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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**

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9 George Allen Hartman,

No. CV-14-02090-TUC-DCB (BGM)

10 Plaintiff,

**REPORT AND RECOMMENDATION**

11 v.

12  
13 United States of America,

14 Defendant.

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16 Currently pending before the Court is Defendant United States of America's  
17 Motion for Partial Summary Judgment on Plaintiff's Motorcycle Accident Claims (Doc.  
18 52). Plaintiff has not filed a response. Defendant has also filed a Notice of No  
19 Oppositon [sic] to Defendant's Motion for Partial Summary Judgment [Doc. 52] and  
20 Defendant's Motion for Summary Disposition (Doc. 57).  
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22 Pursuant to Rules 72.1 and 72.2 of the Local Rules of Civil Procedure, this matter  
23 was referred to Magistrate Judge Macdonald for Report and Recommendation. The  
24 Magistrate Judge recommends that the District Court deny the Government's motion for  
25 summary disposition (Doc. 57) and grant its motion for partial summary judgment (Doc.  
26 52).  
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1 testimony cannot make that causal connection, it is not clear to this Court  
2 that lay opinion can say that it is implausible. Nonetheless, the resolution  
3 of this issue has significant impact on case management and early case  
4 evaluation. Therefore, pursuant to Rule 1 and Rule 23(a)(2)(D) of the  
5 Federal Rules of Civil Procedure, the Court will order expedited disclosure  
6 by Plaintiff of expert opinion establishing the causal link between the  
7 battery and the motorcycle accident. That disclosure must fully comply  
8 with Rule 26(a)(2) of the Federal Rules of Civil Procedure and be delivered  
9 to defense counsel no later than Wednesday, September 16, 2015.

10 Report & Recommendation 6/30/2015 (Doc. 22) at 10. The Magistrate Judge  
11 recommended denial of “Defendants’ Partial Motion to Dismiss as to the ‘General  
12 Allegations Re: Incident of April 12, 2012’ with leave to refile after September 16,  
13 2015.” *Id.* Neither party having objected, on September 30, 2015, the Honorable David  
14 C. Bury entered his Order adopting the Report and Recommendation. Order 9/30/2015  
15 (Doc. 38).

16 On September 15, 2015, Plaintiff’s filed his First Motion to Extend Time for  
17 Disclosure of Plaintiff’s Expert Witnesses, Opinions, and Reports (Doc. 31). In his  
18 motion, Plaintiff sought additional time to disclose an expert witness “establishing the  
19 causal link between the battery of April 11, 2011, and the motorcycle accident of April  
20 12, 2012[.]” Pl.’s First Motion to Extend Time (Doc. 31) at 1. On September 24, 2015,  
21 the Magistrate Judge denied Plaintiff’s request finding that “Plaintiff has not stated good  
22 cause for an extension of time to retain a medical expert to establish the causal link  
23 between the two incidents.” Order 9/24/2015 (Doc. 36) at 2.

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1       **II.     STANDARD OF REVIEW**

2               Summary judgment is appropriate when, viewing the facts in the light most  
3 favorable to the nonmoving party, *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 255,  
4 106 S.Ct. 2505, 2513, 91 L.Ed.2d 202 (1986), “there is no genuine issue as to any  
5 material fact and [] the moving party is entitled to a judgment as a matter of law.” Fed.  
6 R. Civ. P. 56(c). A fact is “material” if it “might affect the outcome of the suit under the  
7 governing law,” and a dispute is “genuine” if “the evidence is such that a reasonable jury  
8 could return a verdict for the nonmoving party.” *Anderson*, 477 U.S. at 248, 106 S.Ct. at  
9 2510. Thus, factual disputes that have no bearing on the outcome of a suit are irrelevant  
10 to the consideration of a motion for summary judgment. *Id.* In order to withstand a  
11 motion for summary judgment, the nonmoving party must show “specific facts showing  
12 that there is a genuine issue for trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 324, 106  
13 S.Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Moreover, a “mere scintilla of evidence” does  
14 not preclude the entry of summary judgment. *Anderson*, 477 U.S. at 252, 106 S.Ct. at  
15 2512. The United States Supreme Court also recognized that “[w]hen opposing parties  
16 tell two different stories, one of which is blatantly contradicted by the record, so that no  
17 reasonable jury could believe it, a court should not adopt that version of the facts for  
18 purposes of ruling on a motion for summary judgment.” *Scott v. Harris*, 550 U.S. 372,  
19 380, 127 S.Ct. 1769, 1776, 167 L.Ed.2d 686 (2007).

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1     **III. ANALYSIS**

2             **A. Summary Disposition**

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4             In light of Plaintiff’s failure to an opposition, Defendant seeks a “summary ruling  
5 with respect to its Motion for Partial Summary Judgment.” Def.’s Mot. for Summ.  
6 Dispo. (Doc. 57) at 1. Defendant relies on Local Rule 7.2(i)<sup>2</sup> as authority for this Court  
7 to summarily enter partial judgment in its favor. Def.’s Mot. for Summ. Dispo. (Doc. 57)  
8 at 2. It is well established Ninth Circuit law, however, that “[a] local rule that requires  
9 the entry of summary judgment simply because no papers opposing the motion are filed  
10 or served, and without regard to whether genuine issues of material fact exist, would be  
11 inconsistent with Rule 56, [and] hence impermissible under Rule 83.” *Henry v. Gill*  
12 *Industries, Inc.*, 983 F.2d 943, 950 (9th Cir. 1993). As the *Henry* court recognized, LR  
13 Civ. 11(i), a predecessor to the current LRCiv. 7.2(i), “does not *require* the court to grant  
14 a motion for summary judgment when the non-moving party fails to file and/or serve its  
15 opposition thereto.” *Henry*, 983 F.2d at 950 (emphasis in original). The district court has  
16 discretion “to determine whether non-compliance should be deemed consent to a given  
17 motion.” *Id.* “That discretion, however, is necessarily abused when exercised to grant a  
18 motion for summary judgment where the movant’s papers are insufficient to support that  
19 motion or on their face reveal a genuine issue of material fact.” *Id.* As such, summary  
20 disposition is in appropriate for a motion for summary judgment and Defendant’s Motion  
21 for Summary Disposition (Doc. 57) will be denied.  
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                  <sup>2</sup> Local Rules of Civil Procedure, Rules of Practice of the United States District Court for  
the District of Arizona.

1           **B.     *Partial Summary Judgment***

2           Defendant seeks partial summary judgment regarding its alleged liability for  
3 Plaintiff's motorcycle accident injuries. *See* Def.'s Mot. for Partial Summ. J. (Doc. 52).  
4 Defendant asserts that "[b]ecause Plaintiff has failed to timely disclose any medical  
5 expert (or treating physician) who can establish that Defendant's alleged conduct on  
6 April 11, 2011 proximately caused the alleged motorcycle accident of April 12, 2012 . . .  
7 Plaintiff cannot create a genuine dispute of material fact as to Defendant's liability for  
8 Plaintiff's motorcycle accident injuries." *Id.* at 5.

9           "If the burden of persuasion at trial would be on the *non-moving* party, the party  
10 moving for summary judgment may satisfy Rule 56's burden of production . . . [by]  
11 demonstrat[ing] to the Court that the nonmoving party's evidence is insufficient to  
12 establish an essential element of the nonmoving party's claim." *Celotex Corp. v. Catrett*,  
13 477 U.S. 317, 331, 106 S.Ct. 2548, 2557, 91 L.Ed.2d 265 (1986). "If the nonmoving  
14 party cannot must sufficient evidence to make out its claim, a trial would be useless and  
15 the moving party is entitled to summary judgment as a matter of law." *Id.* (citations  
16 omitted).

17           This Court previously required Plaintiff's disclosure of expert testimony to  
18 establish a causal link between the battery and the motorcycle accident. Report &  
19 Recommendation 6/30/2015 (Doc. 22) at 10; Order 9/30/2015 (Doc. 38). Plaintiff failed  
20 to timely disclose such an expert and as a result cannot meet his burden at trial.  
21 Accordingly, Defendant is entitled to summary judgment as a matter of law. *Anderson v.*  
22 *Liberty Lobby, Inc.*, 477 U.S. 242, 249, 106 S.Ct. 2505, 2511, 91 L.Ed.2d 202 (1986)

1 (“[T]here is no issue for trial unless there is sufficient evidence favoring the nonmoving  
2 party for a jury to return a verdict for that party”).  
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5 **IV. CONCLUSION**

6 For the reasons discussed, *supra*, Defendant United States of America’s Motion  
7 for Summary Disposition (Doc. 57) should be denied, and Defendant’s Motion for Partial  
8 Summary Judgment on Plaintiff’s Motorcycle Accident Claims (Doc. 52) granted.  
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11 **V. RECOMMENDATION**

12 For the reasons delineated above, the Magistrate Judge recommends that the  
13 District Judge enter an order:  
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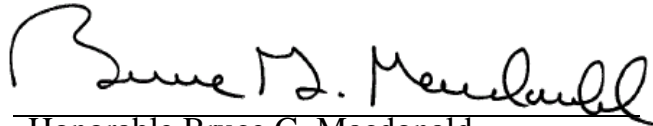
15 1) DENYING Defendant United States of America’s Motion for Summary  
16 Disposition (Doc. 57); and  
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18 2) GRANTING Defendant United States of America’s Motion for Partial  
19 Summary Judgment on Plaintiff’s Motorcycle Accident Claims (Doc. 52);  
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21 Pursuant to 28 U.S.C. §636(b) and Rule 72(b)(2) of the Federal Rules of Civil  
22 Procedure, any party may serve and file written objections within fourteen (14) days after  
23 being served with a copy of this Report and Recommendation. A party may respond to  
24 another party’s objections within fourteen (14) days after being served with a copy. Fed.  
25 R. Civ. P. 72(b)(2). No replies shall be filed unless leave is granted from the District  
26 Judge. If objections are filed, the parties should use the following case number: **CV-14-**  
27 **02090-TUC-DCB.**  
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1 Failure to file timely objections to any factual or legal determination of the  
2 Magistrate Judge may result in waiver of the right of review.  
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4 Dated this 31st day of May, 2016.

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6 Honorable Bruce G. Macdonald  
7 United States Magistrate Judge  
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