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6 STATE OF ARIZONA  
7 MARICOPA COUNTY SUPERIOR COURT

8 \_\_\_\_\_, a [single/married  
9 man/woman],

10 Plaintiff,

11 v.

12 [Name of Defendant] and Jane Doe [last  
13 name of defendant], husband and wife;  
14 JOHN DOES 1-5; JANE DOES 1-5;  
15 BLACK CORPORATIONS 1-5; and  
16 WHITE PARTNERSHIPS 1-5,

17 Defendants.

Case No. CV \_\_\_\_\_

18 PLAINTIFF'S  
19 ARBITRATION MEMORANDUM

(Assigned to the Honorable  
[name of the judge])  
(Arbitrator [Name of arbitrator])

20 Plaintiff, hereby submits his Arbitration Memorandum in preparation for the arbitration  
21 scheduled for \_\_\_\_\_.

22 Summary

23 On November 21, 2011, Defendant was traveling eastbound on Thomas Road in Phoenix.  
24 He was not paying adequate attention to the roadway in front of him and failed to slow down when  
25 the truck in front of him slowed to turn into a business parking lot. He hit that truck from behind  
26 with sufficient force to "spin" the truck and reverse its direction of travel (\_\_\_\_\_ Deposition, p.  
27 16, l. 7 to 11; Truck property damage photos--photos tab). The police were not called to investigate  
28 the collision (\_\_\_\_\_ Deposition, p. 17, l. 20 to 21).

1 . . .

2           The driver of the truck that Defendant struck was Plaintiff. Plaintiff sustained injuries in the  
3 collision. It is Plaintiff's understanding that no dispute exists over liability. The difference of  
4 opinion between Plaintiff and Defendant is over the nature of Plaintiff's injuries, the necessity and  
5 cost of his medical care, the degree and duration of pain from the injuries, and the restrictions  
6 resulting from those injuries. Ultimately, the dispute is over what constitutes fair compensation to  
7 Plaintiff for the consequences of Defendant's negligent act.  
8

9 **Plaintiff**

10           Plaintiff is [Number] years old, is married to \_\_\_\_\_, and works as a \_\_\_\_\_. They  
11 have two children and, [add a little about yourself].  
12

13 **Plaintiff's Injuries and Losses**

14           Plaintiff was injured in this collision. Some information about the nature and extent of those  
15 injuries, as well as the treatment given to help him recover, is found in the medical records and  
16 bills. Other information about the level and duration of the pain from the injuries, and the  
17 restrictions and life changes Plaintiff has experienced from those injuries is found in Plaintiff's  
18 deposition, and will also be given in live testimony by him and his wife.  
19

20 **Medical Treatment**

21           At the scene of the accident, Plaintiff was already feeling pain in his neck and back  
22 (\_\_\_\_\_ Deposition, p. 20, l. 5 to 7). He saw his family doctor that same day, Dr. [Name], M.D..  
23 The doctor noted that Plaintiff had been involved in a motor vehicle accident, and was reporting  
24 shoulder pain, arm pain, hip pain, low back pain, and neck pain. Dr. [Name] noted an assessment  
25 of neck pain and whiplash, and referred Plaintiff to physical therapy at [Name] Physical Therapy  
26 (Dr. [Name] Record, 12). Plaintiff's recollection is that the doctor recommended he wait a few days  
27  
28

1 to see how the pain developed before going (\_\_\_\_\_ Deposition p. 20, l. 15 to 20).

2 Plaintiff's pain became more intense over the next few days, so he scheduled an appointment  
3 with [Clinic]. His first session for treatment was on November 29, 2011 ([Clinic] Records 17), and  
4 he continued treatment through February 16, 2012, during which time he attended 26 treatment  
5 sessions at one to a two-hour time commitment each session (including travel). Even at his last  
6 visit, he reported a flare-up of pain that weekend while photographing a sporting event ([Clinic]  
7 Records 2). The pain from the injury Plaintiff sustained to his neck had not completely resolved.

8 However, he felt he had improved from a pain level of around 9, to a 2 or 3, generally (\_\_\_\_\_  
9 Deposition, p. 25, l. 19 to 25; p. 26, l. 1.). But flare-ups were also regular.  
10

11 Periodically, during his active treatment with [Clinic], Plaintiff continued to have re-  
12 evaluation appointments with Dr. [Name]. Those records show continuing pain in his neck and  
13 right shoulder ([Name] Records 7 to 11). Along with therapy, Dr. [Name] also had Plaintiff use a  
14 TENS unit to help control pain and promote healing ([Name] Records 10). After he stopped  
15 therapy with [Clinic], he continued to see Dr. [Name] for the neck and shoulder pain, for  
16 recommendations and for medication. He saw Dr. Saide the month after he stopped therapy, and the  
17 doctor noted that Plaintiff was still experiencing neck pain. The doctor also still detected palpable  
18 spasms during his examination ([Name] Records 6). But, both the doctor and Plaintiff were out of  
19 ideas, so Plaintiff tried to just give the injuries time to heal, and to learn to accept the changes that  
20 the injuries had caused.  
21

22 By December, however, Plaintiff felt like he needed to try something more, describing the  
23 ongoing fight as "exhausting and frustrating" ([Name] Records 5). Due to the ongoing pain, and the  
24 failure of conservative care to completely resolve the pain, Dr. [Name] ordered an MRI, which was  
25 done on February 27, 2013 ([Name] Records 21). The finding of most significance was a mild  
26  
27  
28

1 narrowing of the central cervical canal and foraminal stenosis at the C5-C6 level. The last record is  
2 from March 7, 2013, but periodic appointments still continued ([Name] Records 3). During that  
3 visit, Dr. [Name] notes Plaintiff had attended physical therapy and was continuing to use a TENS  
4 unit, that he still had neck pain, and detectable spasms. It is evident from his last medical visits that  
5 his pain had not healed completely, and was still causing restrictions.  
6

7 In summary, the medical records show that Plaintiff sustained injuries to his neck, back,  
8 shoulder and hip in the collision, that the most pain was experienced in his neck, and was initially  
9 quite severe. The records show that the pain in most of injured areas subsided, and that the neck  
10 pain improved over time, but did not completely heal. In March of 2013, 16 months after the  
11 accident, Plaintiff was still reporting significant pain symptoms in his neck to his family doctor.  
12

13 Dr. [Name]'s assessment of neck pain and whiplash from the motor vehicle accident, made the  
14 same day of the collision, was re-enforced in each visit, and was never changed. The records  
15 clearly show improvement, but neither Plaintiff's own treating doctor nor any other medical  
16 provider has concluded that Plaintiff's pain attributable to the collision has resolved completely.  
17

18 It should be noted that at least some, maybe all, of the degenerative changes seen in  
19 Plaintiff's MRI could have pre-existed the collision. On August 31, 2011, as a result of periodically  
20 waking with pain in the left side of his neck and left shoulder (onset about 2.5 weeks before), Dr .  
21 [Name] sent Plaintiff for x-rays and for therapy. He was experience that pain in his neck generally  
22 from sleeping in the wrong position (\_\_\_\_\_ Deposition, p. 9, l. 15 to 19). Those x-rays showed  
23 "minimal degenerative changes," but did not detect stenosis or narrowing of the central cervical  
24 canal, as shown in the post-accident MRI. That pain subsided before he finished his few PT visits.  
25

26 This pain before the collision was on the left side (the collision pain was concentrated on the right)  
27 (\_\_\_\_\_ Deposition, p. 33, l. 13 to p. 34, l. 4), was most noticeable upon waking, was much  
28

1 lower in intensity, and, most importantly, did not interfere with his regular physical activities, like  
2 distance bike riding, motorcycle riding and photography, all of which were significantly affected by  
3 the post-accident pain (\_\_\_\_\_ Deposition p. 34, l. 5 to p.35, l. 4)(further discussed below).  
4

5 Even if the waking stiffness in his neck that was addressed before the collision was related to the  
6 degenerative changes, the exacerbation from the collision was so pronounced that the conditions do  
7 not even seem comparable to Plaintiff. In addition, it is evident that this was an isolated incident, in  
8 that Plaintiff had seen Dr. [Name] regularly since at least 2008, with no history of neck pain noted--  
9 including in his most recent visit on July 12, 2011. Dr. [Name] himself does not attribute the post-  
10 accident pain and treatment to any pre-accident incident or condition.  
11

12 Another issue that should be addressed is that in late December of 2011, Plaintiff was  
13 involved in a minor car crash. Plaintiff remembers his neck pain levels increasing for a few days,  
14 and then returning to the pain level he was already experiencing from the November collision. It  
15 was a minor impact with little consequence on his physical condition.  
16

17 **Medical Charges**

18 The following chart summarizes the medical bills for the care Plaintiff received for his  
19 accident-related injuries:

<i>Provider</i>	<i>Amount</i>
TENS Unit	\$1,900.32
[Name], M.D.	\$835.00
[Physical Therapy Clinic]	\$7,790.00
[Radiology Clinic]	\$2,223.00
<b>TOTAL MEDICAL SPECIALS</b>	<b>\$12,748.32</b>

27  
28 Separate from the issues of the nature, severity and duration of Plaintiff's pain, it seems

1 clear, especially applying a probability standard, that these medical expenses are reasonable and  
2 were reasonably incurred in an effort to get Plaintiff from pain that arose from the collision.  
3

4  
5 **Personal Experiences**

6 Because Dr. [Name] and the therapists at [Clinic] only record what they are told and observe  
7 during relatively infrequent and short visits, Plaintiff's medical records do not, really cannot, give  
8 an adequate understanding of Plaintiff's ongoing experience with pain and restrictions. Plaintiff and  
9 those close to him are necessary sources to understand these consequences more fully. And there is  
10 no diagnostic test for pain, so Plaintiff's own description, is the only way to gage the level at which  
11 the injuries are interfering with his activities at various times of the healing process. In his  
12 deposition, Plaintiff touched on some of these losses, which he will likely explain more fully at the  
13 arbitration hearing. Likewise, his wife (who has not been deposed), is expected to share her  
14 observations about changes in Plaintiff's level of function and activities from before the collision to  
15 after.  
16

17  
18 About five years before the accident, Plaintiff began cycling for exercise and enjoyment  
19 (\_\_\_\_\_ Deposition, p. 22, l. 21 to 24). Close in time to the accident, he was riding between 100  
20 to 150 miles per week, and feeling great (comparable to 33 to 50 miles per week running). He was  
21 riding regularly the week of this collision without any pain or restrictions in his neck or elsewhere.

22 From the day of the accident to now, he has not been able to resume this activity because of pain in  
23 his neck (\_\_\_\_\_ Deposition, p. 23, l. 4 to l. 14). Plaintiff still does the exercises recommended  
24 by Foothills, but has gained about 35 pounds since the collision (\_\_\_\_\_ Deposition, p. 23, l. 18  
25 to l. 24).  
26

27 Plaintiff also enjoyed motorcycle riding before the collision. Now, he cannot ride because  
28

1 the weight of the helmet causes pain in his neck (\_\_\_\_\_ Deposition, p. 28, l. 12 to l. 21).

2 Another loss that Plaintiff finds significant is his hobby of sports photography. He regularly  
3 photographed high school and collegiate sporting events, especially wrestling tournaments  
4 (\_\_\_\_\_Deposition, p. 28, l. 7 to l. 11). One of his worst "flare-ups" of neck pain during his  
5 recovery was from trying to photograph a wrestling match in February of 2012 ([Clinic] Records 2).  
6

7 Even now, he has to limit the amount of photography he does or his neck pain increases (\_\_\_\_\_  
8 Deposition p. 28, l. 22 to l. 25).

9 Even though these are examples of specific losses that Plaintiff has experienced, any  
10 extended physical activity that engages the neck muscles can cause an increase in the level of pain.  
11

12 On most days, Plaintiff's neck pain is present, but at a low level. From time to time, he is even pain  
13 free (\_\_\_\_\_ Deposition, p. 27, l. 15 to l. 25). But when he tries to be more active, he almost  
14 always triggers an increase in pain. Fortunately, his employment duties managing restaurants is not  
15 physically demanding, so he has not lost income as a result of the collision.  
16

17 Although Plaintiff had felt neck pain before, he had never experienced this level, location,  
18 consistency, or longevity before. And those short bouts with neck pain before the collision never  
19 restricted his activities. Since the collision, the pain and restrictions have been a consistent part of  
20 his life--now for two years and 8 months.

21 **Conclusion**

22 The key issues before the arbitrator are whether Plaintiff's treatment after the collision is  
23 probably related to the collision instead of some other cause, whether Plaintiff has the ongoing pain  
24 he claims, and whether that pain was caused by, or exacerbated by, the collision.  
25

26 Plaintiff had not experienced this kind of neck pain before the collision, and no other event  
27 is a probable cause of the pain. He had neck pain in July and August before the collision, but not  
28

1 this pain. He was able to continue to function normally, including these favorite activities, without  
2 a problem. After the collision, he actively pursued time-consuming and sometimes painful efforts  
3 to heal, and discontinued some activities that he loved, some temporarily and some permanently.  
4 Plaintiff asserts the pain continues, to a lesser extent than soon after the collision, but consistently.  
5 His wife, Patricia, has observed some of these changes and will share those observations during the  
6 arbitration hearing. If they are telling the truth, and Plaintiff was truthful with his doctor and  
7 therapists, then the pain and restrictions are probably related to the collision. If they are not, then  
8 there is no way to know what he has experienced. But there is no evidence that they are untruthful,  
9 or that they are not telling the truth here.

10  
11  
12 It is probable that the collision caused a neck injury, as well as other injuries to Plaintiff. It  
13 is probable that the injury caused or exacerbated pain in Plaintiff's neck. It is probable that this pain  
14 caused Plaintiff to forego some of his favorite physical activities, and make other negative  
15 adjustments to his life. It is probable that active treatment helped alleviate some, but not all of that  
16 pain. And it is probable that some of that pain, and the accompanying restrictions, continue to this  
17 day, with no end clearly in sight. Consequently, Plaintiff believes that \$[Dollars] would be fair  
18 compensation for his losses.  
19

20  
21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2015.

22 [YOUR NAME]

23  
24 By: \_\_\_\_\_

25 [Your name]  
26 [Your address]  
27 *Pro per*

28 **ORIGINAL** of the foregoing mailed/emailed/delivered  
this \_\_\_\_\_ day of \_\_\_\_\_, 2015, to:



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*Attorneys for Defendant*  
*[Name of attorney]*  
*[Name of attorney's firm]*  
*[Address of firm]*

*Arbitrator [Name]*  
*[Arbitrator's address]*

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