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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF LOS ANGELES

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11		)	NO.
12	Plaintiffs,	)	[Hon.]
13		)	PLAINTIFF'S MOTION IN LIMINE
14	v.	)	NO. TO EXCLUDE DEFENDANT'S
15		)	BIOMECHANICAL/ACCIDENT
16		)	RECONSTRUCTION EXPERT,
17	Defendants.	)	FROM TESTIFYING TO
18		)	ISSUE REGARDING CAUSATION,
		)	MEDICAL DIAGNOSES OR MEDICAL
		)	OPINIONS REGARDING PLAINTIFF'S
		)	INJURIES
		)	
		)	FSC DATE:
		)	TRIAL DATE:

19 TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

20 Comes now, plaintiff, , and
21 hereby respectfully moves this Court, in limine, for an order
22 precluding defendants,
23 from attempting to introduce any testimony, exhibits or
24 evidence, at trial regarding causation, medical diagnoses, and
25 medical opinions by _____, who is a defense
26 designated biomechanical/accident reconstruction expert and not a

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28 _____
PLAINTIFF'S MOTION IN LIMINE _____

1 medical doctor. Specifically, Plaintiff is seeking an Order
2 excluding _____ from testifying to issues regarding
3 causation of Plaintiffs injuries.

4 This motion is made and based on the accompanying Memorandum
5 of Points and Authorities, all exhibits attached hereto, the
6 pleadings and records on file with the Court and the Court's file,
7 upon such matters and documents which the Court may or must take
8 judicial notice and upon such other oral or documentary evidence
9 as may be presented at the time of hearing herein.

10 DATED: _____

ROBERT S. FINK, A Prof. Corp.

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12 By: _____
13 Robert S. Fink
14 Attorneys for Plaintiff,
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 This case arises out of an automobile accident which occurred
5 on _____. Plaintiff, _____, was driving
6 her vehicle when she was involved in a side impact collision.

7 Defendant has taken the position that it is impossible for
8 Plaintiff to sustain these injuries to her body in this accident.
9 In an attempt to avoid responsibility, Defendant has hired _____
10 _____, biomechanical/accident reconstruction expert to testify
11 at trial. Defendant's Expert Witness Declaration indicated that
12 Mr. _____ "will testify as to his opinion of the cause of the
13 alleged injuries to plaintiff." Since Mr. _____ is not a
14 medical doctor, he should not be permitted to give expert **medical**
15 testimony, nor should he be permitted to testify that the accident
16 could not have caused the Plaintiff's injury.

17 II

18 IS NOT QUALIFIED TO MAKE

19 MEDICAL DIAGNOSES, RENDERED MEDICAL

20 OPINIONS OR TESTIFY ABOUT CAUSATION IN CONNECTION

21 WITH THE PLAINTIFF'S INJURIES

22 _____ is defendant's designated biomechanical/
23 accident reconstruction expert. He is not a medical doctor,
24 chiropractor, or physical therapist. In fact, he has never treated
25 or diagnosed a single patient. Attached hereto and incorporated
26 herein by reference as Exhibit 1 is Defendant's Designation of

1 Expert Witness and Expert Witness Declaration which attaches
2 _____'s C.V. Since defendant's expert is not
3 a medical doctor, he should not be permitted to give expert
4 medical testimony at trial, nor should he be permitted to testify
5 regarding causation of the Plaintiff's injuries.

6 First, it is presumed as a matter of law in California that
7 it is unlawful for any person who is not licensed in the field of
8 the healing arts as regulated by the Business and Professions
9 Code to practice medicine. (Bus. & Prof. Code §2052). Second,
10 medical and chiropractic doctors must complete at least 4000
11 hours in the healing arts at an approved school, take board
12 examinations, and obtain a license to qualify as a licensed
13 practitioner - Mr. _____ does not meet any of these
14 requirements.

15 Finally, Mr. _____ is not a licensed medical or chiropractic
16 doctor, and is not qualified to make a diagnosis of injuries, nor
17 state any opinion as to the cause or lack of cause of injury to
18 the Plaintiff, nor interpret the medical records. (Bus. & Prof.
19 Code, §2089).

20 **Evidence Code section** 720 states as follows:

21 "A person is qualified to testify as an expert if he has
22 special knowledge, skill, experience, training, or
23 education sufficient to qualify him as an expert on the
24 the subject to which his testimony relates. [S]uch
25 special knowledge, skill, experience, training, or

26 ///

1 education must be shown before the witness may testify as
2 an expert."

3 An expert who lacks the proper knowledge or education may not
4 testify as an expert witness as to the ultimate issues of a trial.
5 (Putensen v. Clay Adams, Inc., (1970) 12 Cal. App. 3d 1062, 1081.)
6 If the special knowledge or education level of an expert is not
7 shown before trial, he or she may not testify as an expert at
8 trial. (People v. King (1968) 266 Cal. App. 2d 437, 444.) In
9 order to be qualified as an expert in a subject, one must have
10 the basic educational background customary for others in the
11 field in which the expert proposes to testify. See, Pearce v.
12 Linde (1952) 113 Cal. 2d 627, 639-631. When one does not
13 possess the requisite educational level or knowledge in a subject,
14 then one may not testify as an expert. See People v. Fierro,
15 (1991) 1 Cal. Th 173, 223-224.

16 Since Mr. _____ is not a medical doctor, nor a health care
17 provider of any kind, he should not be permitted to give expert
18 medical testimony at trial, nor testify regarding the causation
19 of Plaintiff's injuries.

20 III

21 ALL TESTIMONY BY ABOUT THE CAUSE OF THE
22 PLAINTIFF'S INJURIES SHOULD BE EXCLUDED

23 Persons such as Mr. _____, designated as biomechanical/
24 accident reconstruction experts, are not qualified to provide
25 expert opinion on th cause of injuries. As stated in Bromme v.
26 Pavitt (1992) 5 Cal.App.4th 1487, 1489, 7 Cal.Rptr. 2d 608. "The

1 law is well settled that in a personal injury action causation
2 must be proved within a reasonable medical probability based upon
3 competent expert testimony." See also, Jones v. Ortho
4 Pharmaceutical Corp. (1985) 163 Cal.App. 3d 396, 402, 209 Cal.Rptr.
5 465. In the case of Salasquevara v. Wyeth Laboratories, Inc.
6 (1990) 222 Cal.App. 2d 379, the court held that medical causation
7 of injuries can only be determined by expert medical testimony.
8 In Inskeep v. Busby (1962) 207 Cal.App. 2d 848, the court held
9 that [i]n regard to the causal connection between the injury and
10 accident, it is proper for a medical expert to give his opinion
11 whether a certain agency might have produced a **particular injury.**"

12 In People v. Roehler (1985) 167 Cal.App. 3d 353 at p. 399, the
13 court held that a biomechanical opinion could corroborate, not
14 establish, the medical opinion of an appropriately qualified
15 medical expert. Injury potential or the causation of the injury
16 to Mr. _____ can only be stated by a qualified medical expert
17 with medical education, training, and a license under the
18 California Business and Professions Code. The term "diagnose is
19 defined as "to determine the type and cause of a health condition
20 on the basis of signs and symptoms of the patient." (Mosby's
21 Medical Dictionary 480 (5th Ed. 1998.) Thus, the question of
22 causation of a human injury is a component part of a diagnosis,
23 which is , in turn, a part of the practice of medicine. Mr.
24 _____ has never examined the Plaintiff because he is not a
25 qualified medical doctor, and is not qualified to state an opinion
26 on the probability of injury to the Plaintiff. Based on case law

1 and the qualifications of this defense expert, he is not qualified
2 to render an opinion on the cause of [plaintiff name]'s injuries.

3 More specifically, not only does California law expressly
4 require medical testimony on medical causation, it expressly
5 prohibits such testimony from accident reconstruction and/or
6 biomechanical experts. In People v. Dellinger (1984) 163 Cal.App.
7 3d 284, the court reversed defendant's criminal conviction based
8 on unreliable scientific testimony of a biomechanical engineer
9 who lacked the appropriate medical training to render opinions
10 about cause of injury. (Id. At p. 294 (criticized on other
11 grounds in People v. Snead (1993) 20 Cal.App.4th 1008, 1095-1096).
12 In Dellinger, the prosecutor attempted to justify the admission of
13 biomechanical testimony on the grounds that the expert was
14 eminently qualified as a biomechanical expert. The Court properly
15 noted that, true or not, the fact is irrelevant to the expert's
16 qualifications to testify on medical causation. The Court went on
17 to state that "[t]he competency of an expert is relative to the
18 topic and fields of knowledge about which the person is asked to
19 make a statement. In considering whether a person is qualified as
20 an expert, the filed of expertise must be carefully distinguished
21 and limited. [Causation.]....Dellinger, supra, 163 Cal.App. 3d at
22 pp. 294-295 [citations omitted].)

23 In sum, Mr. _____ should not be permitted to testify that
24 the accident as described by the Plaintiff could not have caused
25 the type of injury sustained by Plaintiff. This testimony remains
26 within the exclusive province of a medical expert.

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IV

CONCLUSION

Based on the foregoing, Plaintiff respectfully submits that Mr. _____ should not be permitted to testify at trial about causation, medical diagnosis or medical opinions.

DATED: _____

Respectfully submitted,

ROBERT S. FINK, A Prof. Corp.

By: _____
Robert S. Fink
Attorneys for Plaintiff,

DECLARATION OF ROBERT S. FINK

I, ROBERT S. FINK, declare:

1. I am an attorney at law, duly licensed to practice before all the courts of the State of California, and I am the attorney of record for Plaintiff _____ (herein after "PLAINTIFF(S)" in the above-referenced matter. I have personal knowledge of all facts set forth herein unless otherwise stated and could and would competently testify thereto if called upon to do so at anytime.

2. Attached hereto and incorporated herein by reference as Exhibit 1 is a true and correct copy of Defendant's Designation of Expert Witness and Expert Witness Declaration.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this ____ day of _____, _____, at Los Angeles, California.

ROBERT S. FINK
Declarant

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2 ROBERT S. FINK
3 A Professional Corporation
4 6404 Wilshire Boulevard, #1001
5 Los Angeles, California 90048
6 SBN 65787

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8 Tel: (323) 653-3030
9 Fax: (323) 655-8182

10 Attorneys for Plaintiff

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

11) NO.
12) [Hon.]
13 Plaintiffs,) PLAINTIFF'S MOTION IN LIMINE
14) NO. ____ TO PRECLUDE ANY REFERENCE
15 v.) TO EXTENT OF PROPERTY DAMAGE
16) IN THE WAY OF ESTIMATES,
17) PHOTOGRAPHS AND/OR TESTIMONY
18) TO LIMIT THE NATURE OF THE
19) DAMAGES SOUGHT

20 Defendants.)

21 TRIAL DATE:

22 TO: ALL PARTIES AND TO THEIR ATTORNEYS OF RECORD:

23 Comes now, plaintiff, , and
24 hereby respectfully moves this Court, in limine, for an order
25 precluding defendants, ,
26 from attempting to introduce any testimony, exhibits or
27 evidence regarding the amount of property damage incurred to any
28 vehicles involved in the herein accident. The motion further
requests that defendant be precluded from mentioning any aspect of

1 the trial including but not limited to Voir Dire, Opening Statement
2 and Closing Arguments.

3 This motion is made and based on the accompanying Memorandum
4 of Points and Authorities, all exhibits attached hereto, the
5 pleadings and records on file with the Court and the Court's file,
6 upon such matters and documents which the Court may or must take
7 judicial notice and upon such other oral or documentary evidence
8 as may be presented at the time of hearing herein.

9 DATED: _____ ROBERT S. FINK, A Prof. Corp.

10
11 By: _____
12 Robert S. Fink
13 Attorneys for Plaintiff,
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1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I

3 INTRODUCTION

4 This case arises out of an automobile accident which occurred
5 on _____. Plaintiff, _____, was driving
6 his/her vehicle when he/she was involved in a _____
7 impact collision.

8 Defendant has taken the position that it is impossible for
9 Plaintiff to sustain these injuries to his/her body in this
10 accident.

11 In an attempt to avoid responsibility, it is believed
12 defendant intends to present testimony, property damage estimates,
13 photographs of the vehicles involved, etc., that will then be
14 argued as to lack of and/or minimal alleged injuries to plaintiff.
15

16 II

17 A BIOMECHANICAL ENGINEER IS NOT QUALIFIED TO
18 GIVE AN OPINION AS TO PROPERTY DAMAGE
19 OR
20 THERE WAS NO DESIGNATION OF A BIOMECHANICAL
21 ENGINEER AND NO PROPERTY DAMAGE PAYMENT IS SOUGHT

22 The testimony of every witness, whether expert or lay,
23 concerning facts to which he testifies is inadmissible unless he
24 has personal knowledge of those facts. People v. Southern, Calif.
25 Edison Co. (1076, 5th Dist) 56 Cal.App.3d 593, 128 Cal.Rptr. 697.
26 Evidence Code section 702 states as follows:

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1 (a) Subject to Section 801, the testimony of a
2 witness concerning a particular matter is in-
3 admissible unless he has personal knowledge
4 of the matter. Against the objection of a party,
5 such personal knowledge must be shown before the
6 witness may testify.

7 **III**

8 **PHOTOGRAPHS OR ESTIMATES OF THE VEHICLES AND TESTIMONY**
9 **REGARDING THE DAMAGE IS IRRELEVANT AND HIGHLY PREJUDICIAL**
10 **TO THE PLAINTIFF**

11 The court in its discretion may exclude evidence if its
12 probative value is substantially outweighed by the probability that
13 its admission will (a) necessitate undue consumption of time or
14 (B) create substantial danger of undue prejudice, of confusing the
15 issues, or misleading the jury. California Evidence Code 352.

16 **ARGUMENT**

17 In this case there is minor property damage to the vehicles
18 involved. Defendant cannot present evidence by way of photographs
19 or estimates without a property foundation. Additionally, since
20 there is no reimbursement sought, any evidence is irrelevant and
21 highly prejudicial and should be excluded.

22 Plaintiff requests that the court preclude any reference of
23 property damage to any of the vehicles involved or illustrating
24 by way of photographs, vehicle estimates and/or testimony of said
25 damage.

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DATED: _____

Respectfully submitted,
ROBERT S. FINK, A Prof. Corp.

By: _____
Robert S. Fink
Attorneys for Plaintiff,

FILED
Superior Court of California
County of Los Angeles

APR 18 2018

Sherri R. Carter, Executive Officer/Clerk
By Stephanie Chung Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF LOS ANGELES

In re Civil Limited Jurisdiction Cases) FIRST AMENDED STANDING ORDER
Calendared in Department 94 (Non-Collection) (Effective as of April 23, 2018)
Cases))

TO EACH PARTY AND TO THE ATTORNEY OF RECORD FOR EACH PARTY:

Pursuant to the California Code of Civil Procedure ("C.C.P."), the California Rules of Court ("C.R.C."), and the Los Angeles County Court Rules ("Local Rules"), the Los Angeles Superior Court ("LASC" or "Court") HEREBY AMENDS AND SUPERSEDES THE JANUARY 12, 2018 STANDING ORDER, AND THE COURT HEREBY ISSUES THE FOLLOWING STANDING ORDER THAT SHALL APPLY TO ALL LIMITED CIVIL (NON COLLECTION) CASES FILED AND/OR HEARD IN DEPARTMENT 94.

1. PLAINTIFF(S) IS/ARE ORDERED TO SERVE A COPY OF THIS STANDING ORDER ON THE DEFENDANT(S) WITH COPIES OF THE SUMMONS AND COMPLAINT AND TO FILE PROOF OF SERVICE, AS MANDATED IN THIS ORDER.

2. The Court sets the following trial date in this case in Department 94 (7th Floor, Room 723) at the Stanley Mosk Courthouse, 111 North Hill Street, Los Angeles, CA 90012:

TRIAL:

Date: _____ at 8:30 a.m.

SERVICE OF SUMMONS AND COMPLAINT

3. The trial date set forth above is conditioned on the defendant(s) being served with the summons and complaint within six (6) months of the filing of the complaint. The trial date may be continued to a later date if service is not accomplished within six months. The parties may stipulate to keep the original trial date even if service of the summons and complaint is not completed within six months of the filing of the original complaint.

4. The summons and complaint shall be served upon the defendant(s) within three years after the complaint is filed in this action. (C.C.P., § 583.210, subd. (a).) Failure to comply will result in dismissal, without prejudice, of the action, as to all unserved parties who have not been dismissed as of that date. (C.C.P., § 581, subd. (g).) The dismissal without prejudice as to the unserved parties for this case shall be effective on the following date:

UNSERVED PARTIES DISMISSAL DATE

5. No case management, mandatory settlement or final status conferences will be conducted in this case.

LAW AND MOTION

6. All regularly noticed pretrial motions will be heard in Department 94 on Mondays, Tuesdays, Wednesdays, and Thursdays at 8:30 a.m. A motion will be heard only if a party reserves a hearing date by going to the court's website at www.lacourt.org and reserving it through the Court Reservation System ("CRS") accessed via the "Divisions" tab at the top of the webpage, in the "Civil" Division section. All motions should be filed at the filing window on the first floor of the Stanley Mosk Courthouse and filed and served in accordance with C.C.P., § 1005, subd. (b), and all other relevant statutes.

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7. Tentative Rulings may be posted on the Court's internet site no later than the day prior to the hearing. To access tentative rulings, parties may go to www.lacourt.org, select "Civil" Division from the Divisions" tab at the top of the webpage; then click on "Tentative Rulings," and then type the case number in the box and click "Search."

EX PARTE APPLICATIONS

8. Ex parte applications must be noticed for 1:30 p.m. in Department 94 and filed and served in accordance with C.R.C., Rules 3.1201-3.1207. All ex parte application fees must be paid by 1:00 p.m. at the filing window on the first floor of the Stanley Mosk Courthouse.

JURY FEES

9. The fees for jury trial shall be due no later than 365 calendar days after the filing of the initial complaint, or as otherwise provided by C.C.P., § 631, subds. (b) and (c).

STIPULATION TO CONTINUE TRIAL

10. A trial will be postponed if all attorneys of record and/or the parties who have appeared in the action stipulate in writing to a specific continued date. If the stipulation is filed less than five (5) court days before the scheduled trial date, then a courtesy copy of the stipulation must be filed in Department 94. A proposed order shall be lodged along with the stipulation. The Stipulation and Order should be filed in Room 118 of the Stanley Mosk Courthouse with the required filing fees.

TRIAL

11. Parties are to appear on the trial date ready to go to trial, and must meet and confer on all pretrial matters at least 20 calendar days before the trial date. On the date of trial, the parties shall bring with them to Department 94 a three-ring binder with a table of contents containing conformed copies of each of the following documents behind a separate tab.

- 1) Printed copies of the Current Operative Pleadings (including the operative complaint; answer; cross-complaint, if any; and answer to cross-complaint);
- 2) Motions in Limine, if any, which must be served and filed in accordance with the Local Rules, Rule 3.57;
- 3) Joint Statement of the Case (if a jury trial);

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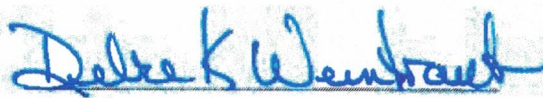
- 1 4) Joint Witness List disclosing an offer of proof regarding the testimony of each
2 witness, the time expected for testimony of each witness, the total time expected
3 for all witnesses, and the need, if any, for an interpreter;
4 5) Joint Exhibit List;
5 6) Printed and Edited Joint Proposed Jury Instructions (if a jury trial), and
6 7) Printed Joint Proposed Verdict Form(s) (if a jury trial).

7 The parties shall also bring a second binder containing the Joint Exhibits in an Exhibit Book
8 numbered appropriately.

9 **FAILURE TO PROVIDE ANY OF THE AFOREMENTIONED DOCUMENTS ON**
10 **THE TRIAL DATE MAY CAUSE A DELAY IN THE CASE BEING ASSIGNED TO A**
11 **TRIAL COURT.**

12 GOOD CAUSE APPEARING THEREFOR, IT IS ORDERED.

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15 Dated: April 18, 2018



DEBRE K. WEINTRAUB
Supervising Judge, Civil
Los Angeles Superior Court