

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

FERRELLGAS, INC. a foreign  
corporation, MARIO GONZALEZ  
and CARL KLEISNER,

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK; THE  
HONORABLE JOANNA S.  
KISHNER, DISTRICT JUDGE,

and

JOSHUA GREEN, an individual,

Respondents.

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Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.

DISTRICT COURT CASE NO.

A-19-795381-C

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## **MOTION TO FILE WRIT PETITION IN EXCESS OF NRAP 21(D) LIMITS**

COME NOW Defendants Ferrellgas, Inc., by and through Felicia Galati, Esq. of Olson Cannon Gormley & Stoberski and Michael C. McMullen, Esq. of Baker, Sterchi, Cowden & Rice, LLC, Carl J. Kleisner, by and through Gina Gilbert Winspear, Esq. of Dennett Winspear, LLP, and Mario Gonzalez, by and through James P.C. Silvestri, Esq. and Steven M. Goldstein, Esq. of Pyatt Silvestri, and hereby submit their Motion for leave to file their Writ exceeding the page and/or word limits set out in NRAP 21(d), NRAP 27(a) and (d), and NRAP 32(a)(7)(D). “[S]uch motions “will be granted only upon a showing of diligence and good cause.” Blandino v. Eighth Jud. Dist. Ct. in & for Cty. of Clark, 466 P.3d 539 (Nev. 2020) citing NRAP 32(a)(7)(D)(i). This Court granted such a motion in Blandino and indicated such motions will not be granted in the future absent a showing of diligence and good cause. Id. at 542.

This case has a long and complicated history involving many motions, supplemental filings, various court hearings, telephonic conferences among the parties and Discovery Commissioner, two Discovery Commissioner Reports and Recommendations, an Objection, and various hearing transcripts. As such, the basic factual and procedural background is complicated. In addition, the issues here relate to the newly enacted NRCP 35 and NRS 52.380, their detailed legislative history including the Nevada Board of Psychological Examiners’ statement to this Court

regarding psychological examinations, the fact that NRCP 35 and NRS 52.380 have not been considered before and the lack of related case law requiring more detailed argument, the pending Moats v. Dist. Ct. (Burgess), Case No. 81912, Writ, and six discrete issues supporting the abuse of discretion and waiver at issue here: (1) the District Court Clearly Abused Its Discretion by Failing to Consider Persuasive Federal Authority and/or Any Other Legal Authority to Support Its Decision; (2) the District Court Clearly Abused Its Discretion In Conducting The Good Cause Analysis And Allowing The Presence Of An Observer At And An Audio Recording Of the NRCP 35 Psychological/Neuropsychological Examination; (3) the District Court Clearly Abused Its Discretion In Accepting Plaintiff's NRCP 35 Nullification Argument; (4) Plaintiff Waived Any Good Cause Argument; (5) the District Court Clearly Abused Its Discretion By Conditioning The NRCP Examination On The Requirement That Dr. Etcoff Or Any Other Licensed Psychologist/Neuropsychologist Violate The Rules And Ethics Of His Profession; and (6) The District Court's Ruling Creates An Unfair Advantage For Plaintiff That Irreparably, Extremely and Unfairly Prejudices Defendants. Also, this case is different from Moats in that it involved the district court's application of NRCP 35(a)(4)(A)(i) and (ii) and NRCP 35(a)(3), and the good cause standards, also requiring separate argument. In addition, the standard of review here relates to discovery issues, which is different than other standards and more varied, therefore,

requiring more argument and case citation to support the Writ. Finally, there are three Defendants filing the Writ, represented by three sets of attorneys with related signature blocks taking up additional space.

Defendants did their level best to pare down the Writ, but there are just too many issues and critical facts essential to a careful consideration of this matter in this multi-million dollars damages case. For the reasons stated herein, Defendants respectfully request they be allowed to file their 35-page Writ as is, consisting of 10,923 words – which exceeds the page limit by 20 pages, and/or the word limit, by 3,923 words. Defendants note that a word count of the Petition from page 1 to 34 just above the signature blocks indicates 8,806 words – 1,806 pages over the Rule limit. Based on all the above, there is diligence and good cause supporting this request and Defendants respectfully request they be allowed to file the oversized Writ.

RESPECTFULLY SUBMITTED this 26<sup>th</sup> day of March, 2021.

*/s/ Felicia Galati, Esq.*

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DATED this 26th day of March, 2021.

*/s/ Steven M. Goldstein*

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DATED this 26th day of March, 2021.

*/s/ Gina Gilbert Winspear, Esq.*

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of March, 2021, I sent via e-mail a true and correct copy of the above and foregoing **MOTION TO FILE WRIT PETITION IN EXCESS OF NRAP 21(D) LIMITS** by electronic service through the Nevada Supreme Court's website, (or, if necessary, by U.S. Mail, first class, postage pre-paid), upon the following:

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*/s/ Erika Parker*

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