

IN THE SUPREME COURT OF THE STATE OF NEVADA

Electronically Filed
Nov 02 2021 07:00 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

JUDITH SALTER, INDIVIDUALLY;
JOSHUA KANER, INDIVIDUALLY;
AND JOSHUA KANER AS
GUARDIAN AND NATURAL
PARENT OF SYDNEY KANER, A
MINOR,

Appellants,

vs.

EDWARD RODRIGUEZ MOYA, AN
INDIVIDUAL; AND BERENICE
DOMENZAIN-RODRIGUEZ, AN
INDIVIDUAL,

Respondents.

District Court Case No.:
A-20-827003-C

**APPELLANT'S APPENDIX,
VOLUME 1 (Nos. 1-250)**

Price Beckstrom, PLLC

Daniel R. Price, Esq.

Nevada Bar No. 13564

Christopher Beckstrom, Esq.

Nevada Bar No. 14031

1404 South Jones Boulevard

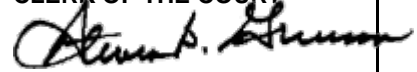
Las Vegas, NV 89146

Attorneys for Appellants

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MENF
DARRELL D. DENNIS
Nevada Bar No. 006618
MICHAEL R. SMITH
Nevada Bar No. 12641
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
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E-Mail: Michael.R.Smith@lewisbrisbois.com
Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER
as guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

vs.

EDWARD RODRIGUEZ MOYA, an
individual; BERENICE DOMENZIAN-
RODRIGUEZ, an individual; DOE OWNERS
I-V; DOE DRIVERS I-V; and ROE
COMPANIES I-V;

Defendants.

Case No. A-20-827003-C

Dept. No.: VI

**DEFENDANTS' MOTION TO ENFORCE
SETTLEMENT AGREEMENT**

(HEARING REQUESTED)

COME NOW, Defendants EDWARD RODRIGUEZ MOYA and BERENICE
DOMENZIAN-RODRIGUEZ (hereinafter referred to collectively as "Defendants"), by and through
their counsel of record, the law office of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and
hereby files the instant Motion to Enforce Settlement Agreement and request this Honorable Court
for an Order recognizing the settlement of the parties and thereby dismissing this matter with
prejudice.

///

///

1 This Motion is made and based on the attached Memorandum of Points and Authorities,
2 including exhibits, the papers and pleadings on file with the Court, and any oral argument the Court
3 may entertain at time of Hearing.

4 DATED this 12th day of February, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By: */s/ Michael R. Smith*

7 DARRELL D. DENNIS

8 Nevada Bar No. 006618

9 MICHAEL R. SMITH

10 Nevada Bar No. 12641

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 *Attorneys for Defendants*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS AND PROCEDURAL HISTORY**

4 Plaintiffs JUDITH SALTER, JOSHUA KAMER, and minor SYDNEY KAMER
5 (hereinafter referred to collectively as “Plaintiffs”) alleged they were involved in a motor-vehicle
6 collision involving the Defendants which occurred on July 25, 2020. (*See*, Plaintiffs’ Time-
7 Sensitive Settlement Offer to Defendants’ insurer dated October 22, 2020, attached hereto *sans*
8 *exhibits* as Exhibit “A.”)

9 Plaintiffs allege they were “rear-ended” by Defendants and sustained injuries as a result. No
10 police were summoned to the scene. (*See*, NRS § 484E.070(2) which provides no police report is
11 necessary if the apparent damage is less than \$750.00.)

12 Indeed, Plaintiff’s vehicle sustained no visibly discernable damage. (*See*, photographs of
13 Plaintiffs’ vehicle, attached hereto as Exhibit “B.”)

14 Defendants’ vehicle sustained no visibly discernable damage. (*See*, Photographs of
15 Defendants’ vehicle, attached hereto as Exhibit “C.”)

16 Prior to filing the instant action, Plaintiffs retained an attorney who sent a “demand letter”
17 to Defendants’ insurer in which Plaintiffs’ counsel demanded “the global limits of this policy” to
18 be paid by Defendants’ insurer before November 23, 2020. (Ex. A.)

19 In response, Defendants’ insurer, on behalf of the Defendants, agreed to provide the entirety
20 of the Defendants’ automobile liability policy, and requested instructions on how to distribute the
21 entire policy funds. (*See*, Defendants’ Automobile Liability Insurer’s Letter to Plaintiffs’ Counsel
22 dated November 12, 2020, attached hereto as Exhibit “D.”)

23 Plaintiffs’ counsel responded by stating his belief that Defendants’ insurer’s reliance on the
24 language of NRS § 485.185 was a rejection and counter-offer. (*See*, Plaintiffs’ Counsel rejection
25 letter dated December 1, 2020, attached hereto as Exhibit “E.”)

26 Plaintiffs filed their Complaint in the Eighth Judicial District Court for the State of Nevada
27 on December 25, 2020.

28 ///

1 II.

2 LEGAL ARGUMENT

3 A. This Honorable Court has Authority to Enforce Settlement Agreement.

4 In *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005), the Nevada Supreme Court stated
5 settlement agreements are contracts and as such, enforcement of the settlement agreement as a
6 contact is soundly within the authority of the Court.

7 B. The May Court Stated Agreement of Material Terms is Necessary To
8 Enforce Settlement Agreement. The Parties in The Instant Matter
Agreed to All Material Terms.

9 The May Court dealt with a motor-vehicle collision dispute with multiple claimants wherein
10 the underlying defendant's automobile insurer agreed to provide the defendant's entire automobile
11 liability policy limits in exchange for general release of all claims and a covenant not to pursue
12 litigation against the underlying defendant. The defendant's entire automobile liability policy was
13 divided amongst the claimants and claimants' respective counsel accepted the offer. After
14 acceptance of the agreement, two claimants refused to execute the settlement agreement because the
15 releases did not contain an admission of liability by the defendant and because the release contained
16 the covenant not to pursue litigation against the underlying defendant.

17 The May Court determined the defendant and the claimants agreed to all material terms of
18 the settlement agreement, and that the agreement to provide the defendant's automobile policy limits
19 was performance under the settlement agreement.

20 The May Court held that as a contract, an enforceable settlement agreement must contain an
21 offer and acceptance, a meeting of the minds, and consideration. The May Court stated a settlement
22 contract is formed when the parties have agreed to its material terms, even though the exact language
23 is finalized later. The May Court stated, "A contract can be formed, however, when the parties
24 have agreed to the material terms, even though the contract's exact language is not finalized until
25 later. In the case of a settlement agreement, a court cannot compel compliance when material terms
26 remain uncertain. The court must be able to ascertain what is required of the respective parties."
27 (*Id.* at 672, 119 P.3d at 1257.)

28 ///

1 The May Court stated, The majority of courts have held that the essential terms of a release
2 are necessary to a settlement agreement's formation and that the parties have not reached a
3 settlement when the release terms are still in dispute. However, what is considered an "essential
4 term" of a release varies with the nature and complexity of the case and must, therefore be
5 determined by a case-by-case basis. (*Id.* at 673, 119 P.3d at 1258.)

6 In evaluating the essential terms of the dispute in *May, supra*, the Nevada Supreme Court
7 stated, "Here, the parties agreed upon essential terms of the release. The district court found that
8 [defendant's insurer] made an offer to pay the full policy proceeds in exchange for a general release
9 of all claims and a covenant not to sue."

10 As applied to the instant matter, Plaintiffs, through their counsel made an offer "to settle all
11 [plaintiffs'] claims arising from this loss against your insured in exchange for the formal limits of
12 your insureds' policy limits of \$50,000 as a global tender." (Ex. A.)

13 In response, Defendants' automobile liability insurer agreed to provide the totality of
14 Defendants' automobile liability policy, and asked how to make the settlement drafts. (Ex. D.)

15 Despite a clear meeting of the minds of the essential terms (a full release in exchange for the
16 Defendants' entire automobile liability policy), plaintiff's counsel refused to enter into the
17 settlement agreement on the terms offered to Defendants' automobile liability insurer. (Ex. E.)

18 Plaintiffs even filed a lawsuit despite Defendants' automobile insurer accepting the
19 plaintiffs' offer on behalf of the Defendants.

20 **C. In the Event Plaintiffs' Claim There was Ambiguity in the Offer, Any**
21 **Ambiguous or Conflicting Contract Terms Must be Construed Against**
Plaintiffs as The Drafter.

22 The plaintiffs in this matter made a very clear and unambiguous offer to forgo pursuit of any
23 claims against Defendants in exchange for the entirety of Defendants' automobile liability insurance
24 policy. (Ex. A.) There were no other terms. (*Id.*)

25 Defendants' automobile liability insurance provider accepted the Plaintiffs' offer on behalf
26 of their clients. (Ex. D.)

27 No modification or alteration of the material terms was made in the acceptance of Plaintiff's
28 offer. (*Id.*)

1 Tellingly, no material terms were even referenced as unacceptable in plaintiffs' claimed
2 rejection of counteroffer. (Ex. E.) Defendants are left to wonder what material terms were rejected
3 in attempting to tender the entire policy limits to plaintiffs' counsel.

4 As stated by the Nevada Supreme Court in Williams v. Waldman, 108 Nev. 466, 473, 836
5 P.2d 614, 619 (1992), "In cases of doubt or ambiguity, a contract must be construed most strongly
6 against the party who prepared it, and favorably to a party who had no voice in the selection of its
7 language."

8 As applied to the instant matter, Plaintiffs unambiguously offered to accept the Defendants'
9 entire automobile liability insurance policy in exchange for a release of all claims against the
10 Defendants. (Ex. A.) The settlement funds would, by natural operation of mathematics, need to be
11 divided by the plaintiffs. Even plaintiffs agreed a portion would be directed for the resolution of
12 minor Sydney Kane. (*Id.*) Defendants' insurer accepted the plaintiffs agreement and asked how to
13 divide the policy, as required by operation of NRS § 485.185. (Ex. D.) This acceptance could not
14 be considered a rejection and counteroffer. All material terms were met in agreement to plaintiffs'
15 offer.

16 In the event there was some unknown, unstated, or secret material term in Plaintiff's offer,
17 it cannot be held that Defendants or their insurer could be held to have somehow failed to satisfy
18 these unknown, unstated, or secret material terms.

19 **III.**

20 **CONCLUSION**

21 The Plaintiffs made an offer to settle their claims with Defendants' automobile liability
22 insurance provider on behalf of the Defendants. In their offer, Plaintiffs extended two, and only
23 two, materials terms- settlement of all claims in exchange for the total protection afforded to
24 Defendants under their automobile liability insurance policy.

25 ///

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1 Defendants' insurer, on behalf of Defendants, accepted both of these material terms.

2 Pursuant to the above and forgoing, Defendants request this Honorable Court recognize the
3 settlement agreement as an enforceable contract, enforce the settlement agreement, and order this
4 matter dismissed with prejudice.

5 DATED this 12th day of February, 2021.

6 LEWIS BRISBOIS BISGAARD & SMITH LLP

7
8 By: /s/ Michael R. Smith

9 DARRELL D. DENNIS

10 Nevada Bar No. 006618

11 MICHAEL R. SMITH

12 Nevada Bar No. 12641

13 6385 S. Rainbow Boulevard, Suite 600

14 Las Vegas, Nevada 89118

15 *Attorneys for Defendants*

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS
3 BISGAARD & SMITH LLP and that on this 12th day of February, 2021, I did cause a true copy of
4 the foregoing **DEFENDANTS' MOTION TO ENFORCE SETTLEMENT AGREEMENT**, to be
5 served via the Court's electronic filing and service system to all parties on the current service list.

6 Daniel R. Price
7 Christopher Beckstrom
8 **PRICE BECKSTROM, PLLC**
9 1404 South Jones Blvd.
10 Las Vegas, NV 89146
11 *Attorneys for Plaintiff*

12 By /s/ Gabriela Mercado
13 Gabriela Mercado, An Employee of
14 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A

EXHIBIT A

and at such time the funds will be distributed as ordered by the court. Following acceptance of this offer my clients will execute a release of all claims in favor of your insureds. A copy of my firm's W-9 is attached.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

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EXHIBIT B

EXHIBIT B



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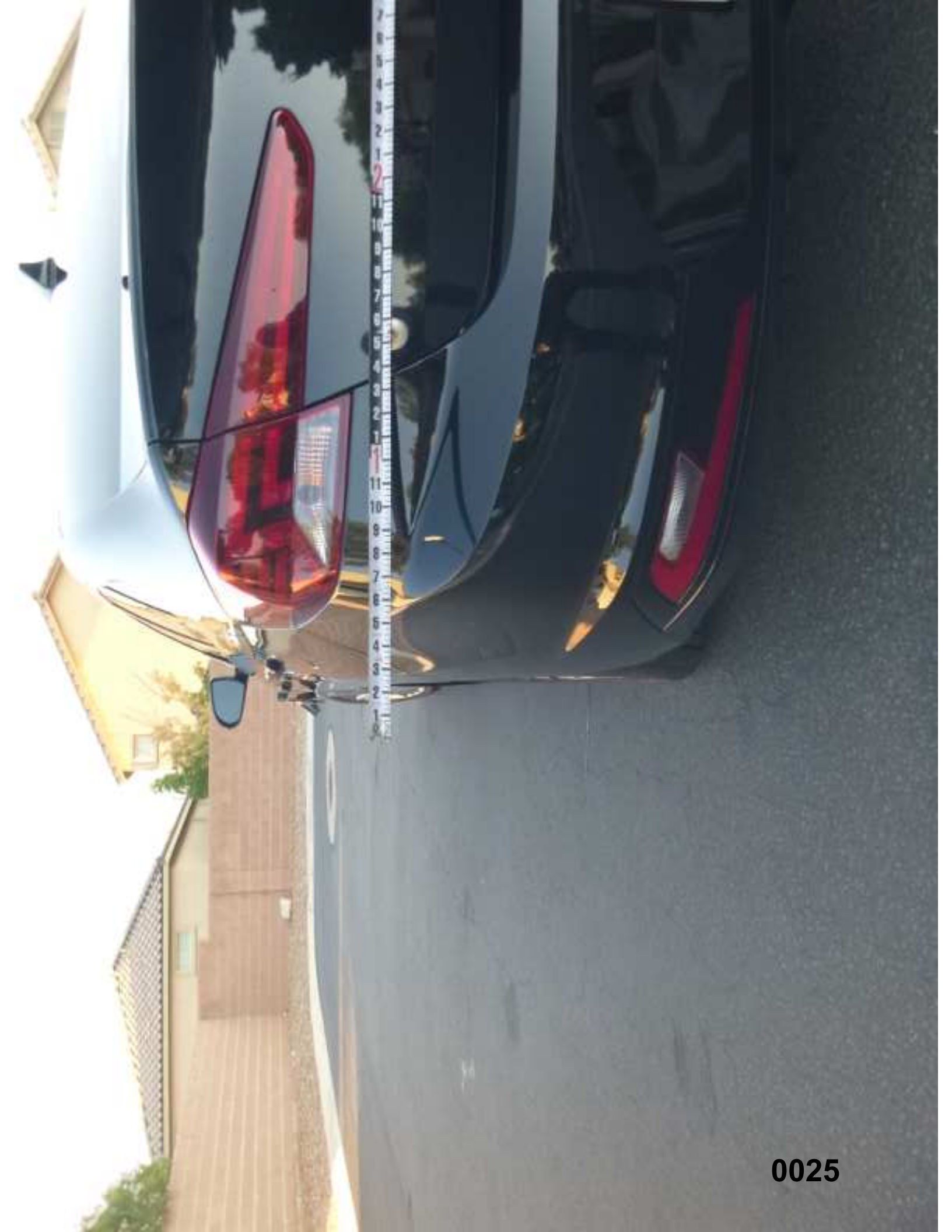
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E L A N T R A

LAS VEGAS

TEMPORARY ACARD
VIN: SHPD5ALF8LH550886 YEAR: 2016 MAKE: HYUNDAI MODEL: ELANTRA

NX-157-621

MAR 16 - 020

ABCH **HYUNDAI.com**

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VIN: 5NPD84LF8LH580



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EDR (HYUNDAI)

Vehicle Selection

5NPD84LF8LH580896

ELANTRA(ADA) **Adapter**

Additional Information

VIN as Programmed into EMS	5NPD84LF8LH580896
User-entered VIN	5NPD84LF8LH580896
User Name	B.HOSLEY
Case Number	2052610
Crash Date	07/25/2020
Tire Size(s)	
Memo	

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- EDR (HYUNDAI) -

Retrieve

Additional Information

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User Name	B.HOSLEY
Case Number	2052610
Crash Date	07/25/2020
Saved-on Date	2020-08-26 18:40
EDR Tool Version	E-T1-H-01-00-0037
EDR Report Version	EDR001-R01
Tire Size(s)	
Menu	

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EDR Information

Part No. (EOL Code) as programmed into ACU	95910-F2150(F230)
ECU SW Version as programmed into ACU	1.00
EDR Version as programmed into ACU	

< Event 1 >

There is no recorded event.

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EXHIBIT C

EXHIBIT C



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TIRE AND LOADING INFORMATION

SEATING CAPACITY - TOTAL 5 FRONT 2 REAR 3

THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED
392 KG OR 865 LB

TIRE	FRONT	REAR	SPARE
ORIGINAL TIRE SIZE	245/45R20 99V	245/45R20 99V	T145/80D18LL 99M
COLD TIRE INFLATION PRESSURE	220 kPa / 32 PSI	220 kPa / 32 PSI	420 kPa / 60 PSI

SEE OWNERS MANUAL FOR ADDITIONAL INFORMATION



HH533189

MFD BY FCA US LLC

GWR: 02314 KG

GWR: 01275 KG

DATE OF MANUFACTURE: 11-16

05100 LB

FRONT: 02810 LB

REAR: 02810 LB

THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S.A. FEDERAL MOTOR VEHICLE SAFETY

BUMPER AND THEFT PREVENTION STANDARDS IN EFFECT ON

THE DATE OF MANUFACTURE SHOWN ABOVE.



VIN: 200000000000000000

PLANT: 112023 02000

VEHICLE MADE IN CHINA

780-3455555555

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780-3455555555



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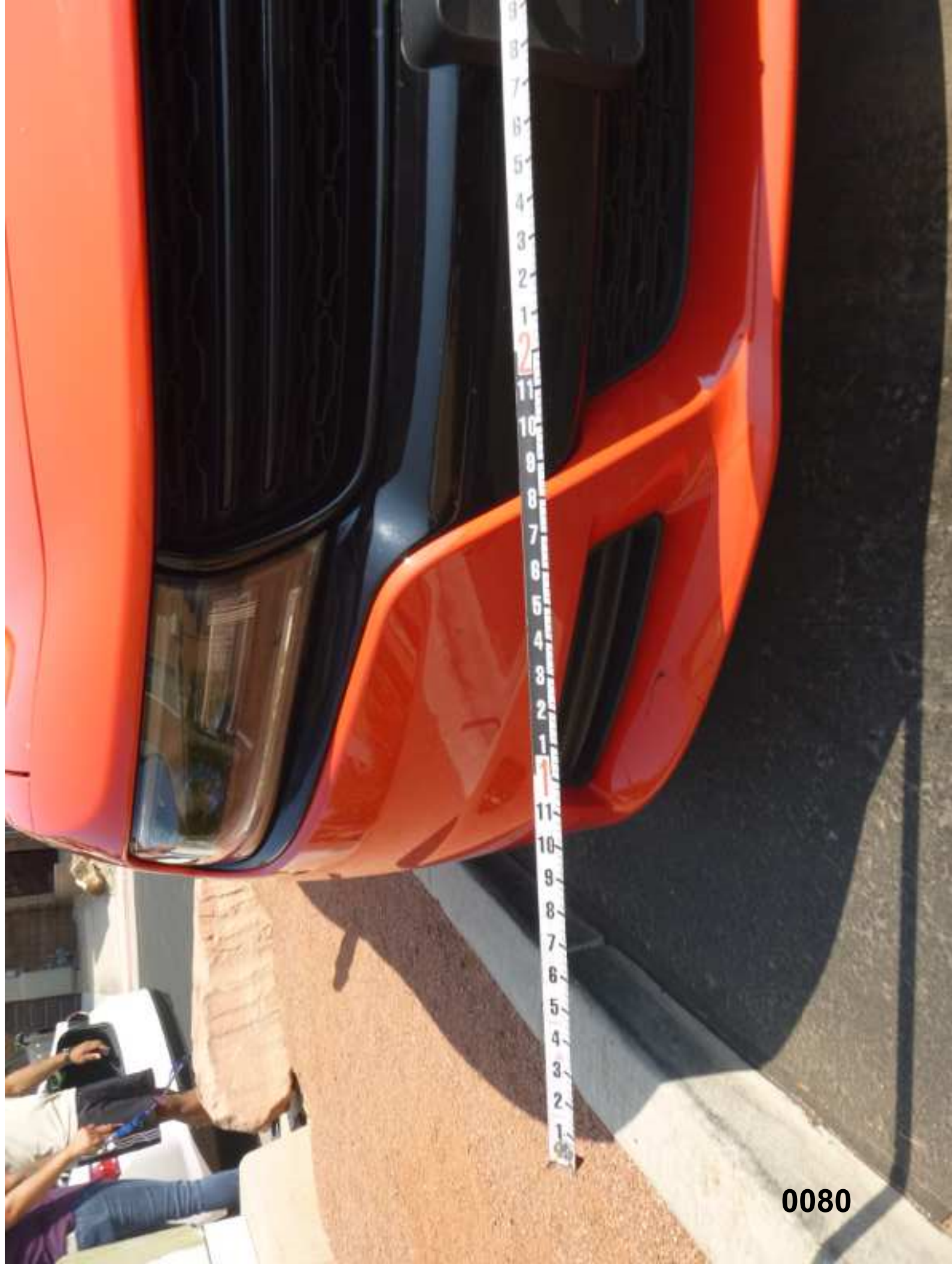
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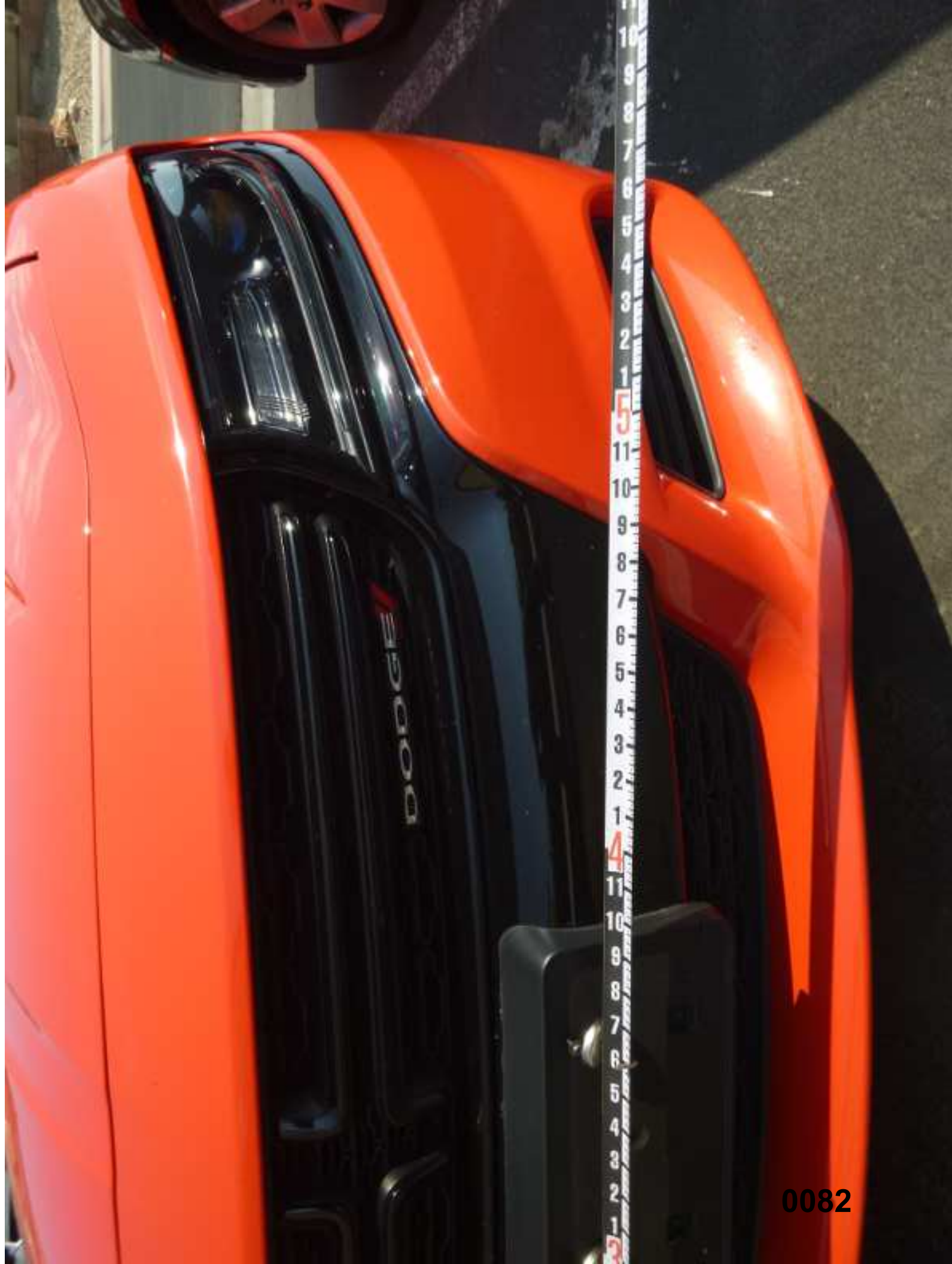
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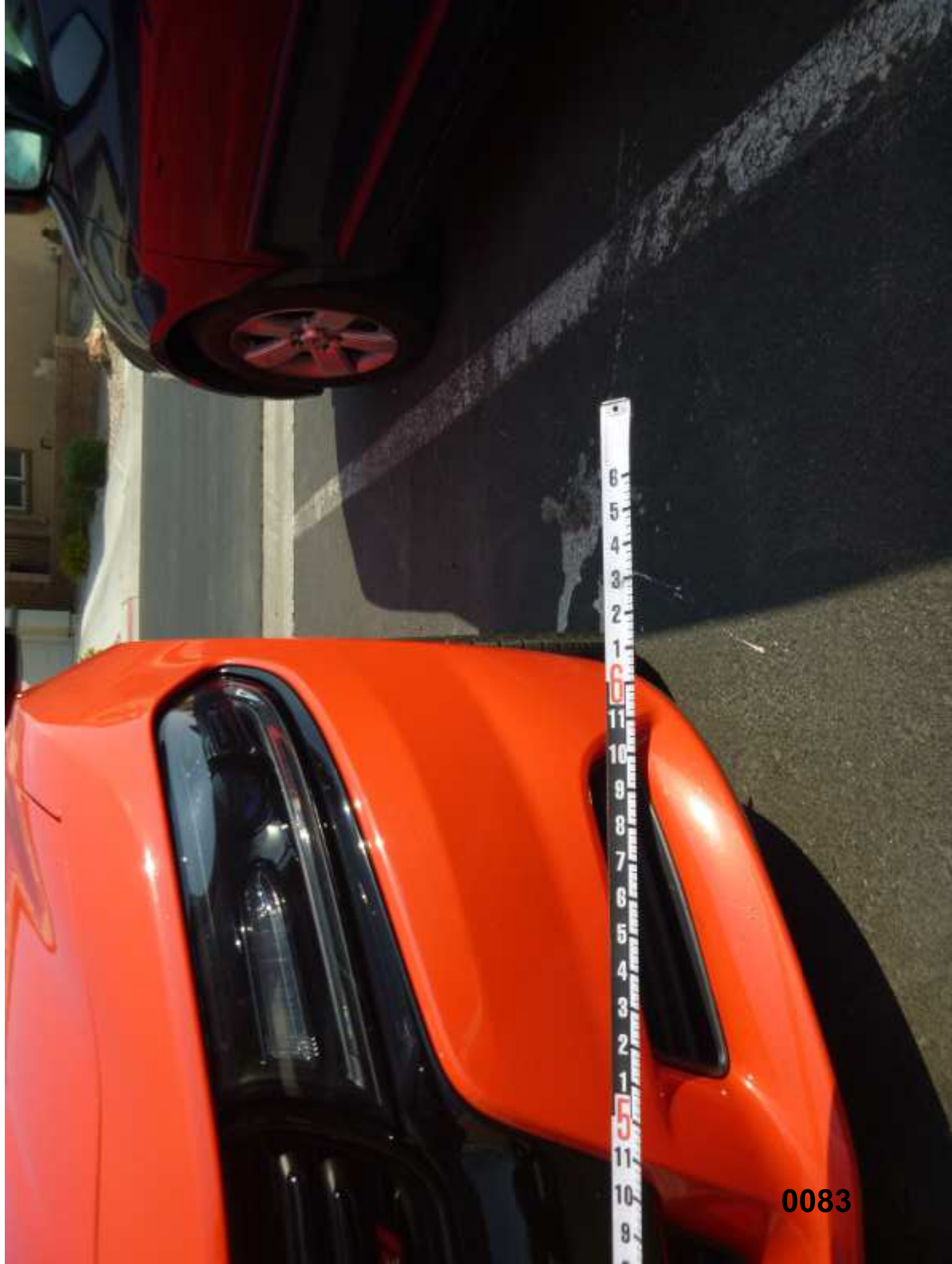
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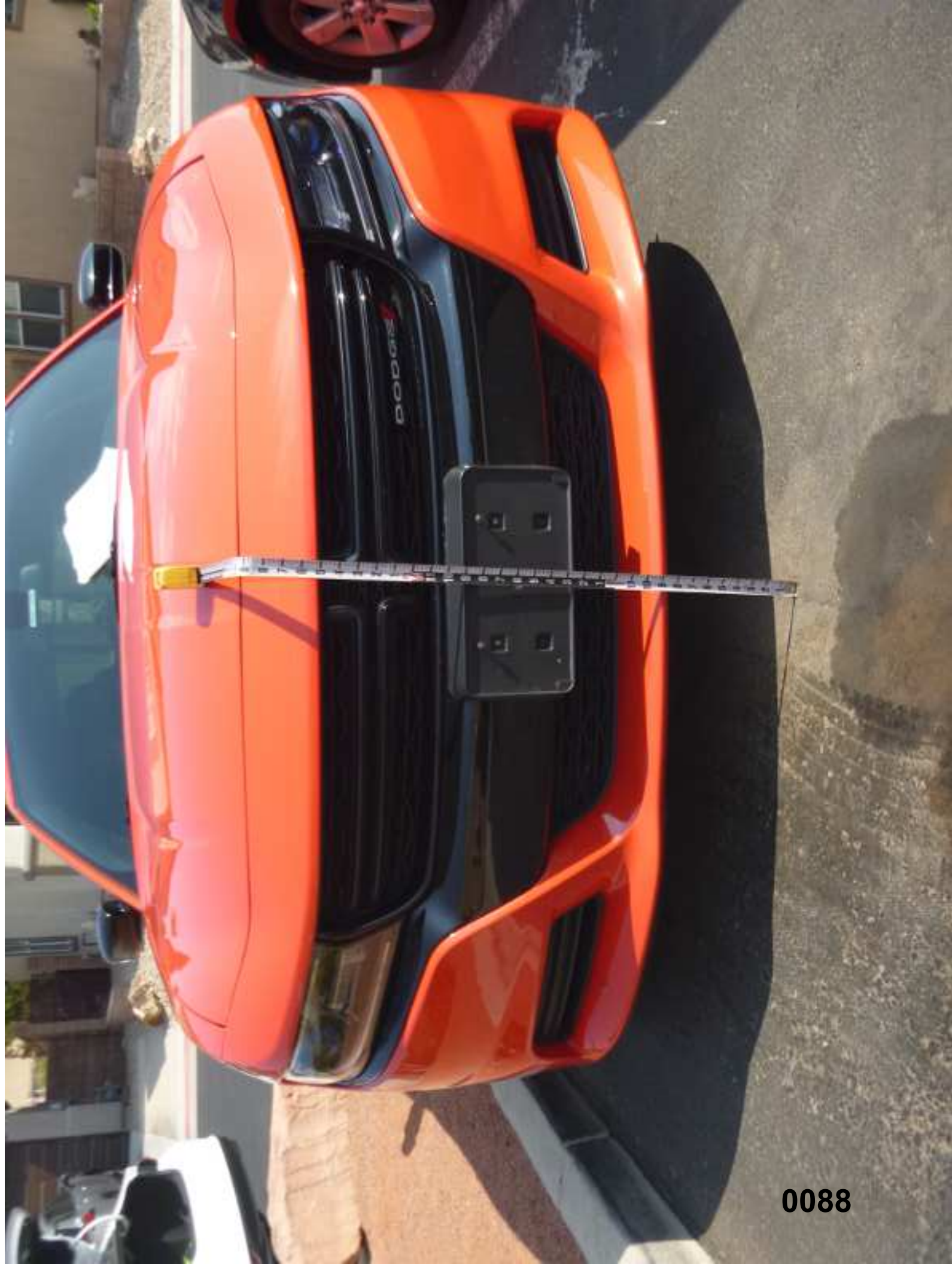


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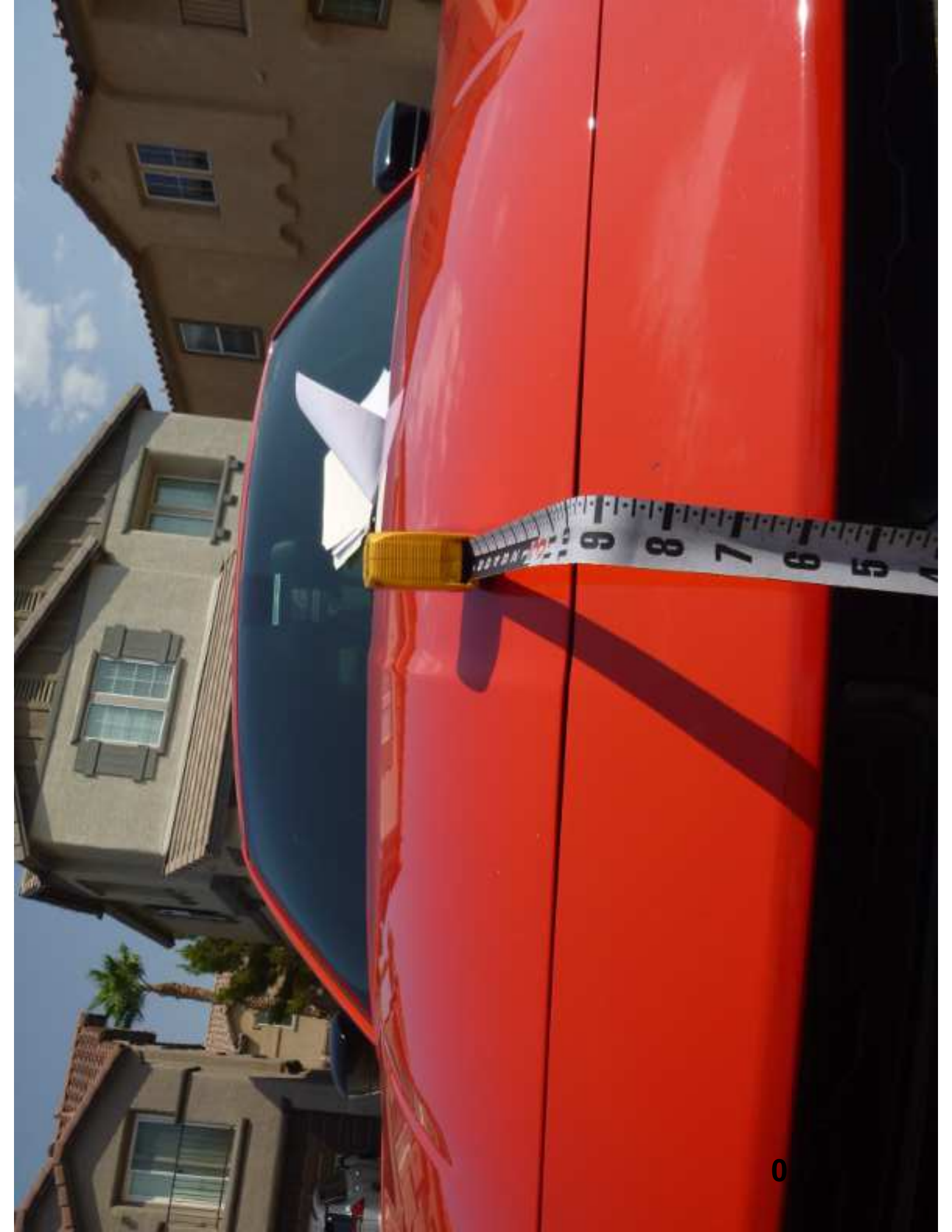
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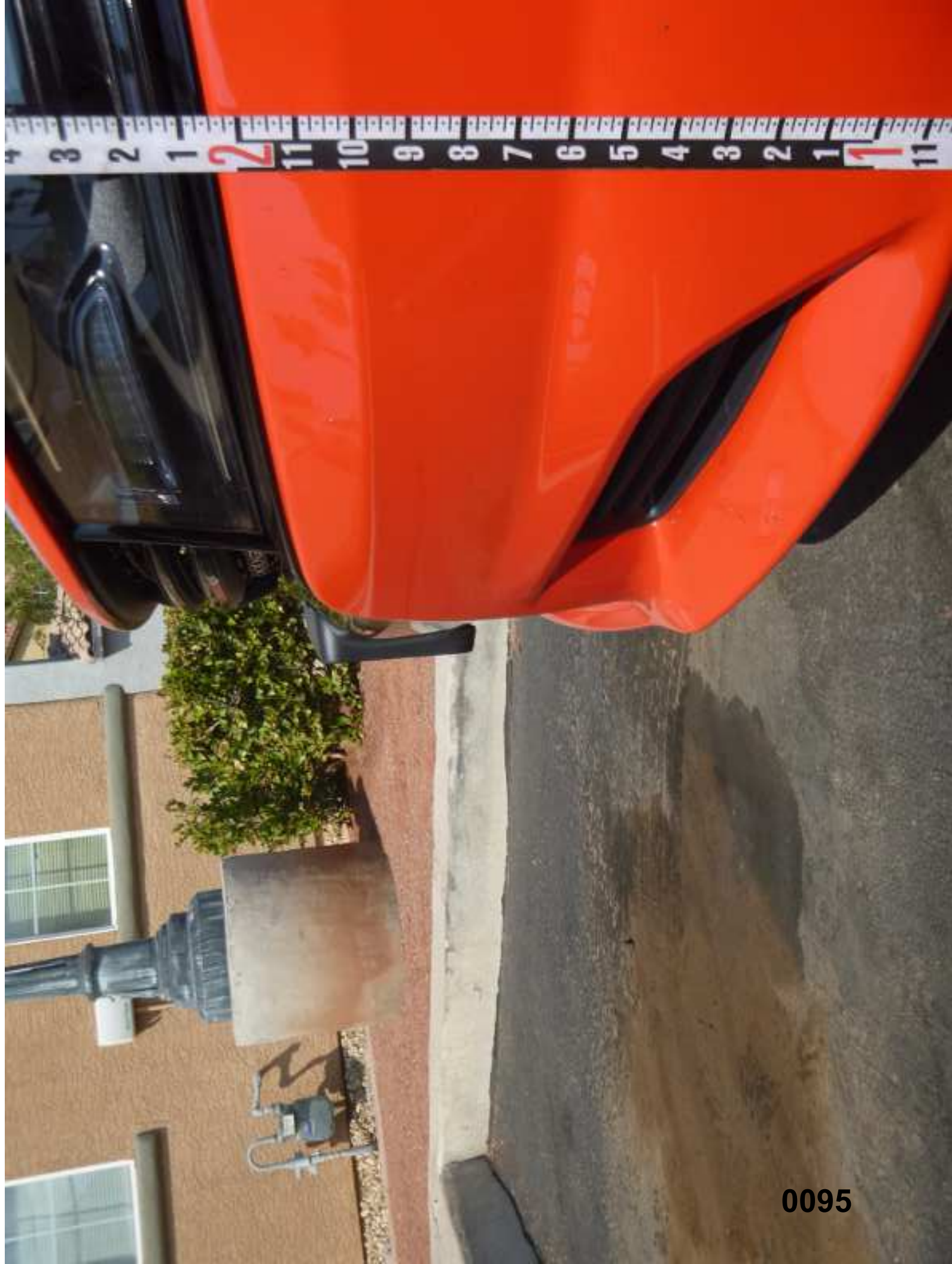




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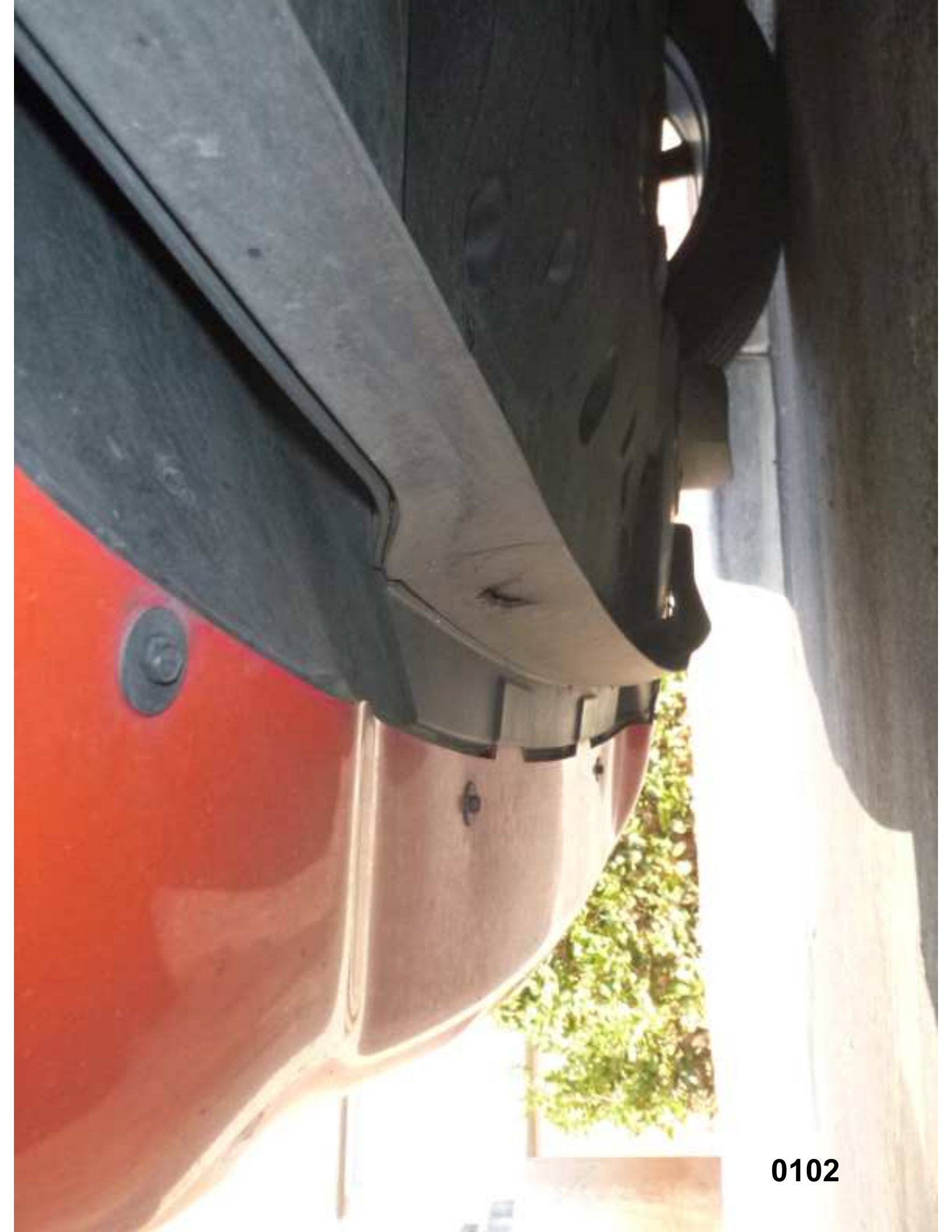


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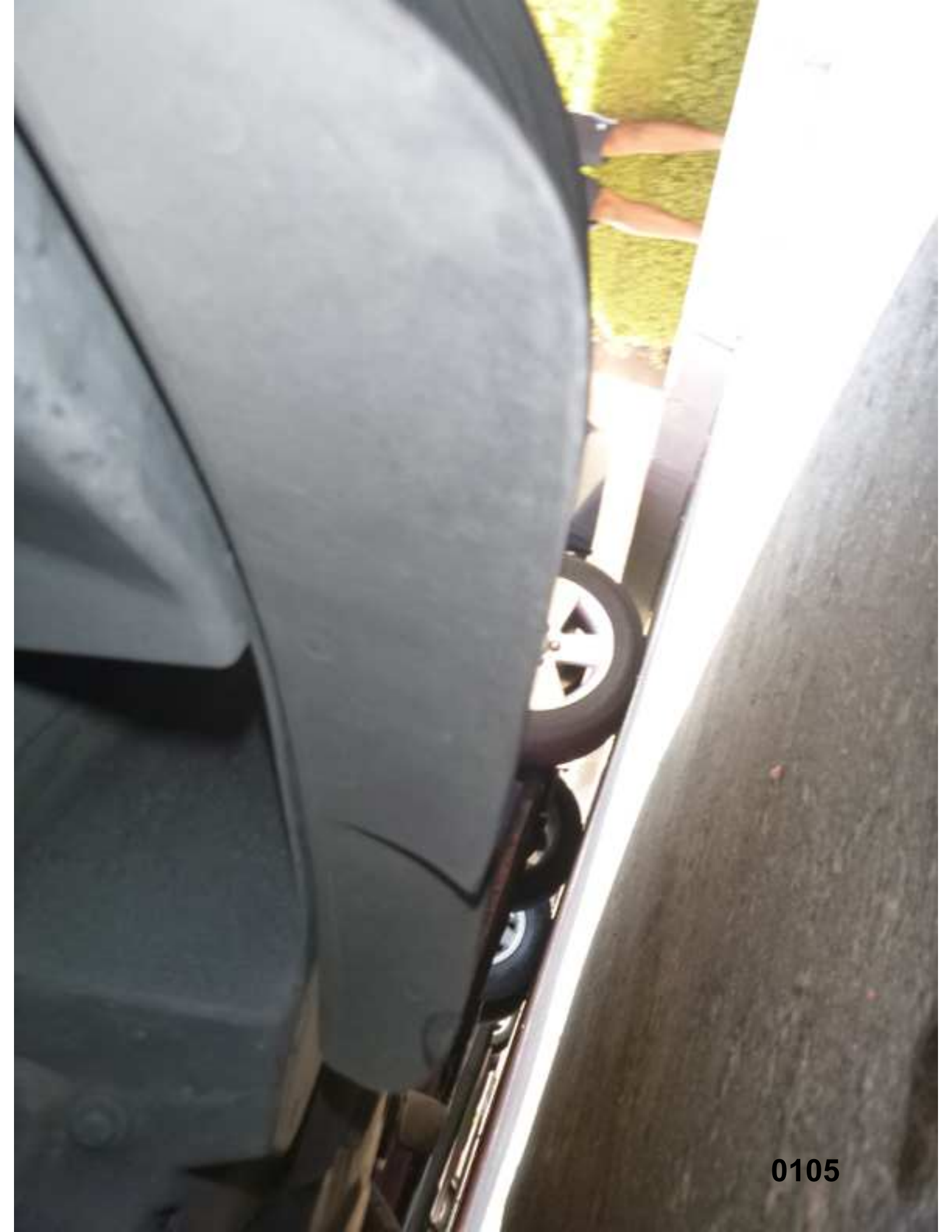
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EXHIBIT D

EXHIBIT D



Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

11/12/2020

Price Beckstom PLLC

7312 W CHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name: GEICO Advantage Insurance Company
Claim Number: 027998674 0101 014
Loss Date: Saturday, July 25, 2020
Policyholder: Berenice Domenzain-rodriguez
Driver: Edward Rodriguez moya
Clients: Judith Salter, Joshua Kaner and Sydney Kaner

Dear Price Beckstom PLLC,

Please be advised that there were a total of three (3) injured parties that were involved in the above referenced loss.

We have Bodily Injury Coverage on our policy with limits of \$25,000.00 per person/ \$50,000.00 per occurrence. At this time, we are extending an offer of the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.

Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.

Please note that all parties must agree to settlement before we can issue payments. We will coordinate with all parties to assist in the agreement and anticipated resolution to include the utilization of a mediator if necessary.

Please note given the nature of the case we will request court approval for any minors involved.

0109

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

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EXHIBIT E

EXHIBIT E



December 1, 2020

Whitney Atterberry
GEICO
PO Box 509119
San Diego, CA 92150
Via Document Upload

Re: Your insured : Berenice Domenzain-Rodriguez &
 Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Clients : Judith Salter, Joshua Kaner and Sydney Kaner

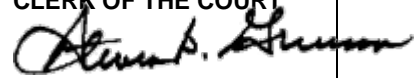
Dear Ms. Atterberry:

My clients were surprised that you did not accept their settlement offer dated October 22, 2020. We did receive your counteroffer dated November 12, 2020, which my clients reject.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC



OPP

Daniel R. Price (NV Bar No. 13564)
Christopher Beckstrom (NV Bar No. 14031)
PRICE BECKSTROM, PLLC
1404 S. Jones Blvd.
Las Vegas, Nevada 89146
Phone: (702) 941-0503
Fax: (702) 832-4026
info@pbnv.law
Attorneys for Plaintiffs

**DISTRICT COURT
CLARK COUNTY, NEVADA**

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER as
guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

v.

EDWARD RODRIGUEZ MOYA, an individual;
BERENICE DOMENZAIN-RODRIGUEZ, an
individual; DOE OWNERS I-V; DOE
DRIVERS I-V; ROE EMPLOYERS I-V and
ROE COMPANIES I-V;

Defendants.

Case No.: A-20-827003-C

Dept. No.: 6

Hearing Date: March 17, 2021
Hearing Time: 9:00 a.m.

**OPPOSITION TO DEFENDANTS'
MOTION TO ENFORCE SETTLEMENT AGREEMENT**

Plaintiffs hereby oppose Defendants' Motion to Enforce Settlement Agreement and set forth
the following Memorandum of Points and Authorities in support of their position.

DATED this 18th day of February, 2021.

/s/ Daniel Price

Daniel R. Price (NV Bar No. 13564)
Christopher Beckstrom (NV Bar No. 14031)
PRICE BECKSTROM, PLLC
1404 S. Jones Blvd.
Las Vegas, Nevada 89146

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants seek to enforce a settlement agreement that does not exist. Basic principles of
3 contract law determine the genesis of a contract such as a settlement agreement, and this Court must
4 therefore look to these common law principles in deciding Defendants' motion. The following basic
5 contract formation rules, when applied to the case at bar, demonstrate no enforceable agreement
6 exists:

- 7
- Offer and acceptance are essential elements of an enforceable contract.
 - An offeror is the master of its offer and may require acceptance by performance, and without
8 the offeree's performance, there is no acceptance.
 - A counteroffer operates as a rejection which terminates the offeree's ability to accept an
9 offer.
- 10

11 In the instant matter, all material settlement communications took place in writing and are
12 attached hereto for this Court to review, as follows:

- 13
- Exhibit 1—Plaintiffs' Time-Limited Settlement Offer dated October 22, 2020.
 - Exhibit 2—GEICO's Counteroffer dated November 12, 2020.
 - Exhibit 3—Correspondence from Plaintiffs, dated December 1, 2020, rejecting GEICO's
14 counteroffer.
- 15

16 Herein, Plaintiffs prove (1) they made an unambiguous offer requiring acceptance by performance,
17 and (2) Defendants' insurance company responded by sending a counteroffer with revised terms,
18 which was a rejection of Plaintiffs' original offer. Plaintiffs then rejected GEICO's counteroffer.
19 There is no contract to enforce.

20 **I.**

21 **STATEMENT OF FACTS**

22 This is a negligence action for personal injuries sustained by the Plaintiffs in a motor vehicle
23 collision that took place on or about July 25, 2020. Although the crash caused only minimal visible
24 damage to the Plaintiffs' vehicle, the forces involved in the collision were significant and caused

1 serious injuries.¹ The most substantial injury was to Plaintiff Joshua Kaner, whose lumbar spine pain
2 continued to worsen in the days and weeks following the crash. His back pain and radicular
3 symptoms became so severe he went to the emergency room at Summerlin Hospital where medical
4 imaging revealed severe central canal stenosis of the lumbar spine. As a result, he was transferred to
5 Spring Valley Hospital where he underwent emergency lumbar laminectomy and discectomy under
6 general anesthesia on October 2, 2020.



Post-surgical incision wound

18 Mr. Kaner is only 30 years old. He is expected to suffer and require ongoing care throughout the rest
19 of his life due to his lumbar spine condition.

20 Defendants carry one auto insurance policy with liability coverage limits of \$25,000.00 per
21 individual and \$50,000.00 per incident through GEICO Advantage Insurance Company (“GEICO”).
22 After the collision, Plaintiffs’ counsel sent a letter to GEICO on July 28, 2020, informing GEICO the

23
24 ¹ See *Rish v. Simao*, 132 Nev. 189, 197, 368 P.3d 1203, 1209 (2016) (“We do not intend to suggest that low-impact collisions cannot result in serious injuries. Low-impact collisions can cause serious, as well as minor, injuries. . . .”).

1 Plaintiffs were injured.² On September 4, 2020, before GEICO had information about Plaintiffs’
2 injuries, it sent a letter to Plaintiffs’ counsel denying the claim: “Please note that we are respectfully
3 denying your client’s injury claim as having no causal relationship to this loss. We will not be
4 collecting any medical records for this file.”³

5 On October 22, 2020, Plaintiffs’ counsel sent a time-limited settlement offer to GEICO
6 offering to resolve all three of the Plaintiffs’ claims in exchange for payment of the \$50,000.00
7 global policy limit.⁴ The offer required acceptance by performance and included the following
8 language:

9 My clients make this one-time offer to settle all of my clients’ claims
10 arising from this loss against your insured in exchange for the formal
limits of your insureds’ policy limits of \$50,000 as a global tender.

11 **This offer expires on November 23, 2020 at 1:00 p.m., Pacific Time.**

12 This offer can only be accepted by the following performance,
accomplished prior to the expiration of this offer:

- 13 1) Receipt of \$50,000 (the global policy limits of this policy) in my
14 office, payable to “Price Beckstrom, PLLC, Judith Salter, Joshua
Kaner, and Sydney Kaner.”⁵

15 GEICO responded to Plaintiffs’ settlement offer with a letter dated November 12, 2020, stating:

16 We have Bodily Injury Coverage on our policy with limits of \$25,000.00
per person/\$50,000.00 per occurrence. At this time, we are extending an
17 offer of the global limit of \$50,000.00 to settle the three (3) bodily injury
claims presented in this loss.

18 Please take this matter under consideration to come up with a distribution
of our remaining policy limits (with no one person receiving more than
19 the \$25,000.00 single policy limit and all parties limited to \$50,000.00
combined.) Please notify me when you have come to a conclusion
20 regarding the disbursement of the remaining limits.⁶

21 _____
22 ² Exhibit 4—Letter of Representation dated July 28, 2020.

23 ³ Exhibit 5—Claim Denial dated September 4, 2020.

24 ⁴ Exhibit 1—Plaintiffs’ Time-Limited Settlement Offer dated October 22, 2020.

⁵ *Id.* at 1 (emphasis in original).

⁶ Exhibit 2—GEICO Counteroffer dated November 12, 2020 (emphasis added).

1 The November 23 deadline passed, and GEICO did not complete acceptance by performance on
2 behalf of the Defendants. On December 1, 2020, Plaintiffs’ counsel sent a letter to GEICO rejecting
3 the November 12 counteroffer.⁷ Plaintiffs subsequently filed suit and Defendants appeared and filed
4 their Answer and then brought the instant motion seeking to enforce a contract that never existed.

5 II.

6 LEGAL ANALYSIS

7 It is axiomatic that a contract must exist before a court can enforce it. The most fundamental
8 concept of contract law is that without an offer and valid acceptance there is no contract. Despite this
9 truth, and despite the truth that Defendants did not accept Plaintiffs’ offer, Defendants brought the
10 present motion.

11 Relying on *May v. Anderson*,⁸ Defendants argue this Court should enforce a settlement
12 agreement and dismiss the instant matter completely. *May* holds that a settlement agreement is “a
13 contract, [and] its construction and enforcement are governed by principles of contract law.”⁹ The
14 *May* case arose from a motor vehicle collision and the victims’ subsequent claims for personal
15 injuries.¹⁰ The negligent motorist’s insurance company offered to pay the full policy limit to the
16 victims in exchange for a general release and covenant not to sue, and the victims’ attorneys
17 accepted the offer.¹¹ Thereafter, one of the crash victims refused to sign the release because it did not
18 contain an admission of liability from the at-fault motorist and extinguished all claims against
19
20

21 ⁷ Exhibit 3— Correspondence from Plaintiffs, dated December 1, 2020, rejecting GEICO’s
22 counteroffer

23 ⁸ 121 Nev. 668, 119 P.3d 1254 (2005).

24 ⁹ *Id.* at 672, 119 P.3d at 1257.

¹⁰ *Id.* at 670, 119 P.3d at 1256.

¹¹ *Id.* at 670-72, 119 P.3d at 1256.

1 anyone who could be liable for the collision.¹² The matter proceeded to a bench trial, where the
2 district court found that because the victim’s attorney had unambiguously accepted the settlement
3 offer, an enforceable settlement agreement existed.¹³

4 On appeal, the Supreme Court of Nevada affirmed the district court’s enforcement of the
5 settlement agreement. It held that a settlement agreement is a contract, the construction and
6 enforcement of which is governed by principles of contract law.¹⁴ The *May* court then stated: “Basic
7 contract principles require, for an enforceable contract, an offer and acceptance, meeting of the
8 minds, and consideration.”¹⁵ The *May* court affirmed the district court’s finding of an enforceable
9 settlement agreement, citing the fact that the insurance company had made a settlement offer, and
10 the accident victims’ counsel had authority to negotiate on behalf of his clients and unambiguously
11 accepted the offer in writing.¹⁶

12 Defendants’ reliance on the *May* decision is misplaced. The instant matter’s most obvious—
13 and most crucial—factual divergence from *May* is that **Defendants never accepted Plaintiffs’**
14 **offer**. Defendants and Plaintiffs agree that Plaintiffs’ October 22, 2020, letter was an unambiguous
15 settlement offer.¹⁷ However, unlike the facts of *May*, the case at bar completely lacks any acceptance
16 of an offer. Plaintiffs’ offer unmistakably required acceptance by performance, and **there is no**
17 **dispute that GEICO failed to complete this performance**. Further, even a plain language reading
18 of GEICO’s November 12 letter (Exhibit 2) shows it did not intend to accept Plaintiffs’ offer but
19 instead assert its own counteroffer. Finally, Defendants’ motion argues about the materiality and
20

21 ¹² *Id.* at 672, 119 P.3d at 1256-57.

22 ¹³ *Id.* at 672, 119 P.3d at 1257.

23 ¹⁴ *Id.*

24 ¹⁵ *Id.*

¹⁶ *Id.* at 674, 119 P.3d at 1258-59.

¹⁷ *Opp.* at 5.

1 construction of contract terms; however, these arguments overlook the dispositive underlying reality
2 that there was no acceptance and thus no contract to begin with. Defendants’ motion must
3 accordingly be denied.

4 **A. Plaintiffs Asserted an Unambiguous Offer Requiring Acceptance by Performance.**
5 **GEICO did not Accept.**

6 An offeror, as the master of the offer, may specify the manner of acceptance, and the offeree
7 must perform accordingly to accept the offer and form a legally enforceable contract.¹⁸ An offeror
8 may require performance of an act as a valid condition for acceptance of an offer.¹⁹ Indeed, “[w]here
9 the offer requires acceptance by performance and does not invite a return promise, . . . a contract can
10 be created only by the offeree’s performance.”²⁰ A mere promise to perform, without actual
11 performance, does not constitute valid acceptance in such a situation.²¹

12 In the instant matter, Plaintiffs’ offer established the manner of acceptance by performance of
13 a single act: “This offer can only be accepted by the following performance, accomplished prior to
14 the expiration of this offer: 1) Receipt of \$50,000 (the global policy limits of this policy) in my
15 office, payable to ‘Price Beckstrom, PLLC, Judith Salter, Joshua Kaner, and Sydney Kaner.’”²²
16 If GEICO had simply provided payment in the manner specified prior to the deadline, a contract
17 would have formed and Plaintiffs would be bound by its terms. However, it is undisputed that
18 GEICO did not respond in this way. Instead, it sent a letter asserting its own offer to pay \$50,000.00
19 and asking for a proposed distribution of funds.

21 ¹⁸ RESTAT 2D OF CONTRACTS, § 53.

22 ¹⁹ See, e.g., *Eagle Materials, Inc. v. Stiren*, No. 53438, 2011 Nev. Unpub. LEXIS 1086, at *4 (Feb. 3, 2011) (“An offer for a unilateral contract invites acceptance by the performance of an act.”).

23 ²⁰ RESTAT 2D OF CONTRACTS, § 50 (emphasis added).

24 ²¹ *Id.*

²² Exhibit 1 (emphasis added).

1 Considering this deficiency, Defendants are not asking this Court to *enforce* a settlement
2 agreement, but to *create* one. Defendants’ insurance carrier was authorized to act on their behalf and
3 did not accept Plaintiffs’ offer by sending payment. The essential element of acceptance is not
4 present to form an enforceable contract. Defendants’ motion should be denied.

5 **B. GEICO’s Counteroffer Operated as a Rejection of Plaintiffs’ Offer.**

6 Unless abrogated by statute, this Court must apply the common law in determining legal
7 standards.²³ The common law’s mirror image rule applies to settlement negotiations in this case.²⁴
8 “It is elementary law that an offer must be unconditionally accepted by the offeree to become a
9 binding contract.”²⁵ Indeed, “acceptance must comply exactly with the requirements of the offer,
10 omitting nothing from the promise or performance requested.”²⁶

11 Turning to the case at bar, GEICO’s November 12, 2020, response to Plaintiffs’ offer was not
12 an unambiguous acceptance of all material terms. It does not even reference the Plaintiffs’ prior
13 offer. And by its own language, it does not even purport to accept an offer asserted by Plaintiffs. To
14 the contrary, GEICO’s letter asserts a new offer, stating “At this time, we are extending an offer of
15 the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.”²⁷ It
16 also contained new terms. Plaintiffs’ offer required receipt of \$50,000.00 payable to “Price
17

18 ²³ See, e.g., *J.A. Jones Constr. Co. v. Wilmington Tr. Co. (In re Resort at Summerlin Litig.)*, 122 Nev.
19 177, 183, 127 P.3d 1076, 1080 (2006) (“Because the statutory scheme does not apply, we must turn
to the common law. . .”).

20 ²⁴ See *Branch Banking & Tr. Co. v. Windhaven & Tollway, Ltd. Liab. Co.*, 131 Nev. 155, 158, 347
21 P.3d 1038, 1040 (2015) (“We presume that a statute does not modify common law unless such intent
is explicitly stated.”); compare NRS 104.2207 (U.C.C. provision abrogating the common law mirror
image rule only in the context of sales of goods).

22 ²⁵ See, e.g., *Shikwan Sung v. Hamilton*, 676 F. Supp. 2d 990, 999 (D. Haw. 2009); see also 1 RESTAT
23 OF CONTRACTS, § 59.

24 ²⁶ See, e.g., *Parry v. Walker*, 657 P.2d 1000, 1002 (Colo. App. 1982) (citing 1 RESTAT OF
CONTRACTS, § 59) (internal quotation marks omitted).

²⁷ Exhibit 2 (emphasis added).

Beckstrom, PLLC, Judith Salter, Joshua Kaner, and Sydney Kaner.”²⁸ GEICO’s counteroffer changed the terms of the proposed settlement, requesting Plaintiffs specify amounts for each individual payee.²⁹ As master of the offer, Plaintiffs specified that delivery of the settlement funds before the deadline was the only way GEICO could accept the offer. To date, GEICO has never delivered any settlement funds to Plaintiffs’ counsel. A settlement agreement (*i.e.* contract) never formed due to lack of acceptance. Defendants’ motion should be denied.

C. GEICO’s Arguments About the Materiality of Terms Ignore that Such an Analysis Requires the Existence of a Contract.

Defendants’ motion argues about the materiality of contract terms. It further argues conflicting contract terms should be construed against the document’s drafter. These arguments make no sense because there is no contract.

The *May* court enforced a settlement agreement in that case because unambiguous offer and acceptance had taken place and a contract had formed. It did so despite a subsequent disagreement about peripheral terms such as an admission of guilt. An analysis about the materiality of terms is only relevant if there is an agreement to begin with. As shown above, acceptance never occurred, and no contract was formed. Defendants further fail to specify which terms are ambiguous and should ostensibly be construed against Plaintiffs. Defendants apparently fail to understand that Plaintiffs’ offer required acceptance by performance, and their failure to perform means there is no acceptance. Indeed, there can be no dispute that such performance ever took place. Even their correspondence subsequent to Plaintiffs’ offer does not contain language purporting to accept Plaintiffs’ offer, nor does it even reference Plaintiffs’ offer. Plaintiffs expressly rejected GEICO’s

²⁸ Exhibit 1 (emphasis in original).

²⁹ Exhibit 2 (“Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.”).

subsequent offer, and no binding contract ever took effect. Arguments about the materiality or ambiguity of terms are rightly tossed aside. Defendants' motion should be denied.

III.

CONCLUSION

Defendants cannot show the existence of an enforceable agreement as no such agreement ever existed. The purported agreement fails without the basic contract element of acceptance. This Court must accordingly deny the instant motion.

Dated this 18th day of February, 2021.

/s/ Daniel Price

Daniel R. Price (NV Bar No. 13564)
Christopher Beckstrom (NV Bar No. 14031)
PRICE BECKSTROM, PLLC
1404 S. Jones Blvd.
Las Vegas, Nevada 89146

CERTIFICATE OF SERVICE

I hereby certify that, pursuant to NRCP 5, NEFCR 9, and EDCR 8.05, on the date indicated below, a copy of the foregoing ***Opposition to Defendants' Motion to Enforce Settlement Agreement*** was served upon the below through the Court's electronic service system:

Darrell D. Dennis, Esq.
Michael R. Smith, Esq.
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Blvd., Ste 600
Las Vegas, NV 89118
Attorneys for Defendants

Dated this 18th day of February, 2021.

/s/ Stephanie Amundsen

An Employee of PRICE BECKSTROM, PLLC

EXHIBIT 1

and at such time the funds will be distributed as ordered by the court. Following acceptance of this offer my clients will execute a release of all claims in favor of your insureds. A copy of my firm's W-9 is attached.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

EXHIBIT 2



Government Employees Insurance Company
GEICO General Insurance Company
GEICO Indemnity Insurance Company
GEICO Casualty Insurance Company

■ Chevy Chase, MD.	■ Dallas, TX
■ Fredericksburg, VA	■ Lakeland, FL
■ Woodbury, NY	■ Honolulu, HI.
■ Macon, GA	■ Coralville, IA
■ Poway, CA	■ Virginia Beach, VA

Date: November 12, 11:55:21 AM EST
To: 17028324026
From: ezdefaultreg@geico.com
Subj: ::LWDA::D227702176::Claim# 0279986740101014
Total pages: 3

To:
Policy Holder: Berenice Domenzain-Rodriguez
From: Whitney Atterberry (GEICO Claims Examiner)

Your letter from GEICO is attached.

=====

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

11/12/2020

Price Beckstom Pllc

7312 WCHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name: GEICO Advantage Insurance Company
Claim Number: 027998674 0101 014
Loss Date: Saturday, July 25, 2020
Policyholder: Berenice Domenzain-rodriguez
Driver: Edward Rodriguez moya
Clients: Judith Salter, Joshua Kaner and Sydney Kaner

Dear Price Beckstom Pllc,

Please be advised that there were a total of three (3) injured parties that were involved in the above referenced loss.

We have Bodily Injury Coverage on our policy with limits of \$25,000.00 per person/ \$50,000.00 per occurrence. At this time, we are extending an offer of the global limit of \$50,000.00 to settle the three (3) bodily injury claims presented in this loss.

Please take this matter under consideration to come up with a distribution of our remaining policy limits (with no one person receiving more than the \$25,000.00 single policy limit and all parties limited to \$50,000.00 combined.) Please notify me when you have come to a conclusion regarding the disbursement of the remaining limits.

Please note that all parties must agree to settlement before we can issue payments. We will coordinate with all parties to assist in the agreement and anticipated resolution to include the utilization of a mediator if necessary.

Please note given the nature of the case we will request court approval for any minors involved.

0128

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

EXHIBIT 3



December 1, 2020

Whitney Atterberry
GEICO
PO Box 509119
San Diego, CA 92150
Via Document Upload

Re: Your insured : Berenice Domenzain-Rodriguez &
 Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Clients : Judith Salter, Joshua Kaner and Sydney Kaner

Dear Ms. Atterberry:

My clients were surprised that you did not accept their settlement offer dated October 22, 2020. We did receive your counteroffer dated November 12, 2020, which my clients reject.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

EXHIBIT 4



Fax Confirmation

To: (866) 568-2132

From: (702) 832-4026

Doc: Fax_3P LOR Form 05-17-2018
2020-07-28 1003_2020-07-28-1009-
PDT.pdf

Pages: 1

Sent: July 28, 2020 10:09 AM PDT

Rec'd: July 28, 2020 10:10 AM PDT



July 28, 2020

Geico
Fax: 866-568-2132

Re: Your insured : Berenice Domenzain-Rodriguez & Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Client(s) : Judith Salter, Joshua Kaner & Sydney Kaner

Dear claims handler:

This is to advise you that my firm represents the above-named client(s) in a claim for personal injuries against your insured as a result of an incident on 7/25/2020.

Please provide me with a **certified copy of all insurance policies**, including any umbrella policy(ies), of your insured and retain this letter as an indication of my representation. Kindly forward copies of any recorded oral and or written statements taken from our client with regards to the facts of this loss. Please also preserve any and all information related to this claim.

Please confirm in writing your address and other information to correspond with the adjuster. Should you need further information or assistance with this claim, please feel free to contact me.

Finally, please instruct your insured to preserve all evidence in your insured's possession, custody, or control related to this incident. This includes any photographs, and/or video/audio of the incident, parties, and/or the involved vehicles, statements of the parties, etc. Failure to preserve that evidence may result in sanctions against your insured. *See, Stubli v. Big D International Trucks, Inc.*, 810 P.2d 785, 107 Nev. 309 (1991).

Sincerely,

Daniel Price

Daniel R. Price
PRICE BECKSTROM, PLLC

EXHIBIT 5

GEICO Fax



Government Employees Insurance Company
GEICO General Insurance Company
GEICO Indemnity Insurance Company
GEICO Casualty Insurance Company

■ Chevy Chase, MD.	■ Dallas, TX
■ Fredericksburg, VA	■ Lakeland, FL
■ Woodbury, NY	■ Honolulu, HI.
■ Macon, GA	■ Coralville, IA
■ Poway, CA	■ Virginia Beach, VA

Date: September 04, 04:00:42 PM EDT
To: 17025072335
From: ezdefaultreg@geico.com
Subj: ::LWDA::D223970396::Claim# 0279986740101014
Total pages: 2

To:
Policy Holder: Berenice Domenzain-Rodriguez
From: Whitney Atterberry (GEICO Claims Examiner)

Your letter from GEICO is attached.

=====

This email/fax message is for the sole use of the intended recipient(s) and may contain confidential and privileged information. Any unauthorized review, use, disclosure or distribution of this email/fax is prohibited. If you are not the intended recipient, please destroy all paper and electronic copies of the original message.

Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

9/4/2020

Price Beckstom Attorneys At Law

7312 WCHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name: GEICO Advantage Insurance Company
Claim Number: 027998674 0101 014
Loss Date: Saturday, July 25, 2020
Policyholder: Berenice Domenzain-rodriguez
Driver: Edward Rodriguez moya

Dear Price Beckstom Attorneys At Law,

We acknowledge your request for the disclosure of our insured's bodily injury liability limits regarding your clients, Judith Salter, Joshua Kaner and Sydney Kaner.

Please accept this letter as confirmation of the available coverage in lieu of a Declarations Page and/or policy. The limits for this policy for the date of loss, 07/25/2020, is \$25,000/\$50,000.

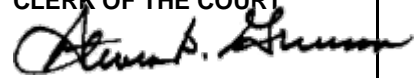
Please note that we are respectfully denying your client's injury claim as having no causal relationship to this loss. We will not be collecting any medical records for this file.

If you have any questions or wish to discuss this matter further, please call me at the number listed below.

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

0137



ROPP
DARRELL D. DENNIS
Nevada Bar No. 006618
MICHAEL R. SMITH
Nevada Bar No. 12641
LEWIS BRISBOIS BISGAARD & SMITH LLP
6385 S. Rainbow Boulevard, Suite 600
Las Vegas, Nevada 89118
Telephone: 702.893.3383
Facsimile: 702.893.3789
E-Mail: Darrell.Dennis@lewisbrisbois.com
E-Mail: Michael.R.Smith@lewisbrisbois.com
Attorneys for Defendants

EIGHTH JUDICIAL DISTRICT COURT
CLARK COUNTY, NEVADA

JUDITH SALTER, individually; JOSHUA
KANER, individually; and JOSHUA KANER
as guardian and natural parent of SYDNEY
KANER, a minor;

Plaintiffs,

vs.

EDWARD RODRIGUEZ MOYA, an
individual; BERENICE DOMENZIAN-
RODRIGUEZ, an individual; DOE OWNERS
I-V; DOE DRIVERS I-V; and ROE
COMPANIES I-V;

Defendants.

Case No. A-20-827003-C

Dept. No.: VI

**DEFENDANTS' REPLY TO PLAINTIFFS'
OPPOSITION TO DEFENDANTS'
MOTION TO ENFORCE SETTLEMENT
AGREEMENT**

COME NOW, Defendants EDWARD RODRIGUEZ MOYA and BERENICE
DOMENZIAN-RODRIGUEZ (hereinafter referred to collectively as "Defendants"), by and through
their counsel of record, the law office of LEWIS BRISBOIS BISGAARD & SMITH, LLP, and
hereby files the instant Reply to Plaintiffs' Opposition to Defendants' Motion to Enforce Settlement
Agreement and request this Honorable Court for an Order recognizing the settlement of the parties
and thereby dismissing this matter with prejudice.

///

///

1 This Reply to Plaintiffs' Opposition is made and based on the attached Memorandum of
2 Points and Authorities, including exhibits, the papers and pleadings on file with the Court, and any
3 oral argument the Court may entertain at time of Hearing.

4 DATED this 23rd day of February, 2021.

5 LEWIS BRISBOIS BISGAARD & SMITH LLP

6 By: /s/ Michael R. Smith

7 DARRELL D. DENNIS

8 Nevada Bar No. 006618

9 MICHAEL R. SMITH

10 Nevada Bar No. 12641

11 6385 S. Rainbow Boulevard, Suite 600

12 Las Vegas, Nevada 89118

13 *Attorneys for Defendants*

1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **I.**

3 **FACTS AND PROCEDURAL HISTORY**

4 Plaintiffs JUDITH SALTER, JOSHUA KAMER, and minor SYDNEY KAMER
5 (hereinafter referred to collectively as “Plaintiffs”) alleged they were involved in a motor-vehicle
6 collision involving the Defendants which occurred on July 25, 2020. (*See*, Plaintiff’s Letter to
7 Defendant’s automobile liability insurance carrier dated July 28, 2020, attached hereto as Exhibit
8 “A.” *See also*, Plaintiffs’ Time-Sensitive Settlement Offer to Defendants’ insurer dated October 22,
9 2020, attached hereto *sans exhibits* as Exhibit “B.”)

10 Plaintiffs allege they were “rear-ended” by Defendants and sustained injuries as a result. No
11 police were summoned to the scene. (*See*, NRS § 484E.070(2), which provides no police report is
12 necessary if the apparent damage to property is less than \$750.00.)

13 Indeed, Plaintiff’s vehicle sustained no visibly discernable damage. (*See*, photographs of
14 Plaintiffs’ vehicle, attached hereto as Exhibit “C.”)

15 Defendants’ vehicle sustained no visibly discernable damage. (*See*, Photographs of
16 Defendants’ vehicle, attached hereto as Exhibit “D.”)

17 Three days after the alleged event, plaintiffs retained counsel, who in turn notified the
18 Defendants’ automobile liability insurance carrier of the alleged event and requested information
19 concerning the Defendants’ automobile liability insurance policy, including the limits of same. (Ex.
20 A.)

21 In response to plaintiffs’ counsel’s demand for information concerning Defendants’
22 automobile liability insurance, Defendants’ automobile liability insurance carrier informed
23 plaintiffs’ counsel of the Defendants’ automobile liability insurance policy, which was \$25,000.00
24 per person, \$50,000.00 per occurrence. (*See*, Defendants’ Automobile Liability Insurer’s Letter to
25 Plaintiffs’ Counsel dated September 4, 2020, attached hereto as Exhibit “E.” *See also*, NRS §
26 485.185.)

27 In the same letter, Defendants’ automobile liability insurance carrier denied plaintiff’s
28 claims. (Ex. E.) It is likely this denial was based on the absence of a police report and the

1 photographs of the vehicles. (Ex. C & D.)

2 Aware of the Defendants' automobile liability insurance policy limits, including the
3 limitation of the amount the automobile liability insurance would pay any one single person,
4 plaintiffs' counsel presented a demand letter in which he demanded the Defendants' automobile
5 liability insurance policy. (Ex. B.)

6 The essential terms were clearly articulated in this letter- resolution of all claims of all
7 plaintiffs in exchange for the Defendants' automobile liability policy limits. (*Id.*)

8 Defendants' automobile liability insurer agreed to plaintiffs' counsel's demand letter, asking
9 how plaintiff's counsel would like the settlement checks prepared under the limitations of the policy
10 as previously presented to plaintiff's counsel by letter dated September 4, 2020. (*See*, Defendants'
11 Automobile Liability Insurer's Letter to Plaintiffs' Counsel dated November 12, 2020, attached
12 hereto as Exhibit "F.") The Defendants' automobile liability insurance carrier was completely
13 prepared to provide plaintiffs' counsel with the entirety of Defendants' automobile liability
14 insurance policy as requested by plaintiffs' counsel. (*Id.*) This acceptance of plaintiffs' terms was
15 also weeks before the plaintiffs' offer expired. (Ex. B.)

16 Nearly a month after Defendants' automobile liability insurance carrier attempted to accept
17 plaintiffs' terms and provide plaintiffs with the entirety of the Defendants' automobile liability
18 insurance policy, plaintiffs' counsel sent Defendants' automobile liability insurance carrier a letter
19 in which plaintiffs' counsel stated the acceptance of plaintiffs' offer was no longer acceptable to
20 plaintiffs. (*See*, Plaintiffs' Counsel rescission letter dated December 1, 2020, attached hereto as
21 Exhibit "G.")

22 Plaintiffs' position is that the acceptance of plaintiffs' offer was not acceptable. (*See*,
23 Plaintiff's Opposition to Defendants' Motion to Enforce Settlement Agreement, on file with the
24 Court.) Plaintiffs' position is that the Defendants' automobile liability insurance carrier made a
25 rejection and counter-offer by agreeing to plaintiffs' terms. (*Id.*) Plaintiffs have made no effort to
26 articulate what material terms were presented in plaintiffs' offer which were not agreed to in the
27 Defendants' automobile insurance carrier's acceptance of plaintiffs' offer.

28 ///

1 Reduced to the absurd, the history of the instant dispute can be presented as-

- 2 • Plaintiffs inquire into Defendants' automobile liability insurance policy.
3 (Ex. A.)
- 4 • Defendants' automobile liability insurance carrier informs plaintiffs that the
5 Defendants' automobile liability insurance policy is limited to \$25,000 per
6 person/ \$50,000 per occurrence. (Ex. E.)
- 7 • Plaintiffs say, "Okay, we demand the entirety of the Defendants'
8 automobile liability insurance policy limits in exchange for full, final, and
9 complete release of all claims. We want the money by November 23,
10 2020." (Ex. B.)
- 11 • Before November 23, 2020, Defendants' automobile liability insurance
12 carrier responds to plaintiffs and says, "Okay, how do you want the
13 checks?" (Ex. F.)
- 14 • On December 1, 2020, plaintiffs' counsel says, "We didn't take your money
15 you timely offered us, so you breached the agreement." (Ex. G.)

16 The plaintiff was aware of the limitations on Defendants' automobile liability insurance
17 policy, and made a demand for settlement and resolution of all claims arising from the alleged motor
18 vehicle incident. (Ex. B.) This demand included all material terms of a settlement agreement. (*Id.*)

19 Defendants' automobile liability carrier accepted plaintiffs' offer on Defendants' behalf.
20 (Ex. F.)

21 Plaintiffs did not inform any person or entity of plaintiffs' allegation that Defendants'
22 automobile liability carrier's timely acceptance of plaintiffs' offer was perceived as a rejection
23 during the initial offer's "open" period for acceptance, instead waiting several weeks to unilaterally
24 decide that the Defendants' automobile liability insurance carrier's acceptance of all material terms
25 presented in plaintiffs' offer was somehow a rejection. (Ex. G.)

26 Plaintiffs still cannot articulate what material term presented in their offer was not accepted
27 by Defendants' automobile insurance carrier. (on file with court). Plaintiffs state the initial offer
28 could only be accepted by performance. (*Id.*) Plaintiffs want this Honorable Court to ignore the
fact Defendants' automobile liability carrier timely inquired as to how to draft the settlement checks,
which was a limitation known to plaintiffs' counsel when their offer was made. (Ex. E & F.)

Plaintiffs' counsel now attempts to convince this Honorable Court that the limitations of the

1 Defendants' automobile liability insurance policy, which were known to plaintiffs at least as early
2 as September 4, 2020, was somehow a change in the proposed settlement. (*See*, Plaintiff's
3 Opposition to Defendants' Motion to Enforce Settlement Agreement, on file with the Court,
4 specifically at 9:1-3.) This position is inconsistent with Nevada Law.

5 II.

6 LEGAL ARGUMENT

7 A. This Honorable Court has Authority to Enforce Settlement Agreement.

8 In *May v. Anderson*, 121 Nev. 668, 119 P.3d 1254 (2005), the Nevada Supreme Court stated
9 settlement agreements are contracts and as such, enforcement of the settlement agreement as a
10 contract is soundly within the authority of the Court.

11 B. The May Court Stated Agreement of Material Terms is Necessary To 12 Enforce Settlement Agreement. The Parties in The Instant Matter 13 Agreed to All Material Terms.

14 The May Court stated:

15 Because a settlement agreement is a contract, its construction and enforcement are
16 governed by principles of contract law. Basic contract principles require, for an
17 enforceable contract, an offer and acceptance, meeting of the minds, and
18 consideration. With respect to contract formation, preliminary negotiations do not
19 constitute a binding contract unless the parties have agreed to all material terms. A
20 valid contract cannot exist when material terms are lacking or are insufficiently
21 certain and definite. A contract can be formed, however, when the parties have
22 agreed to the material terms, even though the contract's exact language is not
23 finalized until later. In the case of a settlement agreement, a court cannot compel
24 compliance when material terms remain uncertain. The court must be able to
25 ascertain what is required of the respective parties.

26 *Id.* at 672, 119 P.3d at 1257.

27 The May Court held that as a contract, an enforceable settlement agreement must contain an
28 offer and acceptance, a meeting of the minds, and consideration. The May Court stated a settlement
contract is formed when the parties have agreed to its material terms, even though the exact language
is finalized later.

26 Offer

27 In the instant matter, the plaintiffs understood the limitations on Defendants' automobile
28 liability insurance, and made an offer to accept the Defendants' automobile insurance policy single

1 occurrence limits of coverage in exchange for resolution of “all [plaintiffs’] claims, that they may
2 have now or may have in the future, arising from this loss against your insured within the limits of
3 your insureds’ insurance policy.” (Ex. B.)

4 All material terms were presented in plaintiffs’ offer.

5 This Honorable Court can ascertain the elements and essential and material terms of
6 plaintiffs’ offer.

7 **Acceptance**

8 In the instant matter, the Defendants’ automobile liability insurance carrier accepted
9 plaintiff’s offer, and attempted to timely provide plaintiffs with the demanded policy limits. (Ex.
10 F.)

11 Unlike in *May, supra*, there are no disputed terms in the plaintiffs’ offer or in the Defendants
12 automobile liability insurance carrier’s acceptance of plaintiffs’ offer.

13 It is expected that plaintiffs’ counsel may attempt to argue that the amount of the settlement
14 checks to be provided to plaintiffs is somehow a rejection and counter-offer. (*See, Plaintiff’s*
15 *Opposition to Defendants’ Motion to Enforce Settlement Agreement*, on file with the Court.) This
16 argument cannot be reasonably considered by this Honorable Court, in that Defendants’ automobile
17 liability insurance carrier can be confident that plaintiffs had previously agreed to distribution of
18 settlement amongst themselves; any claim that the plaintiffs had not agreed to a distribution, that
19 there were questions regarding same would implicate plaintiffs’ counsel and prevent his
20 representation of the group.¹

21 ///

22 _____
23 ¹ Nevada Rules of Professional Conduct, Rule 1.7, states, in part, “A lawyer shall not represent a
24 client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest
exists if the representation of one client will be adverse to another client.”

25 Nevada Rules of Professional Conduct, Rule 1.8(g), states, “A lawyer who represents two or more
26 clients shall not participate in making an aggregate settlement of the claims of or against the clients,
27 or in a criminal case an aggregated agreement as to guilty or *nolo contendere* pleas, unless each client
28 gives informed consent, in a writing signed by the client. The lawyer’s disclosure shall include the
existence and nature of all the claims or pleas involved and of the participation of each person in
the settlement.”

1 **Meeting of the Minds**

2 As stated above, the plaintiffs offered abandonment of all possible past, existing, and future
3 claims against Defendants in exchange for the Defendants' automobile liability policy limits. (Ex.
4 B.)

5 There was a meeting of the minds on all essential terms.

6 Indeed, plaintiffs have not argued that any essential or material term was absent or
7 misunderstood. (*See*, Plaintiff's Opposition to Defendants' Motion to Enforce Settlement
8 Agreement, on file with the Court.) Plaintiffs' argument is that plaintiffs' refusal to accept the
9 Defendants' automobile insurance liability policy limit was a failure of acceptance. (*Id.*)

10 Plaintiffs' argument is that plaintiffs' refusal to accept payment acts as Defendants' failure.

11 **Consideration**

12 As stated herein, the plaintiffs agreed to abandon all past, present, and future claims against
13 Defendants in exchange for the Defendants' automobile liability insurance policy limits. (Ex. B.)
14 Defendants' automobile liability insurance carrier agreed to plaintiff's offer, and attempted to
15 provide said payment. (Ex. F.)

16 Any argument that Defendants' automobile liability insurance carrier failed to provide
17 consideration fails to consider that plaintiffs failed to accept payment when timely presented. (*Id.*)

18 Just like in *May, supra*, all material terms were presented and agreed to by the parties. As
19 stated by Nevada Supreme Court in *May, supra*, "Here, the parties agreed upon essential terms of
20 the release. The district court found that [defendant's insurer] made an offer to pay the full policy
21 proceeds in exchange for a general release of all claims and a covenant not to sue." 121 Nev. at
22 674, 119 P.3d at 1258-59.

23 **III.**

24 **CONCLUSION**

25 The plaintiffs made an offer to settle any past, present, and future claims they might have
26 against Defendants to Defendants' automobile liability insurance carrier. The plaintiffs offer
27 contained all material and necessary terms for a valid agreement.

28 ///

1 The Defendants' automobile liability insurance carrier, on behalf of their insureds, agreed to
2 all the terms as extended in the plaintiffs' offer, and did so prior to the expiration of plaintiffs' offer.

3 Plaintiffs did not accept the payment extended on behalf of the Defendants. The failure of
4 plaintiffs to accept the payment which they demanded is insufficient to support plaintiffs' claim that
5 there was no agreement.

6 Based on the above and forgoing, Defendants request this Honorable Court recognize the
7 settlement agreement as an enforceable contract, enforce the settlement agreement, and order this
8 matter dismissed with prejudice.

9
10 DATED this 23rd day of February, 2021.

11 LEWIS BRISBOIS BISGAARD & SMITH LLP

12 By: /s/ Michael R. Smith

13 DARRELL D. DENNIS

14 Nevada Bar No. 006618

15 MICHAEL R. SMITH

16 Nevada Bar No. 12641

17 6385 S. Rainbow Boulevard, Suite 600

18 Las Vegas, Nevada 89118

19 *Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRCP 5(b), I hereby certify that I am an employee of LEWIS BRISBOIS
3 BISGAARD & SMITH LLP and that on this 23rd day of February, 2021, I did cause a true copy of
4 the foregoing **DEFENDANTS' REPLY TO PLAINTIFFS' OPPOSITION TO DEFENDANTS'**
5 **MOTION TO ENFORCE SETTLEMENT AGREEMENT**, to be served via the Court's electronic
6 filing and service system to all parties on the current service list.

7 Daniel R. Price
8 Christopher Beckstrom
9 **PRICE BECKSTROM, PLLC**
10 1404 South Jones Blvd.
11 Las Vegas, NV 89146
12 *Attorneys for Plaintiff*

13 By /s/ Gabriela Mercado
14 Gabriela Mercado, An Employee of
15 LEWIS BRISBOIS BISGAARD & SMITH LLP
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EXHIBIT A

EXHIBIT A



July 28, 2020

Geico
Fax: 866-568-2132

Re: Your insured : Berenice Domenzain-Rodriguez & Edward J Rodriguez Moya
 Date of Loss : 7/25/2020
 Claim Number: 0279986740101014
 My Client(s) : Judith Salter, Joshua Kaner & Sydney Kaner

Dear claims handler:

This is to advise you that my firm represents the above-named client(s) in a claim for personal injuries against your insured as a result of an incident on 7/25/2020.

Please provide me with a **certified copy of all insurance policies**, including any umbrella policy(ies), of your insured and retain this letter as an indication of my representation. Kindly forward copies of any recorded oral and or written statements taken from our client with regards to the facts of this loss. Please also preserve any and all information related to this claim.

Please confirm in writing your address and other information to correspond with the adjuster. Should you need further information or assistance with this claim, please feel free to contact me.

Finally, please instruct your insured to preserve all evidence in your insured's possession, custody, or control related to this incident. This includes any photographs, and/or video/audio of the incident, parties, and/or the involved vehicles, statements of the parties, etc. Failure to preserve that evidence may result in sanctions against your insured. *See, Stubli v. Big D International Trucks, Inc.*, 810 P.2d 785, 107 Nev. 309 (1991).

Sincerely,

Daniel Price

Daniel R. Price
PRICE BECKSTROM, PLLC

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EXHIBIT B

EXHIBIT B

and at such time the funds will be distributed as ordered by the court. Following acceptance of this offer my clients will execute a release of all claims in favor of your insureds. A copy of my firm's W-9 is attached.

Sincerely,

Daniel Price

Daniel R. Price, Esq.
PRICE BECKSTROM, PLLC

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EXHIBIT C

EXHIBIT C



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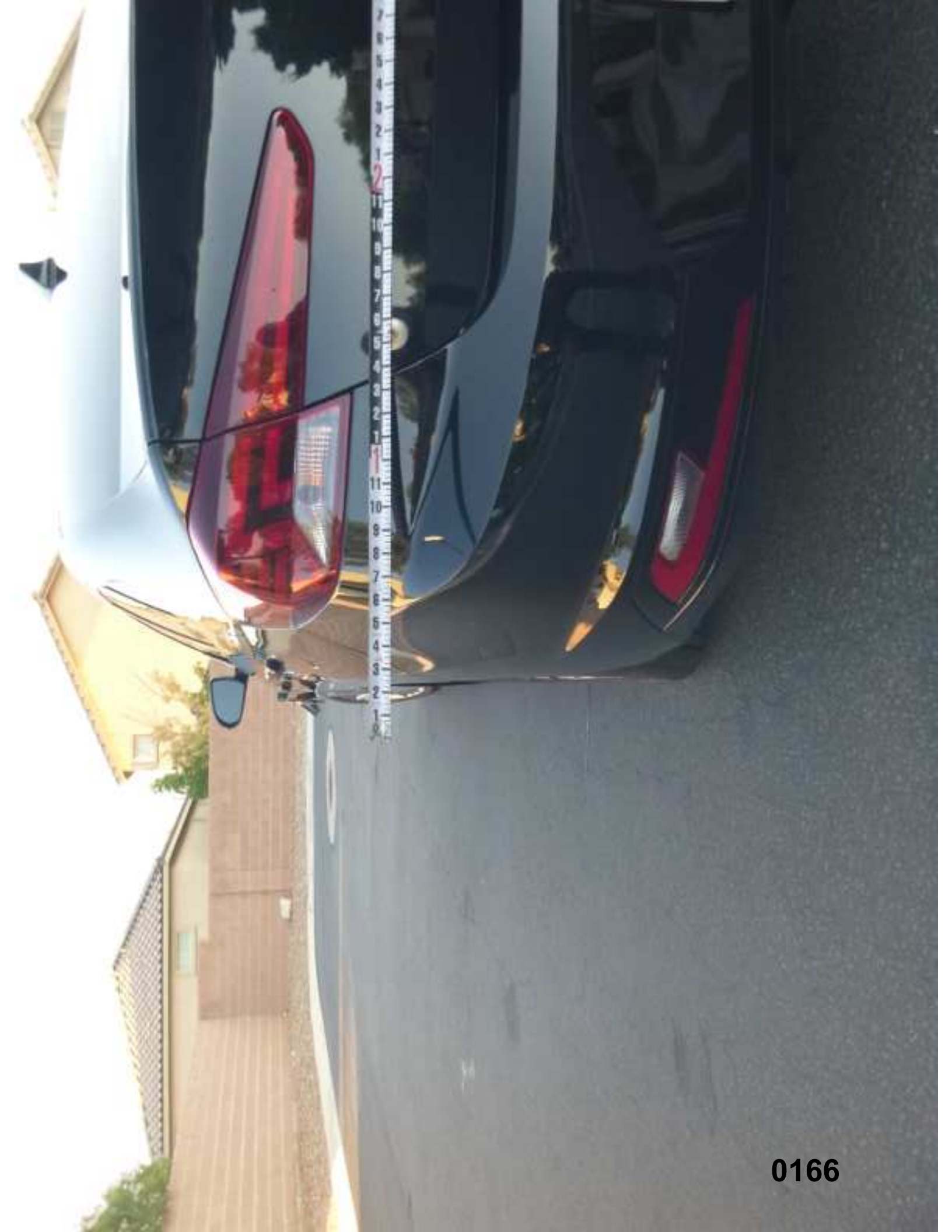
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E L A N T R A

LAS VEGAS

TEMPORARY ACARD
VIN: SHPD5ALF8LH550886 YEAR: 2016 MAKE: HYUNDAI MODEL: ELANTRA

NX-157-621

MAR 16 - 020

ABCH **HYUNDAI.com**

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VIN: 5NPD84LF8LH580





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EDR (HYUNDAI)

Vehicle Selection

5NPD84LF8LH580896

Auto VIN Search

Clear

ELANTRA(ADA)

Adapter

Additional Information

VIN as Programmed into EMS 5NPD84LF8LH580896

User-entered VIN 5NPD84LF8LH580896

User Name B.HOSLEY

Case Number 2052610

Crash Date 07/25/2020

Tire Size(s)

Memo

OK

Cancel

ASUS

ASUS

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- EDR (HYUNDAI) -

Retrieve

Additional Information

User-entered VIN	5NPD84LFBJH580896
User Name	B.HOSLEY
Case Number	2052610
Crash Date	07/25/2020
Saved-on Date	2020-08-26 18:40
EDR Tool Version	E-T1-H-01-00-0037
EDR Report Version	EDR001-R01
Tire Size(s)	
Notes	

ASUS

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Retrieve

EDR Information

Part No. (EOL Code) as programmed into ACU	95910-F2150(F230)
ECU SW Version as programmed into ACU	1.00
EDR Version as programmed into ACU	

< Event 1 >

There is no recorded event.

ASUS

ASUS



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LAS VEGAS

TEMPORARY PLACARD

VIN: 5NPD84LF8LH580896 YEAR 2020 MAKE HYUNDAI MODEL ELANTRA

NX-157-621

MAR 16 - 2020



ABCHYUNDAI.com



5NPD84LF8LH580896

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EXHIBIT D

EXHIBIT D



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TIRE AND LOADING INFORMATION

SEATING CAPACITY - TOTAL 5 FRONT 2 REAR 3

THE COMBINED WEIGHT OF OCCUPANTS AND CARGO SHOULD NEVER EXCEED
392 KG OR 865 LB

TIRE	FRONT	REAR	SPARE
ORIGINAL TIRE SIZE	245/45R20 99V	245/45R20 99V	T145/80D18LL 99M
COLD TIRE INFLATION PRESSURE	220 kPa / 32 PSI	220 kPa / 32 PSI	420 kPa / 60 PSI

SEE OWNERS MANUAL FOR ADDITIONAL INFORMATION



HH533189

MFD BY FCA US LLC

GWR: 02314 KG

GWR: 01275 KG

DATE OF MANUFACTURE: 11-16

05100 LB

FRONT: 02810 LB

REAR: 02810 LB

THIS VEHICLE CONFORMS TO ALL APPLICABLE U.S.A. FEDERAL MOTOR VEHICLE SAFETY
BUMPER AND THEFT PREVENTION STANDARDS IN EFFECT ON
THE DATE OF MANUFACTURE SHOWN ABOVE.



VIN: 2C3CD18C22H633100

PNR: 112023 02800

VEHICLE MADE IN CHINA

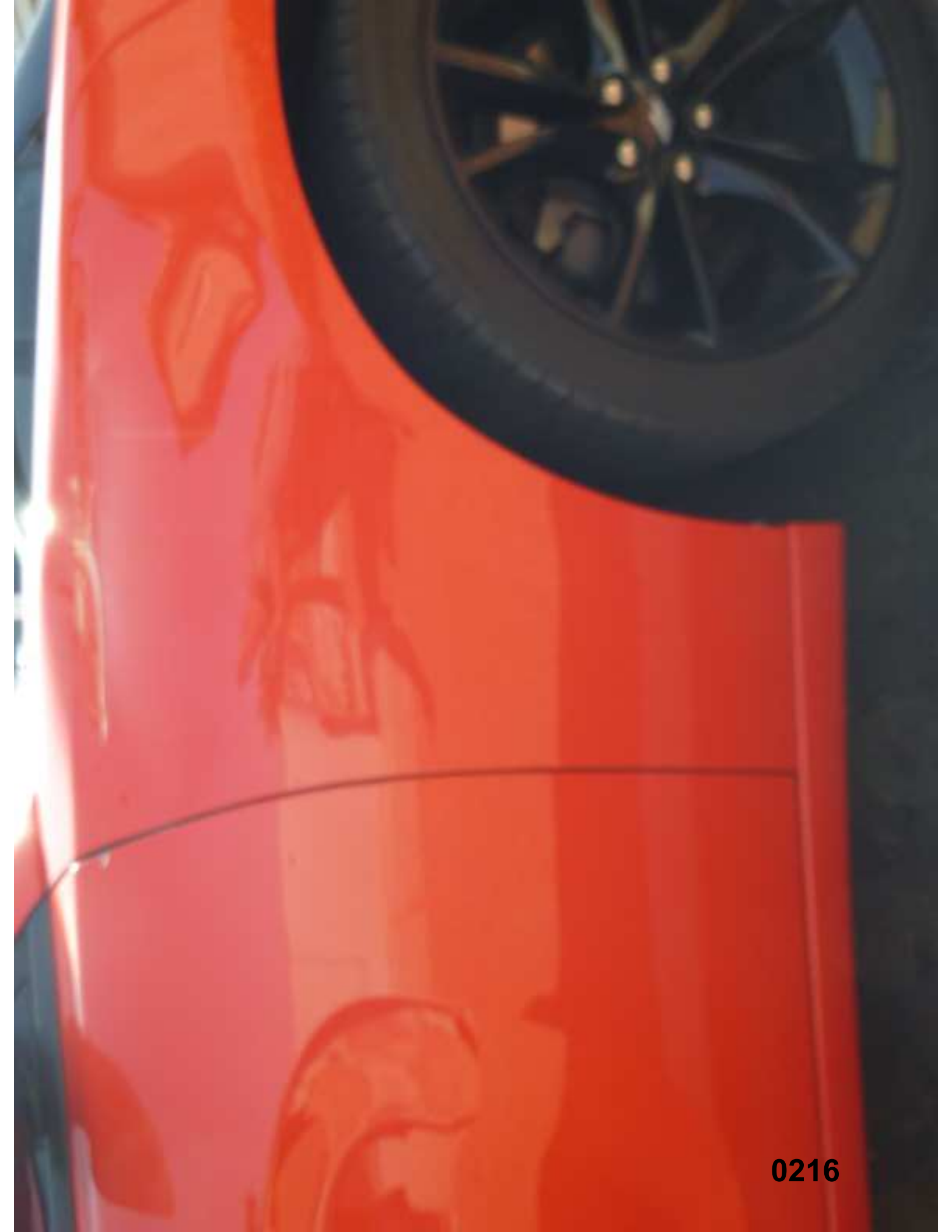
TRAILER WEIGHT: 200

TRAILER

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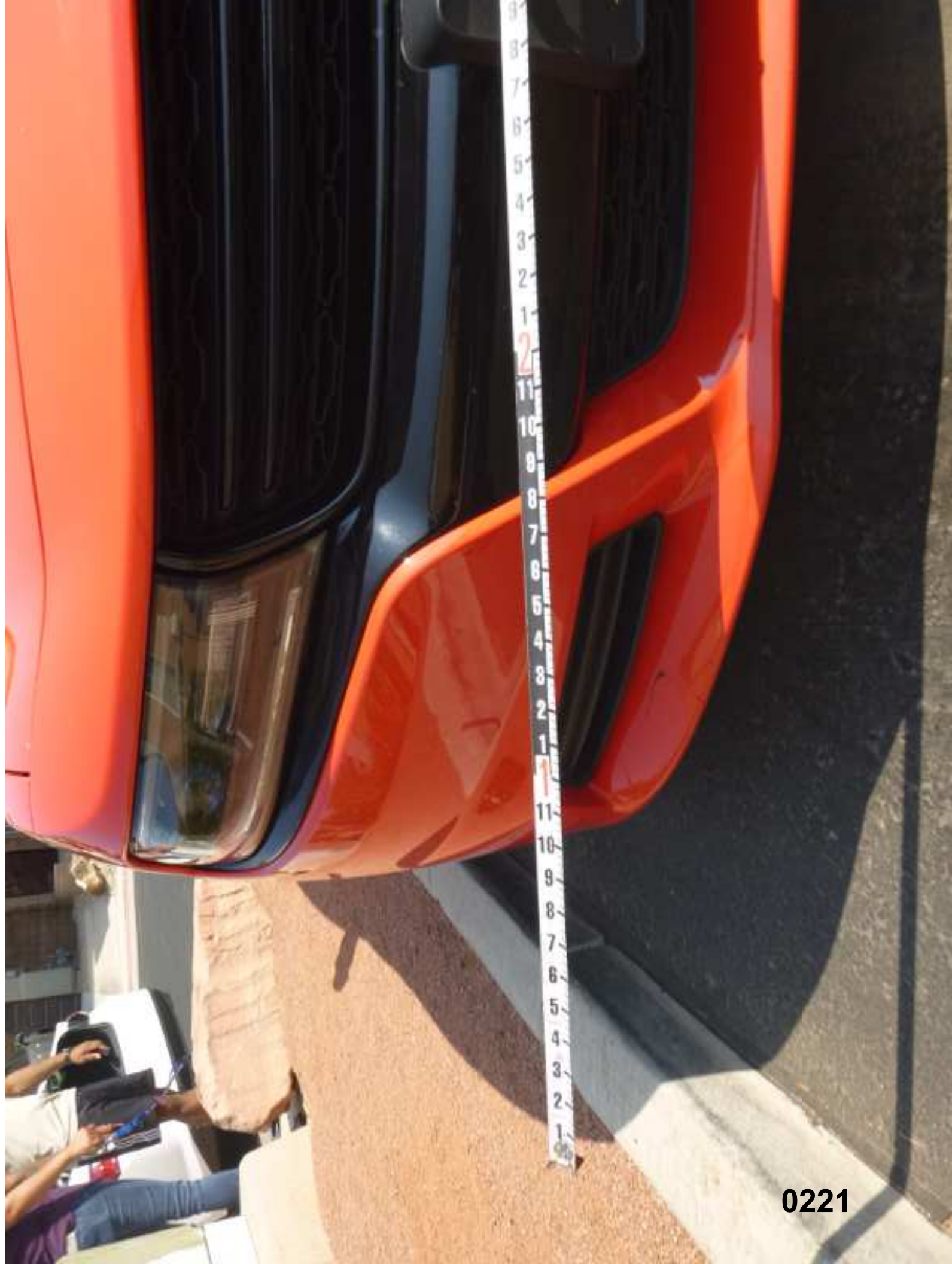
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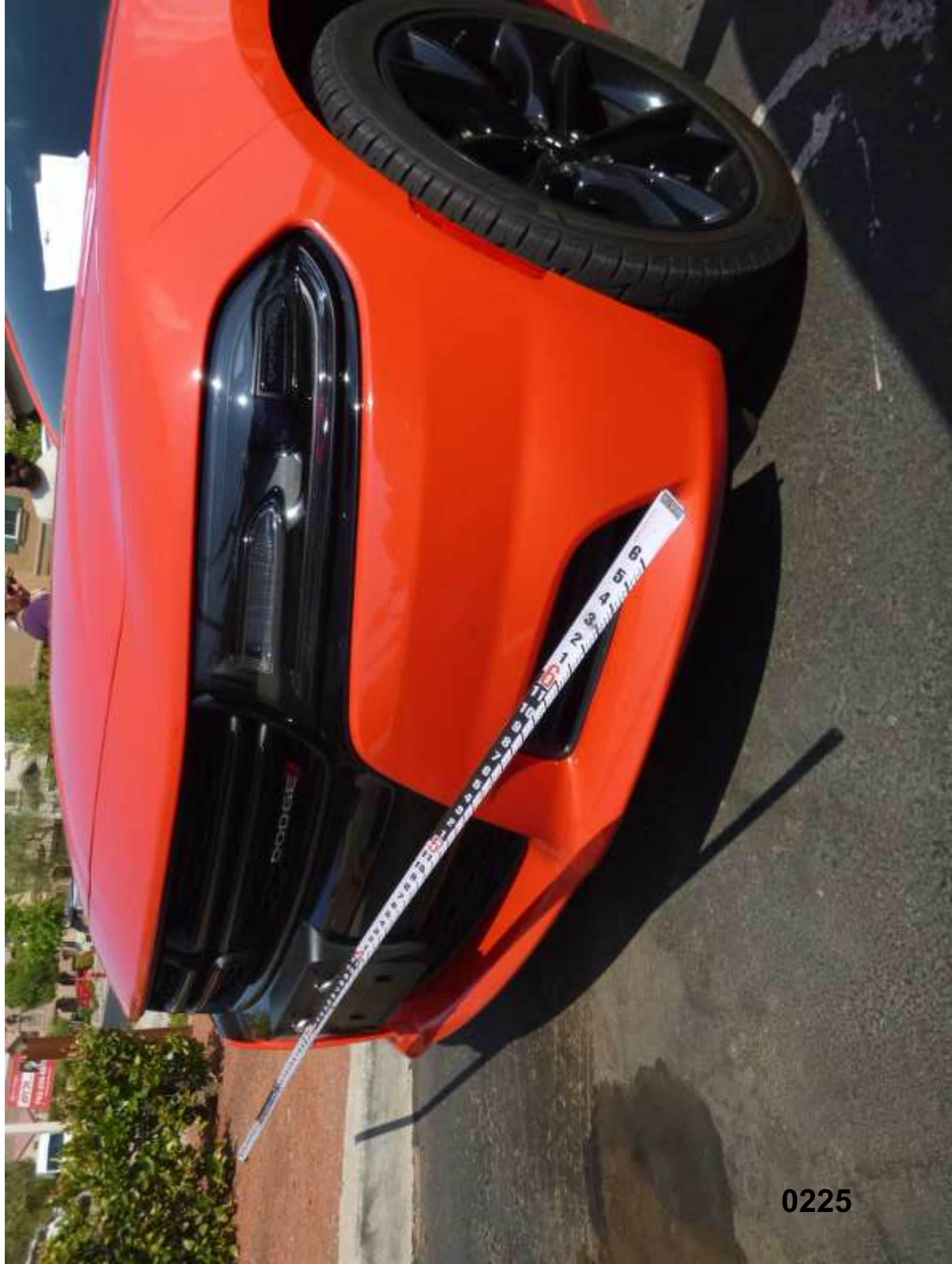
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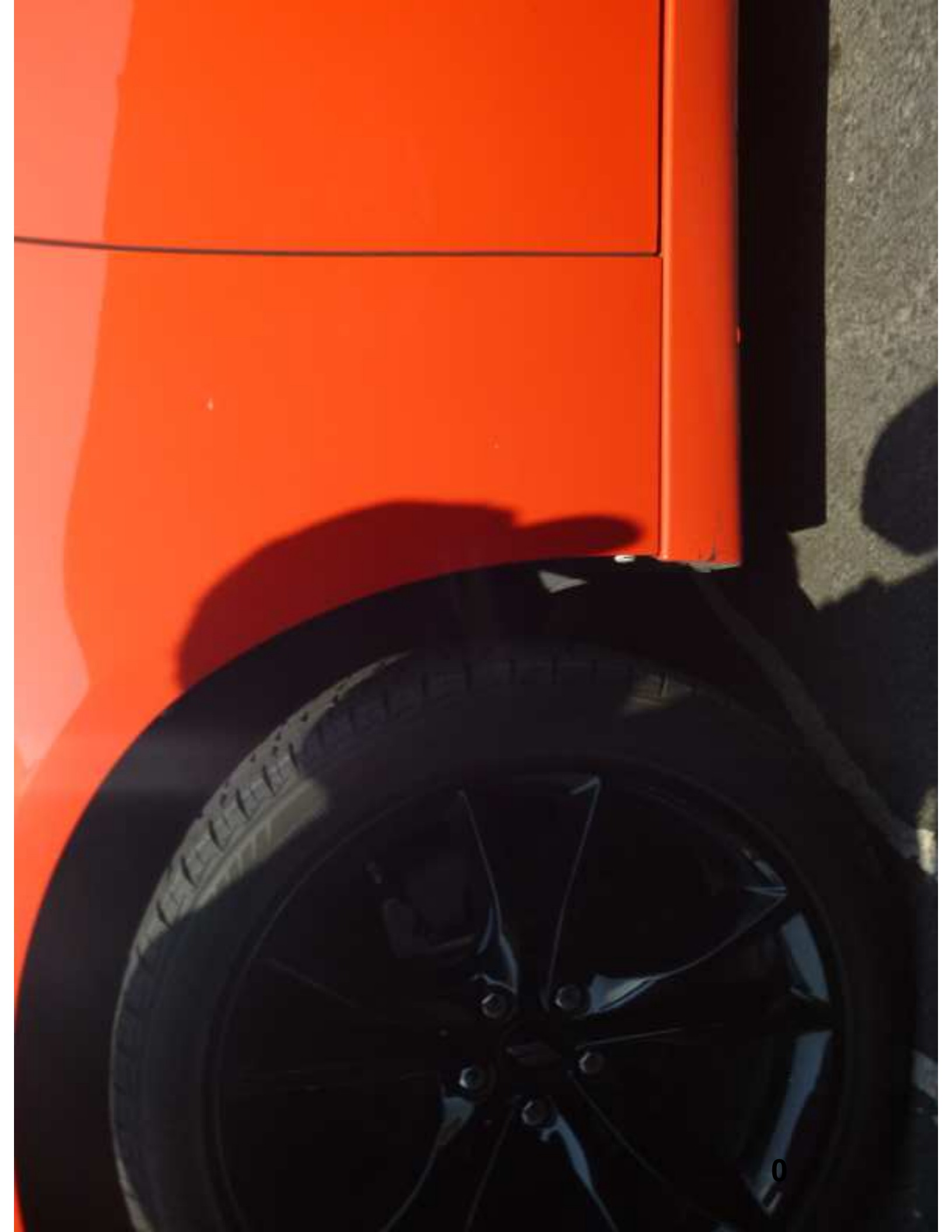
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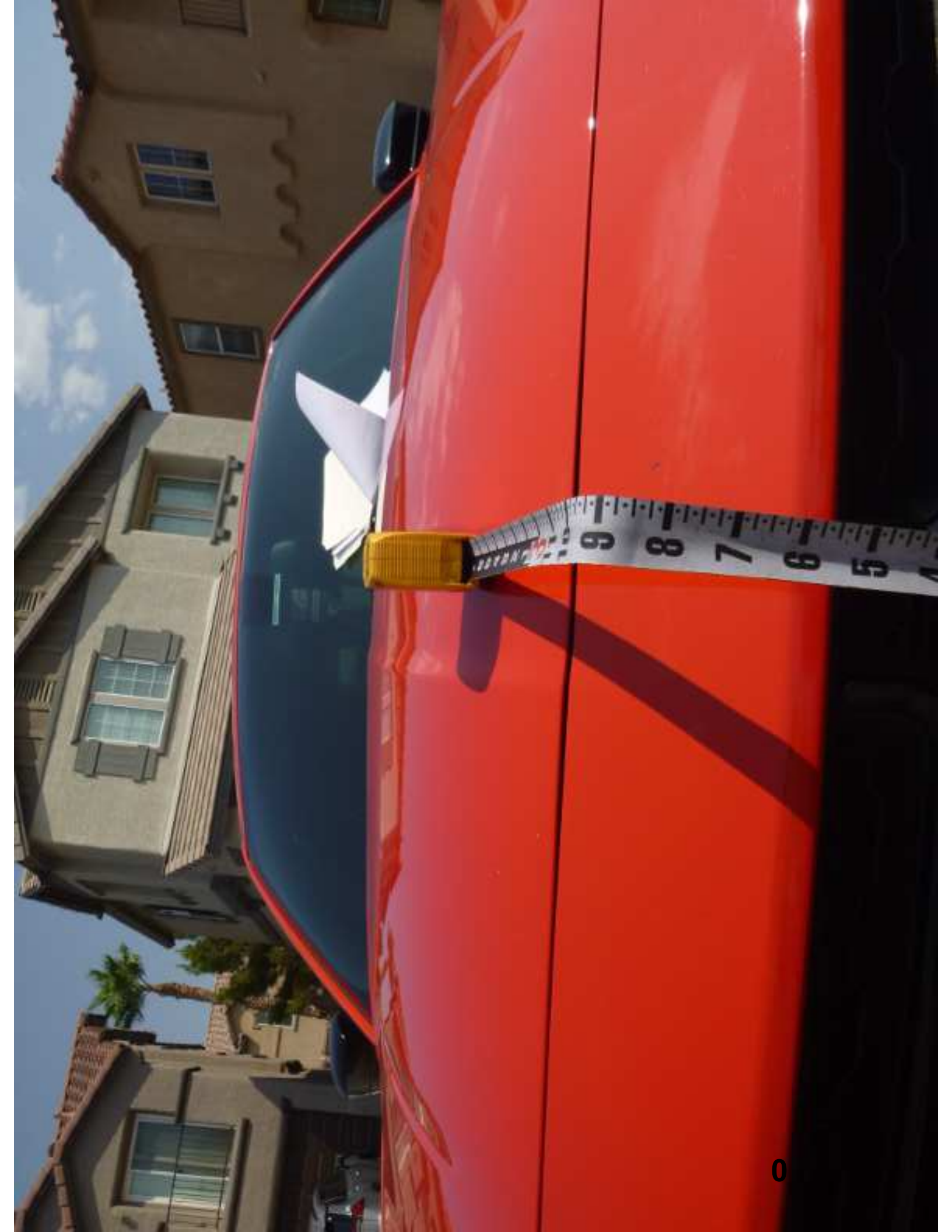
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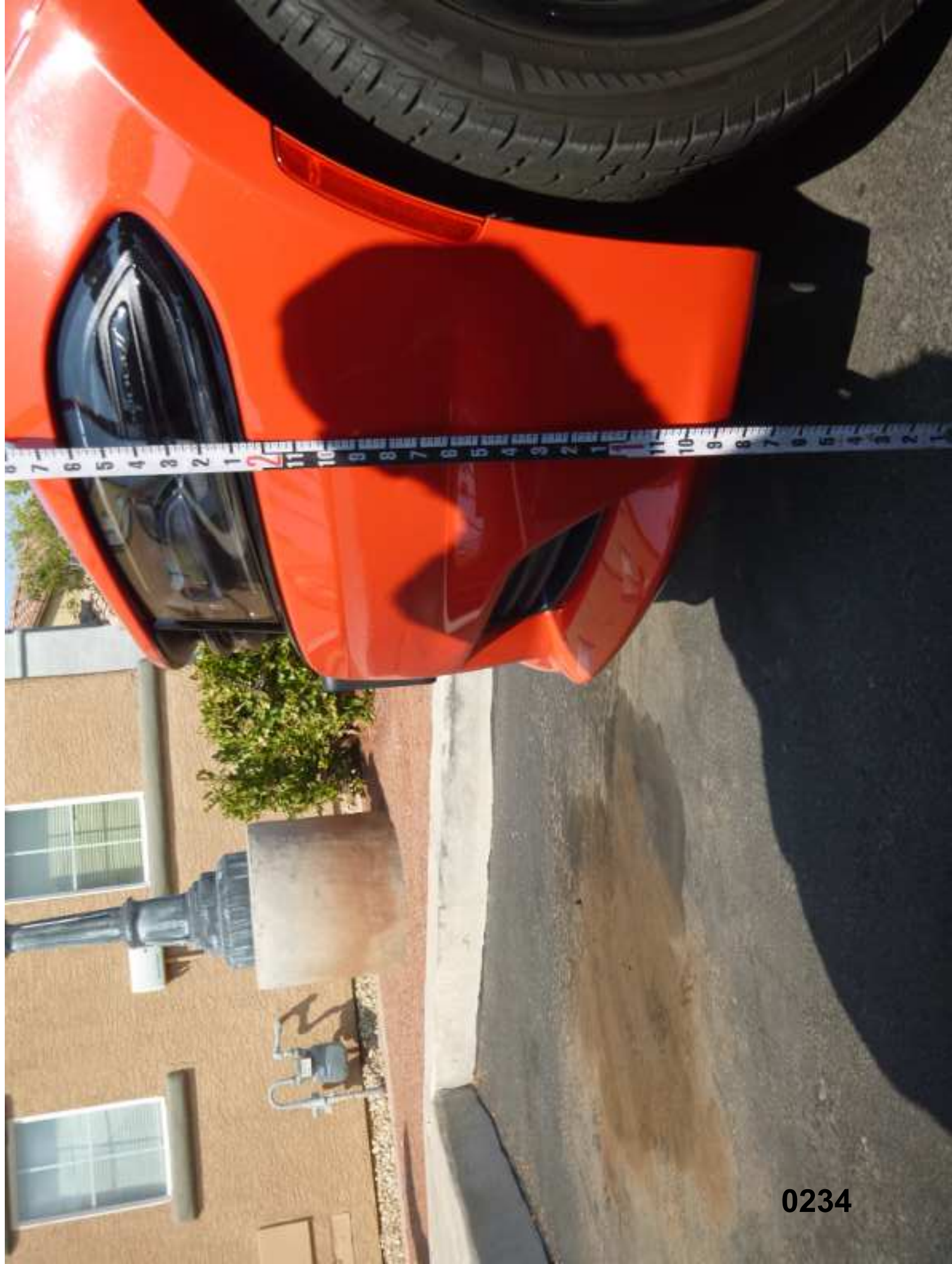


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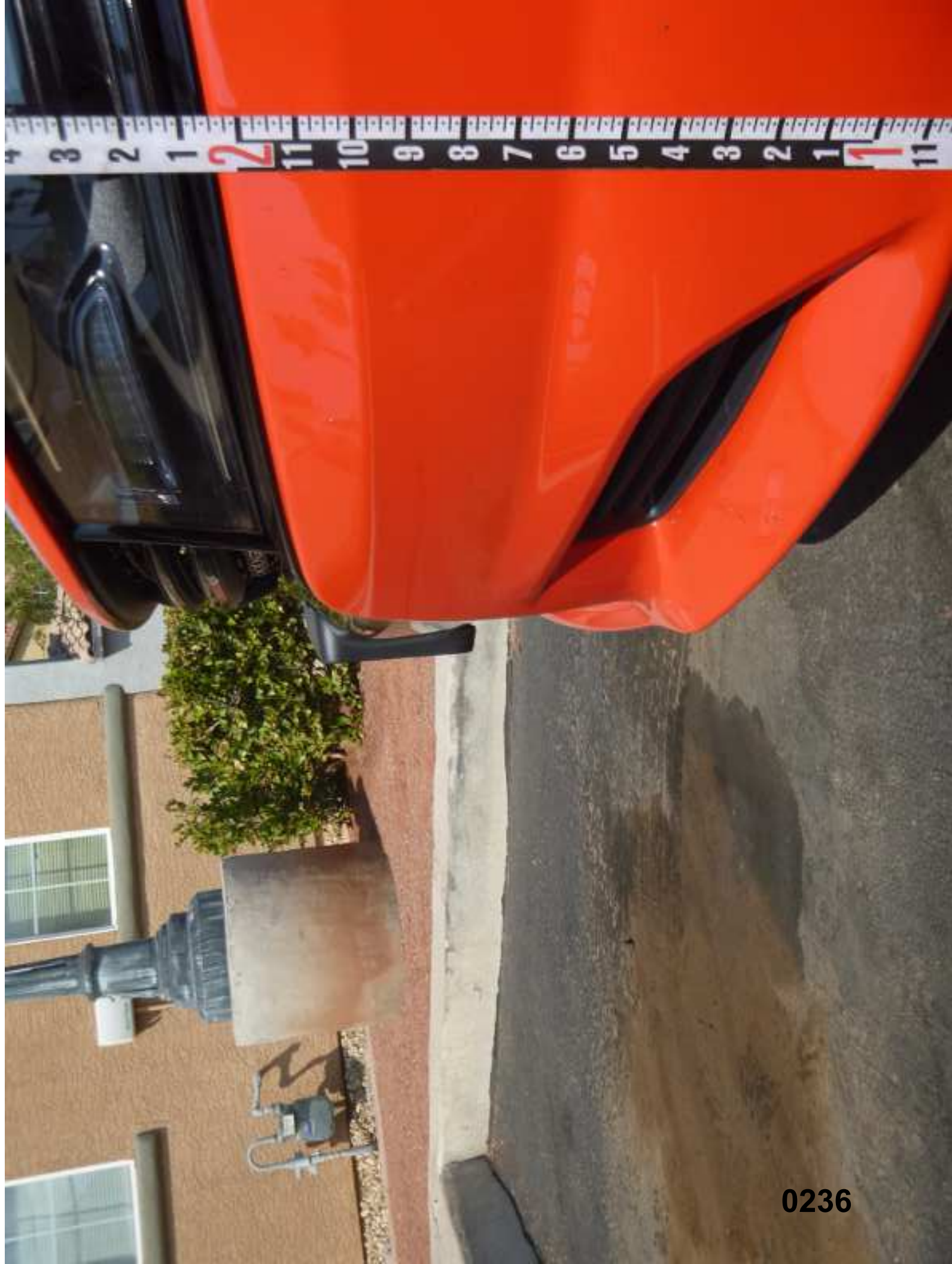




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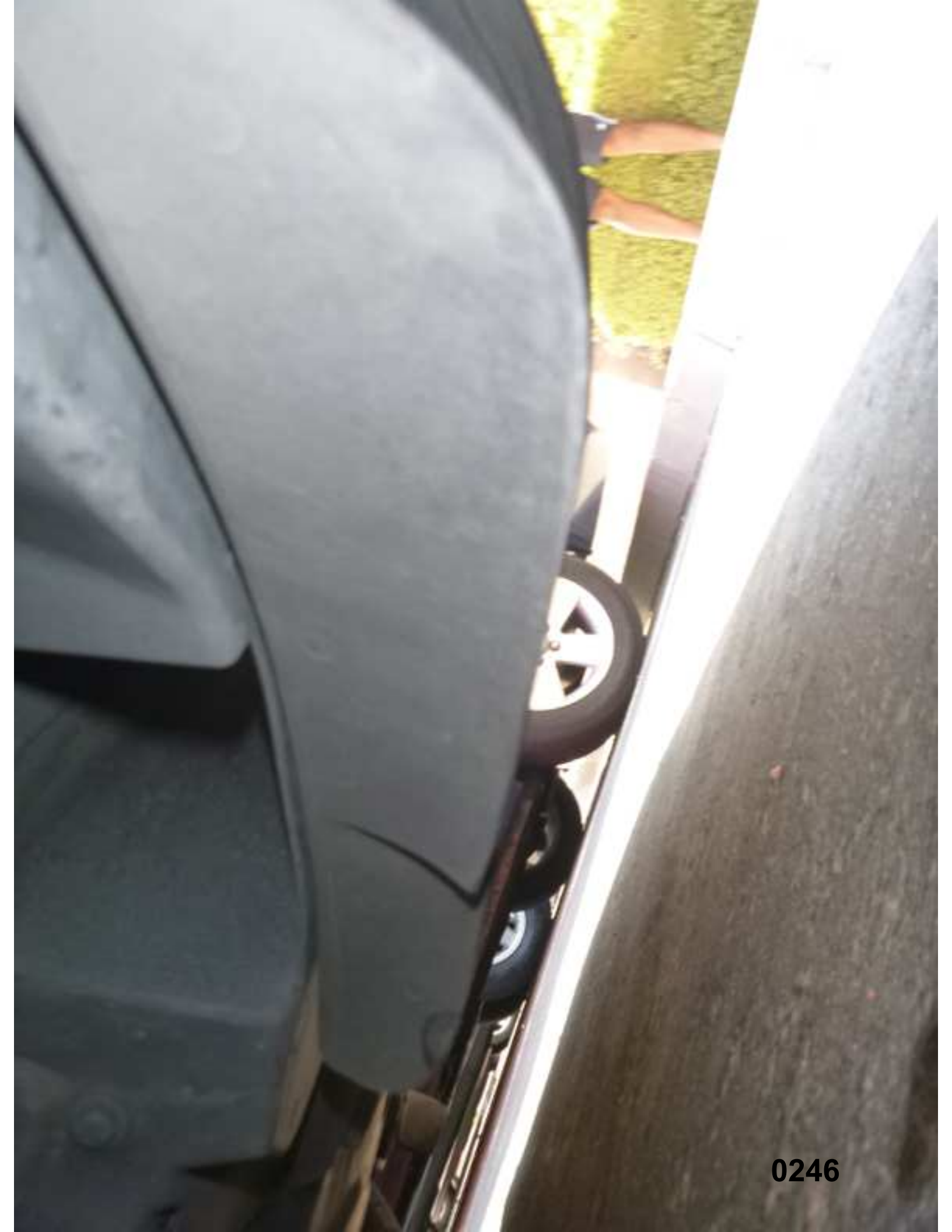
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EXHIBIT E

EXHIBIT E

Attn: Region IV Claims, PO Box 509119
San Diego, CA 92150-9914

9/4/2020

Price Beckstom Attorneys At Law

7312 WCHEYENNE AVE STE 5
Las Vegas, NV 89129-7425

Company Name: GEICO Advantage Insurance Company
Claim Number: 027998674 0101 014
Loss Date: Saturday, July 25, 2020
Policyholder: Berenice Domenzain-rodriguez
Driver: Edward Rodriguez moya

Dear Price Beckstom Attorneys At Law,

We acknowledge your request for the disclosure of our insured's bodily injury liability limits regarding your clients, Judith Salter, Joshua Kaner and Sydney Kaner.

Please accept this letter as confirmation of the available coverage in lieu of a Declarations Page and/or policy. The limits for this policy for the date of loss, 07/25/2020, is \$25,000/\$50,000.

Please note that we are respectfully denying your client's injury claim as having no causal relationship to this loss. We will not be collecting any medical records for this file.

If you have any questions or wish to discuss this matter further, please call me at the number listed below.

Sincerely,

Whitney Atterberry
520-546-5254
Claims Department

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