINING/BUS, TRAINS, LARGE TRUCKS/MAY 2012

INSURANCE

MULTIPLE INSURANCE COMPANIES	INDEPENDENT AUTOMOBILE APPRAISERS	1980 - 1982
EMPIRE MUTUAL INSURANCE	HEAVY EQUIPMENT ADJUSTER	1982 – 1984
HERTZ CLAIMS MANAGEMENT	NATIONAL PROPERTY RE-INSPECTOR	1984 – 1987
HERTZ CLAIMS MANAGEMENT	REGIONAL PROPERTY MANAGER	1987 - 1988
AMERIPRISE INSURANCE	AUTOMOBILE APPRAISER	1/07 – 10/08
HARLEYSVILLE INSURANCE GROUP	CA, MANDATED RE-INSPECTION PROGRAM	6/03 – 12/04

MEMBERSHIPS AND ASSOCIATIONS

1993 – 1995	BOARD MEMBER-HAWAIIAN GARDENS FAMILY & YOUTH DEVELOPMENT
1992 – 1994	PRESIDENT, HAWAIIAN GARDENS BUSINESS FOR PROGRESS
1992 – 1995	HAWAIIAN GARDENS BUSINESS FOR PROGRESS MEMBER
1990 – 1994	FOCUS GROUP MEMBER, PPG ACCESS COUNCIL
1990 – 1994	PPG ACCESS DEVELOPMENT COUNCIL
1990 – 1994	PPG REFINISH SYSTEMS BETA FACILITY
1989 – 1991	CALIFORNIA AUTO BODY ASSOC. FOUNDING CHAPTER PRESIDENT
1992 – 1993	BOARD MEMBER
1990 – 1990	IMPROPER REPAIRS COMMITTEE
1990 – 1997	CAA MEMBER

DESIGNATED EXPERT WITNESS/CONSULTANT		
DATE	CASE	EXPERT
8/01	D & N CONCRETE PUMPING V CNA INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
6/01	LEWIS V. CALMAT OF CENTRAL CALIFORNIA	IMPROPER REPAIRS, COLLISION REPAIRS & TOTAL LOSS
10/99	HELLER V. MR. POLISH	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
4/00	MAUPIN V. ALLSTATE INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
10/01	LANE V. TURNSHEK	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
2/02	DENNY AKYAMA, HUNG DO, JAMIE ROMERO V. FARMERS	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE TOTAL LOSS, IMPROPER REPAIRS, DRP PROCEDURES
11/03	TAPIA V. MERCURY INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
4/04	ROSALES V. MERCURY INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
5/04	BEOTANG V. MERCURY INSURANCE	IMPROPER REPAIRS & DIMINISHED VALUE
6/04	TORREALBA V. GRAND MOTORS INC.	DEALER FRAUD IMPROPER REPAIRS, DIMINISHED VALUE & TOTAL LOSS
7/04	REINES V. PELTZER	IMPROPER REPAIRS & DIMINISHED VALUE
7/04	CALDERON V. CARDINALE MOTORS	DEALER FRAUD IMPROPER REPAIRS & DIMINISHED VALUE
9/04	SOPP V. BATES, DISILVA, LAZZARA	TOTAL LOSS EVALUATION
11/04	STROUDS V. PERTILE - ARBITRATION	INSURANCE & COLLISION FACILITY ESTIMATING & REPAIR ORDER PROCEDURES
12/04	CURTIS V. NORTH BEACH ACQUISITIONS	DEALER FRAUD, IMPROPER REPAIR & VEHICLE CERTIFICATION
6/04	EXCLUSIVE V. VOLVO V MARIA VILLEGAS	DIMINISHED VALUE
11/04	ALFANO V. MERCURY INS.	APPRAISAL PROCESS, IMPROPER REPAIRS, DIMINISHED VALUE & BAD FAITH
12/04	DUVALL V. SHUTTLE LINCOLN MERCURY	IMPROPER REPAIRS, USED CAR CERTIFICATION & DEALER FRAUD
2/05	HICKS V. NATION MOTORS	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
3/05	DAKE V. ROCK AUTOMOTIVE GROUP	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
6/05	LOPEZ V. FIRST CHOICE AUTO CENTER	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
7/05	SOWMA V. MARTIN	IMPROPER REPAIRS & DIMINISHED VALUE
10/05	ARMANTROUT V. SOUTH GATE COLLISION	TOTAL LOSS EVALUATION & LOSS OF USE
2/06	KUHN V. PROGRESSIVE INS./COPPERFIELD COLLISION	IMPROPER REPAIRS, BAD FAITH, FRAUD & DIMINISH VALUE
1/06	MARCHENA V. STATE FARM AUTOMOBILE INSURANCE	TOTAL LOSS EVALUATION & BAD FAITH
3/06	KOONHBEARRY V. INTERFIRST LEASING	DEALER FRAUD, IMPROPER REPAIRS & DIMINISHED VALUE
2/06	LANDEIS V. FUTURE FORD MOTORS	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE
3/06	HERRERA V. THROUNG	DIMINISHED VALUE & TOTAL LOSS
5/06	J.L. RINCO V. SAFEWAY INS. & GMAC	TOTAL LOSS EVALUATION
5/06	A. KLEIMAN V. B. YAKOV/J. JACOBSON	LOSS OF USE
6/06	SORISHOWCHAMAKI V. BMW OF NORTH AMERICA	MANUFACTURER DEFECT & DEALER FRAUD
5/06	HERRERA V. INFINITY INS.	BAD FAITH, IMPROPER REPAIRS & TOTAL LOSS
5/06	BIOTEAU V. VOLKSWAGEN OF NORTH AMERICA	DEALER FRAUD & IMPROPER REPAIRS
9/06	ISRANI V. SINCLAIR	DIMINISHED VALUE & IMPROPER REPAIRS
11/06	AARON HENRY V. JASMINE BANAYAN	DIMINISHED VALUE & LOSS OF USE
2/07	MCGREW V. AUTO GALLERY OF SAN DIEGO	DEALER FRAUD, DIMINISHED VALUE, IMPROPER REPAIRS
2/07	BEVERLY HILLS A/B V. CA. BAR	REPAIR FRAUD & AUTHORIZATION, IMPROPER REPAIRS
3/07	WILLIAMS V. BOGAEV	DIMINISHED VALUE
5/07	SHULTS/MANOLAKAS V. MB OF N. AMERICA	IMPROPER REPAIRS, DEALER FRAUD. USED CAR CERTIFICATION
7/07	COYLE V. TEKEDA AMERICA HOLDINGS	DIMINISHED VALUE, COLLISION REPAIR COSTS, MANUFACTURERS REPAIR STANDARDS
7/07	HEARST V. GREBE	DIMINISHED VALUE
7/07	ROSATI V. ASULIN	DIMINISHED VALUE, IMPROPER REPAIRS
8/07	GENOVESE V. VOLKSWAGEN OF AMERICA	DEALER FRAUD, IMPROPER REPAIRS
3/08	NEWHOUSE V. DELAY	DIMINISHED VALUE , IMPROPER REPAIRS

3/08	M. TOWBIN V. RESTORATION COLLISION SPECIALIST	NV DMV BOND ARBITRATION/IMPROPER REPAIRS
8/08	ORTIZ V. JAEGER	DIMINISHED VALUE, IMPROPER REPAIRS
7/08	RODRIGUEZ V. NISSAN NORTH AMERICA	DEALER FRAUD, IMPROPER REPAIRS
4/08	AGUILUZ V. CRAIG MILLER	DEALER FRAUD, IMPROPER REPAIRS
7/08	STATE AUTO PAINTING V. THE PEOPLE OF CALIFORNIA	REPAIR FRAUD & AUTHORIZATION, IMPROPER REPAIRS
8/08	ORTIZ V. JAEGER	DIMINISHED VALUE & IMPROPER REPAIRS
9/08	LEWEY V. GOKCEN	LOSS OF USE, VEHICLE REPAIRS
7/09	RAPP V. GREEN LIGHT AUTO	DIMINISHED VALUE, DEALER FRAUD, IMPROPER REPAIRS
7/09	SIMMONS V. COLLISION SPECIALISTS	NV DMV BOND ARBITRATION
8/09	SULLIVAN V. PROGRESSIVE INSURANCE	3 RD PARTY DIMINISHED VALUE MEDIATION
9/09	HUANG V. FARMERS INSURANCE GROUP	APPRAISAL PROCESS, FERRARI VEHICLE REPAIR PROCEDURES
9/09	GROCHOWSKI V. SUPERIOR MOTORS	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
9/09	GABALDON V. BOB BAKER FORD	DIMINISHED VALUE, DEALER FRAUD, IMPROPER REPAIRS
12/09	SCHWARTZ V. AUTO CLUB OF S. CALIFORNIA	APPRAISAL PROCESS, TOTAL LOSS
2/10	PERZ V. MOSSY TOYOTA	ARBITRATION, DEALER FRAUD
3/10	HANAYAN V. WAWANESA	APPRAISAL PROCESS, REPAIR ESTIMATE PROCEDURES
4/10	SIMMONS V. FOLKERTS	DIMINISHED VALUE, IMPROPER REPAIRS, LOSS OF USE
9/10	WIGHT V. AUTOFITNESS	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
11/10	DAWSON V. NORM BAKER MOTOR SALES	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
12/10	HEINE V. CARMAX AUTO SALES	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
5/11	CARSON V. MERCURY INSURANCE	IMPROPER REPAIRS, LOSS OF USE, INSURANCE BAD FAITH
6/11	CLASS AUTO CENTER V. ESIS INC & CERRITOS A/B	TORTUOUS INTERFERENCE. REPAIR FRAUD
9/11	DICHOSA V. HOUSE OF IMPORTS	DEALER FRAUD IMPROPER REPAIRS, LOSS OF USE
10/11	COULSON V. CANNOCK	DIMINISHED VALUE, LOSS OF USE, COLLISION REPAIR STANDARDS
11/11	AYLOTT V. STATE FARM	APPRAISAL PROCESS , TOTAL LOSS
2/11	SCHUMM V. STATE FARM	DIMINISHED VALUE, LOSS OF USE, REPAIR STANDARDS
6/11	RUIZ V. VANDERBEEK MOTORS	DEALER FRAUD, IMPROPER REPAIRS
7/11	FULLER V. ESPARZA	IMPROPER & INCOMPLETE VEHICLE REPAIRS
8/11	DAVIS V. BONANDER PONTIAC	DEALER FRAUD, CERTIFIED PRE – OWNED VEHICLE
5/12	KIREN V. FRESNO INFINITI	ARBITRATION CERTIFIED PRE – OWNED VEHICLE FRAUD
6/12	HERRERA V. A & P AUTO SALES	DEALER FRAUD, IMPROPER REPAIRS
8/12	SINGH V. LEUCK	DIMINISHED VALUE
6/12	LLANA V. GSM AUTO GROUP	DEALER FRAUD, IMPROPER REPAIRS
2/13	ZOGRAFOS V. GORDON IMPORTS, LLC	DEALER FRAUD, IMPROPER REPAIRS
6/13	NICK'S GARAGE/JEFFREY'S A/B V. NATIONWIDE INS.	ASSIGNMENT OF RIGHT, COLLISION REPAIR PROCEDURES, MECHANICAL V. COLLISION LABOR RATES & INVESTMENT
6/13	FRANCO V. REYES AUTO SALES	DEALER FRAUD, IMPROPER COLLISION REPAIRS, POST COLLISION REPAIR ROLL OVER SAFETY
6/13	FAALOGOIFO V. SCAS	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/13	SPICER V. RT MOTORSPORTS	DEALER FRAUD, NV MANDATORY INSPECTION
8/13	NEILSEN V. FISHTAIL INVESTMENTS	DEALER FRAUD, NV MANDATORY INSPECTION, POST COLLISION REPAIR AIR BAG DEPLOYMENT
12/13	KEUSSEYAN V. MERCEDES BENZ NA	PAINT DEFECT AND SUBSEQUENT CORRECTIVE REPAIRS
1/14	PURCHASE V. CRISPEN	DIMINISHED VALUE, COLLISION DAMAGE ANALYSIS
4/14	FOSTER V. NISSAN OF BAKERSFIELD	DEALER FRAUD, IMPROPER COLLISION REPAIRS
4/14	PMEURLEAU V. SOUTHERN CA. AUTO SALES	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	BENSON V. SCAS	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	GASTELLUM V. SCAS	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	PLONTE V. EMPIRE AUTO SALES	DEALER FRAUD, IMPROPER COLLISION REPAIRS
8/14	BURGERS V. AUTOCLUB OR S. CA.	DIMINISHED VALUE, LOSS OF USE
8/14	KELLEY V. J & M AUTO SALES	DEALER FRAUD, IMPROPER COLLISION REPAIRS
8/14	PAYEAH V JIMMY VASSER'S TOYOTA	DEALER FRAUD, TOYOTA USED VEHICLE CERTIFICATION, IMPROPER COLLISION REPAIRS.

9/14	BICKEL V. KAYS CAR INC.	DEALER FRAUD, IMPROPER COLLISION REPAIRS
9/14	GRANDADOS V. STERLING IMPORTS	DEALER FRAUD, IMPROPER COLLISION REPAIRS
9/14	HANSCHKE V. JEPSON	DIMINISHED VALUE
9/14	MURO V. CA. MOTORS DIRECT	ARBITRATION/DEALER FRAUD
9/14	BOLAND V. CA MOTORS DIRECT	ARBITRATION/DEALER FRAUD
9/14	LOPEZ V. PORSCHE CARS NORTH AMERICA, INC.	DEALER FRAUD, IMPROPER COLLISION REPAIRS, UNDISCLOSED PRIOR DAMAGE
10/14	MACIAS V. MARTIN SATURN OF ONTARIO, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER COLLISION REPAIRS
10/14	ZHONG V. UNITED IMPORTS	ARBITRATION/DEALER FRAUD
11/14	SAMISH V ALVEREZ LINCOLN	DEALER FRAUD, IMPROPER COLLISION REPAIRS
12/14	DURAN V. QUANTUM AUTO SALES	DEALER FRAUD, IMPROPER COLLISION REPAIRS
12/14	ARCE LEPE V. SCAS	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE - ARBITRATION HEARING
1/15	GARCIA V. SUNROAD CV AUTO, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER COLLISION REPAIRS
2/15	GULLINS V. CARMAX AUTO SUPERSTORES, LLC	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
2/15	CALDERON V. GALPIN HONDA	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
4/15	BAILEY-RUSSELL V. HARB GROUP, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
5/15	SPEARS V. RIVERSIDE AUTO HOLDINGS, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
5/15	SHAHNAZARYAN V. AIG	APPRAISAL PROCESS, INSURANCE BAD FAITH
7/15	MEDINA V. SOUTH COAST CARS	DEALER FRAUD, IMPROPER COLLISION REPAIRS
7/15	DISTEFANO V. SANTA MONICA BMW	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
7/15	REED V. MILLER - DM, INC., DBA MERCEDES-BENZ OF BEVERLY HILLS	DEALER FRAUD, IMPROPER REPAIRS - ARBITRATION HEARING
7/15	CHAVEZ V. UNIVERSAL BROKERS, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
7/15	LEE V. CARMAX AUTO SUPERSTORES CALIFORNIA, LLC	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
9/15	REYNOSO V. NEW LOOK COLLISION CENTER	DMV ADMINISTRATIVE HEARING, IMPROPER COLLISION REPAIRS
10/15	FERRIER V. STERLING COLLISION CENTER	FERRARI DEFECTIVE PAINT APPLICATION
10/15	FREDRICKS V. EL CAJON FORD	DEALER FRAUD, IMPROPER REPAIRS
10/15	ALCARAZ V. SOUTH COAST AUTO SALES	DEALER FRAUD, IMPROPER REPAIRS
10/15	TRIPI V. GILBERTSON	DIMINISHED VALUE
10/15	KELLEY V. ADAMS SERVICE CENTER, INC.	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
11/15	RIGBY V. POWAY HYUNDAI	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
12/15	DIRIENZU V. AUTONATION NISSAN SOUTH BAY	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
12/15	PRALL V. FORD MOTOR COMPANY	PRODUCT LIABILITY
12/15	DENEVAN V. CARCREDIT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
2/16	MORAYMA REYES-OCASIO	DIMINISHED VALUE - ARBITRATION HEARING
2/16	APELES V. ADAMS SERVICE CENTER	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS-ARBITRATION HEARING
2/16	ASHBURN/BOYD V. HONDA OF THE DESERT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
3/16	TABANYI V. HYUNDAI MOTOR AMERICA	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
3/16	RILEY V. BENJAMIN	DIMINISHED VALUE
4/16	WAKE/BROWNLEE V. BLANTO, INC., DBA MEGA CARS	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
4/16	RAMIREZ V. BMW OF MONROVIA	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS

MEDIA		
FOX 11 NEWS	AIDAN PICKERING	THE WRECK CHECK
NBC NEWS	MICHELLE RUIZ	FLEECE OR FIXED
NBC NIGHTLY NEWS	TOM BROKOW	ON THE ROAD AGAIN
CBS NEWS	MARK MOTTERN	DANGEROUS COLLISION REPAIRS
ABC 20/20	GLENN RUPPEL	BANG UP JOB/WRECK CHECK
KFI 640 RADIO	KAREL & ANDREW	IMPROPER REPAIRS/WRECK CHECK
KFI 640 RADIO	KAREL & ANDREW	STATE FARM IMITATION PARTS LAWSUIT
KRLA 1110 RADIO	KENNY MORSE	IMPROPER REPAIRS/WRECK CHECK
KFI 640 RADIO	CLARK HOWARD	HELP WITH COLLISION REPAIRS
WKVW CRASH TALK RADIO	MICHAEL HARBER	ASSISTANCE W/IMPROPER REPAIRS & DV
WKVI CRASH TALK RADIO	MICHAEL HARBER	ASSISTANCE W/IMPROPER REPAIRS & DV
WKVI CRASH TALK RADIO	MICHAEL HARBER	DO BODY SHOPS LIE, CHEAT & STEAL TO CREATE PROFITS
WKVI CRASH TALK RADIO	MICHAEL HARBER	CONSUMER RIGHTS BEFORE, DURING & AFTER THE REPAIR PROCESS
WKVI CRASH TALK	MICHAEL HARBER	CONTRACTUAL RESPONSIBILITIES OF THE INSURER/REPAIRER
KGTV 10 NEWS SAN DIEGO	MARTY EMERALD	ARE CAR DEALERS SELLING DANGEROUS CARS
WKVI CRASH TALK RADIO	MICHAEL HARBER	WRECK CHECK CAR SCAN ENTERS/DIMINISHED VALUE
105.9 FM CAR CARE SHOW	NICK ORSO	DIMINISHED VALUE, IMPROPER REPAIRS, POST REPAIR INSPECTIONS
105.9 FM CAR CARE SHOW	NICK ORSO	PRO'S & CON'S ABOUT USING INSURANCE PARTNER SHOPS
105.9 FM CAR CARE SHOW	NICK ORSO	CPO VEHICLE PROGRAMS

AUTHORED & CO-AUTHORED ARTICLES	
INSURER FRAUD	BODY SHOP CONNECTION
DRP MAKES FOR ROCKY ROAD	HAMMER & DOLLY
THE ADVANTAGES OF PERFORMING POST REPAIR INSPECTIONS	COLLISION WATCHDOG
INCREASED SCRUTINY DIRECTED AT AIRBAG FRAUD, IMPROPER AIR BAG INSTALLATIONS	BRUCE ADAMS

FEATURED ARTICLES		
PUBLICATION	AUTHOR	TITLE
L.A. TIMES	KEN REICH	AUTO REPAIR POLICY IN NEED OF OVERHAUL
L.A. TIMES	KEN REICH	VIEWS COLLIDE ON "WRECK CHECK" ANALYSIS
LONG BEACH BUSINESS JOURNAL	STEVEN STELPFLUG	WRECK CHECK COULD HOLD KEY TO SHOPS INDEPENDENCE
INLAND EMPIRE BUSINESS JOURNAL	CANDY FIELDS	WRECK CHECK
BEYOND PARTS & EQUIPMENT	DAVID WILLIAMS	WRECK CHECK - CARSCAN THE ULTIMATE SECOND OPINION
BODY SHOP BUSINESS	BODY SHOP BUSINESS	IS THE INDUSTRY SUFFERING FROM WIDESPREAD BILLING FRAUD & REPAIR DEFECTS
POINT/COUNTER POINT	BODY SHOP BUSINESS	IS IT POSSIBLE TO RUN A BODY SHOP WITHOUT LYING, CHEATING & STEALING.
INSURE.COM		INSIDE THE DIRECT CAR REPAIR PROCESS
AUTOBODY NEWS	KARYN HENDRICKS	AFTER THE AIR BAG DEPLOYED
ARIZONA WATCHDOG	DICK STROM	ADVANTAGES OF PERFORMING POST REPAIR INSPECTIONS
BODY SHOP BUSINESS	DAVID WILLIAMS	9 STEPS TO PROTECT YOUR SHOP FROM DV CLAIMS
BODY SHOP BUSINESS	DAVID WILLIAMS	WOULD YOUR WORK PASS AN AUTO SAFETY EXPERT TEST
AUTO BUSINESS REPAIR NEWS	BRUCE ADAMS	INCREASED SCRUTINY DIRECTED AT AIRBAG FRAUD
BODY SHOP BUSINESS	CHARLES BARONE	DIMINISHED VALUE: FACT OR FICTION

<i>INVITED LECTURES</i>		
CALIFORNIA SENATE INSURANCE COMMITTEE - SENATOR JACKIE SPEIER- CHAIRPERSON	IMPROPER REPAIRS/INSURANCE DIRECT REPAIR PROGRAMS INSURER FRAUD, RETURNING SALVAGE VEHICLES TO THE ROAD	10/1999
NATIONAL ODOMETER & TITLE FRAUD ENFORCEMENT ASSOC.	THE ROAD TO PROPER COLLISION REPAIR	2004
COALITION FOR COLLISION REPAIR EXCELLENCE	JOIN THE TOUGH AND PROUD [POST REPAIR INSPECTORS]	2004
COALITION FOR COLLISION REPAIR EXCELLENCE	RELATIONSHIP WITH A POST REPAIR INSPECTOR	2004

DESIGNATED EXPERT WITNESS/CONSULTANT		
DATE	CASE	EXPERT
8/01	D & N CONCRETE PUMPING V CNA INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
6/01	LEWIS V. CALMAT OF CENTRAL CALIFORNIA	IMPROPER REPAIRS, COLLISION REPAIRS & TOTAL LOSS
10/99	HELLER V. MR. POLISH	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
4/00	MAUPIN V. ALLSTATE INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
10/01	LANE V. TURNSHEK	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
2/02	DENNY AKIYAMA, HUNG DO, JAMIE ROMERO V. FARMERS	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE TOTAL LOSS, IMPROPER REPAIRS, DRP PROCEDURES
11/03	TAPIA V. MERCURY INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
4/04	ROSALES V. MERCURY INSURANCE	IMPROPER REPAIRS, COLLISION REPAIRS & DIMINISHED VALUE
5/04	BEOTANG V. MERCURY INSURANCE	IMPROPER REPAIRS & DIMINISHED VALUE
6/04	TORREALBA V. GRAND MOTORS INC.	DEALER FRAUD IMPROPER REPAIRS, DIMINISHED VALUE & TOTAL LOSS
7/04	REINES V. PELTZER	IMPROPER REPAIRS & DIMINISHED VALUE
7/04	CALDERON V. CARDINALE MOTORS	DEALER FRAUD IMPROPER REPAIRS & DIMINISHED VALUE
9/04	SOPP V. BATES, DISILVA, LAZZARA	TOTAL LOSS EVALUATION
11/04	STROUDS V. PERTILE - ARBITRATION	INSURANCE & COLLISION FACILITY ESTIMATING & REPAIR ORDER PROCEDURES
12/04	CURTIS V. NORTH BEACH ACQUISITIONS	DEALER FRAUD, IMPROPER REPAIR & VEHICLE CERTIFICATION
6/04	EXCLUSIVE V. VOLVO V MARIA VILLEGAS	DIMINISHED VALUE
11/04	ALFANO V. MERCURY INS.	APPRAISAL PROCESS, IMPROPER REPAIRS, DIMINISHED VALUE & BAD FAITH
12/04	DUVALL V. SHUTTLE LINCOLN MERCURY	IMPROPER REPAIRS, USED CAR CERTIFICATION & DEALER FRAUD
2/05	HICKS V. NATION MOTORS	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
3/05	DAKE V. ROCK AUTOMOTIVE GROUP	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
6/05	LOPEZ V. FIRST CHOICE AUTO CENTER	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE & USED CAR CERTIFICATION
7/05	SOWMA V. MARTIN	IMPROPER REPAIRS & DIMINISHED VALUE
10/05	ARMANTROUT V. SOUTH GATE COLLISION	TOTAL LOSS EVALUATION & LOSS OF USE
2/06	KUHN V. PROGRESSIVE INS./COPPERFIELD COLLISION	IMPROPER REPAIRS, BAD FAITH, FRAUD & DIMINISH VALUE
1/06	MARCHENA V. STATE FARM AUTOMOBILE INSURANCE	TOTAL LOSS EVALUATION & BAD FAITH
3/06	KOONHBEARRY V. INTERFIRST LEASING	DEALER FRAUD, IMPROPER REPAIRS & DIMINISHED VALUE
2/06	LANDEIS V. FUTURE FORD MOTORS	DEALER FRAUD, IMPROPER REPAIRS, DIMINISHED VALUE
3/06	HERRERA V. THROUNG	DIMINISHED VALUE & TOTAL LOSS
5/06	J.L. RINCO V. SAFEWAY INS. & GMAC	TOTAL LOSS EVALUATION
5/06	A. KLEIMAN V. B. YAKOV/J. JACOBSON	LOSS OF USE
6/06	SORISHOWCHAMAKI V. BMW OF NORTH AMERICA	MANUFACTURER DEFECT & DEALER FRAUD
5/06	HERRERA V. INFINITY INS.	BAD FAITH, IMPROPER REPAIRS & TOTAL LOSS
5/06	BIOTEAU V. VOLKSWAGEN OF NORTH AMERICA	DEALER FRAUD & IMPROPER REPAIRS
9/06	ISRANI V. SINCLAIR	DIMINISHED VALUE & IMPROPER REPAIRS
11/06	AARON HENRY V. JASMINE BANAYAN	DIMINISHED VALUE & LOSS OF USE
2/07	MCGREW V. AUTO GALLERY OF SAN DIEGO	DEALER FRAUD, DIMINISHED VALUE, IMPROPER REPAIRS
2/07	BEVERLY HILLS A/B V. CA. BAR	REPAIR FRAUD & AUTHORIZATION, IMPROPER REPAIRS
3/07	WILLIAMS V. BOGAEV	DIMINISHED VALUE
5/07	SHULTS/MANOLAKAS V. MB OF N. AMERICA	IMPROPER REPAIRS, DEALER FRAUD. USED CAR CERTIFICATION
7/07	COYLE V. TEKEDA AMERICA HOLDINGS	DIMINISHED VALUE, COLLISION REPAIR COSTS, MANUFACTURERS REPAIR STANDARDS
7/07	HEARST V. GREBE	DIMINISHED VALUE
7/07	ROSATI V. ASULIN	DIMINISHED VALUE, IMPROPER REPAIRS

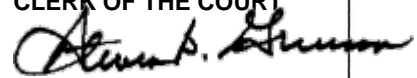
8/07	GENOVESE V. VOLKSWAGEN OF AMERICA	DEALER FRAUD, IMPROPER REPAIRS
3/08	NEWHOUSE V. DELAY	DIMINISHED VALUE , IMPROPER REPAIRS
3/08	M. TOWBIN V. RESTORATION COLLISION SPECIALIST	NV DMV BOND ARBITRATION/IMPROPER REPAIRS
8/08	ORTIZ V. JAEGER	DIMINISHED VALUE, IMPROPER REPAIRS
7/08	RODRIGUEZ V. NISSAN NORTH AMERICA	DEALER FRAUD, IMPROPER REPAIRS
4/08	AGUILUZ V. CRAIG MILLER	DEALER FRAUD, IMPROPER REPAIRS
7/08	STATE AUTO PAINTING V. THE PEOPLE OF CALIFORNIA	REPAIR FRAUD & AUTHORIZATION, IMPROPER REPAIRS
8/08	ORTIZ V. JAEGER	DIMINISHED VALUE & IMPROPER REPAIRS
9/08	LEWEY V. GOKCEN	LOSS OF USE, VEHICLE REPAIRS
7/09	RAPP V. GREEN LIGHT AUTO	DIMINISHED VALUE, DEALER FRAUD, IMPROPER REPAIRS
7/09	SIMMONS V. COLLISION SPECIALISTS	NV DMV BOND ARBITRATION
8/09	SULLIVAN V. PROGRESSIVE INSURANCE	3 RD PARTY DIMINISHED VALUE MEDIATION
9/09	HUANG V. FARMERS INSURANCE GROUP	APPRAISAL PROCESS, FERRARI VEHICLE REPAIR PROCEDURES
9/09	GROCHOWSKI V. SUPERIOR MOTORS	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
9/09	GABALDON V. BOB BAKER FORD	DIMINISHED VALUE, DEALER FRAUD, IMPROPER REPAIRS
12/09	SCHWARTZ V. AUTO CLUB OF S. CALIFORNIA	APPRAISAL PROCESS, TOTAL LOSS
2/10	PERZ V. MOSSY TOYOTA	ARBITRATION, DEALER FRAUD
3/10	HANAYAN V. WAWANESA	APPRAISAL PROCESS, REPAIR ESTIMATE PROCEDURES
4/10	SIMMONS V. FOLKERTS	DIMINISHED VALUE, IMPROPER REPAIRS, LOSS OF USE
9/10	WIGHT V. AUTOFITNESS	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
11/10	DAWSON V. NORM BAKER MOTOR SALES #A600543 JAMS ARBITRATION LOO GEORGE WEST	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
12/10	HEINE V. CARMAX AUTO SALES	DEALER FRAUD, IMPROPER REPAIRS, LOSS OF USE
5/11	CARSON V. MERCURY INSURANCE September 24, 2012) Cal.App.4th;12 C.D.O.S. 12055; 2012 Cal.App.LEXIS 1100 LOO Monte Day	IMPROPER REPAIRS, LOSS OF USE, INSURANCE BAD FAITH
6/11	CLASS AUTO CENTER V. ESIS INC & CERRITOS A/B CONSULTANT & INSPECTION	TORTUOUS INTERFERENCE. REPAIR FRAUD
9/11	DICHOSA V. HOUSE OF IMPORTS VEHICLE CONDITION ASSESSMENT/CONSULTANT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD IMPROPER REPAIRS, LOSS OF USE
10/11	COULSON V. CANNOCK	DIMINISHED VALUE, LOSS OF USE, COLLISION REPAIR STANDARDS
11/11	AYLOTT V. STATE FARM TESTIFIED @ AP & TOTAL LOSS ASSESSMENT	APPRAISAL PROCESS , TOTAL LOSS
2/11	SCHUMM V. STATE FARM #30-2011-00453166-CU-BC-CJC LOO MONTE DAY	DIMINISHED VALUE, LOSS OF USE, REPAIR STANDARDS
6/11	RUIZ V. VANDERBEEK MOTORS #scv25882 PLACER COUNTY SC LOO MCCOY, TURNAGE & ROBERTSON	DEALER FRAUD, IMPROPER REPAIRS
7/11	FULLER V. ESPARZA	IMPROPER & INCOMPLETE VEHICLE REPAIRS
8/11	DAVIS V. BONANDER PONTIAC VEHICLE CONDITION ASSMT/CONSULTANT LOO MONTE DAY	DEALER FRAUD, CERTIFIED PRE – OWNED VEHICLE
5/12	KIREN V. FRESNO INFINITI VEHICLE CONDITION ASSESSMENT/CONSULTANT LOO THE CAR LAW FIRM	ARBITRATION CERTIFIED PRE – OWNED VEHICLE FRAUD
6/12	HERRERA V. A & P AUTO SALES # 30-2011 -00522752 LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER REPAIRS

8/12	SINGH V. LEUCK DV ASSMT/CONSULTANT	DIMINISHED VALUE
6/12	LLANA V. GSM AUTO GROUP #30-2010-00422315 OC SUPERIOR CT LOO MCCOY, TURNAGE & ROBERTSON	DEALER FRAUD, IMPROPER REPAIRS
2/13	ZOGRAFOS V. GORDON IMPORTS, LLC VEHICLE CONDITION ASSESSMENT/CONSULTANT LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER REPAIRS
6/13	NICK'S GARAGE/JEFFREY'S A/B V. NATIONWIDE INS. #5:12-CV-777 MAD/DEP- USDC No. DISTRICT NY LOO BOUSQUET HOLSTEIN	ASSIGNMENT OF RIGHT, COLLISION REPAIR PROCEDURES, MECHANICAL V. COLLISION LABOR RATES & INVESTMENT
6/13	FRANCO V. REYES AUTO SALES #12C00522 LA SUPERIOR COURT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS, POST COLLISION REPAIR ROLL OVER SAFETY
6/13	FAALOGOIFO V. SCAS # G051937 CA STATE COURT OR APPEAL 4 TH DISTRICT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/13	SPICER V. RT MOTORSPORTS #A-12-664704-C D/C CLARK COUNTY LOO GEORGE WEST	DEALER FRAUD, NV MANDATORY INSPECTION
8/13	NEILSEN V. SMART AUTO # A-12-662558-C JAMS ARBITRATION LOO GEORGE WEST	DEALER FRAUD, NV MANDATORY INSPECTION, POST COLLISION REPAIR AIR BAG DEPLOYMENT
12/13	KEUSSEYAN V. MERCEDES BENZ NA VEHICLE CONDITION ASSMT/CONSULTANT LOO RENE KORPER	PAINT DEFECT AND SUBSEQUENT CORRECTIVE REPAIRS
1/14	PURCHASE V. CRISPEN DV ASSMT/CONSULTANT	DIMINISHED VALUE, COLLISION DAMAGE ANALYSIS
4/14	FOSTER V. NISSAN OF BAKERSFIELD AMER. ARBITRATION ASSOC. LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER COLLISION REPAIRS
4/14	POMERLEAU V. SOUTHERN CA. AUTO SALES VEHICLE CONDITION ASSMT/CONSULTANT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	BENSON V. SCAS #30-2013000621744 OC SUPERIOR CT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	GASTELUM V. SCAS INSPECTION/CONSULTANT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
6/14	PLONTE V. EMPIRE AUTO SALES # 72434e00522 13 AMERICAN ARBITRATION SER. LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER COLLISION REPAIRS
8/14	BURGERS V. CARDENAS #30-2013-00656746-CU-PA-CJC OC SUPERIOR CT LOO MONTE DAY	DIMINISHED VALUE, LOSS OF USE
8/14	KELLEY V. J & M AUTO SALES VEHICLE CONDITION ASSMT/CONSULTANT LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER COLLISION REPAIRS
8/14	PAYEAH V JIMMY VASSER'S TOYOTA #26-62283 SUPERIOR CT. NAPA LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, TOYOTA USED VEHICLE CERTIFICATION, IMPROPER COLLISION REPAIRS.
9/14	BICKEL V. KAYS CAR INC. #BC505929 LA COUNTY SUPERIOR CT	DEALER FRAUD, IMPROPER COLLISION REPAIRS

	LOO ROSNER, BARRY & BABBITT	
9/14	GRANDADOS V. STERLING IMPORTS VEHICLE CONDITION ASSESSMENT/CONSULTANT LOO THE CAR LAW FIRM	DEALER FRAUD, IMPROPER COLLISION REPAIRS
9/14	HANSCH V. JEPSON # G052328 CA CT. OF APPEALS LOO MONTE DAY	DIMINISHED VALUE
9/14	MURO V. CA. MOTORS DIRECT VEHICLE CONDITION ASSMT/CONSULTANT LOO THE CAR LAW FIRM	ARBITRATION/DEALER FRAUD
9/14	BOLAND V. CA MOTORS DIRECT	ARBITRATION/DEALER FRAUD
9/14	LOPEZ V. PORSCHE CARS NORTH AMERICA, INC. #BD510776 LA SUPERIOR CT. CENTRAL DISTRICT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS, UNDISCLOSED PRIOR DAMAGE
10/14	MACIAS V. MARTIN SATURN OF ONTARIO, INC. #CIVDS1415636 LOO GLASSEY SMITH	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER COLLISION REPAIRS
10/14	ZHONG V. UNITED IMPORTS VEHICLE CONDITION ASSMT/CONSULTANT LOO THE CAR LAW FIRM	ARBITRATION/DEALER FRAUD
11/14	SAMISH V ALVEREZ LINCOLN #RIC 1203094 RIVERSIDE CO. SUPERIOR CT. LOO LARRY HODDICK	DEALER FRAUD, IMPROPER COLLISION REPAIRS
12/14	DURAN V. QUANTUM AUTO SALES #2013-657740 OC SUPERIOR CT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
12/14	ARCE LEPE V. SCAS INSPECTION/CONSULTANT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE - ARBITRATION HEARING
1/15	GARCIA V. SUNROAD CV AUTO, INC. #37-2014-00017855-CU-BC-CTL LOO GLASSEY SMITH	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER COLLISION REPAIRS
2/15	GULLINS V. CARMAX AUTO SUPERSTORES, LLC # 2:13-CV-09398-JAK-CWX USDC CENTRAL CA LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
2/15	CALDERON V. GALPIN HONDA # BC501005 LA CENTRAL DISTRICT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
4/15	BAILEY-RUSSELL V. HARB GROUP, INC. # MCC-1300827 RCSC-TEMECULA CA LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
5/15	SPEARS V. RIVERSIDE AUTO HOLDINGS, INC. #RIC 1406752 RIC SUPERIOR CT. LOO GLASSEY SMITH	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
5/15	SHAHNAZARYAN V. AIG TOTAL LOSS ASSESSMENT/CONSULTANT	APPRAISAL PROCESS, INSURANCE BAD FAITH
7/15	MEDINA V. SOUTH COAST CARS #37-2013-00069866 LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER COLLISION REPAIRS
7/15	DISTEFANO V. SANTA MONICA BMW VEHICLE CONDITION ASSMT/CONSULTANT LOO LARRY R. HODDICK	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
7/15	REED V. MILLER - DM, INC., DBA MB OF BEVERLY HILLS	DEALER FRAUD, IMPROPER REPAIRS - ARBITRATION HEARING

	#1220049203 JAMS ARBITRATION LOO ROSNER, BARRY & BABBITT	
7/15	CHAVEZ V. UNIVERSAL BROKERS, INC. #BC524745 LA SUPERIOR CT. LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
7/15	LEE V. CARMAX AUTO SUPERSTORES CALIFORNIA, LLC #2:13-CV-07648 CA CENTRAL CA CT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
9/15	REYNOSO V. NEW LOOK COLLISION CENTER TESTIFIED @ DMV HEARING & VCA	DMV ADMINISTRATIVE HEARING, IMPROPER COLLISION REPAIRS
10/15	FERRIER V. STERLING COLLISION CENTER #30-2014-00747943 OC SUPERIOR CT. LOO DAVID VAN RIPER	FERRARI DEFECTIVE PAINT APPLICATION
10/15	FREDRICKS V. EL CAJON FORD #37-2014-00016159-CU-CU-CTL SAN DIEGO LOO GLASSEY SMITH	DEALER FRAUD, IMPROPER REPAIRS
10/15	ALCARAZ V. SOUTH COAST AUTO SALES VEHICLE CONDITION ASSMT/CONSULTANT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, IMPROPER REPAIRS
10/15	TRIPI V. GILBERTSON #30-2013-00694609 LOO KEVIN TRIPI	DIMINISHED VALUE
10/15	KELLEY V. ADAMS SERVICE CENTER, INC. VEHICLE CONDITION ASSESSMENT/CONSULTANT LOO LAREYBI & ASSOCIATES	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
11/15	RIGBY V. POWAY HYUNDAI #37-2015-00005285-CU-CO-CTL CA S/C SD LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
12/15	DIRIENZU V. AUTONATION NISSAN SOUTH BAY ARB.# 1200050030 #BC554648 LA CENTRAL DISTRICT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
12/15	PRALL V. FORD MOTOR COMPANY #2:14-CV-01313-MMD-GWF USDC DISTRICT OF NV LOO RICHARD HARRIS	PRODUCT LIABILITY
12/15	DENEVAN V. CARCREDIT #RIC1306779 RIC SUPERIOR CT LOO ROBERT B. MOBASSERI	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
2/16	MORAYMA REYES-OCASIO DIMINISHED VALUE ASSESSMENT/CONSULTANT	DIMINISHED VALUE - ARBITRATION HEARING
2/16	APELES V. ADAMS SERVICE CENTER VEHICLE CONDITION ASSMT/CONSULTANT LOO ROBERT B. MOBASSERI	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS- ARBITRATION HEARING
2/16	ASHBURN/BOYD V. HONDA OF THE DESERT ARB. # 01-150005-6641 LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
3/16	TABANYI V. HYUNDAI MOTOR AMERICA #BC611495 LA SUPERIOR CT. LOO ALISA GOUKASTAN	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
3/16	RILEY V. BENJAMIN #30-2014-00723752 OC CA CENTRAL DISTRICT LOO J. DWORK ATTY.	DIMINISHED VALUE

4/16	WAKE/BROWNLEE V. BLANTO, INC., DBA MEGA CARS #BC589535 LA COUNTY SUPERIOR COURT LOO ROSNER, BARRY & BABBITT	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS
4/16	RAMIREZ V. BMW OF MONROVIA CASE # BC588613 LA CENTRAL DISTRICT LOO GLASSEY SMITH	DEALER FRAUD, UNDISCLOSED PRIOR DAMAGE, IMPROPER REPAIRS



**DISTRICT COURT
CLARK COUNTY, NEVADA**

DERRICK POOLE

CASE NO.: A-16-737120-C
DEPT NO.: 27

PLAINTIFF(S)

VS.

NEVADA AUTO DEALERSHIP
INVESTMENTS, LLC; WELLS FARGO
DEALER SERVICES, INC.;
COREPOINTE INSURANCE
COMPANY

DEFENDANT(S)

**DECISION & ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY
JUDGMENT**

These matters having come on for hearing on November 9, 2017; George O. West III, Esq. and Craig B. Friedberg, Esq. appearing for Plaintiff Derrick Poole ("Poole"); Jeffery A. Bendavid, Esq. and Stephanie J. Smith, Esq. appearing for Defendants Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler, Jeep, Dodge, and Corepointe Insurance Company ("Defendant(s)"), and the Court having heard arguments of counsel, and being fully advised in the premises, COURT FINDS after review:

This case arises out of a sale of a Certified Pre-Owned ("CPO") truck purchased on or about May 26, 2014. Defendants Nevada Auto Dealership LLC and Corepointe Insurance Co. filed a Motion for Summary Judgment on October 2, 2017, and a hearing was held November 9, 2017. The Court took the matter under advisement and set a Status Check for November 21, 2017 for the Court to release a written decision.

IN THE SUPREME COURT OF THE STATE OF NEVADA

DERRICK POOLE,

Appellant,

v

NEVADA AUTO DEALERSHIP
INVESTMENTS LLC a Nevada
Limited Liability Company d/b/a
SAHARA CHRYSLER, JEEP,
DODGE, and COREPOINTE
INSURANCE COMPANY,

Respondents,

Appeal from the Eighth Judicial District Court, Clark County.
The Honorable Nancy Alff, District Court Judge

Supreme Court Case No: 74808

Electronically Filed
Jun 18 2018 09:10 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court Case No:
A-16-737120-C

APPELLANT'S APPENDIX VOLUME 3

Law Offices of George O. West III
Consumer Attorneys Against Auto Fraud
George O. West III Esq, State Bar No. 7951
10161 Park Run Drive, Suite 150
Las Vegas, NV 89145
Telephone : (702) 318-6570
Email: gowesq@cox.net

CRAIG B. FRIEDBERG [SBN 4606]
Law Offices of Craig B. Friedberg, Esq.
Craig B. Friedberg, Esq, State Bar. No. 4606
4760 S. Pecos Road, Suite 103
Las Vegas, NV 89121
Telephone: (702) 435-7968
Email: attcbf@cox.net

Attorneys for Appellant Derrick Poole

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4	12/9/17	Order Denying Defendant Nevada Auto Dealership Investments LLC d/b/a Sahara Chrysler Jeep Dodge Ram's Motion to Strike Fugitive Documents and Motion to Strike the Declaration of Rocco Avillini Attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment	866-868
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4	11/6/17	Plaintiff's Opposition to Defendants' Motion To Strike Declaration of Rocco Avellini in Support Of Plaintiff's Opposition to Defendants' Motion For Summary Judgment	790-844

4	11/12/17	Decision and Order Granting Defendants' Motion For Summary Judgment	845-848
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7	3/28/18	Judgment	1404-1405
7	3/28/18	Notice of Entry of Judgment	1406-1409

On Oct 24, 2017, at 4:24 PM, Jeffery Bendavid <J.Bendavid@moranlawfirm.com> wrote:

Hi George. Please let me know if you are available to discuss the proposed stip. I am in my office. Let me know. Thanks.

Jeff Bendavid

From: George West III [<mailto:gowesq@cox.net>]
Sent: Tuesday, October 24, 2017 10:29 AM
To: Jeffery Bendavid <J.Bendavid@moranlawfirm.com>
Cc: Stephanie Smith <s.smith@moranlawfirm.com>; Craig Friedberg <attcbf@cox.net>
Subject: Fwd: Stip on MSJ

Jeff,

I am again following up on the stip. I intent on lodging Plaintiff's Opposition, Sep Stmt, Resp to your set stmt, Exhibits and Errata with the Court tomorrow afternoon. Consequently, if you can't get me the stip and order re extending brief limitations by 10:00 a.m tomorrow I will have to file my ex parte application increase the pages instead of the stip which was agreed to in writing. If good with you, please date and sign in blue and email over to me, otherwise I will need to file my application and order. Thank you for you immediate attention in this regard.

Begin forwarded message:

From: George West III <gowesq@cox.net>
Subject: Fwd: Stip on MSJ
Date: October 23, 2017 at 6:34:13 PM PDT
To: Jeffery Bendavid <j.bendavid@moranlawfirm.com>
Cc: Stephanie Smith <s.smith@moranlawfirm.com>, Craig Friedberg <attcbf@cox.net>

Jeff,

I was following up the the stip on the MSJ briefing. Please advise.

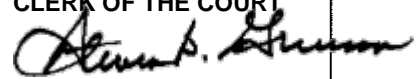
Begin forwarded message:

From: George West III <gowesq@cox.net>
Subject: Stip on MSJ
Date: October 21, 2017 at 6:57:50 PM PDT
To: Jeffery Bendavid <j.bendavid@moranlawfirm.com>, Stephanie Smith <s.smith@moranlawfirm.com>
Cc: Craig Friedberg <attcbf@cox.net>

Jeff,

Attached is the proposed stip in Word for your review. If good with you, please sign in blue ink and email back to me and I will file and lodge with the Court forthwith.

Thanks.



1 **MTS**
2 **JEFFERY A. BENDAVID, ESQ.**
3 Nevada Bar No. 6220
4 **STEPHANIE J. SMITH, ESQ.**
5 Nevada Bar No. 11280
6 **MORAN BRANDON BENDAVID MORAN**
7 630 South 4th Street
8 Las Vegas, Nevada 89101
9 (702) 384-8424
10 j.bendavid@moranlawfirm.com
11 s.smith@moranlawfirm.com
12 *Attorney for Defendants, Nevada Auto*
13 *Dealership Investments LLC d/b/a Sahara*
14 *Chrysler and Corepointe Insurance Co.*

ENTERED


10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 DERRICK POOLE,

13 Plaintiff,

14 v.

15 NEVADA AUTO DEALERSHIP
16 INVESTMENTS LLC, a Nevada Limited
17 Liability Company d/b/a SAHARA
18 CHRYSLER; JEEP, DODGE, WELLS
19 FARGO DEALER SERVICES INC.,
20 COREPOINTE INSURANCE
21 COMPANY; and DOES 1 through 100,
22 Inclusive,

23 Defendant.

Case No.: A-16-737120-C
Dept. No.: XXVII

**MOTION TO STRIKE
DECLARATION OF ROCCO
AVELLINI ATTACHED TO
PLAINTIFF'S OPPOSITION ON
ORDER SHORTENING TIME**

Date: 11-9-17
Time: 10:30 am

23 COMES NOW, Defendant, NEVADA AUTO DEALERSHIP INVESTMENTS
24 d/b/a SAHARA CHRYSLER JEEP DODGE RAM ("Defendant" and/or "Nevada Auto"),
25 by and through its counsel of record, JEFFERY A. BENDAVID, ESQ., and STEPHANIE J.
26 SMITH, ESQ. of MORAN BRANDON BENDAVID MORAN, and hereby submits its
27 Motion to Strike the Declaration of DERRICK POOLE'S ("Plaintiff" and/or "Poole")
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 expert, ROCCO AVELLINI, attached to Plaintiff's Opposition to Defendants' Motion for
2 Summary Judgment, on Order Shortening Time.

3 DATED this 2nd day of November, 2017.

4 MORAN BRANDON BENDAVID MORAN

5
6 /s/ Jeffery A. Bendavid,

7 JEFFERY A. BENDAVID, ESQ.

8 Nevada Bar No. 6220

9 STEPHANIE J. SMITH, ESQ.

10 Nevada Bar No. 11280

11 630 South 4th Street

12 Las Vegas, Nevada 89101

13 (702) 384-8424

14 Attorneys for Defendant, *Nevada Auto Dealership*
15 *Investments and Corepointe Insurance*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

ORDER SHORTENING TIME

This matter having come before this Court upon the Affidavit of Jeffery A. Bendavid, Esq. in Support of Order Shortening Time and the Court having reviewed all of the papers and pleadings on file herein, and for good cause shown, therefore;

IT IS HEREBY ORDERED that Motion to Strike the Declaration of DERRICK POOLE'S expert, ROCCO AVELLINI, attached to Plaintiff's Opposition to Defendants' Motion for Summary Judgment. shall be heard on Shortened Time, on the 9th day of November, at the hour of 10:30 (a.m.)/p.m. in the above-entitled Court, or as soon thereafter as counsel may be heard. *and give* *4:30 PM*

IT IS FURTHER ORDERED that Plaintiff shall file an Opposition on or before the 7th day of November, 2017; and Defendant shall file any Reply on or before the day of, 2017.

DATED this 3 day of Nov., 2017.

Nancy L. Alf
DISTRICT COURT JUDGE



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **AFFIDAVIT OF JEFFERY A. BENDAVID, ESQ. IN SUPPORT OF MOTION ON**
2 **ORDER SHORTENING TIME**

3 COUNTY OF CLARK)
4) ss:
5 STATE OF NEVADA)

6 I, JEFFERY BENDAVID, ESQ., declare under penalty of perjury that matters set
7 forth herein are true to the best of my knowledge.

8 1. Affiant is an attorney duly licensed to practice law within the State of
9 Nevada, and counsel for Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS,
10 LLC and COREPOINTE INSURANCE in the above-captioned matter.

11 2. Initial expert reports were due on June 14, 2017, in this litigation.

12 3. Rebuttal expert reports were due on July 14, 2017.

13 4. Discovery in this matter is closed and closed officially on August 31, 2017.

14 5. Plaintiff did not proffer any rebuttal report on July 14, 2017, and did not
15 otherwise supplement the initial expert disclosure.

16 6. On October 20, 2017, Plaintiff served an Opposition to Defendant's Motion
17 for Summary Judgment. Attached to the Opposition was a 17 page "declaration" from
18 Rocco Avellini, in which he supplements and tries to bolster his opinions that should have
19 been complete and fully stated at the time for expert disclosures, and/or within a
20 supplemental or rebuttal report.

21 7. Since discovery is closed, Plaintiff's expert should not now be able to
22 supplement and substantiate his opinions beyond what was already within his expert report
23 and Curriculum Vitae.

24 8. The hearing is set for November 9, 2017, and there is good cause to hear
25 Defendant's Motion to Strike Fugitive Documents on shortened time to determine what
26 27 28




MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

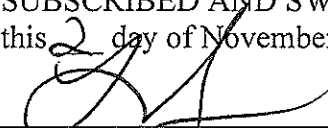
630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

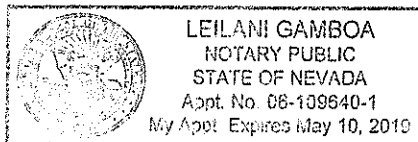
1 pleadings the Court is willing to consider and/or are actually permitted under the Nevada
2 Rules of Civil Procedure and/or Eighth Judicial District Court Rules.

3 FURTHER AFFIANT SAYETH NAUGHT.

4
5
6 
7 JEFFERY A. BENDAUID, ESQ.

8 SUBSCRIBED AND SWORN to before me
9 this 2 day of November, 2017.

10 
11 NOTARY PUBLIC of and for said County and State



MORAN BRANDON
BENDAUID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **INTRODUCTION**

4 Rocco Avellini's ("Mr. Avellini") supplemental "17 page declaration" should be
5 stricken in its entirety, as it is untimely and improperly attempts to supplement and bolster
6 his opinions and findings within his report. Additionally, Mr. Avellini's 17 page declaration
7 attempts to introduce a safety issue to which he also attempted to improperly introduce
8 during his deposition, regarding a wheel on the subject Vehicle. Lastly, Mr. Avellini's 17
9 page declaration is irrelevant and immaterial, as Plaintiff could have attached Mr. Avellini's
10 expert report, however, it is improper for Mr. Avellini to rebut opinions and facts at this
11 juncture. Accordingly, all of Mr. Avellini's 17 page declaration opinions should be stricken
12 as untimely and irrelevant.
13

14 **II. FACTS**

15 Pursuant to a mutual agreement by Defendant's and Plaintiff's (the "Parties")
16 counsel, the initial expert designation to be on or before June 14, 2017. Plaintiff served his
17 initial expert designation on June 12, 2017. Defendant served its initial expert designation
18 on June 14, 2017 and a rebuttal report on July 14, 2017. Plaintiff never served a rebuttal
19 expert report, and Mr. Avellini testified that he was not asked to prepare one. *Exhibit 1-*
20 *Excerpts of Deposition of Rocco Avellini ("Avellini Depo."), 79:16-18.* Plaintiff never
21 served any supplemental reports regarding Mr. Avellini's findings and/or opinions, and
22 discovery closed on August 31, 2017. *See Scheduling Order.*
23

24 Mr. Avellini was deposed on September 22, 2017, and also made no attempt to
25 actually supplement his report, however he did improperly testify to things beyond the
26 actual findings within his report. On October 20, 2017, Plaintiff attempted to file an 89 page
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Opposition to Defendants' Motion for Summary Judgment, without exhibits, attached
2 thereto, was a seventeen (17) page declaration for Mr. Avellini which purportedly is based
3 on his reading of Defendants' Motion for Summary Judgment and Motion to Strike him as
4 an expert. *Exhibit 2- attached hereto*. Based on the untimely disclosure and the irrelevant
5 and superfluous 17 page declaration, it should be stricken.
6

7 III.

8 LEGAL ARGUMENT

9 **A. Mr. Avellini's 17 page Declaration Should be Stricken as it is Untimely, and** 10 **in Contravention of NRCP 16.1.**

11 Mr. Avellini's additional 17 pages of declaratory testimony is entirely self-serving,
12 sets forth speculative information, and attempts to include additional opinions and testimony
13 regarding a "reconditioned" wheel. *See Exhibit A, ¶14-17*. Mr. Avellini also sets forth
14 opinions that appear to improperly rebut opinions by Ray Gongora (Defendant's mechanic,
15 whom Plaintiff designated as an expert), however, any such opinions and rebuttals should
16 have been contained wholly in Mr. Avellini's report. NRCP 16.1(a)(2)(B) provides, in
17 pertinent part:
18

19
20 Except as otherwise stipulated or directed by the court, this disclosure shall,
21 with respect to a witness who is retained or specially employed to provide
22 expert testimony in the case or whose duties as an employee of the party
23 regularly involve giving expert testimony, be accompanied by a written report
24 prepared and signed by the witness...

25 The report shall contain a complete statement of all opinions to be expressed
26 and the basis and reasons therefor; the data or other information considered
27 by the witness in forming the opinions; any exhibits to be used as a
28 summary of or support for the opinions; the qualifications of the witness,
including a list of all publications authored by the witness within the
preceding 10 years; the compensation to be paid for the study and testimony;
and a listing of any other cases in which the witness has testified as an expert
at trial or by deposition within the preceding four years.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Furthermore, NRCp 16.1(a)(2)(C) provides that:

2
3 (C) These disclosures shall be made at the times and in the sequence directed by the
4 court.

5 (i) In the absence of extraordinary circumstances, and except as otherwise
6 provided in subdivision (2), the court shall direct that the disclosures shall be
7 made at least 90 days before the discovery cut-off date.

8 (ii) If the evidence is intended solely to contradict or rebut evidence on the same
9 subject matter identified by another party under paragraph (2)(B), the
10 disclosures shall be made within 30 days after the disclosure made by the
11 other party. This later disclosure deadline does not apply to any party's
12 witness whose purpose is to contradict a portion of another party's case in
13 chief that should have been expected and anticipated by the disclosing party,
14 or to present any opinions outside of the scope of another party's disclosure.

15 Here, by the Court's order and a subsequent stipulation between Plaintiff and
16 Defendants, expert disclosures were due on June 14, 2017. Plaintiff did not serve any other
17 supplemental and/or rebuttal reports. Discovery closed on August 31, 2017. As such, any
18 disclosure of new opinions and/or opinions which "contradict a portion of another party's
19 case in chief that should have been expected and anticipated by the disclosing party..." is
20 not permitted. *Id.* Indeed, to allow supplemental declarations at any time, including after the
21 close of discovery, from an expert would create a never-ending cycle of expert disclosures.
22 See *Hologram USA, Inc., v. Pulse Evolution Corp.*, 2016 U.S. Dist. LEXIS 95974 (July 21,
23 2016). In *Hologram*, although dealing with NRCp's federal counterpart, FRCP 26.1, the
24 Court found:

25 Supplementation "means correcting inaccuracies, or filling the interstices of an
26 incomplete report based on information that was not available at the time of the
27 initial disclosure." (citing *Keener v. United States*, 181 F.R.D. 639, 640 (D.
28 Mont. 1998)). It is not "a loophole through which a party who submits partial
expert witness disclosures, or who wishes to revise her disclosures in light of
her opponent's challenges to the analysis and conclusions therein, can add to
them to her advantage after the court's deadline for doing so has passed.
(internal citations omitted.)



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Mr. Avellini's 17 page declaration directly addresses and attempts to contradict
2 portions of Defendants' case in chief, primarily the deposition testimony of Ray Gongora,
3 the mechanic previously employed by Defendant, Nevada Auto Dealership Investments
4 LLC. *See Exhibit 2.* George West, Esq., Plaintiff's counsel, took the deposition of Ray
5 Gongora on December 14, 2016, six (6) months prior to initial expert disclosures.
6 Accordingly, Mr. Avellini had the deposition of Mr. Gongora in his possession and was free
7 to put forth any opinions regarding Mr. Gongora or his techniques, or the Certified Pre-
8 Owned inspection in his original report.
9

10 Adding additional opinions and attempting to rebut information which was known to
11 Plaintiff, well prior to the preparation of his expert's report and which was plainly part of
12 Defendants' case in chief, is in direct contravention to NRCP 16.1. Mr. Avellini should not
13 be permitted to supplement and enhance his opinions at this juncture, well after the
14 disclosure of his report and after the close of discovery. Again, discovery closed on August
15 31, 2017. As such, the 17 pages of opinions of Mr. Avellini are entirely untimely, and
16 should be stricken in its entirety.
17

18
19 **B. Mr. Avellini's 17 page Declaration Should be Stricken as it is Redundant and**
20 **Immaterial.**

21 Mr. Avellini sets forth significant additions such as stating additional background
22 information which could and should have been set forth in his original report and/or
23 *curriculum vitae* in his June 14, 2017 disclosure. *See Exhibit 2.* Regardless, additional
24 information regarding Mr. Avellini's qualifications and/or background are irrelevant to the
25 Motion for Summary Judgment. Accordingly, this additional information should be stricken
26 pursuant to NRCP 12(f).
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 NRCP 12(f) provides, in pertinent part, that, “[U]pon motion made by a party before
2 responding to a pleading... the court may order stricken from any pleading any insufficient
3 defense or any redundant, immaterial, impertinent, or scandalous matter.” Here, Plaintiff
4 provides redundant information to the extent that Mr. Avellini was afforded the opportunity
5 to include his Curriculum Vitae and also testify as to his experience and qualifications, and
6 as such his inclusion of additional information and expansion on previous information is
7 redundant and immaterial. In particular, Defendants’ Motion for Summary Judgment does
8 not argue directly against Plaintiff’s expert’s qualifications as the basis for their seeking
9 summary judgment. As such, this information should be stricken in its entirety.
10

11
12 **IV.**
CONCLUSION

13 Based upon the above and foregoing, Defendants, *Nevada Auto Dealership Investments*
14 *LLC d/b/a Sahara Chrysler and Corepointe Insurance Co*, requests that the supplemental 17
15 page declaration and testimony of Rocco Avellini be stricken from the record and not
16 considered by this Court as evidence with respect to Plaintiff’s Opposition.
17

18 DATED this 2nd day of November, 2017.
19

20 **MORAN BRANDON BENDAVID MORAN**

21 /s/: Jeffery A. Bendavid, Esq.

22 **JEFFERY A. BENDAVID, ESQ.**

23 Nevada Bar No. 6220

24 **STEPHANIE J. SMITH, ESQ.**

25 Nevada Bar No. 11280

26 630 South 4th Street

27 Las Vegas, NV 89101

28 Attorney for *Nevada Auto Dealership Investments LLC and*
Corepointe Insurance



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Exhibit “1”

DECLARATION OF ROCCO AVELLINI

I, Rocco Avellini, declare:

1. That I have been retained by Plaintiff in this case to give certain opinions regarding a 2013 Dodge Ram 1500 ("subject vehicle") that was sold to the Plaintiff, Mr. Poole. This declaration is made in opposition to Defendant Nevada Auto Dealership Investments LLC's ("SAHARA") motion to exclude me from rendering expert opinions in this case. I have read Defendant SAHARA's motion to attempt to prevent me from testifying in this case, as well as SAHARA's Motion for Summary Judgment as it relates to me. **This declaration is being submitted in opposition to Defendant's Motion for Summary Judgment.**

2. I have personal knowledge of the matters set forth herein, except those matters of which I have gained such knowledge based upon my review of certain documents, records, information and data relating to the subject vehicle in this case or relating to the general subject matter that would be relevant to this case and my opinions. My opinions were based on my specialized knowledge, training, experience, and continuing education, and keeping abreast of the latest advances and changes relating to the collision damage and repair of vehicles, including but not limited to the new aluminum vehicles and hybrid vehicles, in addition to assessing diminished value of vehicles. The documents specifically involving the subject vehicle and other comparable vehicles, in addition to other documents and sources of information identified or referred to in both my Vehicle Condition Assessment and Diminished Value Assessment, and based on my experience within my of area of expertise, **are documents and information that other experts in my field of expertise would reasonably rely upon in forming opinions in this case** concerning the subject matters that I have been retained to render opinions about; and if called as a witness, I would and could competently testify:

VEHICLE CONDITION REPORT OPINIONS

3. Regarding my Vehicle Condition Assessment, the report consisted of seven pages and it is attached as Exhibit 22 without exhibits. I clearly set forth in my report what materials and information I reviewed and relied upon in formulating my opinions at pages 3 and 4 of my Vehicle Condition Assessment at Exhibit 22. I also produced at my deposition

additional materials, including the the portions of deposition transcripts of Mr. Gongora, SAHARA's CPO mechanic, and Joshua Grant, SAHARA's used car director, that I reviewed.

With respect to my condition report, I was asked to formulate the following opinions:

- Were the previous repairs to the vehicle done correctly and were they to manufacturer's specifications?
- Should the subject vehicle have been sold as a Chrysler/Dodge CPO vehicle?
- Did SAHARA know or should they have known the extent of the collision damage caused by the previous collision, as well as the extent of the repairs as a result of the previous collision when SAHARA sold the CPO vehicle to Mr. Poole?
- Did the vehicle sustain diminished value as a result of the March 26, 2014 collision?

4. From my review of the facts and information given to me, this case is about four primary issues involving areas of my expertise, of which my opinions are based. First, what was the extent of the damage caused to the subject vehicle as a result of the previous collision/accident the subject vehicle was involved in on March 26, 2014. Second, were the repairs to the subject vehicle resulting from the March 26, 2014 previous collision done properly, meaning were they within manufacturer specifications? Third, based on the thorough and comprehensive nature of SAHARA's 125 Point CPO inspection undertaken by SAHARA's certified and trained mechanic on May 8, 2014, did SAHARA know or should they have known the extent of the previous collision damage? Fourth, based upon that CPO inspection, should SAHARA have known that not all of the previous repairs to the vehicle were done properly, (meaning not to manufacturer's specifications), and knowing, or should have knowing that, should the subject vehicle have been certified as a Dodge CPO? All of the documents and information I reviewed is listed on page 3 and 4 of my assessment at Exhibit 22, (without exhibits), and would be relevant and relied upon by any other expert in my area of expertise in rendering the opinions. I will address the basis for my diminished value opinions later in this declaration.

5. My area of expertise for the last 30 years has been in automotive collision and mechanical repairs, insurance claims manager, vehicle appraisals, post collision and mechanical repair inspections, evaluating vehicle values and collision monitoring. A very large

part of my expertise is performing and assessing the extent of damage to vehicles caused by all types of collisions and accidents, performing or supervising the proper repairs on those vehicles to return the vehicle to manufacturer specifications, quality control over the repair to vehicles to ensure they meet manufacturer specifications after being repaired, and assessing whether repairs performed on the vehicles were done properly and within manufacturer specifications. **This case primarily centers around automotive collision and repair. This case also primarily involves the extent of a previous collision that the subject vehicle was involved in just prior to selling that same vehicle to Mr. Poole approximately sixty days later as a Dodge CPO vehicle.** The case involves assessment of whether those previous repairs to the subject vehicle were completed properly and according to manufacturer specifications. This case is also about if those previous repairs were not done properly and according to manufacturers specifications, should the vehicle have been certified as a Dodge CPO vehicle? This case is about whether the subject vehicle sustained diminished value as a result of the previous collision.

6. In reading SAHARA's motion to exclude me from testifying they argue that I do not have the required "formal or informal schooling, training, licensing or experience" to testify in this case. My CV is attached as Exhibit 23 to this declaration and I believe it speaks for itself that I am qualified to render the opinions I have been asked to make in this case. Most of the cases I have been involved with concern auto/dealer fraud usually involving improper automotive repairs, hidden/undisclosed damage or repairs, total loss evaluations, appraisals and diminished value. Sometimes my services don't have anything to do with dealer fraud. For example many people want a second opinion regarding a total loss evaluation to insure that the amount that an insurance company is offering is correct. While SAHARA's counsel never bothered to ask me a single question at my deposition about my qualifications, I feel compelled to set forth this information in a little more detail, which tracks my CV.

7. I began my automotive career in 1969 as a body man in Brooklyn, NY and worked myself to the front office to become an estimator and then the shop manager. I also managed the tow truck operation for the same repair facility. I also was an owner of a tow

truck company and then became a manager of an automotive salvage yard. I was the manager of an automobile salvage yard supervising a total of 10 – 15 yardmen, delivery drivers and office support staff. In the early 1980, I began working in the insurance industry, starting as an independent automobile estimator. I was promoted to the supervisor of this small independent appraisal company (that employed from 9 – 15 appraisers), which completed estimate and total loss evaluations for numerous insurance companies. My next insurance related position was as a heavy equipment adjuster for Empire Mutual Insurance, my duties included estimating damage to trucks, motorhomes, water craft trucks and trailers. **I then went to work for the Hertz Corporation as a National Property Damage Reinspector & Manager.** My duties included supervising eight (8) Regional offices with approximately 100 property damage adjusters. I conducted a national re-inspection program for the 390 independent appraisal companies. I conducted open and close file audits at our regional offices **and supervised our direct repair program facilities for our fleet vehicle repairs.** I then became partners in an auto sales business that operated at Rocco's Collision Center ("RCC"), that included buying, selling and inspections of vehicles. I then opened Rocco's Sports Car Emporium in 1988 where I personally restored and repaired exotic vehicles and muscle cars. Rocco's Sports Car Emporium evolved into RCC. RCC was a state of the art facility that offered collision and full mechanical repair and maintenance involving almost every domestic and foreign vehicle on the market. I owned, operated and personally supervised all repairs and then did the majority of the quality control inspections after the collision repair process was complete. **I owned and operated RCC for fifteen years.**

8. While operating RCC I became involved with Wreck Check a company that offered diminished value assessments and many other Value Added Services [VAS]. In 1997, I created Wreck Check Car Scan Centers ("WCCSC") that offers VAS services to the public, including but not limited to, expert witness testimony, improper repairs, hidden and non-disclosed damage or repairs, post repair inspections, diminished value assessments, total loss assessments, collision monitoring and other automotive related assistance. I have approximately 40 licensees nationwide that offer the WCCSC VAS services in their area. Over the course of my career in the auto collision industry, I have personally appraised, evaluated,

repaired, inspected for quality control of repairs, or supervised the repair in the high tens of thousands of vehicles and probably over 100,000. After opening WCCSC, I have personally appraised, evaluated and inspected over thousands of vehicles. **What I did to assess the subject vehicle in this case in rendering my opinions is no different from what I have been trained to do for over the last 30 years as a collision damage repair professional.**

9. As an auto collision and repair professional with over three decades in the industry, I have extensive familiarity and specialized knowledge, experience, skill, training and technical education in assessing and evaluating collision damage, the extent of that collision damage, proper and improper repairs and diminished value to vehicles. I do not have an engineering background, nor do I have any academic background in vehicle design or engineering. I am not a designer of vehicles. I was not involved in the development of the Dodge CPO standards nor was I involved in the development of the manufacturer's repair specifications for the subject vehicle. However, what I do have is extensive and intimate familiarity and specialized knowledge, experience, skill, training and technical education involving the inspection, valuation, appraisal, estimation, assessment and proper repair of vehicles, including the subject vehicle.

10. Based on my over three decades in the auto collision and repair industry as auto collision and repair professional and based upon that experience, technical training and expertise, technical education in the field of collision repair, in either preparing or reviewing collision estimates in at least the high tens of thousands, I would **not** have to be present or actually see the repair process to a vehicle to know, opine or evaluate the extent of the damage to that vehicle. All that is required is the body shop estimate, which in this case is the Allstate Collision Estimate of Record ("ACE"), which I reviewed and is attached as Exhibit 2. In assessing whether the repairs to the subject vehicle were properly completed according to the manufacturers' specifications. However, my subsequent inspection of the vehicle would also assist me in rendering my opinions in assessing if the repairs were completed correctly, which I also conducted on the vehicle. **This is precisely what I have been trained to do and know**, which is to properly inspect and evaluate the repairs to vehicles.

11. SAHARA makes much to-do about the fact that my inspection occurred two years after the previous collision in March of 2014; and that somehow my opinions are not reliable due to the passage of time. The passage of time in this case does **not** affect my opinions at all in this case because I am not aware of, nor have I seen any information or evidence that there were any subsequent repairs or changes to the vehicle between the time of the previous collision on March of 2014 and the time I inspected it in June of 2016. In fact, in reviewing SAHARA's motion for summary judgment, which also mentioned my opinions, at undisputed fact number 18 in SAHARA's motion, **SAHARA agrees and states that there were no repairs performed to the vehicle during the time Mr. Poole purchased the subject vehicle and the time I inspected the vehicle.** The subsequent accident the subject vehicle was involved in on May of 2017 does not affect my opinions in any way because my opinions are based upon, limited to and focused on the repairs undertaken to the vehicle as a result of the March 2014 accident. **Based upon what I was requested to do, my focus would be on what were the state of the repairs on the subject vehicle when it underwent and "passed" the 125 Point CPO inspection that was completed by SAHARA's certified and trained technician on May 8, 2014.**

12. It is appropriate to point out the obvious here. When a vehicle is damaged and it needs to be properly repaired according to manufacturer specifications, if it can be restored to those specifications, the vehicle is not brought to the manufacturer or to a design engineer, or to a metallurgist. The vehicle is brought to a independent collision damage professional. An auto collision and repair professional does not have to have an engineering degree, or any other scientific or academic degree to be able to undertake a proper inspection, valuation or assessment about whether previous repairs to the vehicle were properly done within manufacturer's specifications. If having an academic degree in engineering, metallurgy or other related academic degree were a requirement, based on my over three decades experience in this industry, then nearly no body shop collision professional would be competent to do their job -- which is to repair the vehicle, if possible, to the manufacturer's repair specifications. In over 30 years, I have yet to meet a trained auto collision and repair professional that possesses that type of academic degree in design or

engineering of vehicles and components of a vehicle.

13. If having some sort of academic degree or background in engineering or car design were required to repair collision damaged vehicles, that would mean that consumers, insurance companies and most importantly, **the governmental agencies that regulate the collision industry**, allow unqualified and incompetent people to attempt to return collision damaged vehicles to the road in a safe condition. It is common knowledge in the collision industry that education and training offered by a combination of manufacturers, providers of information that specialized in the aftermarket repair industry such as I-CAR and ASE, All Data and others, are the benchmark for collecting data and information for the proper repair of collision-damaged vehicles. These entities and organizations have all the most up-to-date data that is **utilized on a daily basis** with respect to any information involving the proper repair of collision damages vehicles, which I also stay up-to-date on.

14. Manufacturers will also quite commonly issue technical updates or position statements on proper repairs to vehicles, all of which any authorized franchised dealership such as SAHARA would have or should be familiar with.. These manufacturer's position statements sometimes are also easily accessible to the public like with Chrysler/Dodge at <https://www.moparrepairconnection.com/collision/position-statements/>. To secure access to these position statements you can establish an account simply as a "vehicle owner" or a "do-it-yourselfer." This is where I obtained a Fiat Chrysler official factory position statement on "reconditioned" wheels attached as Exhibit 8 in doing my research in this case. This position statement was attached to my assessment, and of which I testified to in my deposition with respect to my opinions that the subject vehicle was not properly repaired according to manufacturer's specifications; and because of that, the vehicle was not only improperly certified as a CPO vehicle, but it created a major safety risk to the community. **The ACE at Exhibit 2 at pages 2 and 3, lines 29 to 34, clearly indicates that the left front wheel to the vehicle was replaced with a "reconditioned" wheel which was sublet to a wheel repair company to complete the process, or, the left front wheel was replaced with a "recycled" wheel, which means according to the definitions in the ACE, is a "used" part, and based on my experience, that can also mean the wheel could come from salvaged vehicle**

from a junkyard. According to the FCA official position statement:

FCA US LLC does **not** recommend that customers use “reconditioned” wheels (wheels that have been damaged and repaired) **because they can result in a sudden catastrophic wheel failure which could cause loss of control and result in injury or death.**

Damaged wheels are those which have been bent, **broken, cracked or sustained some other physical damage** which may have compromised the wheel structure.

Repaired indicates that the wheel has been modified through bending, welding, heating, straightening, or material removal to rectify damage.

Re-plating of chrome plated wheels, or chrome plating of original equipment painted or polished wheels is **not an acceptable procedure as this may alter mechanical properties and affect fatigue life.**

15. This information on “reconditioned” wheels is entirely accessible to the public. Based upon my experience, since most auto body collision facilities would most certainly know or should know and have access to this information, it is my opinion that this information was not only within the knowledge of SAHARA as a authorized and franchised Chrysler/Dodge dealership, but at a bare minimum, this FCA position statement should have been known to SAHARA, given this is a manufacturing standard involving damaged wheels to Dodge vehicles. Wheels are damaged on a regular basis and brought to franchised dealers, who can order OEM wheels to properly replace damaged OEM wheels.

16. As part of my opinions in this case, I also reviewed photographs of the vehicle in being repaired during the collision repair process. The photographs included various parts that were being repaired or replaced, all of which were entirely consistent with the repairs reflected on the ACE, and are of the same make, model year and color of the subject vehicle. Additionally one of photos identifies the same VIN number of the subject vehicle. Some of those I reviewed are attached as Exhibit 14. I am informed and believe that these photos were identified and produced by SAHARA in discovery and that the photographs are in fact those of the vehicle being repaired from the March 26, 2014 collision. The photo of the front left wheel from the vehicle, as identified in the ACE, is attached as Exhibit 13. It clearly depicts a chip taken out of the wheel’s rim as a result of the previous collision. In my

opinion, this wheel would meet the FCA definition of a “damaged” wheel as stated in the FCA position statement. Furthermore, based on my experience, which I also testified to in my deposition, I have dealt with hundreds of these types of wheels (and this type of damage to these types of wheels), and these wheels need to be replaced as new and not reconditioned or repaired because of the exact reasons stated in the FCA position statement. A chip like the one depicted in Exhibit 13 could easily propagate a crack into the wheel, and as the FCA position statement says, **it could cause sudden loss of control to the vehicle causing serious injury or death.** and that is why FCA does not recommend reconditioned wheels be used on their vehicles. Based on the ACE, the vehicle’s front left wheel was either “reconditioned” or was replaced with a “recycled” or “salvaged” wheel. Neither of these repairs to the front wheel would meet factory repair specifications, and therefore this vehicle should have never been certified as a CPO vehicle.

17. I reviewed Mr. Gongora’s deposition. He was SAHARA’s CPO technician who undertook the CPO inspection on the subject vehicle. He testified in his deposition at pages 50 and 51, which I reviewed, that as long as the subject vehicle met specifications, there was no need to notate it on the CPO inspection report he prepared. The CPO inspection report is attached as Exhibit 6, which I also reviewed as part of the information I received in formulating my opinions. Based on the ACE, based upon Exhibit 13 (the photograph of the damage to the wheel), and based upon Mr. Gongora’s deposition, this vehicle did not meet manufacturer’s repair specifications and should not have been certified as a CPO vehicle. It is my opinion that if Chrysler/Dodge collision repair specifications requires that reconditioned wheels should not be used than that requirement must be equally applicable to the CPO process.

18. With respect to my opinions about whether SAHARA knew or should have known the extent of the previous collision, based on my experience, my review of the deposition of Mr. Gongora, and reviewing the CPO inspection manual, **(which does not require any measurements to be taken by the CPO technician other than for fluids, brakes and other wear items)**, it is entirely achievable to determine the approximate severity of the impact solely by a visual inspection. These are the same procedures that a qualified collision damage technician

would use to analyze collision damage and to properly repair the subject vehicle. Mr. Gongora, SAHARA's certified and trained CPO technician, inspected the subject vehicle and determined that the vehicle was CPO eligible.

19. Mr. Gongora testified in his deposition that he did not make any comment on the Chrysler CPO checklist regarding the prior collision damage because he was able to look at the prior damage and determine if all the repairs were completed to OEM specifications. **Again, keep in mind that his determination was rendered without taking measurements on the vehicle.** I identified the prior collision damage and repairs by utilizing the same visual procedures that any qualified collision repair technician or post repair inspector would use to analyze collision damage and to repair the subject vehicle according to those manufacturer specifications. **According to the Dodge CPO Manual, item 103 on the CPO list under the heading "Body Panel," the CPO technician, (Mr. Gongora), is also trained and required to inspect the "body surface and panel alignment and fit."** The collision technician, like me, would look for ***misaligned exterior panels***, damage and movement of structural components and secure points such as bolts, hood, door and luggage hinges. My descriptions of the photos I attached to my report show these, and I describe them in detail at pages 3 and 4 of my report. I took a total of 110 photos for my inspection, which further supports my opinions, which I am informed were all provided to SAHARA's counsel, but I took a smattering of the ones that I believed best supported my opinions.

20. Taken as a whole, which I testified to at my deposition, (as opposed to any one thing in isolation such as the misalignment of one bolt which SAHARA attempts to do in the motion), given my experience, because of misalignment of the bumper, tires, wheels, panels, gaps, the repaired left front frame end bracket, and other items set forth in my report at pages 3 to 7, and based upon my observations, the subject vehicle was not repaired according to manufacturer specifications, including but not limited to the front wheel, based on the FCA position statement. Although I did take some measurements showing the uneven space between the right and left front wheels in relation to the bumper, which were part of the other photographs that I took and of which were produced to SAHARA, my opinions in this case that the vehicle was not repaired according to manufacturer's specifications were in large part

based upon my visual observations upon my inspection, in conjunction with the ACE, which experts in my field of expertise would use in formulating their opinions. Again, there is no evidence of which I am aware of that any repairs or other accidents or collision the subject vehicle was involved in between March of 2014, when the previous collision occurred and when I inspected the vehicle in June of 2016. To a person with training, all of what I have just described are signs and indications that the vehicle was involved in a previous collision in addition to the fact that the vehicle was not repaired according to manufacturer's specifications; because if the subject vehicle was fixed according to those specifications, the vehicle would not have all the gaps in between the panels and the other things I just describe and opine about in my report.

DIMINISHED VALUE REPORT OPINIONS

21. I incorporate all of my qualifications and experience mentioned at paragraph 7 in addition to my CV attached as Exhibit 1. With respect to my opinions regarding diminished value of the subject vehicle, my opinions are based upon my numerous years of experience in doing automotive appraisals for insurance companies, my many years of experience with Hertz Rent-A-Car as their National Property Damage Reinspector & Manager, my numerous years of experience in the auto body collision repair business, and my experiences with countless professionals in the field, including auto dealers and auto auctions. I have personally appraised tens of thousands of vehicles, evaluated damage and repaired damage to tens of thousands of vehicles in my personal and supervisory capacity, and I have over 25 years of experience in performing automotive inherent diminished value appraisals. For many years insurance companies claimed they were not liable for diminished value to a damaged vehicle. Over the years that has changed and most jurisdictions in the United States, including Nevada, allow for diminished value damage claims. I have been involved in numerous diminished value claims against Nevada insurance companies on behalf of consumers, and Nevada insurers have paid those claims. My information is also based upon my professional experience in California as well as in talking to WCCSC licensees around the country. I have testified on the amount and existence of diminished value to vehicles in both litigated cases in court and in arbitration; and courts and arbitrators have ordered that diminished value be paid.

22. It is important to note that even if a vehicle can be properly repaired according to manufacturer's specifications, a loss of value remains. There is a significant difference between inherent diminished value and depreciation. Simply put, diminished value is the **immediate** loss of inherent value a vehicle suffers due to an collision or accident. This loss of value occurs at the time a vehicle has been involved in a collision. **Diminished value is measured by the difference in the market value of the vehicle immediately before the collision damage occurred and immediately after the collision damage has been repaired.** Diminished value can have varying degrees. A car with light cosmetic damage or is involved in a very minor collision will not reflect the same loss as the subject vehicle as reflected in the ACE. Diminished value is different from traditional depreciation. Depreciation is an expected and anticipated and measurable reduction or loss of value sustained over a pre-determined time frame, however, like diminished value, Depreciation also takes into account many "objective" factors in calculating the "depreciated" value of a vehicle. These two types of appraisals are similar with respect to the **objective factors** that are taken into account.

23. In determining the existence of, and the amount of, diminished value, I used various relevant sources of information, which is the same information any competent expert in my area of expertise would use in determining diminished value. I use the repair estimate such as the ACE and any reports of prior damage, such as the Carfax run by SAHARA, if available. From these records I take the mileage, year, make and model of the vehicle, as well as the general condition and the options on the vehicle as equipped and the cost of the repairs. The repair estimate shows the type, amount and extent of the damage to the vehicle. I can then easily determine the vehicle's pre-loss value by using comparables or the National Automobile Dealers Association ("NADA") values. It is my opinion, based upon my years of experience, that on line research of vehicle values from dealers and private sellers are more accurate because they represents what consumers and dealers are asking for their vehicles. In addition, when insurance companies evaluate and settle total losses, they use the same on line research information. With this information, I then use comparable car sales to evaluate and determine the diminished value. I find comparables through auction and/or sales data from dealers, public auctions and private sellers across the nation. The above described methodology for

calculating diminished value is commonly accepted in my field of expertise.

24. Vehicles that are in the original condition will typically bring a higher price than vehicles of the same make, model year, and mileage that have been damaged in the manner reflected in the ACE. Inherent diminished value exists across geographic regions and across all types of vehicles. Vehicles that have not been damaged are more sought after by the general public. As a general rule, automotive professionals and dealers will pay more for vehicles that have not been damaged than they will pay for damaged vehicles. **Of course, the extent of the collision, if known, will greatly influence what will be paid by dealer and the consumer.** As I previously stated, there is a big difference with respect to diminished value between a very small collision with very little or cosmetic damage, versus the extent of the damage caused to the subject vehicle by the previous collision reflected in the ACE. This information was known to SAHARA, because Mr. Grant testified that he received the ACE from the private seller approximately three weeks prior reselling the vehicle as a CPO vehicle to Mr. Poole.

25. The difference in value is well recognized in the automobile sales profession. Joshua Grant, SAHARA'S Director of Used Car Sales corroborated this fact in his deposition at page 42 and 43. Most leasing companies charge a lessee an accident penalty. Auction disclosure rules, such as those at Manheim and Adesa require that certain types of damage to vehicles sold at the auction be disclosed. Auction rules, such as those at Mannheim and Adesa allow buyer's of vehicles with undisclosed prior repair damage to return the vehicle and get their money back, or alternatively, have their price adjusted. **These market factors are all indicative and reflective of the uniform existence of diminished value.**

26. SAHARA makes much to do about the comparables in my report were from across the country as opposed to being "local" comparables. The reason why it is best to take a cross section of the country (lower 48) into account with respect to comparables is because it gives me a better overview of the the value of the vehicle. In the case the national search located comparable vehicle within a \$4,000.00 range which is not uncommon and would be similar to the amounts if completing a local search. SAHARA then argues that the "numbers for comparable vehicles inserted appear to be taken from 2017 printouts." SAHARA's argument is misguided. In my deposition I explained the incorrect date is a result of a typo and the

calculation for arriving at the vehicle value at the time of purchase in 2014 and is explained in my diminished value assessment very clearly in exhibit 19 at page five. I utilize this 5% calculation which represents the amount of money the vehicle would increase or decrease in value during the course of a calendar. This percentage in the 25 years as a diminished value expert has been universally accepted in the insurance industry in hundreds of diminished value and total loss claims I have been involved in as an expert. As reflected on my CV in the arbitrations on behalf of consumers for diminished value and total loss, insurers have agreed to the same percentage. In addition in cases where comparables are used from older vehicle value publications I have found in my years of experience in this area of expertise and being involving in numerous cases as identified in my CV at Exhibit 23, after applying the five percent per year calculations the vehicle values are close in value to the 5% calculation. SAHARA next claims there is no basis for the 12.6% or how I utilized that figure. The 12.6% is a damage severity percentage, which is calculated by taking a percentage of the repair cost, (which was \$4,088.70), to the actual cash value of the vehicle, (which was \$32,384.61) This precisely what I testified to in my deposition. The total cost of repairs based on the ACE was \$4,088.73 at Exhibit 2. The Actual Cash Value ("ACV") of the vehicle is reflected on top of page five of my report which is \$32,384.61 based upon the comparables. **\$4,088.70 is 12.6% of \$32,384.61 which is the ACV of the subject vehicle.** The significance of that percentage is that the higher the percentage the less likely it would be for a person to purchase the vehicle.

27. Additionally, In evaluating diminished value it is important to identify the severity of the damage to the subject vehicle which is similar to the steps taken by insurance companies when considering if a vehicle should be deemed a total loss. Because the closer the cost of repairs are to the actual cash value [ACV] the more economically unfeasible it is the continue with the repairs process. It is similar when evaluating diminished value, the greater the percentage of damage is to the ACV of the vehicle the greater the diminished value.

28. It should be noted that in arriving at the loss of inherent diminished value it is not necessary to inspect the subject vehicle, and many experts in this field of expertise can, and often do, rely on the sources of information set forth in this declaration without inspecting the vehicle; however, in this case, I did complete an inspection of the vehicle. This may seem

counter intuitive, but the primary source of information to the existence and amount of a diminished value assessment is the collision damage report from the collision shop. In fact, it is not even necessary to repair the vehicle before I can determine the amount of diminished value that has resulted from the vehicle having been damaged. It is also not necessary to sell the vehicle before I can determine the amount of diminished value. The diminished value exists as of the time the vehicle is damaged. Mr. Pool's vehicle incurred inherent diminished value as set forth and explained in my report at Exhibit 19.

29. SAHARA infers that I engaged in some sort of hocus focus in arriving at my diminished value amounts and that my opinion was not based upon any specifics of the subject vehicle and that my opinion is nothing but speculation and conjecture. Nothing could be further from the truth. Diminished value is not some new or unrecognized or "cutting edge" field of expertise. Per my report, my diminished value assessments are based upon the **same objective factors** and criteria that any other diminished value expert and automobile dealership takes into account. These objective factors include year, make, model, condition, options, mileage and the cost of repairs. In addition, an assessment of the extent of the vehicle's damage including the amount of damage, the type of damage, the area of the damage and the extent of the damage are considered thus the reason for calculating the percentage of damage.

30. With respect to the computer software program WCCSC uses that SAHARA takes issue with, I am not aware that I am required to have a computer programing degree to use a software program in my area of expertise with respect to my opinions on diminished value, or that I have to have been the one who actually designed or wrote the code for the program. There are a myriad of websites available on the internet where a consumer can enter certain information into a web-based application, and the program will come up with a diminished value. In my opinion, these types of evaluations are not reliable with just this limited information. However, many diminished value experts in my area of expertise who undertake a diminished value assessment do in fact use a computer algorithm, **in conjunction with** their review of other **independent information** that was reviewed in the course of their evaluation.

31. The WCCSC software program considers the **same objective criteria** as any other diminished value professional would, such as the year, make, model, mileage, options, type of damage and the cost of the repair and comparable vehicles to arrive at the diminished value of the subject vehicle. The basis for the algorithms and the objective criteria in the WCCSC software were generated as the result of years of extensive research involving a myriad of business and professions across the automobile industry who deal with vehicle appraisals and valuations on a daily basis, including discussions with hundreds of automobile dealerships, new and used cars general managers and sales personnel, other diminished value experts, insurance company appraisers, independent appraisers, and also attending hundreds of automobile auctions. The **objective factors** set forth in this declaration were designed and programmed into the WCCSC software program which I paid a professional software company to develop. When stating in my deposition that I made several revisions to the software it appears that was misunderstood in the context of the statement. I personally advised a professional software programmer of what changes I need and a professional software programmer completes the task within the program. The operator/licensee enters the information into the appropriate fields and the software will determine the amount of loss value to the vehicle, in conjunction with independent information and assessment regarding the diminished value vehicle itself. Additionally, an important component in evaluating diminished value is to have the ability to review any collision estimates, invoices, repair orders, contracts and pertinent documents relating to the repair of the vehicle, which does not occur with many strictly internet-based diminished value software. I find that utilizing strictly internet-based diminished value websites is not reliable or accurate. The reason that the WCCSC Diminished Value Assessment [DVA] evolved into its current form is because of the resistance over the years from the insurance industry in an attempt to deny diminished value recovery. Our DVA addresses denial based on there is no inherent diminished value, diminished value is not owed, diminished value does not occur until the subject vehicle is sold and the consumer actually suffers a loss, diminished value is not owed unless your vehicle suffered a certain amount of damage etc... and many more attempts to deny diminished value recovery.

I certify that the aforementioned is true and accurate under penalty of perjury under the laws of the state of Nevada

Executed this 19th day of October 2017 at Las Vegas, Nevada.



Rocco Avellini

Exhibit “2”

Poole v. Nevada Auto Dealership Investments, LLC, et al.

Deposition of:
Rocco J. Avellini

September 22, 2017



**WESTERN REPORTING
SERVICES, INC.**

500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

www.westernreportingservices.com

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,

Plaintiff,

vs.

) Case No. A-16-737120-C

NEVADA AUTO DEALERSHIP

INVESTMENTS LLC, a Nevada

Limited Liability Company d/b/a)

SAHARA CHRYSLER, JEEP, DODGE,

WELLS FARGO DEALER SERVICES

INC., COREPOINTE INSURANCE

COMPANY, and DOES 1 through

100, Inclusive,

Defendants.

DEPOSITION OF ROCCO J. AVELLINI

Taken on Friday, September 22, 2017

At 1:36 p.m.

At 630 South Fourth Street

Las Vegas, Nevada

Reported by: Marnita J. Goddard, RPR, CCR No. 344

A P P E A R A N C E S

FOR THE PLAINTIFF:

GEORGE O. WEST III, ESQ.

ATTORNEY AT LAW

10161 Park Run Drive

Suite 150

Las Vegas, Nevada 89145

FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS, LLC,
DOING BUSINESS AS SAHARA CHRYSLER, JEEP, DODGE, RAM,
AND COREPOINTE INSURANCE COMPANY:

STEPHANIE J. SMITH, ESQ.

MORAN BRANDON BENDAVID MORAN

630 South Fourth Street

Las Vegas, Nevada 89101

I N D E X

WITNESS

EXAMINATION

ROCCO J. AVELLINI:

(BY MS. SMITH)

4, 195, 217

(BY MR. WEST)

162, 214

1 Q. Were you aware that defendant, my client in
2 this matter, made their initial expert disclosure on
3 June 14th?

4 A. Of what year?

5 Q. Of 2017.

6 A. I don't know that, no.

7 Q. I'm just trying to understand if there was a
8 different report that was supposed to be attached.
9 Because you just testified that you had Mr. Lepper's
10 initial report while you were finishing your initial
11 report?

12 A. I don't know what date I received it.

13 Q. Okay.

14 A. I'm just making comments on Mr. Lepper's
15 report. That's all.

16 Q. Has someone asked you to prepare a rebuttal
17 report to Mr. Lepper's initial report?

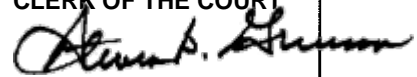
18 A. No.

19 Q. Have you prepared one?

20 A. No.

21 Q. So aside from gaps referenced by
22 Mr. Lepper's report, you do not -- you do not have
23 independent knowledge of a gap allowance for exterior
24 body panels for a 2013 Dodge Ram?

25 A. There are gap allowances that manufacturers



1 **RPLY**

2 **JEFFERY A. BENDAVID, ESQ.**

3 Nevada Bar No. 6220

4 **STEPHANIE J. SMITH, ESQ.**

5 Nevada Bar No. 11280

6 **MORAN BRANDON BENDAVID MORAN**

7 630 South 4th Street

8 Las Vegas, Nevada 89101

9 Tel: (702) 384-8424

10 Fax: (702) 384-6568

11 j.bendavid@moranlawfirm.com

12 s.smith@moranlawfirm.com

13 *Attorney for Defendants, Nevada Auto*

14 *Dealership Investments LLC d/b/a Sahara*

15 *Chrysler and Corepointe Insurance Co.*

16 **DISTRICT COURT**
17 **CLARK COUNTY, NEVADA**

18 DERRICK POOLE,

19 Plaintiff,

20 v.

21 NEVADA AUTO DEALERSHIP
22 INVESTMENTS LLC, a Nevada Limited
23 Liability Company d/b/a SAHARA
24 CHRYSLER; JEEP, DODGE, WELLS
25 FARGO DEALER SERVICES INC.,
26 COREPOINTE INSURANCE
27 COMPANY; and DOES 1 through 100,
28 Inclusive,

Defendants.

Case No.: A-16-737120-C

Dept. No.: XXVII

**DEFENDANTS NEVADA AUTO
DEALERSHIP INVESTMENTS
LLC'S AND COREPOINTE
INSURANCE COMPANY'S REPLY
IN SUPPORT OF MOTION FOR
SUMMARY JUDGMENT**

Date: November 9, 2017

Time: 10:30 a.m.

COME NOW, Defendants, NEVADA AUTO DEALERSHIP INVESTMENTS LLC
DBA SAHARA CHRYSLER JEEP DODGE, ("Defendant" or "Nevada Auto" or "Sahara
Chrysler") and COREPOINTE INSURANCE, ("Corepointe") by and through their counsel
of record JEFFERY A. BENDAVID, ESQ. and STEPHANIE J. SMITH, ESQ. of MORAN
BRANDON BENDAVID MORAN, and hereby submit their Reply to Plaintiff's Opposition



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 to its Motion for Summary Judgment against Plaintiff, DERRICK POOLE ("Poole" and/or
2 "Plaintiff"), an individual.

3 This Reply is made and based upon the Memorandum of Points and Authorities
4 submitted herewith, together with the papers and pleadings on file herein, exhibits attached
5 hereto, and oral arguments at the time of Hearing.
6

7 DATED this 3rd day of November, 2017

8 **MORAN BRANDON BENDAVID MORAN**

9
10 /s/Jeffery A. Bendavid

11 **JEFFERY A. BENDAVID, ESQ.**

12 Nevada Bar No. 6220

13 **STEPHANIE J. SMITH, ESQ.**

14 Nevada Bar No. 11280

15 630 South 4th Street

16 Las Vegas, Nevada 89101

17 (702) 384-8424

18 Fax: (702) 384-6568

19 j.bendavid@moranlawfirm.com

20 s.smith@moranlawfirm.com

21 *Attorney for Defendants, Nevada Auto*

22 *Dealership Investments LLC d/b/a Sahara*

23 *Chrysler and Corepointe Insurance Co.*
24
25
26
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I. INTRODUCTION.**

3 Plaintiff filed 89 pages of briefing in an attempt to obscure the very simple issues in
4 this litigation. By attempting to distract the Court into thinking that there are “material
5 issues of fact in dispute”, Plaintiff reveals the blatant weakness and lack of actual authority
6 that requires the “disclosure” to which Plaintiff insists he was entitled. Plaintiff’s theory
7 that Defendant nefariously concealed information from Plaintiff in order to deceive him and
8 perpetrate a fraud is absurd. The simple facts are that Plaintiff happily drove his car for
9 multiple years and thousands of miles. Plaintiff’s “facts” regarding improper repairs or
10 some kind of “safety” issue are belied by the simple fact that Plaintiff did no repairs on the
11 subject Vehicle, and that Plaintiff continued to drive the Vehicle for approximately a year
12 after his “expert”, Rocco, inspected it. Plaintiff attempts to create a material fact regarding
13 the details of the accident the Vehicle was in prior to his purchase, but the fact remains, any
14 stigma related to the accident is related to the fact that it had been in any accident, not
15 whether some small parts were replaced or repaired. Plaintiff cannot make something
16 material by generating disingenuous concerns or issues through his expert, when the
17 evidence does not support such findings, and when Plaintiff drove it for multiple years and
18 thousands of miles. Accordingly, Defendants are entitled to judgment as a matter of law, as
19 there are no material facts in dispute.
20
21
22
23

24 **II. FACTS**

25 Plaintiff attempts to generate additional material on which to rely by attaching an
26 affidavit from Rocco Avellini¹ and Plaintiff himself. *See Opposition.*² However, Mr.
27
28

¹ Defendants have moved to strike the declaration of Rocco Avellini based on its untimeliness and irrelevance.

² Plaintiff filed another 27 page document of his facts, which Defendants are moving to strike. Defendants neither admit either the veracity, or material nature of Plaintiff’s purported “facts” and objects the



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Avellini is a paid expert hired specifically by Plaintiff's counsel, and who serves primarily
2 as a Plaintiff's expert. Plaintiff is attempting, with his 89 pages of briefing, to create the
3 illusion of disputed "material" facts, however, Plaintiff's verbose briefing does not change
4 the actual true facts of this matter, which are simple, and undisputed.
5

6 It is undisputed that on May 8, 2014, the Vehicle underwent a detailed inspection by
7 a certified mechanic, Ray Gongora, to determine whether it could be a Certified Pre-Owned
8 ("CPO") Vehicle. *See Exhibit 4 to Motion for Summary Judgment.*

9 It is undisputed that the certified mechanic conducting the CPO inspection would
10 have had a CarFax, as Ray Gongora testified that he would look at the CarFax, prior or
11 contemporaneous to performing the inspection, as such here, the mechanic would have been
12 aware of a previous accident on the subject Vehicle. *Exhibit 1, Excerpts of Deposition of*
13 *Ray Gongora ("Gongora Depo."), 40:17-41:7.* Indeed, Plaintiff does not dispute that Ray
14 Gongora was made aware that the Vehicle had been in a previous accident. *See Response*
15 *filed by Plaintiff.* There is no dispute that the Vehicle passed the CPO 125-point inspection,
16 performed by Ray Gongora and accordingly was designated as a CPO vehicle in
17 Defendant's inventory. *See Id.* Plaintiff contends, through his "expert" that the Vehicle
18 should not have been sold as a CPO vehicle, and was otherwise improperly certified. *See*
19 *generally, Plaintiff's Separate Statement.* Defendant disputes these assertions. Again, it is
20 undisputed that Plaintiff purchased the car in May 2014, and signed the CarFax
21 acknowledging that the Vehicle had been in a previous accident. *See First Amended*
22 *Complaint.*

23 Crucially, it is undisputed that Defendant presented a CarFax to Plaintiff, dated May
24 10, 2014, (the "CarFax") pursuant to the CPO Delivery Check Sheet. *Exhibit 9 to MSJ.*
25
26
27
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mischaracterization of the testimony cited to of Travis Spruell, Noah Grant, and Joshua Grant. Defendants further object to the facts set forth by Plaintiff as being material.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
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1 It is more importantly, undisputed that when Plaintiff purchased the subject Vehicle
2 he signed the CarFax, acknowledging it had been in a previous accident. *Id.*

3 It is undisputed that despite being informed of the accident on the Vehicle, Plaintiff
4 did not ask any questions regarding any specifics about accident. *See Exhibit 2, Excerpts of*
5 *Deposition of Derrick Poole ("Poole Depo."), 19:2-20:6.* Plaintiff, even after allegedly
6 being informed the accident was "minor" did not even bother to ask how the salesperson
7 knew such information or how any such information would have been obtained. *Id., 84:4-*
8 *13.*

10 Additionally, it is undisputed that Plaintiff drove the car for thousands of miles over
11 the course of approximately, three (3) years, which is directly relevant as Defendant clearly
12 did not cause Plaintiff to incur any damages. *See Response filed by Plaintiff.*

14 It is undisputed that Plaintiff has not personally experienced any safety issues with
15 his Vehicle. *Poole Depo., 39:7-24, 60:11-13.* Plaintiff is now attempting to generate a
16 "safety" concern regarding a "reconditioned" wheel that may have been on the Vehicle at
17 the time of the sale. *See Response filed by Plaintiff, see also, Opposition.* However, Plaintiff
18 drove the car for a year after his "expert" inspected the Vehicle with this alleged "safety"
19 issue, and was only purportedly made aware of it on August 13, 2017. *Poole Depo., 37:3-8,*
20 *see also Expert Report of Rocco Avellini.*

22 By Plaintiff's own "facts", his expert reviewed the Allstate collision estimate, and
23 conducted a subsequent inspection of the Vehicle. *See Expert Report of R. Avellini, and*
24 *Declaration of R. Avellini to Opposition, ¶10.³* As such, Plaintiff's expert then purportedly
25 inspected a safety issue that allegedly could have resulted in "serious injury or death" in
26 May 2016, yet, permitted Plaintiff to drive the Vehicle for another year, and indeed, did not
27
28

³ Defendant is moving to strike this superfluous and declaration, however, is choosing to cite to Mr. Avellini's sworn declaratory testimony regarding the order in which he reviewed items.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
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1 inform him of any “safety” issue until magically the day prior to Plaintiff’s deposition. *Id.*
2 This fact alone is illustrative of Plaintiff’s factually deficient claims, and his attempt to
3 create “material facts” to preclude summary judgment.

4 The undisputed facts are clear. Plaintiff purchased a Vehicle that he knew had been
5 in a previous accident where it sustained damage, and was towed. Defendant performed a
6 good faith inspection of the Vehicle, and certified it pursuant to its 125-point inspection
7 checklist, via its certified mechanic, Ray Gongora. Plaintiff, aside from his “expert’s” own
8 self-serving testimony⁴, provides no evidence that the car was not suitable to be a CPO in
9 2014, or that the price Plaintiff paid for it did not take into account the previous accident.
10
11

12 **III. LEGAL ARGUMENT**

13 **A. Plaintiff Mischaracterizes the Arguments of Defendants as Defendants Do Not** 14 **Argue to Impose a Higher Burden of Proof on Plaintiff.**

15 Plaintiff expends significant effort in explaining that his claims are solely statutory
16 in nature by citing to *Betsinger v. D.R. Horton*, 232 P.3d 433 (2010). *See Opposition*, 6-10.
17 However, Defendants cited to cases regarding fraudulent conduct in order to illustrate the
18 lack of such conduct in the present circumstances, and the fact that Plaintiff still needs to
19 prove that fraudulent conduct actually occurred. Indeed, Plaintiff largely asserts his base
20 allegations that any statement whatsoever that does not fully disclose each and every facts is
21 somehow “fraudulent” and a “deceptive trade practice”. *See generally, Opposition*. Plaintiff
22 references the decision in *Betsinger*, however, the *Betsinger* Court did not delve into an
23 analysis of what constituted a deceptive trade practice in the sale of consumer goods, but
24 instead instructed that a plaintiff need only meet a “preponderance of the evidence” standard
25
26
27

28 ⁴ Plaintiff’s “expert” is not qualified to make such a statement as he has never conducted a Certified Pre-
Owned inspection, did not perform one on the Vehicle, and did not inspect it for another two years after
Plaintiff drove the Vehicle. *See MSJ*. Also, Defendant has a pending Motion to Strike all of Rocco Avellini’s
testimony, report, and opinions.



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 in proving claims for deceptive trade practices. Defendants do not argue that Plaintiff had to
2 prove deceptive consumer practices by any other standard, only that Plaintiff must prove
3 punitive damages claims by a “clear and convincing” evidence standard. As such, Plaintiff
4 wastes this Court’s time by explaining a standard which is not at issue. *See generally,*
5 *Opposition*. Plaintiff fails to meet any of the requisites for any fraudulent claim, statutory or
6 otherwise.
7

8 Indeed, as explained within Defendants’ Motion for Summary Judgment, Plaintiff
9 failed to demonstrate with actual admissible evidence that Defendants engaged in any
10 statutory deceptive trade practice, in particular Plaintiff fails to demonstrate that Defendants
11 knowingly engaged in any conduct prohibited by NRS 598.0915 et seq. Plaintiff also fails to
12 show how Defendants’ conduct caused him any damages, or that he relied upon those to his
13 detriment. *See Picus v. Wal-Mart*, 256 F.R.D. 651, 658 (D. Nev. 2009). Plaintiff fails to
14 evidence how he actually suffered damages by accepting and purchasing a Vehicle which he
15 knew had been in an accident. Plaintiff, as in his First Amended Complaint, is still trying to
16 concoct a story of some master scheme to defraud him by knowingly and maliciously hiding
17 facts which Defendants were somehow required to disclose, but Plaintiff cannot meet the
18 elements of these claims. Accordingly, Plaintiff’s claims should be summarily dismissed as
19 a matter of law.
20
21

22 **B. This Court is the Appropriate Entity and it is Within its Discretion to**
23 **Determine the Materiality of Facts, as a matter of law.**

24 Plaintiff cites to various other jurisdictions to support his contention that only a jury
25 can decide whether the fact that some parts were repaired or replaced prior to Defendants’
26 possession of the subject Vehicle was material. *See Opposition, 11, fn. 5*. However, the
27 substantive law controls which factual disputes are material. *See Wood v. Safeway, 121*
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Nev. 724, 731 (2005). Notably, Plaintiff does not cite to applicable cases within Nevada,
2 because Nevada's standards are different than those of other states, and it has its own unique
3 consumer fraud/deceptive trade practices standards. *See generally, Opposition*. The cases
4 cited to by Plaintiff from a variety of other jurisdictions each with their own statutory acts
5 regarding consumer fraud and varying standards address extremely different facts. For
6 example, Plaintiff's first cited case dealt with significant unrepaired damage, and a
7 representation that the car purchased was in "perfect condition" with no mention of any
8 accident, and the plaintiffs in that case made their discovery within a day of purchasing the
9 vehicle. *See Totz v. Cont'l v. Du Page Acura*, 236 Ill. App. 3d 891, 899 (1992)⁵. Further,
10 again, the nonmoving party may not defeat a motion for summary judgment on the
11 "gossamer threads of whimsy, speculation, and conjecture." *See Wood*, 121 Nev. at 732.
12 Plaintiff's claims are premised largely on conjecture, that he would not have purchased the
13 Vehicle had more detailed information regarding parts being repaired or replaced had been
14 given to him. *See First Amended Complaint*. However, this is pure, self-serving conjecture,
15 not evidence of a disputed material fact.
16

17
18
19 Plaintiff cites to only two related Nevada cases that address the provenance of this
20 Court to assess what facts are material, *Powers v. United Services Auto. Ass'n.*, to
21 substantiate his contention that materiality is an objective standard to be submitted to a jury.
22 *See Opposition 10:19-11:7*. In *Powers I*, as Plaintiff refers to it, the Court states, "...the
23 issue whether there is a material 'variance between the representation and the existing
24 facts'" (internal citation omitted), 114 Nev. 690, 698 (1998), *Opposition, 10:19-21*.
25 However, there is no such determination to be made here, and thus the Court is the
26 appropriate "fact finder". Indeed, in *Powers II*, as Plaintiff identifies it, the Court is careful
27
28

⁵ Plaintiff's other cases cite to a host of significantly factually different cases, including proposed class actions, and cases with evidence of uniform fraudulent practices, which is not present here.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 to state that, "...every case must be considered on its own facts." 115 Nev. 38, 45, 979 P.2d
2 1286, 1289 (1999).

3 Plaintiff was told that the Vehicle was in an accident previously, and knew that the
4 Vehicle was not a brand new Vehicle, at the time he purchased it, and he did so anyhow. *See*
5 *Id.* Plaintiff attempts to frame the fact that some parts on the Vehicle had been repaired
6 and/or replaced as a "material" fact which should have been disclosed to Plaintiff, because
7 vehicles that have been in an accident have a "stigma." *See First Amended Complaint, and*
8 *generally, Opposition.* Plaintiff admits he knew of the previous accident, therefore, he
9 already accepted the "stigma" and/or any possible issues which may be associated with a
10 pre-owned vehicle, including price, value and other factors.
11

12
13 **C. The Only "Material Fact" about the Vehicle was that it was in an**
14 **Accident Prior to Plaintiff's Purchase, which Plaintiff admits was Disclosed to**
15 **Plaintiff Prior to Purchase.**

16 Plaintiff is trying to generate issues of "material" fact that simply do not exist, and
17 do not need to be in the provenance of a jury. Indeed the standard is that where, "reasonable
18 minds cannot differ" then summary judgment may be granted as a matter of law. Here, it is
19 disingenuous for Plaintiff to argue that had he known of each and every part that was
20 repaired or replaced that he would not have purchased the Vehicle. Plaintiff specifically
21 testified, "I'm not really a mechanic or a car guy. So I don't really know when it comes to
22 what I'm looking at as far as details and stuff." *Deposition of Derrick Poole, 13:14-18.* As
23 such, whether or not Mr. Poole was given information that a specific part being repaired or
24 replaced is irrelevant, and not material. In *Powers v. United Servs. Auto Ass'n*, which does
25 have markedly different facts and involves different obligations placed particularly upon an
26 insurance company, the Nevada Supreme Court still stated that, "[T]o be deemed a material
27 misrepresentation, it must be shown that an insurer's 'investigation would have proceeded
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 differently had' the insured told the truth." (internal citation omitted), 114 Nev. 690, 699,
2 962 P.2d 596 (1998).

3 Similarly, by Plaintiff's own argument Plaintiff should demonstrate the materiality
4 of the additional information that his investigation or course of action would have been
5 different had he been informed specific parts had been repaired or replaced. *Id.* However,
6 aside from Plaintiff's self-serving testimony, there is no actual evidence that Plaintiff would
7 have proceeded any differently including otherwise not purchasing the Vehicle.

8
9 He was informed that the car had been in an accident, and signed a CarFax that
10 reflected damage had been reported, and that the Vehicle had been towed. *See Exhibit 9 to*
11 *MSJ-CarFax*. Plaintiff also testified that he was satisfied with the knowledge that the
12 Vehicle had undergone and passed the CPO inspection by a certified mechanic, which
13 Plaintiff admitted he is not. *Poole Depo.*, 42:1-10. Plaintiff attempts to argue that being
14 informed the Vehicle had sustained \$4,088.70 in previous damage would have been
15 "material" or "important" to disclose, however, even Plaintiff's own expert testified as
16 follows:
17

18
19 Q: Based on your extensive experience in performing car repairs and as a repair
20 shop owner, if someone told you their vehicle had \$4,088.77 of repairs,
21 would that signify anything to you?

22 A. Not at all.

23 *Exhibit 3, Excerpts of Deposition of Rocco Avellini ("Avellini Depo."), 142:12-17.*
24 As such, it is clear that such a disclosure is immaterial, as it does not actually signify
25 anything, even to an "expert." After Plaintiff was informed that the Vehicle had been in a
26 wreck, he felt completely assuaged at The Vehicle was still a CPO pursuant to Defendant's
27 inspection, and Plaintiff continually drove the Vehicle without any actual problems for three
28 (3) years with the Vehicle. *See MSJ, UFs 16-18*. Plaintiff cannot prevail on his claims,



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 based on the conjecture that someone may want to know some information.

2 Indeed, the citations that Plaintiff sets forth deal in hypotheticals and pure
3 speculation. *See Opposition, 12:22-13:16*. Defendant made the requisite disclosure that the
4 Vehicle was in an accident, Plaintiff, no matter how many times he claims, details of the
5 previous accident were “material,” cannot seek to impose extra duties on Defendant with
6 zero legal basis. It is undisputed that the Vehicle had been in a previous accident and
7 undisputed that such a fact was disclosed to Plaintiff, in writing, via the CarFax.

8
9 Any reasonable person would surmise that if a vehicle was in an accident from
10 which it had to be towed, some of the parts would have been repaired and/or replaced. For
11 Plaintiff to now allege that he would have not purchased any vehicle from Defendant is
12 entirely disingenuous, particularly because he personally experienced no issues with it
13 (aside from being in his own accident), and he continued to drive the Vehicle for three years
14 and even after filing his Complaint in this matter, and after his “expert’s” inspection.
15

16 **1. Defendant Disclosed All Material Facts Which it was Legally Required to**
17 **Disclose, and therefore Did Not Commit a Deceptive Trade Practice Pursuant**
18 **to NRS 598.0923(2) et seq.**

19 NRS 598.0923 (2) does not provide that any and all known facts about a transaction
20 must be affirmatively disclosed to a consumer. It provides only a “material fact in
21 connection with the sale” should be disclosed. *See NRS 598.0923(2)*. Despite Plaintiff’s
22 self-serving testimony and “expert” testimony, there is no actual evidence that disclosure of
23 any or all of the repaired or replaced parts or the cost to repair and/or replace those parts was
24 “material” at the time of the sale. *See generally Opposition, and Exhibits thereto*. There is
25 no dispute that Plaintiff was specifically informed of the material fact that the Vehicle had
26 been in a previous accident. *See* Plaintiff claims that any information about a repaired or
27 replaced part would have been “material.” *See generally, Opposition*. However, during
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 deposition, Plaintiff testified he had no idea what the various parts even were or what it
2 meant that they were repaired and/or replaced. For instance, Plaintiff testified:

3 Q. Do you know what -- I believe you keep referring to a frame
4 bracket; is that right?

5 A. Yeah. I believe that's what I read on the estimate.

6 Q. Do you know what that is?

7 A. I have no idea what that is.

8 Q. Do you know what it does?

9 A. I have no idea what it does. *Poole Depo.*, 73:21-74:3.

10
11 Accordingly, the evidence points to the fact that Plaintiff would have proceeded
12 along the exact same course as he actually did, and still purchased the Vehicle after
13 receiving "the information" that the Vehicle had been put through the CPO process. The
14 information contained within the Allstate report could not have been material to Plaintiff
15 because he did not even know what it meant, or what specific parts were used for or did. In
16 truth, Plaintiff would have utilized the same information, the CPO inspection, that was
17 provided to him when he was originally informed that the Vehicle had been in an accident.

18
19 Additionally, Plaintiff also neglects to consider is the fact that the repairs were
20 performed not by Defendant, but by an independent third-party automotive repair shop, and
21 authorized by an insurance company. *See MSJ, Exhibit 3- Allstate documents.* As such,
22 Plaintiff's claims that repairs were improperly performed has even less credibility. Here,
23 Defendant did not knowingly conceal any "material" information, nor did it fail to disclose
24 any "material" information, because in this set of circumstances, the details of the accident
25 were not material, and the condition of the Vehicle at the time of purchase was not
26 otherwise misrepresented.
27
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Only the omission of a “material fact” which may constitute a false representation.
2 *See Nelson v. Heer*, 123 Nev. 217, 163 P.3d 420 (2007). Plaintiffs have not actually
3 provided evidence or legal authority which declares the details of a previously repaired
4 automotive accident are “material” to the purchase of a vehicle when it has been disclosed
5 that there was an accident, and that the vehicle sustained damage. Plaintiff cites to cases
6 regarding “common law” fraud and disclosure, however, in one of them the court recognizes
7 that there was a special relationship beyond that of buyer and seller, and the other, case
8 included facts wherein, the person making representations had no knowledge or actual basis
9 on which to base some of her representations. *See Opposition, fn. 9*. Defendant did not
10 notice defects, safety issues, or other issues which caused it concern, prior to, during or after
11 the sale of the Vehicle. *See generally, MSJ, UFs*.

14 The nature and extent of the accident previously sustained by the Vehicle is not
15 material, because the Vehicle had been fully repaired prior to Defendant’s acquisition of it,
16 and then was put through a comprehensive multi-point inspection. *See MSJ, UFs 4-7*. It is
17 purely speculative that Plaintiff would not have purchased the Vehicle if he had obtained
18 any other additional information about specific parts that had been replaced/repared on the
19 Vehicle, or the amount of money which was spent on repairs or replacements. Plaintiff
20 purchased the car knowing it had sustained damage from a previous accident. *See MSJ, UFs*
21 *10-13*.

24 Defendant fulfilled their affirmative duty to disclose that the Vehicle had been in an
25 accident and had sustained previous damage, Defendant did not otherwise perceive or
26 discovery any latent defects or other problems for which it may have had an additional duty
27 of disclosure. *See MSJ*. Therefore, Defendant did not violate NRS 598.023(2). Plaintiff’s
28 claim should be summarily dismissed, as a matter of law.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **2. Defendant Did Not Make Any False Oral or Written Misrepresentations**
2 **that Constitute Any Violation of 16 C.F.R. § 455 (A)(1) or of NRS**
3 **598.023(3).**

4 Plaintiff for the first time asserts that Defendant made an oral misrepresentation that
5 the previous accident on the Vehicle was “minor” and that it otherwise made a written
6 misrepresentation regarding the condition of the Vehicle. See Opposition, 17:17-19:17. The
7 evidence is clear, the Allstate estimate and the subsequent repair and inspection of the
8 Vehicle, paired with its performance as a vehicle that was in good working condition (save
9 for Plaintiff’s own accident) conclusively demonstrates that the previous accident was
10 “minor”. There was no indication either from the Allstate documents or the subsequent
11 inspection that the Vehicle was considered a total loss, or that it had sustained frame
12 damage. *See Exhibit 3 to MSJ.* Indeed, the CarFax did not indicate any significant or
13 “major” damage. *See Exhibit 9 to MSJ.* Therefore, there was no oral misrepresentation.

14 Further, Ray Gongora testified that he only would notate on the CPO checklist if he
15 discovered an improper or subpar repair. *Gongora Depo., 38:18-39:2.* As such, Mr.
16 Gongora did not find an improper or subpar repair, and accordingly did not mark any down
17 on the CPO checklist. *Id.* There is no evidence that Defendant failed to perform an
18 inspection of the Vehicle, and no actual evidence that there was any policy and practice to
19 hide information regarding previous accidents. *See generally, Opposition.* Thus, it is
20 unclear how any affirmative written misrepresentation was made. Any reasonable consumer
21 who was informed that a vehicle they purchased was in an accident and sustained damages
22 would affirmatively know that some part(s) would have been repaired and/or replaced.
23 Perhaps if Defendant had specifically notated that all parts were original, or that the vehicle
24 had not had any repairs done, they could have made an affirmative misrepresentation,
25 however, no such facts exist.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Plaintiff keeps reiterating that his expert purportedly saw issues two years after he
2 had purchased and driven the Vehicle, however, the only certified mechanic that inspected
3 the Vehicle at the time of the sale was Ray Gongora. *See Opposition. Plaintiff, or his expert,*
4 never performed their own CPO inspection, and in fact Plaintiff's expert did not actually
5 take measurements of the Vehicle to compare with all of the Chrysler standards listed on the
6 CPO checklist. *Avellini Depo., 104:7-11, 202:10:12.* In fact, Plaintiff's expert has never
7 performed any CPO inspection for any dealership. *Avellini Depo., 21:23-25.* Thus, there is
8 no evidence that Defendant made any misrepresentations about the condition of the Vehicle,
9 mechanical or otherwise. Further, there is no evidence that Defendant "knowingly" made
10 any misrepresentations of any kind regarding the vehicle. As such, Defendant did not
11 engage in any deceptive trade practices pursuant to NRS 598.0923(c) or any other federal
12 regulation relating to the sale of goods.

15 **3. There are No Disputed Issues of Material Fact about Representations as**
16 **to the Source, Sponsorship, Approval or Certification of Goods for Sale**
17 **therefore Defendant did not violate NRS 598.0915(2).**

18 Plaintiff asserts that Defendant's advertisement states "only the finest late model
19 vehicles get certified" and because the Vehicle had previously sustained damage which had
20 been repaired, it could not possibly be one of the "finest late model vehicles." *See*
21 *Opposition, 19:26-20:8.* Firstly, an advertising phrase, such as "finest late model vehicles"
22 is non-actionable puffery. *See generally, Henderson v. Gruma Corp., 2011 U.S. Dist.*
23 *LEXIS 41077, see also, Summit Tech., Inc. v. High-Line Medical Instruments, Co., 933 F.*
24 *Supp. 918, 931 (C.D. Cal 1996) (finding a statement that is "incapable of objective*
25 *verification" cannot be expected to induce reasonable consumer reliance).* Here, there is no
26 objective verification of the term "finest." The advertisement does not say that each and
27 every certified vehicle will be free from accidents or previous damage of any kind. And,
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 indeed, a used car is very plainly not a new car and not subject to the same expectations that
2 any consumer may have for a new car. As to the extent that, such a phrase imparts fact by
3 stating "late model vehicles", there is no dispute that Plaintiff purchased a late model (at the
4 time) vehicle, with fewer than 7,000 miles, that had undergone Defendant's CPO process
5 and had been certified accordingly.
6

7 Plaintiff argues that Joshua Grant the "director of used car sales...could have easily
8 avoided selecting a vehicle for CPO certification that he knew had an known accident
9 history." (emphasis omitted). *Opposition*, 20:20-23. Again, there was no assertion that any
10 CPO late model vehicle would be pristine, or have had no repairs or accidents. Plaintiff was
11 informed at the time of purchase that his "fine late model vehicle" had in fact, been in an
12 accident. *See Exhibit 9 to MSJ*. Furthermore, Mr. Grant did not "select the vehicle" as a
13 CPO vehicle he submitted it for an inspection to determine whether it could be a CPO, and
14 performed all requisite steps to do so. *See MSJ*. Accordingly, based on the inspection by Mr.
15 Grant of the Allstate records, and the subsequent physical inspection by Ray Gongora, the
16 mechanic that performed the CPO inspection and reviewed the CarFax, the Vehicle was
17 then determined, in good faith, to be eligible as a CPO Vehicle. Plaintiff has provided no
18 actual evidence that these steps were not taken, or that the Vehicle was otherwise
19 uncertifiable for any other reason at the time of the sale in 2014.
20
21

22 Plaintiff is attempting to put forth a red herring, as Defendant did concede that
23 informing a consumer that a vehicle had been in a previous accident would be important for
24 a variety of reasons. However, Plaintiff is attempting to make specific details about precise
25 parts, which Plaintiff admittedly has no knowledge of, some type of material issue. Indeed,
26 Plaintiff's own First Amended Complaint, which was filed after Plaintiff had taken
27 depositions and discovery in this matter still provided no specific facts that would
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 demonstrate Defendant had engaged in deceptive trade practices.

2 Although not within his initial Complaint, or First Amended Complaint, and not
3 specifically referenced as a safety issue in Plaintiff's expert report, Plaintiff is now fixated
4 on an alleged "safety" issue with a possible "reconditioned" wheel. *See Opposition, 21:2-*
5 *22:15.* Plaintiff hinges this on a "position statement" regarding reconditioned wheels found
6 on the internet. *Id.* However, the document on which Plaintiff relies is a position statement,
7 not an actual requirement and it specifically states a reconditioned wheel is "not
8 recommended" not that it is impermissible for another body shop to use or that the presence
9 of such a wheel bars certification as a CPO vehicle. *See Exhibit 8 to Plaintiff's Opposition.*
10 It is not Defendant that performed any of the repairs on the Vehicle. Further, if the Court
11 were to rely upon this assertion then Plaintiff is alleging that both Allstate insurance
12 company and Universal Motorcars authorized and performed repairs which presented an
13 imminent safety threat or hazard. Ironically, even Plaintiff's own "expert" admitted he
14 would put "reconditioned" wheels on to vehicles that he repaired. *Avellini Depo., 213:21-*
15 *14:4.* Plaintiff is attempting to generate issues of material fact, when there are none.

16 Plaintiff has yet to produce any conclusive admissible evidence that the Vehicle had
17 been in a condition that precluded it from being properly certified as a CPO. Indeed,
18 Plaintiff's own expert said he did not conduct any tests on the allegedly "unsafe" wheel, he
19 did not even remove the wheel to examine it, additionally, he never put it on a frame rack or
20 took any measurements to determine whether there were actually frame issues in 2016 or
21 whether distances he observed were otherwise within acceptable manufacturing tolerances.
22 *Avellini Depo., 93:17-25, 202:10-12, 17-23.* Defendant did not make any misrepresentations
23 about the Approval or Certification of the Vehicle and as such, did not engage in a deceptive
24 trade practice. As such, Defendant is entitled to a judgment as a matter of law as to
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26
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MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Plaintiff's claim that Defendant violated NRS § 598.0915(2).

2 **4. Plaintiff Fails to Specifically Address How Defendant Engaged in Violations**
3 **of 598.0915 (7), or How Defendant Violated NRS 598.0915(15).**

4 Plaintiff's First Amended Complaint contends that Defendant somehow engaged in
5 statutory consumer fraud/deceptive trade practices pursuant to NRS §41.600(2)(e) and NRS
6 598.0915(7) by allegedly knowingly representing falsely that the Vehicle for sale to Plaintiff
7 was of a particular standard, quality or grade, style or model. See First Amended Complaint
8 at 13. Defendant informed Plaintiff that he was purchasing a used vehicle that had
9 experienced an accident in which damage was reported and from which it was towed. *See*
10 *Exhibit 9 to MSJ*. This is exactly the vehicle that Plaintiff signed for, purchased, and drove
11 for three years. *See generally MSJ*. Plaintiff's First Amended Complaint actually does not
12 identify the allegedly false representation knowingly made to Plaintiff by Defendant that
13 constitutes a deceptive trade practice under NRS 598.0915(7). *See Id. at 10-12*.

14
15
16 Regardless, no evidence exists in this matter that establishes that the standard,
17 quality, or grade of the Vehicle was anything other than CPO at the time Plaintiff purchased
18 the Vehicle from Defendant. *Cf. supra*. Plaintiff does not allege and no evidence exists that
19 Defendant did not perform the required 125-point inspection of the Vehicle before certifying
20 the Vehicle as a CPO. Plaintiff does not allege and no evidence exists that demonstrates the
21 Vehicle failed its 125-point inspection and Defendant certified the Vehicle as CPO
22 regardless of this failure. *See Id.*

23
24 The only admissible evidence that exists demonstrates that the Vehicle was
25 inspected and accordingly certified as a CPO vehicle at the time Plaintiff purchased it. *See*
26 *infra*. Defendant's representative, Josh Grant, testified that he thoroughly reviewed all
27 information he received to determine whether the Vehicle was suitable to be considered as a
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 CPO before it was sold to Plaintiff. *See MSJ UF 2*. Based upon his inspection, mechanic
2 Ray Gongora, signed a CPO inspection checklist, certifying the Vehicle as a CPO. *Id.*,
3 *MSJ- Exhibit 5, 38:18-39:2*. Defendant could not, and did not knowingly make a false
4 representation about the certification of the Vehicle, or otherwise falsely certified it, prior to
5 it being sold to Plaintiff. Defendant had a sufficient basis for making the representation that
6 the Vehicle was suitable for CPO. *See supra. Blanchard*. Accordingly, Defendant had a
7 reasonable basis for representing that the Vehicle met CPO standards.

9 Defendant had the Vehicle inspected and had a sufficient basis for making the
10 representation that the Vehicle was suitable for CPO. *See supra., Blanchard*. As such, it is
11 clear that Defendant could not, and did not knowingly make a false representation about the
12 certification of the Vehicle, or otherwise falsely certify its condition, or falsely represent
13 that the Vehicle met the Chrysler standards that were checked on the CPO checklist.

15 Plaintiff thoroughly fails to identify any misrepresentations that would fall into his
16 allegations that Defendant violated NRS 598.0915(15), which is the catchall for any other
17 misrepresentations which were not necessarily encompassed by the other specified
18 misrepresentations of NRS 598. Clearly by neglecting this portion of the statute within his
19 Opposition, Plaintiff is conceding any allegations made by Plaintiff regarding purported
20 misrepresentations by Defendant are encompassed wholly in the other specifically defined
21 “deceptive trade practice” definitions in the other sections of NRS 598.0915 as alleged in
22 the First Amended Complaint. *Id.* Therefore, Plaintiff does not have a claim that Defendant
23 engaged in “deceptive trade practice” pursuant to 598.015(15).

26 **D. Plaintiff’s Cause of Action for Rescission Fails as a Matter of Law, Because He**
27 **Fails to Meet the Elements of that Claim, and Fails to Establish Any Disputed**
28 **Material Facts that Preclude Summary Judgment on this Claim.**

Plaintiff entirely ignores the main case cited by Plaintiff, of *Scaffidi v. Nissan*, which



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 similarly to Plaintiff's claims also alleged a claim under the NDTA, and one for Deceit.
2 Plaintiff is not entitled to Rescission because Defendant did not engage in any "deceptive
3 trade practices" therefore, he is not permitted a return of all of his payments. "Rescission is
4 an equitable remedy which totally abrogates a contract and which seeks to place the parties
5 in the position they occupied prior to executing the contract." *Scaffidi v. United Nissan*, 425
6 F. Supp. 2d 1172, 1183 (2005) citing *Bergstrom v. Estate of DeVoe*, 109 Nev. 575, 854 P.2d
7 860, 861 (Nev. 1993). Where a contract between two parties has been partially performed,
8 and one party does not fully perform, the other has a choice of remedies. *Id.* Here, Plaintiff
9 and Defendant cannot be put in the same position they occupied prior to executing the
10 contract. Furthermore, as in *Scaffidi*, "[T]here is no evidence Defendants made a false
11 representation...with the intention to induce" Plaintiff to purchase a "defective car." *See*
12 *Scaffidi, supra*. There is no evidence that Defendants knew or even should have known that
13 there were defects in the Vehicle, or that there were any problems which should have been
14 disclosed to Plaintiff, aside from the simple fact that the Vehicle had been in an accident.
15 *See Opposition and Exhibits*. Additional support for this fact is that the Vehicle had no
16 actual adverse issues, did not require repairs, and Plaintiff made no warranty claims during
17 the three years he drove it. *See MSJ-UFs 16-18*.

21 "The law is clear that damages and restitution are alternative remedies and an
22 election to pursue one is a bar to invoking the other in a suit for breach of contract. *Mullinix*
23 *v. Morse*, 81 Nev. 451, 454, 406 P.2d 298, 300 (1965). Plaintiff must, "rescind or affirm the
24 contract, but he cannot do both. If he would rescind it, he must immediately return whatever
25 of value he has received under it, and then he may defend against an action for specific
26 performance . . . and he may recover back whatever he has paid..." *Scaffidi v. United*
27 *Nissan*, 425 F. Supp. 2d 1172, 1183 (2005)(internal citation omitted)(emphasis added).
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Here, despite any “notice” of rescission per the Complaint, Plaintiff continued to utilize the
2 Vehicle for three years and put thousands of miles on the Vehicle, and got into an accident.
3 *UFs 23-25.*

4 Plaintiff is not entitled to Rescission, because the parties can never be put back into
5 their original position. *See generally, Id.* In *Scaffidi*, the Court found that summary
6 judgment was appropriate for that defendant dealership because the plaintiff did not provide
7 evidence that the defendant failed to perform, and the vehicle at issue in that case was
8 totaled. *Id.* Furthermore, there are no triable issues of material fact regarding Plaintiff’s
9 entry into the contract, as there was no fraud in the inducement, and Plaintiff has not
10 adequately plead or introduced evidence of either. Plaintiff entered into the contract
11 knowing that the Vehicle had been in an accident. There is no evidence that the introduction
12 of additional information regarding specific parts or monetary amounts spent on repair in an
13 insurance estimate would have put Plaintiff on any other course.

14 Summary judgment is appropriate, because Plaintiff has not produced any
15 admissible evidence that Defendant actually engaged in any “deceptive trade practice” and
16 the Vehicle has had an additional accident, repair work, and three additional years of use. As
17 such, Plaintiff has failed to meet the requisites for a claim for rescission (sounding in either
18 tort or contract), and as there are no material facts in dispute as to this claim, summary
19 judgment for Defendant is appropriate, as a matter of law.

20 **E. Plaintiff Fails to Satisfy the Requisites of Equitable Estoppel, therefore his**
21 **Claim Fails as a Matter of Law.**

22 As Plaintiff acknowledges, "equitable estoppel operates to prevent a party from
23 asserting legal rights that, in equity and good conscience, they should not be allowed to
24 assert because of their conduct." *Nevada State Bank v. Jamison Partnership*, 106 Nev. 792,
25



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 799, 801 P.2d 1377, 1382 (1990). The elements of estoppel are as follows:

2 (1) the party to be estopped must be apprised of the true facts; (2) he
3 must intend that his conduct shall be acted upon or must so act that the
4 party asserting estoppel has the right to believe it was so intended; (3)
5 the party asserting estoppel must be ignorant of the true state of facts; (4)
6 he must have relied to his detriment on the conduct of the party to be
7 estopped.

8 *NGA #2 Ltd. Liab. Co. v. Rains*, 113 Nev. 1151, 1160 (1997)(internal citation
9 omitted). There are no material facts in dispute regarding Defendant's actual conduct, with
10 respect to estoppel. Defendant admitted that it had no recollection of whether it disclosed
11 details regarding which specific parts may have been repaired or replaced on the Vehicle to
12 the mechanic who performed the inspection or to the Plaintiff. However, all parties agree
13 that Defendant did affirmatively disclose to both the inspecting mechanic and the Plaintiff,
14 that the Vehicle had been in a wreck, from which it was towed, and that it had sustained
15 damage. *See Exhibit 9 to MSJ, see also Plaintiff's Response.*

16 Regardless of Plaintiff's self-serving allegations about whether the details of
17 specific parts were "material" to his decision to purchase the Vehicle, he has still failed to
18 provide evidence that Defendant conducted itself in a way that precludes it from asserting its
19 all of its legal rights and defenses. *See generally FAC.* Plaintiff was informed that the
20 Vehicle was in a previous accident and made no investigation into the nature and extent of
21 the accident at the time of purchase. *See Exhibit 7 to MSJ.* Josh Grant testified to reviewing
22 the Allstate documents and not seeing anything that would preclude the Vehicle from being
23 submitted for a CPO inspection. *See MSJ- UF 3.* Accordingly, there is no evidence that
24 Defendant intended to fraudulently, either by affirmative representation or silence, induce
25 Plaintiff to act in a way that would be detrimental to him. Again, there is no evidence of
26 intentional and knowing misconduct.



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Plaintiff still has produced no evidence, aside from his own self-serving testimony
2 that he relied on Defendant's representations to his "detriment." *See Opposition and*
3 *Exhibits thereto*. However, Plaintiff continuously drove his car for 3 years without any
4 incident or repair attributable to any of Defendant's conduct affirmative or otherwise.
5

6 Accordingly, summary judgment is appropriate with respect to this claim.

7 **F. Defendant is Entitled to Summary Judgment on Plaintiff's Claim for**
8 **Restitution/Unjust Enrichment Because He Fails to Meet the Requisites**
9 **for his Claim.**

10 Plaintiff's only claim of damages for his unjust enrichment/restitution is the return of
11 his payments on the Vehicle. However, Plaintiff continuously neglects to take into account
12 that he has been utilizing the Vehicle for over 3 years, and thousands of miles, since he
13 purchased it. As such, there is no equitable relief he is entitled to recover. He already
14 received the benefit of the bargain.

15 Plaintiff's First Amended Complaint alleges both a statutory and common law claim
16 for Restitution and Unjust Enrichment and as discussed in Defendants' MSJ fails to meet the
17 basic requisites for a claim for unjust enrichment and thus it fails as a matter of law.
18 Regardless of Plaintiff's argument that he is seeking the amount Defendants have been
19 "unjustly" enriched, such relief still must be equitable. "[U]njust enrichment occurs
20 whenever a person has and retains a benefit which in equity and good conscience belongs to
21 another." *In re Amaro Derivative Litig.*, 252 P.3d 681 (Nev. 2011)(internal citation omitted).
22

23 Here, Plaintiff paid monthly payments on the Vehicle, which he used and/or had the
24 ability to use, from the time of his purchase through the time of filing his Complaint, and
25 past that date. *See generally, FAC, Exhibit 7 to MSJ, 20:24-21:3*. Plaintiff neither ceased
26 using the Vehicle (aside from the collision he was in), nor sold it or attempted to sell it. *Id.*,
27 *Exhibit 7, 83:8-21*. Plaintiff's claim for unjust enrichment fails, on its face, because he has a
28



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 full and adequate remedy at law, which would include his damages, which are the same as
2 what he is claiming would be the “unjustly” retained amount by Defendants. Plaintiff had a
3 purchase agreement for the Vehicle with Defendant, and Plaintiff obtained and utilized the
4 Vehicle for two (2) years prior to filing his Complaint and continued to use the Vehicle after
5 he filed his Complaint for another year. *See MSJ, UFs 22-24.*

7 Plaintiff was not injured by the Vehicle, and did not sustain other “damages” aside
8 from what he paid for the Vehicle that he has been using actively for 3 years. As such,
9 Defendant has not been unjustly enriched, as it has only been paid for Plaintiff’s usage and
10 ownership for the car to-date, and is not inequitably retaining any “benefit” that belongs to
11 Plaintiff. There is no evidence that Defendant did not take into account the Vehicle’s history
12 prior to pricing the Vehicle for sale, and pursuant to the CPO certification. *See Opposition.*
13 And, Plaintiff’s “expert” opined the untenable opinion that no matter what price was
14 assigned to the Vehicle on the day Mr. Poole purchased it, it was “inherently worth \$8,000
15 less that day.” *Avellini Depo. 182:18-22.* As such, Plaintiff, in essence arbitrarily assigned a
16 value, “no matter what he paid for the Vehicle”, for his damages. Plaintiff did not actually
17 “suffer” these damages nor were they imposed on him. It is contrary to equitable relief to
18 attempt to compensate Plaintiff on that basis for more than he actually can prove as
19 damages.
20

22 Nevada still maintains the long-standing general rule that a plaintiff may not recover
23 equitable remedies where a plaintiff has a full and adequate remedy at law. *See State v.*
24 *Second Judicial Dist. Court in & for Washoe County*, 49 Nev. 145, 159, 241 P. 317, 322
25 (1925). Since Plaintiff has an express agreement with Defendant regarding the purchase of
26 the Vehicle, his claims in equity fail, as a matter of law. *See MSJ, UF 8.* Therefore, entry of
27 summary judgment is appropriate for Defendant.
28



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 **G. Plaintiff's Claim for Declaratory Judgment is Duplicative, Thus**
2 **Summary Judgment is Appropriate.**

3 Plaintiff alleges that he entered into the RISC contract with Defendant and Wells
4 Fargo, and further alleges that he is entitled to Rescission and/or Restitution because the
5 RISC is void ab initio or voidable, due to "fraud". Defendant maintains that the RISC is
6 valid and binding contract, from which Plaintiff benefitted and abided by, and that Plaintiff
7 accepted and utilized the full value for which he agreed, including up until the present.
8

9 Here, the "justifiable controversy" stems from Plaintiff's First Cause of Action for
10 Fraud/Deceptive Trade Practices only, the actual RISC itself and the Parties' respective
11 positions are not what is actually at issue. Plaintiff's claim for Declaratory Judgment
12 therefore completely encompasses claims and defenses of both, Plaintiff and Defendant,
13 which would be resolvable ultimately at the time of trial (or pursuant to summary
14 judgment). *See FAC*. Plaintiff has already alleged a claim for Rescission, and thus his claim
15 for declaratory judgment claim is redundant and rendered moot by adjudication of the main
16 action. *See FAC*. The main premise of Declaratory Relief cause of action is solely related to
17 the other claims, upon which the voiding of the RISC is dependent. As such, a determination
18 on the RISC is inappropriate at this juncture and summary judgment is properly entered in
19 favor of Defendant.
20
21

22 **H. Plaintiff is Not Entitled to Punitive Damages, as a Matter of Law.**

23 Plaintiff cannot prevail on his punitive damages claim under Nevada law, pursuant to
24 the undisputed material facts, and it must be summarily dismissed. Unlike the standard for
25 some of Plaintiff's other supposed claims, in order to prevail on a claim for punitive
26 damages, a plaintiff must prove "by clear and convincing evidence" the defendant "has been
27 guilty of oppression, fraud or malice, express or implied." *Nev. Rev. Stat.* 42.005(1). To
28



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 reiterate, "a plaintiff is never entitled to punitive damages as a matter of right." *Dillard*
2 *Dep't Stores, Inc. v. Beckwith*, 115 Nev. 372, 380, 989 P.2d 882, 887 (1999). Nevada
3 corporations cannot be held liable for punitive damages, save for specific circumstances
4 with a high burden of proof. *See N.R.S. 42.007*. The employer is not liable for the exemplary
5 or punitive damages unless:

7 (a) The employer had advance knowledge that the employee was unfit
8 for the purposes of the employment and employed the employee
9 with a conscious disregard of the rights or safety of others;

9 (b) The employer expressly authorized or ratified the wrongful act of
10 the employee for which the damages are awarded; or

10 (c) The employer is personally guilty of oppression, fraud or malice,
11 express or implied.

12 If the employer is a corporation, the employer is not liable for exemplary or
13 punitive damages unless the elements of paragraph (a), (b) or (c) are met by an
14 officer, director or managing agent of the corporation who was expressly
15 authorized to direct or ratify the employee's conduct on behalf of the
16 corporation.

15 *See also Countrywide Homes Loans, Inc. v. Thitchener*, 124 Nev. 725, 747, 192 P.3d 243,
16 257-258. Notably in Plaintiff's Opposition is the first time he tries to impute "personal"
17 allegations against Joshua Grant. Further, NRS 42.001 defines, and provides clear guidance
18 in defining the conduct that meets the level of egregiousness requisite to impose punitive
19 damages. Specifically,

- 21 1. "Conscious disregard" means the knowledge of the probable harmful
22 consequences of a wrongful act and a willful and deliberate failure to act
23 to avoid those consequences.
- 24 2. "Fraud" means an intentional misrepresentation, deception or concealment
25 of a material fact known to the person with the intent to deprive
26 another person of his or her rights or property or to otherwise injure
27 another person.
- 28 3. "Malice, express or implied" means conduct which is intended to
injure a person or despicable conduct which is engaged in with a
conscious disregard of the rights or safety of others.
4. "Oppression" means despicable conduct that subjects a person to cruel
and unjust hardship with conscious disregard of the rights of the
person. *NRS 42.001*.



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 The Supreme Court of Nevada has clarified recklessness or even gross negligence is
2 insufficient to impose punitive damages, and there must be more than a “theoretical” risk of
3 harm to a particular person. *See Thitchener*, 192 P.3d at 255. Plaintiff has plainly failed to
4 plead allegations to impose punitive damages on Defendant as a company, or to provide any
5 evidence that imposes any personal liability on Joshua Grant. *See generally, FAC*. Plaintiff
6 has not provided evidence of any of the categories delineated in 42.007(a)-(c). There was no
7 unfitness by any employee alleged. Plaintiff does not allege that the employer “expressly
8 authorized or ratified” any legally wrongful act. Plaintiff does not provide any actual
9 admissible evidence that Defendant, via Joshua Grant, engaged in any “deceptive trade
10 practice”, or that there was some underlying scheme to otherwise misrepresent information
11 or defraud persons by following the CPO guidelines. Therefore there is no evidence that
12 demonstrates any of the requisite conduct to impose punitive damages on the Defendant.

15 Plaintiff’s testimony and “evidence” is purely speculative, and unsubstantiated
16 testimony that he would not had purchased the Vehicle if he had been provided more
17 information years after purchasing it, is merely speculation and conjecture, which is
18 insufficient to defeat summary judgment. *See Wood*, 121 Nev. at 732. Any testimony by his
19 expert based on an inspection two years after Plaintiff drove it, is equally conjecture, as he
20 provided no actual measurements or comparisons, or other proof regarding any frame
21 damage nor is he otherwise qualified to opine on whether the Vehicle should have qualified
22 as a CPO vehicle. *See generally, MSJ, Exhibit 11*. There is no evidence that Defendant itself
23 is guilty of conduct meriting punitive damages, as by all accounts, Defendant abided by
24 CPO standards of submitting the Vehicle for inspection to its qualified mechanic, and then
25 certifying the Vehicle which was reasonably based on that inspection. *See MSJ, UFs 4-7*.

28 Plaintiff is now attempting to argue that Joshua Grant was the implementer and



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 creator of policies and practices that are somehow per se representative of Fraud and/or
2 implied malice. However, aside from Plaintiff's lacking First Amended Complaint, Plaintiff
3 fails to provide any actual evidence of conduct by Joshua Grant that meets the requisites for
4 an award of punitive damages. Plaintiff highlights "concealment of a material fact" and
5 tries to de-emphasize that such concealment must occur with the "intent to deprive another
6 person of his or her rights or proper or to otherwise injure a person." *See Opposition 36:11-*
7 *13; see also, NRS 41.001(2).*

9 Here, Plaintiff has provided no evidence of intent by Joshua Grant to deprive
10 anyone of their rights or to otherwise injure someone, in particular, not Plaintiff. *See*
11 *generally, Opposition.* Indeed, Plaintiff continuously neglects to account for the extra
12 warranties and assurances that also accompany a CPO vehicle, and which accompanied the
13 subject Vehicle. *See MSJ, UF 15.* In fact, Joshua Grant testified he did not disclose any
14 additional details because such a disclosure was not required pursuant to CPO guidelines
15 and he did not see any issues that would preclude the Vehicle from being submitted to a
16 CPO inspection. *See MSJ, UFs 3-4, see also Exhibit 4- Excerpt of Joshua Grant Deposition,*
17 *30:2-10, 142:5-23.* Further, there was an inspection of the Vehicle by Ray Gongora that also
18 revealed no safety issues or other serious issues which would require an additional
19 disclosure beyond the fact that the Vehicle was in an accident. *See generally, MSJ.*

22 Plaintiff argues that there needs to be no "actual knowledge" if there is a reasonable
23 inference of implied malice. *Opposition, 39:20-22.* However, as the Nevada Supreme Court
24 has held, the statutory "language plainly requires evidence that a defendant acted with a
25 culpable state of mind, we conclude that NRS 42.001(1) denotes conduct that, at a
26 minimum, must exceed mere recklessness or gross negligence. *Countrywide Home Loans,*
27 *Inc. v. Thitchener*, 124 Nev. 725, 743, 192 P.3d 243, 255, 2008 Nev. LEXIS 79, *33, 124
28



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Nev. Adv. Rep. 64.

2 Here, there is no evidence of a “culpable state of mind”, and Defendant, even
3 through Joshua Grant, did not have any indicators that there was any imminent safety
4 matter, as Plaintiff would have this Court believe. The Allstate documents do not on their
5 face indicate any risk or harm or injury, and in fact, these were authorized repairs performed
6 by a presumably licensed repair shop and authorized by an insurance company.
7 Accordingly, there is no indication that Joshua Grant acted with any conscious disregard or
8 implied malice. All of the allegations, if taken as true, would, at the very most amount to
9 reckless or grossly negligent behavior, which fails to meet the level of egregiousness
10 necessary to impose punitive damages. *Id.* Plaintiff has failed to make the requisite showing
11 for punitive damages, and any such any claim should be summarily dismissed.
12
13

14 **I. Plaintiff’s Claim for Recovery Under the Auto Dealership Bond, does Not**
15 **Satisfy the Requisites of that Claim, and therefore Fails as a Matter of Law.**

16 Plaintiff asserts a claim under NRS 482.345(7), which provides in pertinent part:

17 If a consumer has a claim for relief against a dealer, distributor, rebuilder,
18 manufacturer, representative or salesperson, the consumer may:

19 (a) Bring and maintain an action in any court of competent
20 jurisdiction. If the court enters:
21

22 (1) A judgment on the merits against the dealer, distributor, rebuilder,
23 manufacturer, representative or salesperson, the judgment is binding on the surety.

24 Here, this claim should be summarily dismissed, because the Court has not entered a
25 judgment on the merits against any “dealer, distributor, rebuilder, manufacturer,
26 representative or salesperson.” Plaintiff did not bring a claim for contribution and indemnity
27 against Corepointe. Plaintiff has definitively not obtained a judgment on the merits or a
28 judgment in any other capacity with respect to Defendant Corepointe, and his claims against



MORAN BRANDON
BEN DAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

1 Corepointe hinge on findings specifically with respect to the dealership. Therefore,
2 Corepointe should be entitled to summary dismissal on this claim, as it is premature, and
3 subject only to the entry of a judgment.

4
5 **VI. CONCLUSION**

6 Based on the underlying Motion for Summary Judgment, and the foregoing, Plaintiff
7 has failed to meet the requisites for any of his causes of action, therefore they each fail. The
8 simple undisputed material facts, merit summary judgment in favor of both Defendants, as a
9 matter of law, and as such, Defendants respectfully request that judgment be entered for
10 Defendants with respect to each of Plaintiff's claims.

11
12 DATED this 3rd day of November, 2017

13 **MORAN BRANDON BENDAVID MORAN**

14
15 /s/Jeffery A. Bendavid

16 **JEFFERY A. BENDAVID, ESQ.**

17 Nevada Bar No. 6220

18 **STEPHANIE J. SMITH, ESQ.**

19 Nevada Bar No. 11280

20 630 South 4th Street

21 Las Vegas, Nevada 89101

22 (702) 384-8424

23 Fax: (702) 384-6568

24 j.bendavid@moranlawfirm.com

25 s.smith@moranlawfirm.com

26 *Attorney for Defendants, Nevada Auto*

27 *Dealership Investments LLC d/b/a Sahara*

28 *Chrysler and Corepointe Insurance Co.*



MORAN BRANDON
BENDAVID MORAN
ATTORNEYS AT LAW

630 SOUTH 4TH STREET
LAS VEGAS, NEVADA 89101
PHONE: (702) 384-8424
FAX: (702) 384-6568

Exhibit “1”

DISTRICT COURT
CLARK COUNTY, NEVADA

DERRICK POOLE,)	
)	
Plaintiff,)	
)	
vs.)	No. A-16-737120-C
)	Dept. No. XXVII
NEVADA AUTO DEALERSHIP)	
INVESTMENTS, LLC, a)	
Nevada Limited Liability)	
Company d/b/a SAHARA)	
CHRYSLER, JEEP, DODGE,)	
WELLS FARGO DEALER)	
SERVICES, INC.,)	
COREPOINTE INSURANCE)	
COMPANY, and DOES 1)	
through 100, Inclusive,)	
)	
Defendants.)	
)	

VIDEOTAPED DEPOSITION OF RAY GONGORA

Taken on Wednesday, December 14, 2016
By a Certified Court Reporter
At 2:18 p.m.
At Thorndal, Armstrong
1100 East Bridger
Las Vegas, Nevada

Reported By: Cindy Huebner, CCR 806

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1 **A. No.**

2 **Q.** Why not?

3 **A. Because it is at a standard of the**
4 **vehicle. If it was bent, yes. If it is up to**
5 **standard, no.**

6 **Q.** Were you trained or -- were you trained
7 or did someone tell you that if a vehicle had
8 been in a previous accident but was properly
9 repaired, that did not have to be notated on the
10 report?

11 MR. TERRY: On his inspection report?

12 MR. WEST: Yes, on the inspection
13 report, Exhibit 1.

14 THE WITNESS: As far as -- can you
15 rephrase that?

16 BY MR. WEST:

17 **Q.** Sure.

18 In the normal custom and practice of
19 you conducting the 125-point CPO inspection in
20 Exhibit 1, if a car had indications that it was
21 in a previous accident based upon a series of
22 components and parts being replaced, were you
23 ever told or was it custom and practice for you
24 not to notate that on the report if the repair
25 was done correctly?

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1 **A. No. You didn't have to report it if it**
2 **was correctly. If it was shabby work, yes.**

3 **Q.** Who told you that, with respect to what
4 your protocol was, if you found work that was
5 either done properly or improperly with respect
6 to a previous accident?

7 **A. You deal with experience. If the work**
8 **wasn't up to standard, that is when you notate**
9 **it. If it was fine, it was fine.**

10 **Q.** So if there was a proper repair, it
11 wasn't something that was notated?

12 **A. Not notated.**

13 **Q.** If it was a proper repair, it was not
14 notated, correct?

15 **A. It was not notated.**

16 **Q.** Thank you.

17 MR. WEST: Let's go ahead and take a
18 quick five-minute potty break real quick.

19 (Recessed from 3:05 p.m. to 3:11
20 p.m.)

21 BY MR. WEST:

22 **Q.** Back on the record.

23 Going back and looking at Exhibit 2,
24 which is the body shop estimate, and in
25 conjunction with the vehicle inspection report

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1 and your usual customary way of conducting the
2 125-point inspection, with respect to the things
3 we talked about specifically on this report,
4 would you have been able to identify all of those
5 replaced parts upon your inspection?

6 **A. Yes.**

7 **Q.** And you had specific training, given
8 your vast experience, that you would be able to
9 identify those as replaced parts, correct?

10 **A. To the point if the stickers were left**
11 **on them and up to that point if -- if it is up to**
12 **a standard, that's -- it's up to a standard. But**
13 **if you were to look at a vehicle and parts were**
14 **replaced, usually it has new part stickers on**
15 **them and that's up to standard. They have been**
16 **replaced.**

17 **Q.** If you will look at Exhibit 1 which is
18 a certified pre-owned, up on Page 1, it says
19 CarFax report Item 9 checked off. You would have
20 had the CarFax report in your possession before
21 you did the inspection, that's why you checked it
22 off, correct?

23 **A. I believe so.**

24 **Q.** Was that -- I understand you don't have
25 any personal recollection, so I totally get why

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1 you have to go on "this is what I would do all
2 the time." I mean, you don't have any personal
3 recollection. So based upon your custom and
4 practice as you know it to be when you did these
5 inspections, would it be your custom and
6 practice, based on your recollections, to always
7 look at the CarFax before you did the inspection?

8 **A. Yes.**

9 **Q.** And that's the prudent thing to do,
10 correct?

11 **A. Yes.**

12 **Q.** And if the CarFax report that you
13 looked at in this particular -- with respect to
14 this particular vehicle would indicate the car
15 was in an accident, it was towed, would that be
16 an important fact for you in determining -- as to
17 looking at the vehicle in a different way than
18 you otherwise would if there was a clean CarFax?

19 **A. No, not necessarily.**

20 **Q.** You as a mechanic, would you want to be
21 given a heightened awareness or put on alert if a
22 vehicle was in a previous accident if you are
23 going to conduct a safety inspection? You would
24 want that information?

25 **A. Yes. I would have to say yes.**

HUEBNER COURT REPORTING, INC. (702) 374-2319

Exhibit “2”

Poole v. Nevada Auto Dealership Investments LLC, et al.

Deposition of:
Derrick Poole

August 14, 2017



WESTERN REPORTING
SERVICES, INC.

500 South Rancho Drive, Suite 8A
Las Vegas, Nevada 89106
Telephone **702.474.6255**
Facsimile 702.474.6257

www.westernreportingservices.com

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3

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 DERRICK POOLE,)
5 Plaintiff,)
6 vs.) Case No. A-16-737120-C
7)
8 NEVADA AUTO DEALERSHIP)
9 INVESTMENTS LLC, a Nevada)
10 Limited Liability Company d/b/a)
11 SAHARA CHRYSLER; JEEP, DODGE,)
12 WELLS FARGO DEALER SERVICES)
13 INC., COREPOINT INSURANCE)
14 COMPANY; and DOES 1 through)
15 100, Inclusive,)
16)
17 Defendant.)

16 DEPOSITION OF DERRICK POOLE
17 Taken on Monday, August 14, 2017
18 At 9:34 a.m.
19 At 630 South Fourth Street
20 Las Vegas, Nevada

25 Reported by: Mamita J. Goddard, RPR, CCR No. 344

EXHIBITS		
Number	Description	Page
Ex. 1	Carfax	17
Ex. 2	Certified Pre-owned Vehicle Inspection Checklist	41
Ex. 3	Certified Pre-owned Vehicle Delivery Check Sheet	46
Ex. 4	Disbursement Request Form	65
Ex. 5	Complaint for Damages and Equitable and Declaratory Relief and Demand for Jury Trial	71
Ex. 6	Plaintiff's Sixth Supplement [Corrected]	79
Ex. 7	Arbitration Agreement	80
Ex. 8	Buyers Guide	81

2

4

1 APPEARANCES

2 FOR THE PLAINTIFF:
3 GEORGE O. WEST III, ESQ
4 ATTORNEY AT LAW
5 10161 Park Run Drive
6 Suite 150
7 Las Vegas, Nevada 89145
8 FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS LLC:
9 STEPHANIE J. SMITH, ESQ
10 MORAN BRANDON BENDAVID MORAN
11 630 South Fourth Street
12 Las Vegas, Nevada 89101
13 FOR DEFENDANT WELLS FARGO DEALER SERVICES INC.:
14 MICHAEL PARETTI, ESQ.
15 SNELL & WILMER LLP
16 3883 Howard Hughes Parkway
17 Suite 1100
18 Las Vegas, Nevada 89169

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(BY MR. WEST)	90

1 (Upon inquiry by the reporter prior to the
2 commencement of the proceedings, Counsel present
3 agreed to waive the reporter requirements as set
4 forth in NRCP 30(b)(4) or FRCP (b)(5), as
5 applicable.)

6 DERRICK POOLE,
7 having been first duly sworn, was
8 examined and testified as follows:
9 EXAMINATION

10 BY MS. SMITH:

11 Q. Hi, Mr. Poole.

12 A. Hi.

13 Q. We met previously, but my name is Stephanie
14 Smith. I'm here on behalf of Nevada Auto Dealership
15 Investments, LLC. I think you would more commonly
16 know them as Sahara Chrysler, Jeep, Dodge, Ram.

17 A. Yes, ma'am.

18 Q. When I say "defendant," I'll be referring to
19 that entity. Does that make sense?

20 A. Yes, ma'am.

21 Q. I may also refer to them as Nevada Auto or
22 Sahara Chrysler. Is that all right?

23 A. Yes, ma'am.

24 Q. Okay. I'm also representing Corepointe
25 Insurance, and I likely will not be referring to them,

37

1 as you know, has that been fully repaired?
 2 A. Yes, it has.
 3 Q. Do you know when you were informed of an
 4 issue with the left wheel?
 5 A. Do I know when?
 6 Q. Yes.
 7 A. Yesterday.
 8 Q. Yesterday?
 9 A. Uh-huh.
 10 Q. Do you know the last time that your vehicle
 11 was inspected?
 12 A. Prior to the subsequent accident?
 13 Q. By anyone.
 14 A. I guess when they looked at it during this
 15 past accident. I don't know the exact date.
 16 Q. What about prior to that?
 17 A. It was when the lawyer before you guys had
 18 it inspected at 215 Dodge.
 19 Q. Do you intend on purchasing another vehicle?
 20 A. In the future?
 21 Q. Yes.
 22 A. Yes.
 23 Q. Are you planning on purchasing another
 24 vehicle in the next six months?
 25 A. I don't know. I have no plans as of right

39

1 35 and 36?
 2 A. I don't know. I never got to look.
 3 Q. You didn't test drive any new trucks?
 4 A. No.
 5 Q. Why is that?
 6 A. He talked me into looking at the used ones.
 7 Q. When you were driving your vehicle, did you
 8 ever notice any issues personally when you were
 9 driving it?
 10 MR. WEST: Let me just object to the extent
 11 of time.
 12 You can answer.
 13 THE WITNESS: No. I mean, I felt -- I
 14 always felt that it handled a little bit differently.
 15 But every vehicle handles differently than the other.
 16 Q. (BY MS. SMITH) So no issues in 2014?
 17 A. No.
 18 Q. What about in 2015?
 19 A. No.
 20 Q. What about in 2016?
 21 A. No. Not that I recall.
 22 Q. Nothing occurred that caused you to take it
 23 in possibly for tire check?
 24 A. No.
 25 Q. Any kind of alignment?

38

1 now, no.
 2 Q. Before you went in to Sahara Chrysler, did
 3 you do any online research of other car dealerships?
 4 A. Not so much research. I might have just
 5 looked at vehicles online trying to find exactly what
 6 I wanted. Looking at all the different options,
 7 basically.
 8 Q. Did you have a specific price range you
 9 wanted to be in?
 10 A. I did. I don't remember exactly the number,
 11 but it was below, I think, 33,000 or 34,000 or
 12 something. I think I was approved through Capital One
 13 for 35 or 36. I don't recall. But I still wanted to
 14 be lower than that. I didn't want to use the whole
 15 thing.
 16 Q. What types of trucks that were brand new
 17 fall into that type of price range? Do you recall?
 18 A. I don't.
 19 Q. Anything that you had your eye on when you
 20 had gone down to Sahara Chrysler aside from just
 21 trucks generally?
 22 A. Just a Dodge Ram. King cab. Looking at the
 23 hemi motor.
 24 Q. Would you have been able to purchase a
 25 brand-new Dodge Ram with the good motor for between

40

1 A. No. I was just told at 215 Dodge when I
 2 went for the oil change that it was out of alignment.
 3 So I had them do the alignment.
 4 Q. When 215 Dodge did the alignment, did they
 5 say anything to you about your vehicle?
 6 A. No.
 7 Q. Did they mention any issues to you about
 8 your vehicle?
 9 A. Other than the alignment, no.
 10 Q. Do you know if they did any kind of a check
 11 on your vehicle?
 12 A. I don't know. At that time, I don't know.
 13 Other than the oil change and the alignment, I don't
 14 know of anything else they did.
 15 Q. You don't know if they did a multi-point
 16 inspection?
 17 A. If it was part of the service, I guess they
 18 did. I wasn't back there when they did it. I was in
 19 the waiting room.
 20 Q. Did they say -- I'm sorry.
 21 Did 215 Dodge say anything to you about why
 22 the truck might be out of alignment?
 23 A. No. I just assumed it was from being
 24 driven. Our roads in Vegas.
 25 Q. Did you ask them any questions about why it

57

1 Q. Okay. What was your interpretation of that
2 language?
3 A. Like I said, I would imagine that maybe the
4 tire got flat so they towed it.
5 Q. Flat tire?
6 A. Flat tire.
7 Q. From the accident?
8 A. Yes.
9 Q. Prior to trying to refinance your car the
10 last time with State Farm, did you have any complaints
11 about your vehicle?
12 A. No.
13 Q. Except for maybe the payment?
14 A. Except for maybe the payment.
15 Q. Do you think the vehicle you purchased was
16 appropriate to be a CPO vehicle?
17 A. No, I do not.
18 Q. Why is that?
19 A. Because of the extent of the damage and the
20 type of repairs that they did.
21 Q. Did you come to that conclusion
22 independently or with assistance from your expert?
23 A. Just by reading the estimate I wouldn't have
24 bought that as a CPO vehicle.
25 Q. Why is that?

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1 outside of manufacturer allowances?
2 A. Not that I know of.
3 Q. You didn't notice anything yourself?
4 A. No. I'm not an expert.
5 Q. When you personally looked at the vehicle,
6 you didn't notice that anything was amiss?
7 A. No. I wouldn't know what to look for.
8 Other than apparent signs of damage. I wouldn't know
9 what to look for as far as anything under the hood.
10 Q. Did you ever ask to speak to a CPO
11 technician?
12 A. No.
13 Q. Why is that?
14 A. I don't know why I would. The inspection
15 report was right there. I don't know what I would ask
16 him. I'm not an expert.
17 Q. When you say "inspection report," do you
18 mean the CPO checklist?
19 A. Yes.
20 MR. WEST: For the record, that's Exhibit 2.
21 Q. (BY MS. SMITH) Okay. When you pulled your
22 AutoCheck report and you looked at it and thought it
23 indicated some kind of extra damage that you didn't
24 know about, did you take that into anyone and ask them
25 about the language you were reading?

58

1 A. The extent of the damage. There was
2 something -- like I said, I'm not a mechanic, but
3 there's something that says frame bracket or something
4 repaired. I would have walked away from that vehicle
5 from that point. I'm not going to look to buy a CPO
6 vehicle that has any type of frame issue or anything
7 like that. Who would do that?
8 Q. But it's your belief that that indicates
9 there was frame damage?
10 A. In my mind, yes.
11 Q. Did you ask anyone what that meant?
12 A. For what? On the estimate?
13 Q. Yes.
14 A. No, I haven't. I haven't had any
15 conversations with experts.
16 Q. Okay. Any other documents you rely upon to
17 make that assertion? Are you just going off of the --
18 A. Just my perception from the estimate and the
19 pictures.
20 Q. Are you aware of any items on your vehicle
21 not meeting manufacturer tolerances at the time of
22 your purchase?
23 A. I'm not aware of any of it. That would be a
24 question for the expert.
25 Q. To your knowledge, was there any that were

60

1 A. No, I didn't.
2 Q. Why not?
3 A. Because it stated that it was frame/unibody
4 damage.
5 Q. What is your understanding of what that
6 means?
7 A. Means unsafe, no value. Danger to the
8 community, basically.
9 Q. What do you base that opinion on?
10 A. Just my own perception.
11 Q. Did you experience a safety issue with your
12 vehicle personally?
13 A. No.
14 Q. Any harm to the community from your vehicle?
15 A. Not as of yet. But if that wheel falls
16 apart, there could be.
17 Q. And you were just told that there might be
18 an issue yesterday?
19 A. Yes. It was in the shop for two months, of
20 course.
21 Q. Who told you that there might be a left
22 wheel issue?
23 MR. WEST: Well, to the extent that it calls
24 for attorney-client privileged information, you can't
25 divulge that. If you got the information from an

13

1 A. Yes, I did.
 2 Q. What did you think about that?
 3 A. I liked the truck. I liked the interior.
 4 That was one of the things I liked about it. I liked
 5 the motor that was in it.
 6 Q. Did you pop the hood of the truck?
 7 A. I believe he opened it to show me. But I'm
 8 not really a mechanic. I don't really know anything
 9 about cars. All I know is I liked the motor.
 10 Q. Did you walk around the truck at all?
 11 A. Yes.
 12 Q. You looked at all of its specifications that
 13 you could see?
 14 A. On the window sticker. And then, you know,
 15 just visually looking at the interior. Like I said,
 16 I'm not really a mechanic or a car guy. So I don't
 17 really know when it comes to what I'm looking at as
 18 far as details and stuff.
 19 Q. What kind of vehicle did you have when you
 20 drove down to the dealership to look at trucks?
 21 A. It was a 2005 Dodge Durango. It had the
 22 hemi motor. That's why I was interested in the truck.
 23 Q. Is the Durango also a truck?
 24 A. It's an SUV.
 25 Q. Had you had trucks previously?

15

1 took a test drive. Do you recall what happened next?
 2 A. During the test drive or after the test
 3 drive?
 4 Q. Let's go with you during the test drive.
 5 A. He basically talked up the vehicle.
 6 Q. Okay. Anything in particular?
 7 A. Talked about the CPO, about the safety
 8 inspection that's done on it.
 9 Q. Were you happy with the way the vehicle
 10 drove?
 11 A. Yeah.
 12 MR. WEST: Yes?
 13 THE WITNESS: Yes. Sorry.
 14 Q. (BY MS. SMITH) Did you notice any issues?
 15 A. Not that I knew of, no.
 16 Q. Then after the test drive was over?
 17 A. During the test drive, he had mentioned that
 18 it was in a minor accident.
 19 Q. Okay. Anything else about that conversation
 20 that you can recall?
 21 A. I asked him about it, but he said it was a
 22 minor accident, that it was a CPO vehicle, and there
 23 was nothing to worry about.
 24 Q. That was the only discussion that you had
 25 about that?

14

1 A. I had in the past, yes.
 2 Q. How long had you had the Dodge Durango?
 3 A. I want to say four years maybe.
 4 Q. Do you remember where you bought that?
 5 A. I want to say it's Towbin in Henderson. Is
 6 that the chopper? Chopper, Towbin.
 7 Q. I'm not sure. There's so many commercials
 8 out there.
 9 When you bought that Dodge Durango, was that
 10 a new vehicle?
 11 A. No. It was used.
 12 Q. Do you know if that had any certification on
 13 it when you purchased it?
 14 A. I don't recall, to be honest with you.
 15 Q. Do you recall what you had before the Dodge
 16 Durango?
 17 A. Yes. I actually had two different vehicles.
 18 I had a pickup truck, 2002 Chevy, and I had a 2002
 19 Ford Taurus.
 20 Q. Were either of those purchased as new
 21 vehicles?
 22 A. No. Both used.
 23 Q. So you mostly purchase preowned vehicles?
 24 A. Yes.
 25 Q. So going back to the subject vehicle, you

16

1 A. Yes.
 2 Q. What about when the test drive ended?
 3 A. We went in to -- I guess on the sales floor
 4 to do the application.
 5 Q. Okay. And did you fill out paperwork that
 6 day?
 7 A. Yes, I did.
 8 Q. Were you approved to purchase that day?
 9 A. Yes, I was. I actually went in preapproved
 10 but still had to fill out an application.
 11 Q. When you say you went in preapproved, what
 12 do you mean by that?
 13 A. I did a preapproval with Capital One. So I
 14 had that with me when I went in.
 15 Q. When did you do that?
 16 A. Oh, geez. I actually probably had it for a
 17 couple months, because I had thought about it for a
 18 while. Kind of tossed around the idea of buying a new
 19 vehicle.
 20 Q. Had you looked at any other new or used
 21 vehicles prior to this subject vehicle?
 22 A. No.
 23 Q. Did you end up purchasing the vehicle that
 24 day, then?
 25 A. Yes, I did.

73

1 Q. You are referring to the checklist as a
 2 report?
 3 A. Yes, ma'am. There's an additional
 4 information comment box right here that they could
 5 have wrote in anything that was repaired or replaced.
 6 That would have been pertinent information for me to
 7 buy the vehicle.
 8 Q. If something -- why do you believe that
 9 would have been pertinent information for you?
 10 A. Because that would have been all the
 11 information regarding the accident that was -- for me
 12 to believe that it was a minor accident. I don't
 13 believe that that accident was a minor accident. That
 14 was a major accident. And the fact that there was a
 15 repaired frame bracket or something of that nature and
 16 a damaged wheel, things of that nature should have
 17 been divulged to me in that report. It takes away my
 18 choice to walk away from the vehicle with all the
 19 information, because I wasn't given all the
 20 information as I should have been.
 21 Q. Do you know what -- I believe you keep
 22 referring to a frame bracket; is that right?
 23 A. Yeah. I believe that's what I read on the
 24 estimate.
 25 Q. Do you know what that is?

75

1 wouldn't make any difference if I asked somebody what
 2 it is or not. I wasn't given the information when I
 3 bought the vehicle. So it took away my choice, my
 4 informed choice, of being able to buy the vehicle.
 5 All the information wasn't given to me.
 6 Q. Are you aware of any legal requirements that
 7 state a dealership has to tell you if any individual
 8 part was repaired or replaced?
 9 MR. WEST: Objection. Asked and answered
 10 for the third time. Asks for expert testimony.
 11 Actually, excuse me. Calls for a legal opinion. Pure
 12 legal opinion.
 13 THE WITNESS: I'm not aware of the legal.
 14 Is it the right thing to do? That's a different
 15 question.
 16 Q. (BY MS. SMITH) Do you want to further
 17 explain that statement?
 18 A. Well, I mean, it is a moral thing if you
 19 have all the information on something before you sell
 20 it to somebody that you should divulge all that
 21 information before you sell it to somebody. If you
 22 are telling them that it's a CPO'd, top-of-the-line,
 23 best-of-the-best car, quality and safety, but you
 24 leave out the fact that you have pictures and a report
 25 from an accident that it was in before that you led me

74

1 A. I have no idea what that is.
 2 Q. Do you know what it does?
 3 A. I have no idea what it does.
 4 Q. You've just testified to wheel -- the wheel
 5 being repaired or replaced.
 6 A. Uh-huh.
 7 Q. Can you expand on what you are referring to?
 8 A. Just that I would have -- as far as the
 9 repair?
 10 Q. Yes.
 11 A. I don't know what they did, to be honest
 12 with you. I just know it says repaired.
 13 Q. But you don't know what the repair was to
 14 the wheel?
 15 A. I do not.
 16 Q. When you reviewed the Allstate documents,
 17 did you know what any of those parts were?
 18 A. I know what a headlight is. I know bumpers,
 19 things like that. I really don't know what a lot of
 20 this stuff is, no.
 21 Q. Did you ask anyone about parts that you were
 22 unfamiliar with?
 23 A. No, I have not.
 24 Q. How come?
 25 A. It's not really pertinent at this time. It

76

1 to believe was minor, just not a very good human thing
 2 to do.
 3 Q. Do you know the cost of a comparable new
 4 truck had you purchased a new truck that day in May?
 5 A. I do not.
 6 Q. Don't recall any estimates of price?
 7 A. We never got that far.
 8 Q. You didn't look up any trucks prior to going
 9 down there?
 10 A. I just looked at vehicles online. I didn't
 11 look at anything specific as far as what the price was
 12 going to be.
 13 Q. The time you spent I believe looking at --
 14 briefly at the new trucks before making contact with
 15 the salesperson, you don't recall the pricing on any
 16 of those?
 17 A. I don't recall, no. I'm sure I was looking
 18 at the coolest, nicest vehicle on the lot that was
 19 probably -- probably would have been quite a bit more
 20 than I could afford. No, I don't recall the prices.
 21 Q. Do you have any estimate if they were more
 22 expensive or less expensive than the vehicle you ended
 23 up purchasing?
 24 A. I don't. No, I don't.
 25 Q. Is it your belief that your vehicle is worth

Exhibit “3”

Poole v. Nevada Auto Dealership Investments, LLC, et al.

Deposition of:
Rocco J. Avellini

September 22, 2017



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1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 DERRICK POOLE,)
5)
6 Plaintiff,)
7)
8 vs.) Case No. A-16-737120-C
9)
10 NEVADA AUTO DEALERSHIP)
11 INVESTMENTS LLC, a Nevada)
12 Limited Liability Company d/b/a)
13 SAHARA CHRYSLER, JEEP, DODGE,)
14 WELLS FARGO DEALER SERVICES)
15 INC., COREPOINTE INSURANCE)
16 COMPANY, and DOES 1 through)
17 100, Inclusive,)
18)
19 Defendants.)
20)
21)
22)
23)
24)
25)

16 DEPOSITION OF ROCCO J. AVELLINI
17 Taken on Friday, September 22, 2017
18 At 1:36 p.m.
19 At 630 South Fourth Street
20 Las Vegas, Nevada
21
22
23
24

25 Reported by: Marnita J. Goddard, RPR, CCR No. 344

1 A P P E A R A N C E S

2

3 FOR THE PLAINTIFF:

4 GEORGE O. WEST III, ESQ.

ATTORNEY AT LAW

5 10161 Park Run Drive

Suite 150

6 Las Vegas, Nevada 89145

7

8 FOR DEFENDANT NEVADA AUTO DEALERSHIP INVESTMENTS, LLC,

DOING BUSINESS AS SAHARA CHRYSLER, JEEP, DODGE, RAM,

9 AND COREPOINTE INSURANCE COMPANY:

10 STEPHANIE J. SMITH, ESQ.

MORAN BRANDON BENDAVID MORAN

11 630 South Fourth Street

Las Vegas, Nevada 89101

12

13

14

15 I N D E X

16 WITNESS

EXAMINATION

17 ROCCO J. AVELLINI:

18 (BY MS. SMITH)

4, 195, 217

19 (BY MR. WEST)

162, 214

20

21

22

23

24

25

1 Q. Yes.

2 A. No.

3 Q. Have you served for other plaintiffs on
4 certified pre-owned matters?

5 A. I believe I have, yes.

6 Q. Specifically, Chrysler, Dodge, Ram CPO --
7 I'm sorry.

8 When I say "CPO," I'm going to use that term
9 to refer to certified pre-owned. Are you comfortable
10 with that?

11 A. I am.

12 Q. So any matters in which you testified
13 specifically about Chrysler, Jeep, Dodge, Ram CPO
14 standards?

15 A. Off the top of my head, I do not know. If
16 you would like, I can go through the list that I have.

17 Q. No, that's okay. Just nothing you recall?

18 A. I have testified in CPO cases. I don't
19 remember if they were Chrysler or not.

20 Q. Have you ever been involved in developing
21 any CPO standards for any type of vehicle?

22 A. No.

23 Q. Have you performed any CPO inspections for
24 any dealership?

25 A. No. I viewed, but I didn't take part in.

1 certified pre-owned vehicle seller knew or -- sorry.

2 That was a terrible question. Never mind.

3 A. All you have to look at is their
4 certification program.

5 Q. Okay.

6 A. I guess that's what you're looking for.

7 Q. Have you ever -- when you inspected the
8 subject vehicle in May of 2016, did you go down the
9 CPO checklist that was provided to you in relation to
10 the subject vehicle?

11 A. At that time I did not.

12 Q. You make another statement on page 3 that
13 says when Mr. Poole discloses the prior collision
14 damage to any potential buyer, he will never be able
15 to recover financially to be made whole as the car has
16 also sustained diminished value. What do you mean by
17 that?

18 A. That the -- well, when he tells a potential
19 buyer that his vehicle was involved in an accident,
20 it's common knowledge and industry knowledge that the
21 vehicle's worth less. I believe Mr. Grant said that,
22 that if a vehicle was involved in an accident it would
23 be worth less. The vehicle would be worth less.
24 Inherent diminished value. I mean, that's what Carfax
25 spends millions and millions of dollars on a year, to

1 A. Explain significant.

2 Q. Let me try and rephrase that.

3 Hearing that a vehicle had sustained damages
4 that required \$4,088.77 of repair work, what
5 information could you glean from hearing that amount?

6 A. Without --

7 MR. WEST: Let me object. Vague and
8 ambiguous to the extent in a vacuum or with respect to
9 everything else that he's considered? Lacks
10 foundation.

11 But you can answer.

12 Q. (BY MS. SMITH) Based on your extensive
13 experience in performing car repairs and as a repair
14 shop owner, if someone told you their vehicle had
15 \$4,088.77 of repairs, would that signify anything to
16 you?

17 A. Not at all.

18 Q. So that could be -- could that just be
19 cosmetic damage?

20 A. I couldn't tell you until I saw the car. As
21 in this situation, there was a fender, a bumper, and
22 suspension. So if someone didn't tell me what was
23 listed on the estimate, I couldn't tell you. I don't
24 think anyone could. Were you saying someone called me
25 up and said they have \$4,000 worth of damage, you