

IN THE SUPREME COURT OF THE STATE OF NEVADA

FERRELLGAS, INC. a foreign
corporation,

Petitioner,

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.

CASE NO.

DISTRICT COURT CASE NO.

A-19-795381-C

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APPENDIX TO PETITION FOR WRIT OF MANDAMUS
(VOLUME 4)

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APPENDIX TO PETITION FOR WRIT OF MANDAMUS
VOLUME 1

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1	First Amended Complaint and Jury Demand	APP- 1-8
2	Defendants' Motion to Compel NRCP 35 Examination	APP-9-68
3	Joshua Green's Opposition to Defendants' Motion to Compel Rule 35 Examination	APP-69-204

VOLUME 2

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6	Supplemental Briefing on Defendants' Motion to Compel Neuropsychological Rule 35 Examination	APP – 281- 407

VOLUME 3

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9	Discovery Commissioner's Report and Recommendations	APP- 494 – 500

VOLUME 4

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10	Defendants' Objection to Discovery Commissioner's Report and Recommendation E-Filed on 12/22/20	APP- 501 - 750

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NUMBER	DOCUMENT	BATES NUMBER
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VOLUME 6

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12	Second Amended Complaint	APP – 1108 – 1119
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14	Defendants' Supplement to Objection to Discovery Commissioner's Report and Recommendation E-Filed on 12/22/20	APP – 1126 – 1137
15	Transcript of the Proceedings – Defendants Ferrellgas' Motion for Leave to Amend Pleadings to Assert Crossclaims Against Defendant Carl J. Kleisner and Motion to File Third-Party Complaint Against Defendant Kleisner Employer – 1/28/21	APP – 1138 – 1176
16	Order Denying Defendants' Objections to Discovery Commissioner's Reports and Recommendations Dated December 22, 2020, and January 12, 2012; and Affirming as Modified the Discovery Commissioner's Reports and Recommendations Granting in Part and Denying in Part Defendants' Motion to Compel an NRCP 35 Exam	APP – 1177 - 1185

DATED this 26th day of March, 2021

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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 **APPENDIX TO PETITION FOR WRIT OF MANDAMUS (VOLUME 4)** 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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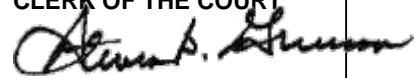
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CLARK COUNTY, NEVADA

JOSHUA GREEN;
Plaintiff,

vs.

FERRELLGAS, INC. et al.,
Defendants.

CASE NO.: A-19-795381-C
DEPT NO.: XXXI

(HEARING REQUESTED)

**DEFENDANTS' OBJECTION TO
DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATION
E-FILED ON 12/22/20**

AND RELATED ACTIONS

COME NOW Defendants FERRELLGAS, INC., MARIO GONZALEZ and CARL
KLEISNER, by and through their attorneys of record, and hereby submit this Objection to the
Discovery Commissioner's Report and Recommendation E-Filed On December 22, 2020

1 (“DCRR”).¹ This Objection is made and based on the attached Points and Authorities, all papers
2 and pleadings on file herein, and such oral argument as the Court may entertain at the hearing of
3 Defendants’ Objection.

4 **POINTS AND AUTHORITIES**

5 **I.**

6 **INTRODUCTION**

7
8 The Discovery Commissioner granted and denied Defendants’ Motion to Compel an
9 Independent Neuropsychological Examination of Plaintiff in various parts. Defendants object to
10 the DCRR allowing: (1) Plaintiff to have an observer present; and (2) Plaintiff to make an audio
11 recording of the examination both pursuant to NRS 52.380, which clearly conflicts with Rule
12 35. Defendants request that this Court reverse those decisions and enter an order prohibiting
13 Plaintiff from having an observer present and from making an audio recording of the
14 examination. In the alternative, Defendants request this Court stay this case in its entirety
15 because this issue is currently pending before the Nevada Supreme Court on a petition for writ
16 of mandamus in Moats v. Dist. Ct. (Burgess), Case Nos. A769459 and 81912.²

17 **II.**

18 **PROCEDURAL BACKGROUND**

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21 On October 26, 2020, Defendants filed a Motion to Compel a Rule 35 Exam, to be
22 conducted by Dr. Lewis Etcoff, because Plaintiff admits that he has made his mental condition
23 an issue in this case by alleging he suffered from PTSD as a result of the flash-fire and has
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27 ¹ See DCRR, Exhibit A hereto.

28 ² The Answering Brief is due on January 14, 2021.

memory and concentration issues.³ The parties agree a psychological examination is in order, but disagree as to the scope of the examination and other particulars. On November 9, 2020, Plaintiff filed an Opposition thereto requesting that he be allowed to have an observer present and make an audio recording of the examination.⁴ On November 12, 2020, Defendants filed a Reply thereto.⁵ On November 19, 2020, the Discovery Commissioner held a hearing on the Motion and granted and denied the Motion.⁶ On December 7, 2020, Plaintiff filed an unauthorized Supplemental Brief.⁷ On December 9, 2020, Defendants filed a Supplemental Brief responding thereto.⁸ On December 10, 2020, the parties attended a follow-up hearing regarding the scope of the examination, for which a separate report and recommendation will be submitted. On December 16, 2020, the Discovery Commissioner conducted a telephonic hearing with the parties on various outstanding issues relating to the motion. On December 22, 2020, the DCRR regarding the November 19, 2020 hearing was e-filed and served, and the related Notice of Entry was filed on December 23, 2020.

III.

FACTUAL BACKGROUND

This Court is familiar with the facts of the case. This litigation arises from the failure of a flexible gas hose that resulted in a flash-fire on June 18, 2018 relating to the built-in barbecue grill in the outdoor kitchen at the home of Defendant Mario Gonzalez. Plaintiff Joshua Green alleges he suffered injuries while operating the barbecue when a flash-fire occurred.

³ See Motion, Exhibit B hereto.

⁴ See Opposition, Exhibit C hereto.

⁵ See Reply, Exhibit D hereto.

⁶ See Minutes, Exhibit E hereto; Transcript, Exhibit H hereto.

⁷ See Plaintiff's Supplemental Brief, Exhibit F hereto.

⁸ See Defendants' Supplemental Brief, Exhibit G hereto.

Plaintiff's Expert

On September 4, 2020, Plaintiff disclosed a report from Dr. Michael Elliott detailing a May 20, 2020 visit alleging, for the first time in Plaintiff's medical history, that he may suffer from a traumatic brain injury and recommending a full neuropsychological evaluation.⁹ A July 1, 2020 visit indicated Plaintiff was suffering ongoing emotional distress and depression, and again recommended a neuropsychological evaluation.¹⁰ The final visit on September 1, 2020, consisted of a psychological evaluation purporting to diagnose Plaintiff with Unspecified Trauma and Stressor Related Disorder, Anxiety Disorder, Unspecified, and Unspecified Mild Neurocognitive Disorder¹¹, and recommended further evaluation and testing.

Dr. Elliott evaluated Plaintiff for "severe headaches," "difficulty focusing and following conversations/trains of thought," "several difficulties when using grills," "losing confidence in himself," and "concern that he will not be able to continue his career" - both psychological and neuropsychological issues.¹² Dr. Elliott evaluated Plaintiff for issues relating to difficulties in concentrating and remembering and Plaintiff testified he was diagnosed with a learning disability at a very young age.¹³ Plaintiff testified that he was seeing a Shaman, Lauren Unger, in the days before the incident for help dealing with Plaintiff being "super negative" and with having been

⁹ See Plaintiff's Tenth Supplement, Exhibit A to Reply, at GREEN 1086-1087 (collectively Exhibit D hereto).

¹⁰ Id. at GREEN 1088-1089.

¹¹ Id. at GREEN 1090-1094.

¹² Id.

¹³ See Plaintiff's Deposition, Exhibit B to Reply, at pp. 279:23-281:2 (collectively Exhibit D hereto).

1 taken advantage of in several of his businesses.¹⁴ Dr. Elliott found Plaintiff's "symptoms and
2 behaviors are consistent with patients that have suffered brain trauma through a blast injury."¹⁵

3 Plaintiff's disclosure identified Dr. Elliott's expected testimony to include "Anxiety
4 disorder due to known physiological condition;" "Generalized anxiety disorder;" and
5 "*Screening for a traumatic brain injury*"¹⁶ and expected testimony regarding a comprehensive
6 treatment plan for both psychological and neuropsychological issues including, *inter alia*, (1)
7 the need for psychotherapy; (2) pharmacological intervention to alleviate emotional and
8 attentional issues; (3) Biofeedback/Heartmath program; (4) Eye Movement Desensitization &
9 Reprocessing therapy; (5) *neuropsychological testing*; and (6) follow-up psychological
10 evaluation. The medical records disclosed as part of Plaintiff's tenth supplemental disclosure
11 allege, "Mr. Green's symptoms and behaviors are consistent with patients that have suffered
12 brain trauma through a blast and that his injuries are indicators of a traumatic brain injury."¹⁷

13 Discovery Commissioner

14 The Discovery Commissioner made the following rulings:

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- 19 10. The Court finds that under NRS 52.380 Plaintiff will be allowed to have an observer
20 present during any psychological or neuropsychological examination in this matter.
- 21 11. The Court finds that under NRS 52.380 Plaintiff will be allowed to make an audio
22 recording of any psychological or neuropsychological examination in this matter.
- 23 12. A Rule 35 mental examination regarding psychological issues or neuropsychological
24 issues is somewhat more involved than what would be allowed for a physical
25 examination.

26 ¹⁴ Id. at 286:2-290:16.

27 ¹⁵ See Plaintiff's Tenth Supplement, Exhibit A to Reply, at p. 28 (collectively Exhibit D
hereto).

28 ¹⁶ Id.

¹⁷ Id.

13. Plaintiff has put his past mental and physical condition at issue in this litigation.
14. The Court will not limit Defendants' examiner from inquiring generally into Plaintiff's pre-incident mental condition, but the examiner can only discuss treatment for Plaintiff's mental health treatment for the five years prior to the incident.
15. The Court will not limit Defendants' examiner from inquiring generally into Plaintiff's pre-incident physical condition.
16. The Court will not limit inquiries by Defendants' examiner into Plaintiff's current conditions, symptoms, and complaints that are issue in this litigation.
17. The Court will not preclude Defendants' examiner from inquiring if Plaintiff has a past or current history of an inability to focus.
18. The Court will not preclude Defendants' examiner from inquiring if Plaintiff has a history of memory issues.
19. The Court will not preclude Defendants' examiner from inquiring if Plaintiff had any prior mental conditions.
20. The Court will not preclude Defendants' examiner from inquiring generally about Plaintiff's life before the incident including education, work and training.
21. The Court will allow Defendants' examiner to ask questions that are reasonably part of neuropsychological evaluation.
22. The Court will not allow Defendants' examiner to conduct a second deposition regarding liability related to the incident.
23. With regard to the incident, the Court will allow Defendants' examiner to question Plaintiff regarding what occurred on the day of the incident from the time of the flash fire forward.
24. Plaintiff's counsel contends that Plaintiff is not claiming neuropsychological injuries or a traumatic brain injury as a result of this incident.
25. Defendant argues that Plaintiff's Rule 16.1 disclosures and medical records do not align with the contentions of Plaintiff's counsel regarding neurological injuries and a traumatic brain injury allegation.
26. The Parties dispute what type of Rule 35 examination is warranted in this case.

27. If Plaintiff is claiming a loss of focus and memory loss, the Commissioner will allow a neuropsychological examination.¹⁸

IV.

LEGAL STANDARD

NEVADA RULE OF CIVIL PROCEDURE ("RULE") 35

In 2018, prior to amending Rule 35 – a rule of civil procedure – the Nevada Supreme Court invited public comment. On October 1, 2018, the Nevada Board of Psychological Examiners submitted a statement regarding its position as follows:

In the interest of protecting the needs of the public, it is the position of the Nevada Board of Psychological Examiners that **allowing third-party observers, monitors, and/or electronic recording equipment during psychological and neuropsychological evaluations poses a significant threat to public safety. Observation, monitoring, and recording can significantly alter the credibility and validity of results obtained** during psychological and neuropsychological medical evaluations, as well as forensic evaluations completed for judicial proceedings. **Research indicates that the presence of observers, monitors and recorders during patient clinical interviews and evaluations directly impacts patient behavior and performance such that patients may avoid disclosing crucial information essential to diagnosis and clinical recommendations.** Additionally, (neuro)psychological tests and measures are developed and standardized under highly controlled conditions. Observation, monitoring, and recording of these tests is not part of the standardization. **Observation, monitoring, and recording of psychological assessment components (i.e., testing) of evaluations may distort patient task performance, such that patient weaknesses and strengths are exaggerated, yielding inaccurate or invalid test data.** Furthermore, research highlights that this impact on performance is independent of method of observation. In other words, **there is no "good" or "safe" way to observe, monitor, or record such (neuro)psychological evaluations without impacting and potentially invalidating the evaluation.** Ultimately, deviations from standardized administration procedures compromise the validity of the data collected and compromise the psychologist's ability to compare test results to normative data. This increases the potential for inaccurate test results and erroneous diagnostic conclusions, thus impacting reliability of results and future treatment for the patient. In addition, the risk of secured testing and assessment procedures

¹⁸ See DCRR, pp. 3-4, Exhibit A hereto.

1 being released to non-Psychologists poses risk to the public in that exposure
2 of the test and assessment confidentiality can undermine their future validity
and utility.¹⁹

3 Thereafter and **effective January 1, 2019**, the Nevada Supreme Court enacted Rule 35

4 (Physical and Mental examinations), which provides:

5 **(a) Order for examination.**

6 (1) *In General.* The court where the action is pending may order a party whose
7 mental or physical condition...is in controversy to submit to a physical or mental
8 examination by a suitably licensed or certified examiner. The court has the same
authority to order a party to produce for examination a person who is in the party's
custody or under the party's legal control.

9 (2) *Motion and Notice; Contents of the Order.*

10 (A) The order may be made only on motion for **good cause** and on notice to all
parties and the person to be examined.

11 (B) The order must specify the time, place, manner, conditions, and scope of the
12 examination, as well as the person or persons who will perform it. The examination
must take place in an appropriate professional setting in the judicial district in which
the action is pending, unless otherwise agreed by the parties or ordered by the court.

13 (3) ***Recording the examination. On request of a party or the examiner, the***
court may, for good cause shown, require as a condition of the examination
14 **that the examination be audio recorded.** The party or examiner who requests the
audio recording must arrange and pay for the recording and provide a copy of the
recording on written request. The examiner and all persons present must be notified
before the examination begins that it is being recorded.

15 (4) ***Observers at the examination. The party against whom an examination is***
sought may request as a condition of the examination to have an observer
16 **present at the examination. When making the request, the party must identify**
the observer and state his or her relationship to the party being examined. The
17 **observer may not be the party's attorney or anyone employed by the party or**
18 **the party's attorney.**

19 (A) The party may have one observer present for the examination, unless:

20 (i) the examination is a neuropsychological, psychological, or psychiatric
examination; or

21 (ii) the court orders otherwise for good cause shown.

22 (B) The party may not have any observer present for a neuropsychological,
psychological, or psychiatric examination, unless the court orders otherwise
for good cause shown.

23 (C) An observer must not in any way interfere, obstruct, or participate in the
examination.

24 (Emphasis added.)

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28 ¹⁹ See Letter, Exhibit K hereto (emphasis added).

1 Rule 35(a) expressly addresses audio recording and attendance by an observer at court-
2 ordered physical and mental examinations. A court **may** for good cause shown direct that an
3 examination be audio recorded. A generalized fear that the examiner might distort or inaccurately
4 report what occurs at the examination is not sufficient to establish good cause to audio record
5 the examination. In addition, a party whose examination is ordered **may** have an observer
6 present, typically a family member or trusted companion, provided the party identifies the
7 observer and his or her relationship to the party in time for that information to be included in the
8 examination order. **However, psychological and neuropsychological examinations raise**
9 **subtler questions of influence and confidential and proprietary testing materials that make**
10 **it appropriate to condition the attendance of an observer on court permission, to be granted**
11 **for good cause shown.** In either event, the observer should not be the attorney or employed by
12 the attorney for the party against whom the request for examination is made, and the observer
13 may not disrupt or participate in the examination. See Advisory Committee Notes. The Nevada
14 Supreme Court made clear – in enacting Rule 35(a)(4)(A)(i) – that no observer may be present
15 for a neuropsychological, psychological, or psychiatric examination consistent with the Nevada
16 Board of Psychological Examiners’ position statement.

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20 **NRS 52.380**

21 Thereafter, **in October 2019**, the Legislature enacted, NRS 52.380, which provides:

- 22
23 1. **An observer may attend an examination** but shall not participate in or disrupt
24 the examination.
25 2. The observer attending the examination pursuant to subsection 1 may be:
26 (a) An attorney of an examinee or party producing the examinee; or
27 (b) A designated representative of the attorney, if:
28 (1) The attorney of the examinee or party producing the examinee, in writing,
authorizes the designated representative to act on behalf of the attorney during the
examination; and

(2) The designated representative presents the authorization to the examiner before the commencement of the examination.

3. The observer attending the examination pursuant to subsection 1 may make an audio or stenographic recording of the examination.

4. The observer attending the examination pursuant to subsection 1 may suspend the examination if an examiner:

(a) Becomes abusive towards an examinee; or

(b) Exceeds the scope of the examination, including, without limitation, engaging in unauthorized diagnostics, tests or procedures.

5. An examiner may suspend the examination if the observer attending the examination pursuant to subsection 1 disrupts or attempts to participate in the examination.

6. If the examination is suspended pursuant to subsection 4 or 5, the party ordered to produce the examinee may move for a protective order pursuant to the Nevada Rules of Civil Procedure.

7. As used in this section:

(a) "examination" means a mental or physical examination ordered by a court for the purpose of discovery in a civil action.

(b) "Examinee" means a person who is ordered by a court to submit to an examination.

(c) "Examiner" means a person who is ordered by a court to conduct an examination.

(Emphasis added.) Plaintiffs' bar and/or the Nevada Justice Association (NJA) testified at a Meeting of the Assembly Committee on Judiciary, 18th Sess. (March 27, 2019), to persuade the Nevada Supreme Court to adopt some of the above into Rule 35, which the Nevada Supreme Court rejected. Freteluco v. Smith's Food & Drug Centers, Inc., 336 F.R.D. 198, 202 (D. Nev. 2020). Thereafter, the NJA apparently succeeded in obtaining what it wanted through NRS 52.380.

The Discovery Commissioner correctly determined there is a clear conflict between Rule 35 and NRS 52.380 as to an observer attending a neuropsychological or psychological

1 examination, and an audio recording being made of the same.²⁰ However, the Discovery
2 Commissioner erred in ruling that Plaintiff can have an observer present at the psychological or
3 neuropsychological examination, pursuant to NRS 52.380(1), because it is prohibited by Rule
4 35(a)(4)(A)(i); and can audio record the examination pursuant to NRS 52.380(3), because
5 Plaintiff failed to submit any admissible evidence or authority establishing good cause to allow
6 it and Defendants submitted evidence establishing good cause for prohibiting the same under
7 Rule 35(a)(3).²¹

8
9
10 V.

11 **LEGAL ARGUMENT**

12 **A. RULE 35 IS BINDING AND BARS AN OBSERVER AT THE EXAMINATION**

13 The Nevada Supreme Court has held that the separation of powers doctrine is the most
14 important foundation for preserving and protecting liberty by preventing the accumulation of
15 power in any one branch of government. Berkson v. LePome, 126 Nev. 492, 498, 245 P.3d 560,
16 564 (2010) citing Secretary of State v. Nevada State Legislature, 120 Nev. 456, 466, 93 P.3d
17 746, 753 (2004). The Nevada Constitution, Article 3, Section 1(1), provides:

18
19 [t]he powers of the Government of the State of Nevada shall be divided into three
20 separate departments,—the Legislative,—the Executive and the Judicial; and no
21 persons charged with the exercise of powers properly belonging to one of these
22 departments shall exercise any functions, appertaining to either of the others, except
23 in the cases expressly directed or permitted in this constitution.

24 Id. The Constitution further embodies this concept of limited government by specifically
25 delineating the powers granted to the three distinct and coequal branches of government. See

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28 ²⁰ See DCRR, p. 3, Exhibit A hereto.

²¹ Id.

Article 4 (legislative), Article 5 (executive), and Article 6 (judicial). Id. citing Commission on Ethics v. Hardy, 125 Nev. 285, —, 212 P.3d 1098, 1103 (2009). Each of the three governmental branches has “inherent power to administer its own affairs and perform its duties, so as not to become a subordinate branch of government.” Id. citing Halverson v. Hardcastle, 123 Nev. 245, 261, 163 P.3d 428, 439 (2007); accord Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1218, 14 P.3d 1275, 1279 (2000). The Nevada Supreme Court has been especially prudent to keep the powers of the judiciary separate from those of either the legislative or the executive branches. Id. at 564-65 citing Galloway v. Truesdell, 83 Nev. 13, 19, 422 P.2d 237, 242 (1967).

Berkson considered a conflict between NRS 11.340, and the inherent ability of the judiciary to manage litigation and finally resolve cases. The Court held “it is well settled that the judiciary retains the authority to hear and determine justiciable controversies as a coequal power to the legislature's broad authority to enact, amend, and repeal legislation.” Id. at 499, 565 citing Halverson, 123 Nev. at 260, 163 P.3d at 439. “[T]his distinction, ‘[t]o declare what the law **is or has been** is judicial power; to declare what the law **shall be** is legislative.’” Id. citing 1 Thomas M. Cooley, Constitutional Limitations 191 (8th ed.1927).

In keeping with this theory, “‘[t]he judiciary...has the inherent power to govern its own procedures.’” State v. Dist Ct. [Marshall], 116 Nev. 953, 959, 11 P.3d 1209, 1212 (2000) (quoting Whitlock v. Salmon, 104 Nev. 24, 26, 752 P.2d 210, 211 (1988));...**NRS 2.120(2) (legislative recognition that this court regulates civil practice in order to promote “the speedy determination of litigation upon its merits”).** The judiciary is entrusted with “‘rule-making and other incidental powers reasonable and necessary to carry out the duties required for the administration of justice’” and “to economically and fairly manage litigation.” Borger v. Dist. Ct., 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004) (quoting Goldberg v. District Court, 93 Nev. 614, 616, 572 P.2d 521, 522 (1977))...Marshall, 116 Nev. at 959, 11 P.3d at 1213 (stating that “‘[t]here are regulating ... powers of the Judicial Department that are within the province of the judicial function, i.e., ... promulgating and prescribing any and all rules necessary or desirable to handle the business of the courts or their judicial functions’” (second

1 and third alterations in original) (quoting Galloway, 83 Nev. at 23, 422 P.2d at
2 244)). Thus, “‘the legislature may not enact a procedural statute
3 that conflicts with a pre-existing procedural rule, without violating the
4 doctrine of separation of powers, and ... such a statute is of no
5 effect.’” Marshall, 116 Nev. at 959, 11 P.3d at 1213 (quoting State v. Connery, 99
6 Nev. 342, 345, 661 P.2d 1298, 1300 (1983));...Secretary of State, 120 Nev. at 465,
7 93 P.3d at 752 (explaining that **the Legislature cannot restrict, substantially**
8 **impair, or defeat the exercise of this court's constitutional powers**)...In
9 addition to the constitutionally mandated bases for keeping separate those
10 inherent powers of the judiciary, leaving control of court rules and the
11 administration of justice to the judiciary, and thereby placing the
12 responsibility for the system's continued effectiveness with those most familiar
13 with the latest issues and the experience and flexibility to more quickly bring
14 into effect workable solutions and amendments, makes good
15 sense. Goldberg, 93 Nev. at 617–18, 572 P.2d at 523.

16 Id. at 499-500, 565 (emphasis added).

17 In January 2019, the Nevada Supreme Court enacted Rule 35(a)(4)(A)(i) – prohibiting
18 the presence of an observer at a neuropsychological or psychological examination. Thereafter,
19 in October 2019, the legislature enacted NRS 52.380(1) providing that an
20 observer may attend an examination, which includes a mental or physical examination. NRS
21 52.380(7)(a). Pursuant to Berkson, the judiciary has the inherent power to govern its own
22 procedures, including regulating civil practice, and is entrusted with rule-making and other
23 incidental powers reasonable and necessary to carry out the duties required for the administration
24 of justice and to economically and fairly manage litigation – here, Rule 35. Id. The legislature
25 may not enact a procedural statute – NRS 52.380 – that conflicts with the pre-existing procedural
26 rule without violating the doctrine of separation of powers. Id. NRS 52.380 conflicts with Rule
27 35 and, as such, is of no effect. Id. The legislature cannot restrict, substantially impair, or defeat
28 the exercise of this Court’s constitutional powers. Id. Therefore, the Discovery Commissioner
erred in denying Defendants’ Motion and determining that Plaintiff can have an observer present
at the psychological or neuropsychological examination pursuant to NRS 52.380.

1 **B. THE DISCOVERY COMMISSIONER ERRED IN ALLOWING THE**
2 **PRESENCE OF AN OBSERVER AT AND A RECORDING MAY BE**
3 **MADE OF THE EXAMINATION**

4 Even if the Rule 35 and NRS 52.380 were not in conflict, the Discovery Commissioner's
5 ruling is still erroneous because Defendants established good cause for an observer not to be
6 present and no audio recording to be made through two affidavits from Dr. Etcoff. The first
7 affidavit established the scope of the examination (i.e. length of time, testing, subject matters).²²
8 The second affidavit established that he is enjoined from having an observer present and no
9 recording may be made of testing, etc., because it is prohibited by various Boards, etc.²³ Dr.
10 Etcoff's undisputed Affidavit establishes:

- 11
- 12 4. Despite NRS 52.380 "Attendance by Observer," which is applicable to physical independent
13 medical examinations and mental (psychological, neuropsychological, and psychiatric
14 Court-ordered evaluations), **I am enjoined by the Nevada State Board of Psychological**
15 **Examiners; the American Psychological Association; professional neuropsychological**
16 **associations such as the National Academy of Neuropsychology, the American Board**
17 **of Professional Neuropsychology, and the American Board of Clinical**
18 **Neuropsychology; including the Nevada Psychological Association from allowing**
19 **third party observers to observe, take notes, or audiotape copyrighted psychological**
20 **and neuropsychological tests for test security, validity issues, and protection of the**
21 **public (see 2020 attached letters from the Nevada State Board of Psychological**
22 **Examiners and Nevada Psychological Association).**
- 23 5. **Consistent with my professional and ethical obligations as a Nevada Licensed**
24 **Psychologist and Fellow of the National Academy of Neuropsychology, I will**
25 **not allow third party observers or audiotaping of the administration of either**
26 **clinical psychological or neuropsychological tests and measures in clinical or**
27 **Court-ordered forensic evaluations.**²⁴

28 An order requiring Dr. Etcoff to violate the Rules and ethics of his profession is not
appropriate, including because Rule 35 prohibits what has been ordered. Furthermore, Plaintiff

²² See Dr. Etcoff 12/9/2020 Affidavit, Exhibit I hereto.

²³ See Dr Etcoff 12/14/2020 Affidavit, Exhibit J hereto.

²⁴ Id. at p. 1.

1 failed to present any authority or evidence to support his position and/or dispute the above. Rule
2 35(a)(4)(A)(ii). All Plaintiff did was rely on NRS 52.380 and inadmissible hearsay evidence –
3 that the Discovery Commissioner stated at a Bench Bar Meeting, 8 days after NRS 52.380 was
4 enacted, that when the NRS and NRCP conflict, NRS 52.380 controls.²⁵ Thus, Plaintiff
5 submitted no admissible evidence and/or case law to support of his position. The plain language
6 of Rule 35 prohibits the same and the history of the Rule’s enactment establishes the Nevada
7 Supreme Court accepted the Nevada Board of Psychological Examiners’ position and
8 determined no observer may be present at a psychological or neuropsychological examination,
9 and no recording be made unless there is good cause. The legislature simply does not have the
10 power to enact legislation to change this Court’s rules and procedures. Finally, the DCRR
11 contains no analysis, reasoning and/or case law supporting that determination. Therefore, the
12 decision is erroneous.

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14
15 **C. NRS 52.380 IS A PROCEDURAL STATUTE**

16 NRS 52.380 does not create a substantive right for a party to have an observer present or
17 create an audio recording of a psychological or neuropsychological examination. Rather, it
18 contains permissive language – “may” – in both allowing an observer to attend and allowing the
19 observer to make an audio or stenographic recording of the examination. That permissive
20 language does not divest this Court of its authority under and obligation to follow Rule 35 and
21 enforce its prohibition of an observer attending a psychological or neuropsychological
22 examination and not allowing an audio recording for good cause.
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28 ²⁵ See Opposition, Exhibit C, 9:12-13 hereto.

1 Furthermore, NRS 52.380 conditions allowing an observer on the premise that the
2 observer will not participate in or disrupt the examination. Defendants established through Dr.
3 Etcoff that a third-party observer inherently disrupts the examination and its results by altering
4 the behavior of the examinee. Defendants also provided the Court with scientific studies
5 demonstrating that and that the examination depends on unimpeded one-on-one communication
6 between the doctor and patient.²⁶ Plaintiff did not dispute the medical studies or present any
7 evidence to support his position. More importantly, Dr. Etcoff is not alone in his view. The
8 Nevada Board of Psychological Examiners was of the same view prior to the Nevada Supreme
9 Court amending Rule 35.²⁷ Since the Nevada Supreme Court accepted that and prohibits an
10 observer at a psychological or neuropsychological examination, respectfully, this Court cannot
11 find otherwise and/or substitute its judgment to the contrary. Therefore, the Discovery
12 Commissioner erred.

13 There are no reported Nevada state court cases resolving the conflict between Rule 35
14 and the Statute. There is a petition for writ of mandamus currently pending before the Nevada
15 Supreme Court on this issue – Moats v. Dist. Ct. (Burgess), Case Nos. A769459 and 81912.
16

17 There is one federal court case on this issue. In Freteluco v. Smith's Food & Drug Centers,
18 Inc., 336 F.R.D. 198, 200 (D. Nev. 2020), the court considered the plaintiff's request to have an
19 observer present at her examination by Dr. Etcoff, who took exception to having an observer
20 present during his examination of Plaintiff. Id. Defendant averred that Plaintiff's general concern
21 regarding Dr. Etcoff becoming “abusive” during the testing and/or exceeding the scope of the
22 agreed upon examination was not a justification for having an observer present. Id. Defendant
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27 ²⁶ See Motion, Exhibit A (collectively Exhibit B hereto).

28 ²⁷ See Letter, Exhibit K hereto.

1 stated that NRS 52.380 is procedural in nature, not binding on the Court, and “having an observer
2 present during a neuropsychological examination alters the behavior and results of the
3 examination.” Id. The plaintiff argued that NRS 52.380 provides a substantive right allowing the
4 plaintiff to have an observer present during her the examination citing state legislative committee
5 hearing testimony that “this isn't just a procedural rule. This is something substantive. ... the right
6 to control your own body.” Id. The plaintiff argued that having an observer present during the
7 examination would enhance “the court's, jury's, and parties' understanding of what transpired
8 during a Rule 35 examination” Id. The plaintiff claimed polarization (whether conscious or
9 unconscious) plays a role in the adversarial system and an observer would allow “additional
10 insights that come from reviewing the communications and actions that are the foundation of the
11 expert's opinion.” Id. The plaintiff cited to a variety of states that allow the presence of some
12 type of observer. Id. at 200-01. The plaintiff argued that the defendant's position was directly
13 contrary to “the opinions of The American Board of Professional Neuropsychology, The
14 American Psychological Association, and the courts that have routinely ordered the recording of
15 examinations.” Id. at 201. The plaintiff also argued the defendant attempted to mislead the Court
16 because prior to 2018 Dr. Etcoff “always” allowed observers at examinations he conducted
17 without citation for that contention; whereas, Dr. Etcoff's letter attached as Exhibit 2 to the
18 plaintiff's opposition stated that he has allowed observers “on occasion.” Id. On reply, the
19 defendant stated that the plaintiff failed to identify any federal case law or statute upon which
20 the Court should rely to conclude NRS 52.380 is substantive rather than procedural and the
21 plaintiff's reliance on Gensbauer v. May Dep't. Stores, Co., 184 F.R.D. 552 (E.D. Pa. 1999), was
22 easily distinguished because it distinguished between physical and psychological examination,
23 finding that psychological examination “may depend more on unimpeded one-on-one
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1 communication between doctor and patient.” Id. The defendant also stated that “NRS 52.380
2 outlines the procedure for the presence of an observer at a mental or physical examination[]
3 pursuant to NRCP 35.” Id.
4

5 **The court determined NRS 52.380 is a rule of procedure not substance and no**
6 **observer may attend the Rule 35 examination.** Id. at 201-02. It further held the Supreme
7 Court of Nevada enacted a comprehensive set of rules dealing with discovery, the NRCP, which
8 includes Rule 35. Id. at 202. The legislative history further shows that the Chairperson of the
9 Assembly Judiciary Committee, Steve Yeager, confirmed that the language of the Assembly Bill
10 that became NRS 52.380, was proposed to and rejected by the Nevada Supreme Court, but the
11 participants in the March 27, 2019 hearing did not know why the proposal was rejected. Id. The
12 entirety of the Meeting Minutes showed no legislator comments on whether NRS 52.380 is
13 substantive or procedural. Id.
14

15 The court concluded that Fed. R. Civ. P. 35 governed the plaintiff’s examination. Id. at
16 202. Applying the Erie doctrine and an “outcome-determination” test, the Court found that
17 whether an observer is present in the neuropsychological examination is not substantive, but
18 procedural. Id. at 202-03. NRS 52.380 sets forth procedures applicable to observers who may
19 attend independent medical examinations. Id. The court held the statutory provisions are not
20 “outcome” or case determinative, but instead reflect a “procedural preference.” Id. citing Flack
21 v. Nutribullet, LLC, 333 F.R.D. 508, 517 (C.D. Cal. 2019) citing Smolko v. Unimark Lowboy
22 Trans., 327 F.R.D. 59, 63 (M.D. Penn. 2018), and Stefan v. Trinity Trucking, L.L.C., 275 F.R.D.
23 248, 250 (N.D. Ohio 2011). By specifying that the court may determine ‘the time, place, manner,
24 conditions, and scope of the examination, as well as the person or persons who will perform it
25 (Fed. R. Civ. P. 35(a)(2)(B)), Rule 35 consigns the procedures to be used in conducting these
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1 examinations to the sound discretion of the court – an approach consistent with the general
2 guidance of the rules that provide that issues relating to the scope of discovery are in the sound
3 discretion of the court. Id. citing Smolko, 327 F.R.D. at 61. The court noted that , in Erie, the
4 court held the relevant State Rule permitting counsel to attend physical and mental examinations,
5 also eas not an outcome-determinative rule of substance, but a procedural preference expressed
6 by the state courts which did not control the exercise of discretion under Rule 35. Id. at 203. The
7 court agreed that NRS 52.380 sets forth process allowed under the Nevada Rules of Evidence
8 applicable to an examination under Nev. R. Civ. P. 35 and is not a substantive law granting the
9 court the authority to enter an order specifying the “time, place, manner, conditions, and scope
10 of the examination” Id. The court further found that presumptively applying Fed. R. Civ. P.
11 35 to all litigation in federal court would undoubtedly promote equitable administration of law
12 while discouraging forum shopping. Id. The court also agreed with the majority rule adopted by
13 federal courts that exclude third parties from observing medical and psychiatric examinations. Id.
14 citing Flack, 333 F.R.D. at 517 citing Smolko, supra.

15 The introduction of a third party “changes the nature of the proceeding, much in the way
16 that television ‘coverage’ of events qualitatively changes what occurs in front of the camera.”
17 Id. citing Tirado v. Erosa, 158 F.R.D. 294, 299 (S.D.N.Y. 1994).

18 Courts are often reluctant to permit a third party or recording device out of concern
19 that the intrusion would (1) potentially invalidate the examination results; (2) fail
20 to provide a level playing field[] as plaintiff was not required to tape record his
21 examinations with his own health care providers; and (3) inject a greater degree of
22 the adversary process into an evaluation that is to be neutral. 333 F.R.D. at 518
23 (citations and internal quote marks omitted)...The introduction of a third party is
24 necessarily distracting to the examiner and the examinee, and clearly heightens an
25 already adversarial process into one that is simply more so. See Smolko, 327 F.R.D.
26 at 61-62 (citation omitted). In fact, as the court in Smolko stated, the presence of a
27 third party introduces “a degree of artificiality to the examination that would be
28 inconsistent with the applicable professional standard.” Id.

1 Id. at 203-04 citing Flack.

2 The court held that even if it were to adopt the middle road approach taken by some
3 federal courts, which requires the party seeking to have an observer present at an examination to
4 demonstrate “good cause for the request,” the plaintiff failed to meet the standard. Id. at 204
5 citing Tarte v. United States, 249 F.R.D. 856 (S.D. Fla. 2008); Smolko, 327 F.R.D. at 62. There
6 was nothing extraordinary or out of the ordinary that suggested a third party observer was
7 appropriate in that case. Id. Nothing was presented to the court that supported a concern that Dr.
8 Etcoff had ever been or, in this case, would be abusive to someone he is examining; would go
9 beyond the agreed upon testing he disclosed. Id. Thus, Fed. R. Civ. P. 35 governed plaintiff's
10 independent medical exam and NRS 52.380 was not properly applied in that case. Id. The court
11 further found that plaintiff failed to provide any evidence or information, other than generic
12 concerns, warranting an observer at the examination. Accordingly, the court would not permit
13 an observer to be present at the examination. Id. All the above applies to Rule 35 and, therefore,
14 the DCRR should be reversed.

15 VI.

16 CONCLUSION

17 Defendant respectfully requests the Court reverse the Discovery Commissioner's Report
18 and Recommendation and order that no observer may be present at Plaintiff's psychological or
19 neuropsychological examination, and no audio recording may be made of the same pursuant to
20 Rule 35, which prohibits that and/or provides that should not be done except for good cause.
21 Defendants established good cause for their position and Plaintiff failed to submit any admissible
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evidence and/or authority for his position. In the alternative, Defendants request this Court stay this case until the Nevada Supreme Court's decision in Moats.

DATED this 5th day of January, 2021.

OLSON CANNON GORMLEY
& STOBERSKI

/s/ Felicia Galati, Esq.

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AND

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Attorney for Defendant
FERRELLGAS, INC

DATED this 5th day of January, 2021.

DENNETT WINSPEAR, LLP

/s/ Gina Gilbert Winspear, Esq.

Gina Gilbert Winspear Esq.
3301 N. Buffalo Drive, Suite 195
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Attorneys for Defendant,
CARL J. KLEISNER

DATED this 5th day of January, 2021.

PYATT SILVESTRI

/s/ Steven M. Goldstein, Esq.

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Las Vegas, Nevada 89101
Attorneys for Defendant,
MARIO S. GONZALEZ

1 **CERTIFICATE OF SERVICE**

2 On the 5th day of January, 2021, the undersigned, an employee of Olson Cannon Gormley
3 & Stoberski, hereby served a true copy of **DEFENDANTS' OBJECTION TO DISCOVERY**
4 **COMMISSIONER'S REPORT AND RECOMMENDATION E-FILED ON 12/22/20** to the
5 parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order
6 (Administrative Order 14-2) effective June 1, 2014, and or mailed:
7

8
9 Matthew G. Pfau, Esq.
10 H&P Law
11 8950 W. Tropicana Ave., #1
12 Las Vegas, NV 89147
13 mpfau@courtroomproven.com
14 Attorneys for Plaintiff

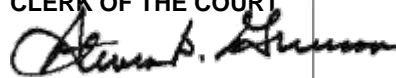
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22 Attorneys for Defendant,
23 MARIO S. GONZALEZ

24
25
26
27
28
/s/ Erika Parker

An Employee of Olson Cannon Gormley
& Stoberksi

EXHIBIT A



DCRR

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gsilva@bscr-law.com
Attorneys for Defendant
FERRELLGAS, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA GREEN;

Plaintiff,

vs.

FERRELLGAS, INC. et al.,

Defendants.

CASE NO.: A-19-795381-C
DEPT NO.: XXXI

**Discovery Commissioner's Report and
Recommendations**

AND RELATED ACTIONS

DISCOVERY COMMISSIONER'S
REPORT and RECOMMENDATIONS

Date of Hearing: November 19, 2020

Time of Hearing: 9:00 a.m.

Attorney for Plaintiff: Matt Pfau of H & P LAW.

Attorneys for Defendant Ferrellgas, Inc.: Gregorio V. Silva, Esq. of BAKER STERCHI
COWDEN & RICE and Felicia Galati, Esq. of OLSON CANNON GORMLEY &
STOBERSKI

Attorney for Defendant Mario Gonzalez: Steven Goldstein, Esq. of PYATT SILVESTRI

Attorney for Defendant Carl Kleisner: Gina Winspear, Esq. of DENNETT WINSPEAR

Attorney for Plaintiff: Matthew Pfau, Esq. of H & P LAW

1. FINDINGS

1. Defendants filed a Motion to Compel a Rule 35 Exam.
2. Defendants seek an Order compelling Plaintiff to appear for a Rule 35 mental examination.
3. Plaintiff Joshua Green admits that he has made his mental condition an issue of this case since he is alleging suffering from PTSD as a result of the explosion.
4. Plaintiff Joshua Green requests that he be allowed to have an observer present and make an audio recording of any Rule 35 examination.
5. Nevada Rules of Civil Procedure 35 precludes an observer from attending a neuropsychological, psychological or psychiatric examination.
6. Nevada Rules of Civil Procedure 35 preclude any observer from interfering, obstructing, or participating in any Rule 35 examination.

1 7. Nevada Revised Statute 52.380 provides the right to have an observer attend a
2 mental or physical examination, but precludes an observer from participating in or disrupting
3 a mental or physical examination.
4

5 8. There is a clear conflict between the language of NRCP 35 and NRS 52.380.

6 9. The Court is tasked with reading NRCP 35 in conjunction with NRS 52.380.

7 10. The Court finds that under NRS 52.380 Plaintiff will be allowed to have an
8 observer present during any psychological or neuropsychological examination in this matter.
9

10 11. The Court finds that under NRS 52.380 Plaintiff will be allowed to make an
11 audio recording of any psychological or neuropsychological examination in this matter.
12

13 12. A Rule 35 mental examination regarding psychological issues or
14 neuropsychological issues is somewhat more involved than what would be allowed for a
15 physical examination.
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17 13. Plaintiff has put his past mental and physical condition at issue in this litigation.
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19 14. The Court will not limit Defendants' examiner from inquiring generally into
20 Plaintiff's pre-incident mental condition, but the examiner can only discuss treatment for
21 Plaintiff's mental health treatment for the five years prior to the incident.
22

23 15. The Court will not limit Defendants' examiner from inquiring generally into
24 Plaintiff's pre-incident physical condition.
25

26 16. The Court will not limit inquiries by Defendants' examiner into Plaintiff's
27 current conditions, symptoms, and complaints that are issue in this litigation.
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 17. The Court will not preclude Defendants' examiner from inquiring if Plaintiff
has a past or current history of an inability to focus.

1 18. The Court will not preclude Defendants' examiner from inquiring if Plaintiff
2 has a history of memory issues.

3 19. The Court will not preclude Defendants' examiner from inquiring if Plaintiff
4 had any prior mental conditions.

5 20. The Court will not preclude Defendants' examiner from inquiring generally
6 about Plaintiff's life before the incident including education, work and training.

7 21. The Court will allow Defendants' examiner to ask questions that are
8 reasonably part of neuropsychological evaluation.
9

10 22. The Court will not allow Defendants' examiner to conduct a second deposition
11 regarding liability related to the incident.
12

13 23. With regard to the incident, the Court will allow Defendants' examiner to
14 question Plaintiff regarding what occurred on the day of the incident from the time of the flash
15 fire forward.
16

17 24. Plaintiff's counsel contends that Plaintiff is not claiming neuropsychological
18 injuries or a traumatic brain injury as a result of this incident.
19

20 25. Defendant argues that Plaintiff's Rule 16.1 disclosures and medical records do
21 not align with the contentions of Plaintiff's counsel regarding neurological injuries and a
22 traumatic brain injury allegation.
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24 26. The Parties dispute what type of Rule 35 examination is warranted in this case.

25 27. If Plaintiff is claiming a loss of focus and memory loss, the Commissioner will
26 allow a neuropsychological examination.
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1 The Discovery Commissioner met with counsel and discussed the issues noted
2 above. Having reviewed the materials offered in support of this recommendation, she
3 hereby submits the above recommendations.

4
5 DATED this 21st day of December 2020.



DISCOVERY COMMISSIONER

6
7
8 Submitted by
9 BAKER STERCHI COWDEN & RICE

10 /s/ Gregorio V. Silva
11 GREGORIO V. SILVA, ESQ.
12 Nevada Bar No. 13583
13 BAKER, STERCHI, COWDEN & RICE, LLC
14 2400 Pershing Road, Suite 500
15 Kansas City, MO 64108

16 Approved as to form and content

17 H&P Law

18 /s/ Matt G. Pfau
19 Matt G. Pfau, ESQ.
20 Nevada Bar No. 11439
21 H&P Law
22 Attorneys for Plaintiff,
23 Joshua Green

24 DENNETT WINSPEAR

25 /s/ Gina Winspear
26 Gina Gilbert Winspear, ESQ.
27 Nevada Bar No. 5552
28 Dennett Winspear
Attorney for Defendant
Carl J. Kleisner

PYATT, SILVESTRI

25 /s/ Steven M. Goldstein
26 Steven M. Goldstein, ESQ.
27 Nevada Bar No. 6318
28 Pyatt Silvestri
Attorneys for Defendant
Mario Gonzalez

NOTICE

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after being served with a report any party may file and serve written objections to the recommendations. Written authorities may be filed with objections, but are not mandatory. If written authorities are filed, any other party may file and serve responding authorities within seven (7) days after being served with objections.

Objection time will expire on Jan 5th 2021 ~~2020~~.

A copy of the foregoing Discovery Commissioner's Report was:

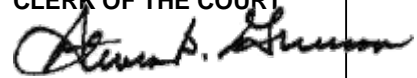
Electronically filed and served counsel on Dec. 22nd, 2020, Pursuant to N.E.F.C.R. Rule 9.

By

Natilie Simonette
COMMISSIONER DESIGNEE

FELICIA GALATI, ESQ.

EXHIBIT B



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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA GREEN;

Plaintiff,

vs.

FERRELLGAS, INC. et al.,

Defendants.

CASE NO.: A-19-795381-C
DEPT NO.: XXXI

**DEFENDANTS' MOTION TO
COMPEL NRCP 35 EXAMINATION**

**HEARING BEFORE DISCOVERY
COMMISSIONER REQUESTED**

AND RELATED ACTIONS

COMES NOW Defendants FERRELLGAS, INC. ("Ferrellgas"), by and through its attorneys of record, FELICIA GALATI, ESQ., of the law offices of OLSON CANNON GORMLEY & STOBERSKI, and Gregorio V. Silva, Esq. of BAKER, STERCHI, COWDEN & RICE, LLC; MARIO GONZALEZ, by and through his attorneys of record STEVEN GOLDSTEIN, ESQ., of the law office of PYATT &

SILVESTRI; and CARL J. KLEISNER, by and through his attorneys of record GINA G. WINSPEAR, ESQ., of the law office of DENNETT WINSPEAR, LLP, and hereby move this Honorable Court for an Order compelling Plaintiff JOSHUA GREEN to submit to a Rule 35 psychological examination.

This Motion is made and based upon all of the pleadings and papers on file herein, the Points and Authorities attached hereto, and any further argument and evidence that may be introduced at the time of the hearing of this matter.

DATED this 26th day of October, 2020.

OLSON CANNON GORMLEY
& STOBERSKI



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FERRELLGAS, INC.

**DECLARATION OF GREGORIO V. SILVA, ESQ. IN CERTIFICATION
OF EDCR 2.34**

GREGORIO V. SILVA, ESQ., being duly sworn, states as follows:

1. That Affiant is an attorney-at-law licensed to practice law in the State of Nevada and represents Defendant Ferrellgas, Inc.

2. That Affiant has personal knowledge concerning the facts and circumstances surrounding the matters addressed herein and makes this Affidavit based on that knowledge.

3. On September 21, 2020, Plaintiff's counsel Matthew Pfau, Esq. sent correspondence indicating Plaintiff's willingness to undergo an IME, but required several conditions.¹

4. After conferring with Ferrellgas' potential expert regarding Plaintiff's requirements, Affiant sent correspondence to Mr. Pfau dated October 7, 2020, expressing disagreement and/or concern with several of the conditions set forth by Mr. Pfau.²

5. Thereafter, Affiant held a telephone conference with Mr. Pfau on October 9, 2020.

6. During that meet-and-confer, Affiant and Mr. Pfau were able to agree on several issues, including:

- a. Mr. Pfau agreed that both a physical and mental examination would be appropriate for Plaintiff;
- b. Mr. Pfau agreed he would be willing to revisit potential additional examinations if Plaintiff made supplemental disclosures which made the same necessary;
- c. Mr. Pfau agreed that Dr. Etcoff would provide any testing data directly to Plaintiff's psychologist without providing the same to counsel due to copyright and patient confidentiality concerns; and

¹ See Correspondence dated September 21, 2020, attached hereto as Exhibit A.

² See Correspondence dated October 7, 2020, attached hereto as Exhibit B.

d. Mr. Pfau indicated he was agreeable to extending deadlines for initial expert disclosures pending on the Court's ruling on the instant motion.

7. Affiant and Mr. Pfau could not reach an agreement on the remaining issues set forth in Mr. Pfau's September 21, 2020 correspondence, including.

a. Plaintiff refused to allow inquiries about his past medical condition or events related to his life after the explosion despite claims for ongoing psychological and neurological issues;

b. Audio recording of the examination;

c. Accompaniment by a silent observer during the examination; or

d. A stipulation allowing Plaintiff to comment on the examination, regardless of whether it was relevant, at trial in this matter.

8. Because the parties have not been able to resolve this issue without Court intervention, Defendants submits the instant motion.

9. Affiant submits that he has complied with EDCR 2.34 in good faith.

DATED this 26th day of October, 2020.



GREGORIA V. SILVA, ESQ.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This litigation arises from an explosion/fire on June 18, 2018. The likely cause of the explosion was an electrical issue with an outdoor kitchen containing a built-in barbecue grill and broiler at the home of Defendant Mario Gonzalez. Defendant

1 Ferrellgas did not manufacture or install the flexible gas hose, but a service technician
2 with Ferrellgas did advise Gonzalez of a potential electrical issue.

3 Plaintiff alleges he suffered injuries while operating the barbecue at Gonzalez's
4 home when the subject grill exploded. As a result of the incident, Plaintiff was
5 hospitalized for a few days, and within two weeks, Plaintiff reported to his physicians
6 that he was fully healed and had a pain score of zero. Plaintiff then went on to open his
7 own restaurant, where he worked as the head chef. Plaintiff now alleges a potential
8 traumatic brain injury and debilitating psychological damage over two years later.
9

10 **II. PERTINENT FACTUAL BACKGROUND**

11 Plaintiff's medical specials from acute treatment totaled approximately \$55,000.³
12 On September 8, 2020, Plaintiff disclosed a report from Michael Elliott and Associates
13 detailing a visit from four months prior in May, 2020.⁴ This report, for the first time in
14 Plaintiff's medical history, alleges Plaintiff may suffer from a traumatic brain injury and
15 recommended a full neuropsychological evaluation. A second visit on July 1, 2020
16 indicated Plaintiff was suffering ongoing emotional distress and depression, and again
17 recommends a neuropsychological evaluation.⁵ A final visit on September 1, 2020 which
18 consisted of a psychological evaluation purports to diagnose Plaintiff with Unspecified
19 Trauma and Stressor Related Disorder, Anxiety Disorder, Unspecified, and Unspecified
20 Mild Neurocognitive Disorder.⁶ This report also recommends further evaluation and
21
22
23
24

25 ³ See Plaintiff's Tenth Supplemental Disclosures, attached hereto as Exhibit C, at p. 14-
26 15.

27 ⁴ *Id.* at GREEN 1086-1087.

28 ⁵ *Id.* at GREEN 1088-1089.

⁶ *Id.* at GREEN 1090-1094.

1 testing. Plaintiff's counsel has advised of at least one more treatment date for which
2 records have not been disclosed, and that treatment is ongoing.

3
4 Based upon these new reports and an upcoming initial expert disclosure deadline
5 of December 23, 2020, Defendants requested examinations of Plaintiff – both medical
6 and psychological. Plaintiff's counsel responded that Plaintiff would be willing to
7 undergo an examination but placed extraordinary parameters upon the examination.

8 Namely:

- 9 • Only one defense medical examination would be permitted;
- 10 • The physician will produce a copy of his/her entire file, including test
- 11 materials and raw data;
- 12 • The physician will provide a copy directly to Plaintiff's counsel;
- 13 • The physician may not ask questions regarding Plaintiff's medical history,
- 14 current medical status, or events related to his life or the explosion;
- 15 • Plaintiff may audio record the examination;
- 16 • Plaintiff be accompanied by a silent observer during the examination;
- 17 • Plaintiff will not be required to wait longer than 15 minutes in the waiting
- 18 room; and
- 19 • Radiographic images are not permitted.
- 20
- 21
- 22

23 Defendants sent correspondence to Plaintiff's counsel on October 7, 2020,
24 objecting to these items, setting forth an explanation for each objection. The parties held
25 a meet-and-confer and were able to come to several stipulations.
26
27
28

1 **III. ARGUMENT**

2 NRCP 35 provides:

3 (a) Order for Examination.

4 (1)The court where the action is pending may order a party whose
5 mental or physical condition – including blood group – is in
6 controversy to submit to a physical or mental examination by a
7 suitably licensed or certified examiner.

8 As a reading of the rule indicates, when the mental condition of a party is in issue, the
9 court may order the party to submit to an independent medical examination. *See also*
10 *Shoshone Coca-Cola Bottling Co. v. Dolinski*, 82 Nev. 439, 446-47, 420 P.2d 855, 860
11 (1967).

12 A plaintiff in a negligence action who asserts mental or physical
13 injury ... places that mental or physical injury clearly in
14 controversy and provides the defendant with good cause for an
15 examination to determine the existence and extent of such
16 asserted injury.

17 *See Schlagenhauf v. Holder*, 379 U.S. 104, 119, 85 S.Ct. 234, 243 (1964) (emphasis
18 added).

19 The parties agreed that physical and mental examinations of Plaintiff are
20 appropriate and warranted in this case. Despite Defendants' best efforts to compromise,
21 the parties were unable to agree as to several items listed in Plaintiff's set of parameters.
22 Therefore, Defendants request Court intervention as to these items. Plaintiff has agreed to
23 at least two examinations: one mental and one physical. Should the need for further
24 examinations arise, Plaintiff has agreed to revisit the issue.

25 As to the psychological examination, Defendants have retained Lewis Etcoff,
26 Ph.D., A.B.N. Dr. Etcoff is well-known and respected in the community, and has
27 performed hundreds of examinations over his career. The examination is to take place at
28

1 Dr. Etcoff's office, located at 8475 S. Eastern Ave., Suite 205, Las Vegas, Nevada 89123.

2 The date and time is to be determined based upon this Court's order, though the earliest
3 date of availability is currently in early March. Defendants will be filing a separate
4 Motion with the District Court to extend discovery deadlines to resolve timing conflicts.
5

6 The following parameters were agreed to by the parties:

- 7 • Plaintiff agreed that both a physical and mental examination would be
8 appropriate;
- 9 • Plaintiff agreed that potential additional examinations may be necessary
10 depending upon additional treatment;
- 11 • Plaintiff agreed that Dr. Etcoff would provide any testing data directly to
12 Plaintiff's psychologist without providing the same to counsel due to
13 copyright and patient confidentiality concerns; and
- 14 • Plaintiff is agreeable to extending deadlines for initial expert disclosures
15 pending on the Court's ruling on the instant motion.
16

17 The following parameters could not be agreed to and Defendants respectfully
18 request the Court deny Plaintiff's requests as follows:
19

- 20 • Plaintiff's request that Dr. Etcoff will not make inquiries into Plaintiff's past or
21 current medical status, or ask him about any events related to his life or the explosion.
22
 - 23 ○ Defendants' Position: the purpose of a psychological examination is to
24 determine the psychological impact of the subject incident. This necessarily
25 requires an understanding of Plaintiff's past and current medical status, as
26 well as inquiring into life events and the subject incident itself. Plaintiff's own
27 records indicate he claims he is psychologically impaired as a result of the
28

incident, including suffering from trauma and anxiety related to the explosion. Further, Plaintiff's treating provider was able to inquire into Plaintiff's life events and history, as evidenced in the reports. Prohibiting Dr. Etcoff from inquiring as to Plaintiff's life events and the subject incident hampers the psychological examination and renders it inaccurate and ineffective.

- Plaintiff's request an audio recording of the examination.
 - Defendants' Position: NRCP 35, as amended, now addresses audio recordings. It permits audio recording upon a showing of good cause. Plaintiff has not expressed any basis or good cause for audio recording the examination. Further, the advisory committee notes indicate the issue with recording psychological examinations, and state that a fear that the examiner may distort or inaccurately report what occurs at the examination is not good cause. Dr. Etcoff is well-known and well-respected, there should not be any concern with his examination to indicate any need for recording. Audio recording of a psychological examination also raises questions of influence and access to proprietary testing material, and would not be warranted or appropriate.
- Plaintiff's request to allow a silent observer at the examination.
 - Defendants' position: NRCP 35, as amended, also addresses silent observers. The rule specifically **excludes** psychological examinations as being appropriate for silent observers to attend. A party requesting a silent observer at a psychological examination must show good cause. Again, the advisory committee notes address the issue with silent observers in a psychological

examination, citing questions of influence, confidentiality and proprietary testing materials.

- Neuropsychologists and psychologists have an obligation, both legal and ethical, to protect the security of the test instruments and guard against the potential misuse of the electronic record.
- Unlike a physical examination, the psychological and neuropsychological interview involves a complex observational process that unfolds within a particular type of interpersonal context. This process is intended to facilitate the open disclosure of information that often involves the most intimate details of a person's life, both positive and negative. A skillful neuropsychologist observes more than just the words spoken by an examinee but also attends to their emotional tone, body language and other forms of nonverbal communication during the interview and assessment. Third-party observers, monitors and/or electronic recording equipment constitute a robust source of distortion of this subtle observational process, leading to alterations and potential contamination of the clinical data. These conditions commonly highlight the adversarial elements of the compulsory examination process, inhibiting the frank discussion and exploration of psychologically important events and experiences related to a person's mental, behavioral and emotional functioning. These alterations in interpersonal dynamics can hinder proper diagnosis.
- Defendants have attached literature on the effect of observation on a psychological examination to this motion as Exhibit A.

- Plaintiff's request that a purported violation of the parameters may be commented upon at trial.
 - Defendants' position: If Plaintiff believes there is a violation of an agreement or parameter, or comment regarding the same is relevant to the trial, that is an issue that should be briefed and addressed by the trial court via pretrial motion.

///

1 **IV. CONCLUSION**

2 Defendants request the Court grant an order compelling Plaintiff to appear and
3 submit to an NRCP 35 examination based upon the agreed-upon parameters, and deny
4 Plaintiff's request for additional parameters. The parameters requested by Plaintiff are not
5 warranted or appropriate and may affect the testing, as noted by NRCP 35's advisory
6 comments.
7

8 DATED this 26th day of October, 2020.
9

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EXHIBIT A

Journal of Forensic Neuropsychology

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Third Party Observers

Guest Editor
Robert J. McCaffrey

CONTENTS

- Third Party Observers: Why All the Fuss? 1
Robert J. McCaffrey
Julie K. Lynch
Christine L. Yantz

Following a brief discussion of the emergence of third party observation as an issue in neuropsychology, this article reviews the social psychological theory of social facilitation. Social facilitation refers to the impact of another person, whether as an observer or a performer of the same activity, on an individual's performance. Both performance enhancements and impairments can be caused by this phenomenon. The article concludes with a review of the empirical studies that have demonstrated that a third party observer significantly impacts an individual's performance on some neuropsychological tests.

KEYWORDS. Social facilitation, third party observer, forensic, standardized test administration

Effect of a Third Party Observer on Neuropsychological
Test Performance Following Closed Head Injury 17
Julie K. Lynch

The effect of a third party observer on neuropsychological test performance was examined within the framework of social facilitation. Social facilitation refers to the influence of an observer's presence on human behavior. Previous studies of social facilitation have demonstrated that an observer improves performance on easy or well-learned tasks and diminishes performance on complex or novel tasks. To examine social facilitation effects on neuropsychological testing, the Trail Making Test, Verbal Paired Associates subtest from the Wechsler Memory Scale-Revised (WMS-R), Finger Tapping Test, Grip Strength, and the Grooved Pegboard were administered to 60 individuals with a self-reported history of mild to severe closed head injury. Half of the participants received a standard test administration, and the other half were tested in the presence of a third party observer. A statistically significant difference between groups was found on the Verbal Paired Associates delayed recall from the WMS-R with the observed group recalling fewer word pairs than the unobserved group.

KEYWORDS. Forensic, third party observer, social facilitation, standardized test administration

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Christine L. Yantz
Robert J. McCaffrey

Studies showing impairing third party observation effects on neuropsychological testing led to the National Academy of Neuropsychology's policy statement recommending that third party observers, other than supervisors for training purposes, should be excluded during neuropsychological test sessions. The current study was designed to determine if the presence of the examiner's supervisor during testing had similar impairing effects on memory performance as did other forms of third party observers. This study examined the effects of supervisory observation on the Memory Assessment Scales performance of 45 undergraduates. The results showed that the Global and Verbal Memory summary scores were significantly lower in the observed group than the unobserved group. The presence of an evaluator's supervisor negatively impacted an examinee's memory test performance, even when the examinee was informed that the presence of the supervisor was to observe the examiner's administration of the test and not the examinee's performance.

KEYWORDS. Third party observer, Memory Assessment Scales, supervision, neuropsychological training

Effects of a Third Party Observer During Neuropsychological
Assessment: When the Observer Is a Video Camera 39
Marios Constantinou
Lee Ashendorf
Robert J. McCaffrey

Several studies have reported that the presence of a third party observer during neuropsychological assessment negatively affects the test performance of the examinee. A previous study (Constantinou, Ashendorf, & McCaffrey, 2002) demonstrated that the presence of an audio recorder as the third party observer during neuropsychological assessment also has a negative effect on the performance. The present study was designed to investigate whether or not a video recorder as the third party observer affects neuropsychological test performance. Results showed that the presence of a video recorder had a negative impact on memory test scores. This study confirms findings from the social facilitation literature that the presence of a video camera impacts task performance, and also replicates our earlier work with an audio recorder as third party observer.

KEYWORDS. Third party observer, video recorder, audio recorder, neuropsychological evaluation, standardized test administration

Third Party Observers: The Effect Size Is Greater
Than You Might Think 49
Brandon E. Gavett
Julie K. Lynch
Robert J. McCaffrey

Third party observers have been found to significantly impair neuropsychological test performance on measures of attention, verbal memory, verbal fluency, and cognitive symptom validity. One measure of the importance of a research-based finding for clinical practice is effect size. Effect sizes were calculated for selected social facilitation literature and empirical studies of the impact of a third party observer on formal neuropsychological measures. The average effect size estimate found for the social facilitation research was large. Effect size estimates associated with findings from the third party observer research were, on average, medium for memory measures and small for motor and attention/executive measures. These findings indicate that the presence of an observer during a neuropsychological evaluation should be expected to have a clinically meaningful impact on an examinee's test performance, with memory measures particularly vulnerable.

KEYWORDS. Third party observer, effect size, social facilitation

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Kevin Duff
Jerid M. Fisher

The practice of forensic neuropsychology can lead to many potential ethical dilemmas, including the request that a third party observer be present during an exami-

nation. Following a case example, we review relevant Ethical Standards from the recent revision of the American Psychological Association's Ethics Code (APA, 2002), as well as policy statements by the National Academy of Neuropsychology (NAN, 2000) and the American Academy of Clinical Neuropsychology (AACN, 2001) that should be considered when confronted with the request for observation by a third party. As many ethical dilemmas are rarely clear-cut, their answers will likely generate additional questions for the individual practitioner and the profession. Finally, we provide some suggested courses of action when presented with similar requests.

KEYWORDS. Ethical standards, forensic, neuropsychological evaluation, third party observer

Some Final Thoughts and Comments Regarding the Issues of Third Party Observers

83

Robert J. McCaffrey

Clinical neuropsychologists need to be aware of the issues associated with requests for third party observers to be present during an evaluation and be prepared to address these issues before they arise. While the literature to date has focused upon the impact of the third party observer on the examinee's test performance, the issue of examiner reactivity to the presence of an observer remains largely unstudied. The data from an evaluation conducted with a third party observer present cannot be deemed to be either a reliable or valid indication of the examinee's current neuropsychological status. As such, any data obtained in the presence of a third party observer may be considered as unreliable and any opinion testimony based upon those data inadmissible.

KEYWORDS. Third party observer, forensic neuropsychology, examiner reactivity, clinical training

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Contemplating the Presence of Third Party Observers and Facilitators in Psychological Evaluations

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Significant controversy surrounds how psychologists should balance competing interests when considering whether and under what conditions third parties should be permitted to be present during psychological evaluations. This is especially true in forensic contexts where much is often at stake for those being assessed. Unfortunately, existing professional statements on this issue provide limited guidance to practitioners on how to think about this issue. In this article, the authors (a) distinguish between different types of third party participants, (b) highlight the competing interests that underlie third party presence decisions, and (c) offer a framework for psychologists to employ when considering third party presence.

Keywords: *psychological evaluations; third party observers; forensic assessment; decision making on third party presence; professional guidelines on third party presence*

It is not uncommon to receive requests for third parties to be present during evaluations, and psychologists conducting examinations sometimes invite third parties to serve as observers or facilitators as well.¹ Although requests made by others may occur when the psychologist is conducting therapeutic evaluations (which we define, for purposes of this article, as evaluations that inform decision making regarding treatment and other types of interventions), they are more likely to occur in the context of forensic psychological evaluations (which we define, for purposes of this article, as evaluations conducted during or in anticipation of litigation that are intended to provide legal decision makers or others with information about the examinee's psychological functioning that is relevant to an issue in dispute).

Requests for third party presence during therapeutic evaluations can be initiated by (a) persons who are interested in observing the examinee's functioning (e.g., parents who want to learn about their child's disability, another health care professional who is treating the examinee), (b) an examining psychologist who requests the third party's presence to facilitate the evaluation (e.g., a psychologist who requests

the assistance of an interpreter to facilitate evaluation of someone who is not fluent in the psychologist's language, a psychologist who believes that the presence of a significant other is necessary to calm or assure a distressed examinee), (c) an examining psychologist who wants to observe a psychometrist administer tests to the subject of the evaluation, or (d) an examining psychologist who invites observation by a trainee for educational purposes. When psychological evaluations are conducted in the context of litigation, requests for third party participation are typically initiated by an attorney representing the examinee or another party to the litigation, typically for purposes of independently documenting what transpired.

Contemplating third party presence in psychological evaluations is challenging because psychologists must consider the potential impact of the third party's presence on the examinee's participation and, in cases in which psychological testing is administered,

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issues related to test standardization, norms, and security. Decision making regarding third party observation of psychological evaluations conducted in the context of litigation is even more complicated by state and federal laws, rules, and court decisions that may control the parties' access to evidence and, consequently, the psychologists' actions. For example, many states allow defense counsel to be present during psychological evaluations of criminal defendants, and Melton et al. (2007) argue that at least some form of evaluation documentation (i.e., third party presence or recording via videotape or audiotape) might be constitutionally required whenever requested by the defense in criminal proceedings. In contrast, some courts have suggested that the presence of attorney observers "could contribute little and may seriously disrupt the evaluation process" (*Estelle v. Smith*, 1981, p. 470).

With respect to the presence of counsel during evaluations that occur in the context of civil proceedings, states have adopted one of four approaches. Some states offer an absolute right to have an observer present during an examination (e.g., *Acosta v. Tenneco Oil Company*, 1990; *Langfeldt-Haaland v. Saupe Enterprises*, 1989; *Tietjen v. Department of Labor & Industry*, 1975), some direct that there is a presumptive right to have counsel present (e.g., *US Security Insurance Company v. Cimino*, 2000), some hold that there is no presumptive right to have counsel present (*Dziwanoski v. Ocean Carriers Corporation*, 1960; *McDaniel v. Toledo, Peoria & Western R.R.*, 1983), and some grant the trial court discretion to make this decision based on consideration of case specific factors (e.g., *Hayes v. District Court*, 1993; *Wood v. Chicago, Milwaukee, St. Paul & Pacific Railroad*, 1984).

There are at least some types of psychological evaluations, however, for which there tends to be greater consensus about the importance of accurate documentation of the evaluation process. For example, some states require that all interviews of children conducted in the context of abuse or neglect investigations be audiotaped or videotaped unless there is good cause for not doing so (e.g., Texas Code 261.302), presumably in response to research demonstrating professionals' limited ability to document what occurred during the interview process (e.g., Ceci & Bruck, 2000; Jones, Cross, Walsh, & Simone, 2005). In addition, some professional organizations have encouraged taping of evaluations (e.g., American Academy of Child and Adolescent Psychiatry, 1990), and psychologist commentators have called for videotaping or

audiotaping in wide variety of forensic evaluations, including (a) mental state at the time of offense (Goldstein, Morse, & Shapiro, 2003), (b) competence to execute a will (Drogin & Barrett, 2003), and (c) competence to be executed (Zapf, Boccaccini, & Brodsky, 2003).

Although there is a developing body of research indicating that the presence of third parties can affect examinees' performance on psychological tests (see below for more discussion), there is little research that addresses the effects of third party presence on forensic examinees more specifically (Cramer & Brodsky, 2007). Psychologists also appear to be particularly perplexed about the appropriateness of allowing third parties to be present during psychological evaluations conducted in the context of legal proceedings. In a recent survey of 160 forensic practitioners, approximately 75% reported having conducted a criminal forensic psychological evaluation with a third party present, but the majority of respondents (59%) expressed concerns that a third party's presence might affect the evaluation process in a negative way (Shealy, Cramer, & Pirelli, 2008).

In this article, we offer a framework for psychologists making decisions about third party presence during psychological evaluations, with a special emphasis on handling these requests in forensic contexts. In doing so, we (a) describe different types of, and rationales for, third party presence during psychological evaluations; (b) review and critique professional commentary on this issue; and (c) offer a list of factors for psychologists to consider when contemplating the presence of third party participants.

Understanding Third Party Participants and Their Roles

When considering the problems associated with the presence of a third party in psychological evaluations, it is first necessary to delineate the different roles that third parties might play. Although many types of individuals may be present during examinations (e.g., psychologists, psychology trainees, other health care professionals, attorneys, the examinee's parents or significant others, interpreters, court reporters), they all serve one of two primary roles—observer or facilitator.

Third Party Observers

A third party observer is best described as an individual whose sole purpose is to observe (and perhaps

document)—*but not affect*—the psychological evaluation. Requests for third party observers are often made when persons are undergoing forensic examination in which, because of the adversarial nature of the proceedings and the significance of what transpires, there is a heightened interest in documenting all that occurs—including the psychological examination process. In the typical case, the examinee's attorney requests that an evaluation conducted by a psychologist retained by the opposing party be observed by an attorney, a paralegal, a court reporter, or another mental health professional. At least some support for attorneys' beliefs that forensic psychological evaluations need to be observed or otherwise memorialized via audio recording or video recording is suggested by a growing body of research, indicating the inaccuracy of examiners' notes and failure of examiners to recount accurately leading questions they employ (e.g., Berliner & Lieb, 2001; Ceci & Bruck, 2000; Lamb, Orbach, Sternberg, Hershkowitz, & Horowitz, 2000; Warren & Woodall, 1999).

Examining psychologists sometimes initiate third party observation so that they can view some portion of the examination that is conducted by a psychometrist or trainee (American Academy of Clinical Neuropsychology, 1999), or have their work observed by a trainee or other professional. Of course, audio recording or video recording a psychological evaluation, whether introduced by the examining psychologist or others, may be considered to be a form of third party observation as well. Interestingly, the audiotaping or videotaping of criminal forensic evaluations appears to be relatively uncommon. More than 75% of 160 forensic practitioners reported never having had their criminal forensic evaluations documented in such a manner (Shealy et al., 2008).

The simple presence of a third party can affect the psychological assessment process in a positive, negative, or negligible manner. For example, with the expectation that any errors will be documented for consideration at some later time, a psychologist whose work is observed or recorded may be more careful and more closely adhere to test instructions and protocols. Alternatively, the psychologist may be more nervous and make more mistakes. The presence of a third party observer who the examinee perceives as supportive (e.g., retained counsel, a family member) has the potential to reduce anxiety and increase openness and candor, whereas the presence of some other third party observers (e.g., some family members, a trainee) may heighten the examinee's anxiety or discomfort, with decreased candor and/or poorer performance on

standardized testing resulting (McCaffrey, Fisher, Gold, & Lynch, 1996).

Third Party Facilitators

In contrast to third party *observers* whose presence is not intended to affect the evaluation process, third party *facilitators* are involved specifically because of their potential to affect the evaluation process. Examining psychologists seek the participation of third party facilitators upon concluding that their assistance will facilitate the evaluation and result in more valid data than would otherwise be obtained. Examples of third party facilitators include interpreters who translate in cases in which the psychologist and examinee do not use the same language² or a significant other or parent who can calm or reassure, and thereby facilitate the evaluation of, a particularly anxious examinee.

Aspects of the Psychological Evaluation Process That May Involve Third Parties

When contemplating the potential impact of a third party observer or facilitator, it is important to consider the nature and scope of the evaluation. Essentially all psychological evaluations involve an interview with the examinee whereas many—but not all—also incorporate psychological testing. The presence of a third party may differentially affect the examinee's interview and test responses. Unless the interview is a semistructured one (e.g., Diagnostic Interview Schedule, Diagnostic Interview Schedule for Children, Psychiatric Diagnostic Interview, Structured Interview of Reported Symptoms), a third party observer cannot affect test security or normative comparisons with other individuals. In contrast, the presence of a third party observer during psychological test administration can affect normative comparisons and threaten test security (this latter concern, of course, is not an issue if the observer is a psychologist or if the test administration is recorded and only reviewed by a psychologist). Concerns regarding normative comparisons and test security are certainly important in cases in which the third party is present during administration of psychological testing and will be discussed in detail below.

As noted above, third party facilitators are employed during a psychological interview to facilitate the examinee's comfort, disclosure, participation, and/or performance or improve rapport or communication between the examiner and examinee. Because the

presence of third party facilitators during the administration of psychological testing will certainly affect normative comparisons, their participation should only be considered when necessary to proceed with test administration (e.g., when an interpreter is needed to administer a test or when a parent, family member, or significant other is needed to calm or reassure an anxious examinee).

Professional Commentary on Presence of Third Party Observers and Participants

Although Section 9 of the *Ethical Principles of Psychologists and Code of Conduct* (EPPCC; American Psychological Association, 2002) references the general obligations of psychologists engaged in assessment activities, the code does not offer specific guidance to psychologists faced with the prospect of third party observers or facilitators. Similarly, treatment of third party presence during psychological evaluations in the *Standards for Educational Testing and Psychological Assessment* (American Educational Research Association, American Psychological Association, & National Council on Measurement in Education, 1999) is primarily limited to a discussion of the use of interpreters. There are, however, three documents developed by professional organizations that address the issue of third party presence more directly.

Most recently, the American Psychological Association's Committee on Psychological Tests and Assessment (CPTA; 2007) published the *Statement on Third Party Observers (STPO) in Psychological Testing and Assessment: A Framework for Decision Making*, the purpose of which is to assist psychologists in

- (1) reaching a conclusion concerning the appropriateness of observation of psychological evaluations,
- (2) conveying the scientific and professional bases for such a conclusion, and
- (3) identifying options in light of such a conclusion, with sensitivity to the particular source and substance of a request for observation and the specific nature and circumstances of the assessment in question. (p. 1)

The CPTA recommends that psychologists contemplating the presence of third party observers consider the following options: (a) conduct the evaluation in the presence of a third party and minimize intrusion resulting from the observation or participation, (b) use assessment measures considered to be less affected

by third party participation, (c) recommend that the request for third party participation be withdrawn, or (d) decline to perform the assessment if third parties will be present.³

In 1999, the National Academy of Neuropsychology (NAN; 2000) approved an "official statement" titled "Presence of Third Party Observers During Neuropsychological Testing,"⁴ and in 2001, the American Academy of Clinical Neuropsychology (AACN; 2001) promulgated the "Policy Statement on the Presence of Third Party Observers in Neuropsychological Assessments." Although both documents offer commentary that is relevant to neuropsychologists (and psychologists) who are faced with requests for third party observation, they are so different in approach that they require separate analysis and consideration.

The NAN statement, after offering that third party observation may be initiated by attorneys motivated to ensure that their clients are appropriately assessed and fairly treated, notes that such observation is problematic because it (a) is inconsistent with standardized test administration, (b) can affect the examinee's test performance, (c) creates the potential for distraction or interruption, and (d) can pose a threat to test security—all of which are valid points. Immediately thereafter, however, the NAN document notes that presence of a "neutral, noninvolved party" (a term that goes undefined) in nonforensic contexts is appropriate when such occurs for purposes of education/training or to facilitate assessment of the examinee (such as in the case of a parent who is allowed to be present during an examination to reassure an anxious child). Noteworthy is that this document cites concerns regarding violating standardized test administration, affecting test performance, distracting and interrupting the assessment process, and threatening test security to support the exclusion of one type of third party observers (i.e., attorneys) yet not others (i.e., parents and significant others, interpreters, trainees). Such a distinction, in the absence of empirical support for differential effects of these different types of observers, appears to be without merit.⁵

The stated purpose of the AACN document, which is considerably more detailed than the NAN statement, is to "clarify what is the appropriate response of a clinical neuropsychologist when a request is received for the presence of a third party during medicolegal consultation and patient examination" *in civil litigation contexts only* (AACN, 2001, p. 433). It is important to understand that this AACN policy—despite its broad title—is apparently not intended to

apply to neuropsychological evaluations conducted for *therapeutic* purposes or neuropsychological evaluations of criminal defendants.⁶

The AACN policy begins by making a distinction between “involved third parties” and “uninvolved third parties.” Involved third parties are defined as persons who “directly or indirectly, have some stake in the outcome of a particular plaintiff in civil litigation . . . [stemming from] . . . a legal, financial, family, social or other relationship, or benefit (AACN, 2001, p. 433). In contrast, “uninvolved third parties” are described as typically present to learn about neuropsychological assessment and patients, and having “no stake in the outcome of a plaintiff patient’s [*sic*] examination, directly or indirectly . . . [but rather] . . . have an interest in the behavior of the examiner or in the examination process or in the behavior of the patient [*sic*] during the assessment as an exemplar” (AACN, 2001, p. 433).⁷ The AACN policy, like the statement published by NAN, uses the distinction between “involved” and “uninvolved” third parties to justify exclusion of some third parties (e.g., attorneys or professionals retained by attorneys [presumably including psychologists]) while permitting the presence of others (e.g., caretakers, students/trainees, examining psychologists observing the work of psychometrists, interpreters), “It is not permissible for involved third parties to be physically or electronically present during the course of an evaluation assessment [*sic*] of a plaintiff patient [*sic*] with the exception of those situations specified below” (AACN, 2001, p. 434). The document anchors this general prohibition in concerns that the presence of a third party (a) constitutes a deviation from normal clinical practice, (b) “potentially introduces a distortion of the patient’s [*sic*] motivation,” (c) creates distractions, (d) is inconsistent with directions included in some test manuals, (e) threatens test security, and (f) constitutes a derivation from standardized test administration that “may jeopardize the validity and reliability of the test’s findings” (AACN, 2001, pp. 434, 436).

Like the rationales offered in the NAN document for exclusion of third parties, the concerns listed above all are sound (at least when applied to the presence of some third parties during assessments involving standardized tests—as opposed to other assessment techniques). Yet, the fact that these caveats and concerns are used to selectively support the exclusion of one type of third party observer (i.e., “involved third parties” such as attorneys or their representatives)

and not others (i.e., parents and significant others, interpreters, psychometrists, trainees) is without foundation. More specifically, the presence of *both* “involved” and “uninvolved” third parties (a) can constitute a deviation from normal clinical practice, (b) can introduce a distortion of the examinee’s response style, (c) is inconsistent with directions included in some test manuals, (d) can pose a significant threat to test security, and (e) still constitutes a significant departure from standardized test administration that may jeopardize the validity and reliability of test findings.⁸ Also problematic, of course, is the AACN document’s silence on the issue of third party observation of psychological evaluations that occur in the context of criminal proceedings. If this silence indicates that the presence of third parties is acceptable during criminal proceedings, but unacceptable in civil proceedings (because the data they gather in these circumstances is somehow differentially invalid), then this distinction appears to be without empirical support. If, on the other hand, observation of criminal forensic evaluations is not prohibited on the simple grounds that it may be guaranteed by law (which the document does appear to indicate—see p. 434), then the question remains whether third party presence should be prohibited in jurisdictions that do not offer such a guarantee in criminal proceedings. Regardless, the AACN’s guidelines do not provide a sufficient empirical, ethical, or legal rationale for making a distinction between third party presence in civil versus criminal proceedings.

Managing Concerns and Making Decisions About Third Party Observers and Participants

Generally, concerns about the presence of third parties during psychological evaluations fall into one of four categories: (a) negative effects on the examinee’s responses and participation, (b) interruption of the flow of information from the examinee to the examiner, (c) threats to the validity of conclusions that can be drawn from the evaluation, and (d) threats to the security (and future utility) of psychological assessment techniques and tests. All these concerns are legitimate and should lead examining psychologists to make decisions about the presence of third parties only after serious deliberation. Yet, none of these issues—alone or in combination—necessarily outweigh the legal, practical, and clinical reasons for

allowing third parties to be present in some cases, nor do they offer a sufficient rationale for a general prohibition on third party presence.

Negative Effects on the Examinee's Responses and Presentation

Although only a handful of research studies exists examining this issue in forensic contexts (Cramer & Brodsky, 2007), results of several analogue studies indicate that a third party's presence, as well as audio recording and video recording, can influence examinees' performance on some learning and memory tasks (Constantinou, Ashendorf, & McCaffrey, 2002; Constantinou, Ashendorf, & McCaffrey, 2005; Gavett, Lynch, & McCaffrey, 2005; Kehrer, Sanchez, Habif, Rosenbaum, & Townes, 2000; Lynch, 2005). Clearly, more research is needed in this area. Yet, as mentioned above, some third parties—such as interpreters or persons who otherwise facilitate the evaluation—may need to be present for any assessment to occur and, in other cases, a third party's presence may positively—rather than negatively—affect the examinee's interview responses or test performance. Crucial to acknowledge is that any and all third parties—including those whose presence is invited by the examining psychologist (e.g., trainees)—may alter, distort, or influence the evaluation process. This acknowledgement, of course, indicates that differential consideration of third party's presence—at least based on concerns regarding the potential impact on the examinee's responses—is questionable.

Furthermore, although the presence of a third party can affect an examinee's presentation or performance, there are myriad factors that can have greater or similar effects on the psychological evaluation process. These include examiner and examinee demographic variables (e.g., race, socioeconomic status, sex), the examiner's style (e.g., warm vs. aloof), the examiner's expectations of the examinee's performance, the examinee's anxiety level, and—what is likely the most significant variable—the nature and purpose of the evaluation (Anastasi & Urbina, 1997).

The context of the psychological evaluation can affect an examinee's responses, and nowhere is this more apparent than when the evaluation is conducted in the context of litigation (see Rogers, 2008, for comprehensive review of the relevant literatures; the importance of this issue for normative comparisons cannot be overemphasized and that is why we address it at several different points in this article [also see the section "Threats to the Validity of Conclusions Drawn

from Psychological Evaluations"])). Accordingly, it seems odd to single out third party presence as a prohibitive threat to psychological assessment when more serious threats to the examinee's responses are tolerated. Of course, given reasonable concerns that a third party's presence can affect an examinee's presentation, psychologists who conduct evaluations under such conditions are obligated to note any impact the third party's presence may have on examinee performance (see Section 9.06 of the EPPCC, which directs that psychologists take into account the conditions under which their assessments take place and the potential impact on their opinions, and indicate any "significant limitations," American Psychological Association, 2002, p. 13).

Interrupting the Flow of the Examination

In addition to affecting the examinee's responses, a third party may affect the flow of information during an assessment. For example, an examinee may be distracted by or defer to the third party; the third party might interrupt the examiner or direct the examinee to refuse to answer certain questions; or the third party may otherwise interfere with the examination. Although such interference might occur, there is at least a subset of potential third party observers whose ethical and professional obligations make it such that they do not pose such challenges (i.e., psychologists). In the case of other third party observers, the potential for such interference can be minimized by establishing ground rules before the evaluation begins. For example, as a condition of participation, the examining psychologist can require that the third party observer sit outside of the examinee's line of vision and not speak, signal, or otherwise affect the evaluation, or observe in a less obtrusive way (e.g., behind a one-way mirror). Alternatively, the examiner can suggest a less intrusive form of observation (e.g., by agreeing to audio record or video record the evaluation).

Threats to the Validity of Conclusions Drawn From Psychological Evaluations

The presence of a third party during administration of standardized testing may affect the validity of conclusions that are based on test norms. This truism, of course, applies just as well to third parties whose presence is precipitated by the examining psychologist (such as when administration of psychological testing is observed by a trainee or when the examining psychologist observes a trainee or psychometrist administer psychological testing) as it does to third

parties whose presence is requested by someone other than the examining psychologist (e.g., an attorney who wishes to observe, or designates another psychologist to observe, the evaluation). Clearly, differences between the circumstances under which a test was normed and administered may limit the utility of test norms and the validity of the examinee's test performance and scores. As a result, a number of test manuals direct that a third party should not be present during testing (McCaffrey, Lynch, & Yantz, 2005). And, as mentioned above, results of some research indicate that the presence of third parties as well as the use of audio recording (Constantinou et al., 2002) or video recording (Constantinou et al., 2005) devices can negatively affect performance on some neuropsychological tests.

However, as noted above, many variables affect the examinee's test performance and the validity of comparisons based on a test's normative sample. And, in forensic evaluation contexts, threats to validity stemming from the presence of a third party during the assessment are likely to be overshadowed by these other factors—the most important of which being that almost all psychological and neuropsychological instruments have not been normed on individuals involved in legal proceedings.

Compared with persons undergoing psychological evaluation for the purposes of test norming or treatment planning and decision making, persons completing psychological testing in forensic contexts are much more likely to adopt a response style that, broadly conceived, can be characterized as “less than candid and forthcoming” (Otto, 2008). Rogers (2008), for example, in his summary of the literature regarding symptom feigning, estimated that criminal defendants undergoing psychological evaluations may feign psychiatric symptoms at a rate twice that of persons undergoing evaluations in nonforensic contexts. Furthermore, based on his survey of practicing neuropsychologists, Mittenberg (2002) provided base rate estimates of symptom feigning ranging from 33% (personal injury litigation), 30% (personal injury cases), 23% (criminal cases), to 8% (nonforensic cases). These examples simply highlight that the presence of a third party—insofar as it constitutes a deviation from standard test administration—is not nearly as well documented, and is likely a lesser threat to the validity of conclusions drawn from psychological test data, than the effects of the litigation context itself on examinee test performance. To presuppose that psychologists and neuropsychologists can somehow account for the impact of the evaluation

context (as evidenced by their regular use of and reliance on psychologists tests that were not developed in forensic evaluation contexts when they conduct forensic evaluations) yet that they cannot do the same when it comes to the presence of a third party is puzzling. In other words, we think it inconsistent that psychologists who conduct forensic evaluations can argue that almost all of the tests they use—which were normed under conditions very different from those under which a forensic examinee completes them—provide valid data, but if psychologists administer these same tests in the presence of third parties not nominated by themselves, then the test data somehow become invalid.

Threats to Test Security

Section 9.11 of the EPPCC, *Maintaining Test Security*, directs that “Psychologists make reasonable efforts to maintain the integrity and security of test materials and other assessment techniques” (American Psychological Association, 2002, p. 13) and Standards 5.7 and 11.7 of the *Standards for Educational Testing and Psychological Assessment* direct that “Test users have the responsibility of protecting the security of test materials at all times” and “Test users have the responsibility to protect the security of tests, to the extent that developers enjoin users to do so” (American Educational Research Association et al., 1999, pp. 64, 115).⁹

In those psychological evaluations in which secure test stimuli are used, the presence of a third party or recording of the examination can threaten the security (and future utility) of any tests that are administered. Third party observers or facilitators who are not obligated to honor legal or ethical mandates to ensure test security might make public test stimuli and thereby invalidate the materials, or use their newly found knowledge of test stimuli to “coach” other examinees. And surveys indicating that some attorneys may coach litigants who complete psychological testing in the context of a forensic evaluation reinforce this concern (e.g., Wetter & Corrigan, 1995; Youngjohn, 1995).

Although it would appear to go without saying, given the discussions in the APA, CPTA, NAN, and AACN statements on third party presence, we believe it important to highlight that test security issues are not relevant if the evaluation does not involve administration of secure/standardized test stimuli or materials or if the third party who observes the test administration or reviews recording of it is ethically or legally obligated to ensure test security (e.g., a psychologist retained by the

Table 1
Factors to Consider When Contemplating the Presence
of a Third Party During a Psychological Examination

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1. For third party facilitators
 - a. Consider whether the facilitator's presence is necessary or preferred (e.g., does the evaluation necessitate an interpreter because of language differences between the examiner and examinee?).
 - b. Consider the impact of the third party facilitator's presence on the behavior and performance of the examiner and examinee.
 - c. Identify steps that can be taken to ensure that the third party facilitates the evaluation maximally and impedes the evaluation minimally.
 - d. If standardized psychological testing is to be administered during the evaluation.
 - i. Take steps to protect test security.
 1. Educate facilitator about need for test security
 2. Enlist agreement of facilitator to honor test security
 - ii. Consider using tests, the security of which are less vulnerable (e.g., self-report measures).
 - iii. Consider how the third party facilitator's participation affects test performance.
 - e. If reasonable accommodations cannot be made, consider not performing the evaluation.
 2. For third party observers
 - a. Determine the purpose of the third party observer's presence and whether such presence is necessary or preferred (e.g., is the presence of the third party legally mandated in this type of evaluation?).
 - b. Consider the impact of the third party observer's presence on the behavior and performance of the examiner and examinee.
 - c. Identify alternatives that meet the goals of a third party observer and which may have less of an impact on the examiner and examinee (e.g., audio recording or video recording).
 - d. Take steps to minimize the effect that the third party observer's presence may have on the behavior and performance of the examiner and examinee; for example,
 - i. Place observer out of the line of vision of the examiner and/or examinee.
 - ii. Before beginning the evaluation, identify ground rules and the need for the third party not to interfere.
 - iii. Select an observer who is sensitive to the need for an uninterrupted examination (such as a psychologist).
 - e. If standardized psychological testing is to be administered during the evaluation.
 - i. Take steps to protect test security.
 1. Select an observer who is obligated to protect test security (such as a psychologist), or
 - ii. Educate observer about need for test security and enlist agreement to honor test security; consider using tests that are less vulnerable (e.g., self-report measures).
 - iii. Consider how the third party observer's participation affects test performance.
 - f. If reasonable accommodations cannot be made, consider not performing the evaluation.
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attorney representing the examinee-litigant or a psychology intern observing the work of a supervisor). Test security is only an issue if the third party does not appreciate the significance of the test security issue or shares test information inappropriately despite such an appreciation.

Although some attorneys might request to observe administration of psychological testing for an illegitimate goal, these actions are likely ethical violations for them as well (see, e.g., Arizona St S CT Rule 42 RPC ER 1.2 (d), 2004, which prohibits attorneys from counseling or assisting clients to engage in fraud). Further courts are not likely to be receptive to attorneys' attempts to couch such activity as appropriate preparation and advocacy (Youngjohn, 1995). Nonetheless, preventing an attorney from being present during psychological testing will not necessarily ameliorate the problems of test security, as overzealous attorneys can certainly gain knowledge of

psychological tests through other means (see, e.g., Ruiz, Drake, Glass, Marcotte, & Van Gorp, 2002; Pope, Butcher, & Seelen, 2000).

Psychologists concerned about test security can consider requesting that the observer be someone who is bound to protect test security or request that test administration be recorded and only made available to persons obligated to protect test security (i.e., a psychologist). Or the psychologist, if conducting the evaluation with the assistance of an interpreter or being observed by a third party who is guaranteed access to the evaluation (e.g., an attorney representing a criminal defendant in some jurisdictions), can condition observation of the evaluation on the third party's assurance that he or she will not act in a way that threatens the test's security and utility. For example, Standard 11.7 of the *Standards for Educational Testing and Psychological Assessment* states that

test users should remind test takers and others who have access to test materials that the legal rights of test publishers, including copyrights, and the legal obligations of other participants in the testing process may prohibit disclosure of test items without specific authorization. (American Educational Research Association et al., 1999, p. 115)

Finally, the psychologist could choose to use assessment tools in which test stimuli are more protected during the testing process (e.g., use of self-report measures vs. examiner-administered measures), or the psychologist could simply choose not to conduct the evaluation.

Summary and Conclusion

Third party participation in psychological evaluations is sometimes necessary, sometimes helpful, and sometimes required by law. Psychologists' deliberations about the presence of third parties should be logical and consistent, protect the security and future utility of psychological assessment instruments, and not unnecessarily compromise the rights of litigants who are undergoing evaluation. Psychologists contemplating a third party's presence during an evaluation should consider a number of factors including (a) the nature of and basis for the third party's presence, (b) how this presence might facilitate or impede the evaluation, (c) whether the third party's presence threatens test security and normative comparisons, and (d) how a response can be crafted that meets the needs of a particular assessment with minimal disruption. Table 1 offers a helpful series of issues for psychologists to consider when contemplating such presences during psychological evaluations and summarizes the different interests psychologists must balance based on the nature, context, and purpose of the evaluation.

Notes

1. We refer to psychologists and psychological examinations throughout this article, but many of these issues apply to allied health care professionals who engage in similar activities (e.g., psychiatrists). Of course, other professionals are controlled by different ethical and practice standards and guidelines.

2. Although use of interpreters to facilitate administration of psychologist tests presents its own challenges, its potential appropriateness is reflected in Standard 9.11 of the Standards for

Psychological and Educational Testing (American Educational Research Association et al., 1999).

3. Problematic and potentially confusing is that the STPO initially suggests that the presence of third party observers or participants could be initiated by a number of different persons—including psychologists themselves—but the later section of the document only provides options for psychologists who are faced with requests for third party observers or participants.

4. The title of the NAN document references neuropsychological testing (as distinguished from neuropsychological evaluation), and the concerns included in the document regarding third party presence all involve issues related to negative impacts on testing. However, the document opens with the phrase, "Forensic neuropsychological evaluations are often constrained by the demand that a third party observer be present during the course of *interview* and formal testing" (NAN, 2000, p. 379, italics added), which raises the possibility that the document may be used to justify exclusion of third parties during both interviews and testing, despite its narrow title.

5. We do, of course, acknowledge that *some* of these concerns do apply differentially to different types of third party observers/participants (e.g., test security is a reasonable concern when the third party is an interpreter, parent, or attorney, but not when the third party is a psychologist-in-training).

6. The reasoning underlying AACN's notice that the use of the document is limited to psychologists evaluating persons involved in civil litigation is puzzling. The document does indicate that it is not intended for application in "criminal forensic consultations that involve issues of *criminal liability or culpability* because the right to legal representation and a third party observer is absolute in criminal proceedings" (AACN, 2001, p. 434, italics added). This statement is of considerable interest insofar it (a) could be interpreted as indicating that the document does apply to evaluations of criminal defendants when the psychological issue is something other than criminal responsibility (e.g., competence to proceed, sentencing) and (b) may not accurately describe the legal landscape in all jurisdictions. Moreover, why AACN determined that this document should not serve as a resource for psychologists faced with questions of third party presence when conducting treatment-related evaluations (as opposed to forensic evaluations) is unclear.

7. Although not addressed in this document, a psychologist retained by the examinee's counsel to observe the evaluation conducted by a psychologist retained by opposing counsel appear to us to qualify as a "noninterested third party" (or at least as "noninterested" as the examining psychologist).

8. The NAN and AACN arguments that third party observation of persons undergoing forensic evaluation is contraindicated because it diminishes the utility of normative data and jeopardizes the validity of findings is particularly perplexing when this statement is considered in light of the fact that the overwhelming majority of tests employed by neuropsychologists in these contexts were normed on persons who were not even involved in litigation in which their psychological functioning was at issue, nor are such norms even available. It is puzzling to reason that differences between the conditions of forensic examinations and the conditions under which almost all of their tests were standardized does not jeopardize the

validity of test findings to a degree that they should not be used, but that the presence of third parties when these test are administered precludes such presence.

9. A related concern but one we will not directly address in this article involves copyright issues. Test publishers claim (e.g., see Harcourt Assessment, 2008) that audio- or videotaping test administration is an infringement on copyright rules.

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Effects of a Third Party Observer During Neuropsychological Assessment: When the Observer Is a Video Camera

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ABSTRACT. Several studies have reported that the presence of a third party observer during neuropsychological assessment negatively affects the test performance of the examinee. A previous study (Constantinou, Ashendorf, & McCaffrey, 2002) demonstrated that the presence of an audio recorder as the third party observer during neuropsychological assessment also has a negative effect on the performance. The present study was designed to investigate whether or not a video recorder as the third party observer affects neuropsychological test performance. Results showed that the presence of a video recorder had a negative impact on memory test scores. This study confirms findings from the social facilitation literature that the presence of a video camera impacts task per-

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formance, and also replicates our earlier work with an audio recorder as third party observer. [Article copies available for a fee from The Haworth Document Delivery Service: 1-800-HAWORTH. E-mail address: <docdelivery@haworthpress.com> Website: <<http://www.HaworthPress.com>> © 2005 by The Haworth Press, Inc. All rights reserved.]

KEYWORDS. Third party observer, video recorder, audio recorder, neuropsychological evaluation, standardized test administration

The physical presence of an observer in the testing room during neuropsychological assessments is an issue that should concern contemporary neuropsychologists. Neuropsychological evaluations that are conducted for legal purposes are often conducted in the presence of a third party. However, past literature revealed that an audience tends to have a negative or positive effect on the performance of motor and cognitive tasks (Guerin, 1986). Such audience effects have been attributed to the social psychology phenomenon of *social facilitation*, defined as “the tendency of an individual to exhibit enhanced performance on simple tasks and inhibited performance on complex tasks in the presence of passive or evaluative observers” (Constantinou, Ashendorf, & McCaffrey, 2002).

In an effort to provide an alternative to the physical presence of a third party observer in the examination room during the actual neuropsychological testing, McSweeney et al. (1998) proposed that the examination be recorded either by audio or video recordings. This compromise raises ethical concerns that are discussed by Duff and Fisher in this issue. In addition to any ethical concerns, there is some evidence in the social psychology literature that social facilitation effects occur when the individual believes that his/her performance is being videotaped for observation. The presence of a videocamera has been found to significantly improve performance on a visual vigilance task (Putz, 1975) and immediate paired associates recall (Geen, 1973) but impair performance on delayed paired associates recall (Geen, 1973). Landers, Bauer, and Feltz (1978) found the presence of a videocamera to have a detrimental impact on visuomotor task performance. Two other studies (Cohen, 1979; Henchy & Glass, 1968) have shown that individuals performing a task in the presence of a videocamera more frequently provided domi-

nant responses during the task than did those individuals performing alone.

In addition to the social facilitation literature, Constantinou, Ashendorf, and McCaffrey (2002) examined the effect of an audio recorder on examinees' performances during neuropsychological testing. While the test performance of all participants was audiotaped, they found that the participants who were aware that the testing was audiotaped performed significantly worse on memory testing than those who were not aware of the audiotaping. The present study sought to investigate whether or not McSweeney et al.'s other suggestion, that the neuropsychological examination be video recorded, would be a more viable method of addressing the effects of a third party observer.

METHOD

Participants

Sixty-five students were recruited from undergraduate psychology courses, after obtaining approval from the human subjects institutional review board. Participants were randomly assigned to one of two groups, either the visual recording group (VR) where testing took place in the presence of a video-recording device, or the no visual recording group (NVR) where testing occurred in the absence of this device.

Participants were administered the Beck Depression Inventory-II (BDI-II; Beck, Steer, & Brown, 1996) and the State Trait Anxiety Inventory (STAI; Spielberger, 1983) to screen for clinically significant anxiety or depressive symptomatology. Only one person was excluded from the statistical analyses due to a BDI-II score in the severe range. This reduced the total number of participants to 64 with the VR group having 31 members (14 men and 17 women) and the NVR group having 33 members (18 men and 15 women). Medical background information was also obtained by self-report from each participant. Five individuals reported a medical/surgical history (e.g., traumatic brain injury, brain cancer, brain surgery, or Lyme disease) or mental health problems (e.g., depression, mania, or anxiety). These participants were not excluded from the study.

The 64 participants' chronological ages ranged from 17 to 31 ($M = 19.63$, $SD = 2.55$); educational level ranged from 1 to 4 years of college ($M = 1.64$ years, $SD = .90$). The two groups did not differ statistically on

any of the demographic variables, level of depression, level of state/trait anxiety, or the proportion of those with a significant medical, surgical, or psychological history.

Material

Each participant was administered the following tests in the order presented:

1. *List Learning* (from the MAS; Williams, 1991) involves the oral presentation of 12 common words belonging to one of four categories. Each list presentation is followed by a trial during which the participant attempts to recall as many list words as possible. The word list is presented a maximum of six times, or until all 12 words are successfully recalled on a trial. The total List Acquisition score is the total number of words that were recalled successfully across all the learning trials. The total number of errors, such as related words, unrelated words, or repetitions, over all the administered acquisition trials were counted. In addition, for the purposes of this study, the *number of learning trials* (minimum = 1; maximum = 6) to reach a recall of all 12 words from the list was noted as a measure of learning speed/rate. Because the task has six possible learning trials, the maximum number of learning trials (6) was entered for the participants who had not recalled all 12 words on any trial.
2. *Prose Memory* (from the MAS; Williams, 1991). In this subtest, the participant is orally presented a short story and asked to recall as much of the story as possible after the presentation. In addition, the participants are asked to answer nine "yes-no" questions about the story. The total Prose Memory score consists of the number of correct answers to each of the questions.
3. *List Recall* (from the MAS; Williams, 1991). This is the recall of the 12-item word list immediately following presentation of the short story. A cued recall trial is also administered where the participant is asked to recall word list items belonging to specific categories. The participant receives a List Recall Score and a Cued Recall Score. In addition, the number of errors on both the List Recall and Cued Recall are counted.
4. *Finger Tapping*. The Finger Tapping test from the Halstead-Reitan Neuropsychological Battery for Adults (HRNB-A) was administered and scored following the protocol outlined by Reitan and Wolfson (1993). Since there were no statistical dif-

ferences between the performances with the left and right hands for any subject, the average performance for each hand was combined into a single composite score.

5. *Grooved Pegboard* (see Lezak, 1995). The total time to place all the pegs into the pegboard is the measure of performance on this motor test. The average performance for each hand was combined into a single composite score since there were no statistical differences between performances with the left and right hand for any subject.
6. *Grip Strength*. This motor test from the HRNB-A was administered and scored following the protocol outlined in Reitan and Wolfson (1993). As was the case for the other motor measures, there were no statistical differences between the right and left hands, and therefore, the average score for each hand was combined into a composite score.
7. *Verbal Span* (MAS, Williams, 1991). This test consists of digit span backward and forward. The longest series recalled on each section are added together for a composite Verbal Span score.
8. *Delayed List Recall* (MAS, Williams, 1991). Delayed List Recall administration is identical to that of the List Recall subtest, and follows it by an interval of about 20 minutes. A Delayed List Recall score and a Delayed Cued Recall score are obtained from this subtest. The total number of errors is noted in both Delayed List Recall and Delayed Cued Recall.
9. *Delayed Prose Memory* (MAS, Williams, 1991). This subtest of the MAS is administered about 20 minutes after the presentation of the Prose Memory short story. It is scored in the same manner as Prose Memory.
10. *Forced Recognition* (MAS, Williams, 1991). In this last subtest of the battery, each of the 12 words from List Learning is matched with a distractor word for a total of 12 word pairs. The participant is asked to recognize and circle the familiar word in each of the 12 pairs.

Procedure

Each testing session required approximately one hour. During the administration of the test measures to the VR group, who were informed that their performance was being recorded, the experimenter placed the video camera (measuring 30 cm × 15 cm × 5 cm) on a tripod approximately 1.0 meter away from and in the plain view of the participant.

All of the participants were administered the measures, outlined above, which produced a total of 18 scores: (1) List Acquisition, List Acquisition Errors, Number of Learning Trials; (2) Prose Memory; (3) List Recall, List Recall Errors, Cued Recall, Cued Recall Errors; (4) Finger Tapping; (5) Grooved Pegboard; (6) Grip Strength; (7) Verbal Span; (8) Delayed List Recall, Delayed List Recall Errors, Delayed Cued Recall, Delayed Cued Recall Errors; (9) Delayed Prose Memory; and (10) Forced Recognition. These 18 scores constituted the dependent variables, except for the Forced Recognition score which was not entered in the statistical analysis because all 64 participants received perfect scores of 12 on this subtest.

RESULTS

The data were analyzed with a series of independent *t*-tests while controlling for Type 1 error using Holm's Sequential Bonferroni Method (Jaccard & Turrisi, 2003). Table 1 presents the *t*-value and obtained *p*-value of each of the pair-wise comparisons.

An examination of Table 1 reveals that the NVR and VR groups were significantly different on 8 out of the 18 dependent variables, namely List Acquisition, List Acquisition Errors, Number of Learning Trials, Prose Memory, Cued Recall, Delayed List Recall, Delayed Cued Recall, and Delayed Prose Memory.

There were no significant differences between the NVR and VR group on any of the composite motor measures (i.e., Finger Tapping, Grooved Pegboard, and Strength of Grip tests) or Verbal Span.

In order to evaluate the relative impact of the presence of the video recorder on the eight dependent variables found to significantly discriminate between the NVR and VR groups, the obtained effect-size (i.e., eta squared; η^2) for each of the pair-wise comparisons was calculated. Typically, η^2 s with values of 0.01, 0.06, and 0.14 are considered small, medium, and large effect-sizes, respectively (Green, Salkind, & Akey, 2000). Eta squared for each comparison was calculated with the use of the following statistical formula:

$$\eta^2 = t^2/t^2 + (N1 + N2 - 2)$$

The observed power for each of the significant pair-wise comparisons was also computed. The effect-sizes ranged from .13 to .38, and observed power ranged from .84 to .99 (see Table 2).

TABLE 1. Means and standard deviations of the two groups on the 18 dependent variables.

Dependent Variable	NVR	VR	<i>t</i> (62)	<i>p</i> -value
List Acquisition	64.55 (5.12)	56.97 (7.20)	4.87	< .001*
List Acquisition Errors	0.94 (1.67)	3.32 (2.61)	-4.37	< .001*
Number of Learning Trials	3.67 (1.45)	5.52 (0.89)	-6.10	< .001*
Prose Memory	6.69 (1.90)	5.35 (1.64)	3.02	.004*
List Recall	11.00 (1.22)	10.41 (1.36)	1.80	.08
List Recall Errors	0.15 (0.36)	.39 (0.72)	-1.68	.10
Cued Recall	11.21 (1.02)	9.81 (1.54)	4.33	< .001*
Cued Recall Errors	0.21 (0.55)	.48 (0.63)	-1.86	.07
Verbal Span	13.06 (1.95)	12.19 (2.16)	1.68	.10
Finger Tapping	103.02 (16.59)	102.14 (12.19)	0.24	.81
Grooved Pegboard	148.50 (23.61)	144.46 (22.37)	0.70	.49
Grip Strength	72.99 (21.72)	75.64 (27.47)	-0.43	.67
Delayed List Recall	11.30 (0.92)	10.25 (1.61)	3.21	.002*
Delayed List Recall Errors	0.09 (0.29)	.29 (0.69)	-1.52	.134
Delayed Cued Recall	11.36 (0.96)	9.87 (1.67)	4.41	< .001*
Delayed Cued Recall Errors	0.09 (0.29)	.39 (0.62)	-2.49	.016
Delayed Prose Memory	6.64 (1.99)	5.29 (1.57)	2.98	.004*
Forced Recognition	12.00 (0.00)	12.00 (0.00)	—	—

* NVR mean performance is statistically significantly better than VR mean performance at the $\alpha = \text{npc-1}$ level (npc = number of pair-wise comparisons).

Note. No pair-wise comparisons were computed for Forced Recognition because the two groups had identical Forced Recognition means and standard deviations.

TABLE 2. Effect-size statistic and observed power for the eight dependent variables that were significantly affected by the experimental manipulation.

Dependent Variable	Effect-Size (η^2)	Observed Power
List Acquisition	.28	.99
List Acquisition Errors	.24	.99
Number of Learning Trials	.38	.99
Prose Memory	.13	.84
Cued Recall	.23	.98
Delayed List Recall	.14	.89
Delayed Cued Recall	.24	.99
Delayed Prose Memory	.13	.84

DISCUSSION

The current investigation aimed to investigate the effects of indirect observation, using a video camera, on the neuropsychological test performance of young adults. In addition, the present study was designed to be a follow-up research study to the original study by Constantinou et al. (2002), which found that the presence of an audio recorder impaired the performance of young adults on measures of immediate, short-term, and delayed recall.

The presence of a video camera as the third party observer resulted in adverse performance on memory testing. The performance of the observed group was detrimentally affected on measures of immediate recall and delayed recall (see Table 1). Specifically, List Acquisition, Cued Recall, Delayed List Recall, and Delayed Cued Recall performances on the Memory Assessment Scales were found to be negatively impacted by the presence of a video camera as third party observer. In addition, the VR group required a greater number of trials to learn a list of words than did the NVR group and committed more errors than the NVR group when attempting to recall the same list of words. The presence of a video camera as third party observer did not influence any of the motor measures (i.e., Finger Tapping, Grip Strength, and Grooved Pegboard).

The findings from this study are similar to the study examining an audio recorder as third party observer (Constantinou et al., 2002). The effect sizes associated with video recorder as third party observer were larger on List Acquisition and Delayed List Recall than had been reported with an audio recorder as third party observer (see Table 3). This suggests that the presence of a videocamera may have a greater impact on memory testing than an audiorecorder. The results of the Constantinou et al.

TABLE 3. Effect sizes and observed power for the dependent variables that were significantly affected by the presence of an audio-recorder.*

Dependent Variable	Effect-Size (η^2)	Observed Power
List Acquisition	.20	.86
Cued Recall	.25	.93
Delayed List Recall	.19	.84
Delayed Cued Recall	.24	.92

*adapted from Constantinou et al. (2002, p. 410)

studies provide empirical evidence that neither audio recording nor video recording are any more acceptable than the physical presence of a third party observer.

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Effects of a third party observer and anxiety on tests of executive function ☆ ☆☆

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Abstract

For the past 10 years, research on the effects of observer presence on test performance has expanded in the neuropsychological literature. Previous studies have shown that the presence of a third party observer is associated with poorer performance on tests of effort, attention, concentration, learning, and memory. The present study was designed to investigate whether performance on tests of executive function is similarly impaired by the presence of a third party observer. The study also sought to examine associations among examinee anxiety, observer presence, and performance. Seventy-nine college undergraduates were recruited for the study, and 70 were included in the final analyses. Participants were randomly assigned to either the observation or control condition, and were administered verbal fluency tests, the Trail Making Test (parts A and B), and the Tactual Performance Test, as well as the Fear of Negative Evaluation scale and State-Trait Anxiety Inventory. Multivariate analyses of variance revealed that performance on the combined dependent variables was significantly associated with observer presence. A significant observation condition by trait anxiety interaction was also found. Univariate analyses revealed that performances on semantic fluency and TPT-localization were most strongly associated with observation and trait anxiety, with performance being poorer in the presence of a third party observer. Additionally, effects of trait anxiety on performance in the

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presence of an observer appear to vary depending on task characteristics. Implications and suggestions for further research are discussed.

 Previous

Next 

Keywords

Third party observer; Social facilitation; Anxiety; Tactual performance test; Trail making test; Verbal fluency

In the past decade, considerable attention has been given to research on the effects of third party observers on neuropsychological test performance (McCaffrey, Lynch, & Yantz, 2005). The expanding repertory of studies demonstrating significant effects has led to the assertion by many neuropsychologists and neuropsychological associations that third party observation of neuropsychological examinations violates standardized testing procedures, jeopardizes test security, renders interpretation of norms less valid, and may be a breach of ethics and/or standards (e.g., AERA, APA, & NCME, 1999; Axelrod et al., 2000; Essig, Mittenberg, Petersen, Strauman, & Cooper, 2001; Hamsher, Lee, & Baron, 2001; McCaffrey, 2005, McSweeney et al., 1998). Issues surrounding third party observation are particularly salient for the field of forensic neuropsychology, given that attorneys often request to observe evaluations of their clients, and in some cases are legally allowed to do so (e.g., Essig et al., 2001; Lynch & McCaffrey, 2004; McSweeney et al., 1998).

Research in the area of third party observation first entered the neuropsychological literature when Binder and Johnson-Greene (1995) published a case study on a woman who demonstrated impaired performance on the Portland Digit Recognition Test, a test of effort, in the presence of her mother. Subsequent studies sought to examine the effects of a third party observer on performance on a variety of other tests assessing various neuropsychological domains. These studies have suggested that the presence of a third party observer may lead to impaired performance on tests of learning and memory, including number of perseverative errors on the Rey Auditory-Verbal Learning Test (Kehrer, Sanchez, Habif, Rosenbaum, & Townes, 2000) and number of words recalled at delay on the Verbal Paired Associates subtest from the Wechsler Memory Scale – Revised (Lynch, 2005). Impaired performance on tests of memory has also been found when the third party observer is an audiotape recorder (Constantinou, Ashendorf, & McCaffrey, 2002), a videotape recorder (Constantinou, Ashendorf, & McCaffrey, 2005), or a supervisor explicitly attending to the examiner rather than the examinee (Yantz & McCaffrey, 2005). Studies have also demonstrated impaired performance in the presence of a third party

observer on tests of attention, sustained concentration, response inhibition, and verbal fluency, including digit span, the Paced Auditory Serial Addition Task, the Stroop color-word test, and the Controlled Oral Word Association Test (Kehrer et al., 2000). However, performance on the Trail Making Test (TMT) parts A and B, tests of attention and set-shifting, has not been found to be affected by the presence of a third party observer (Kehrer et al., 2000, Lynch, 2005), nor have tests of motor function including the Finger Tapping Test (FTT), Grooved Pegboard, and grip strength (Constantinou et al., 2005, Kehrer et al., 2000, Lynch, 2005). Interestingly, use of motor measures at the beginning of the testing session in attempt to facilitate adaptation to the testing process has been found to be effective only when a third party observer is not present, as unobserved examinees given an adaptation period performed better on a paired list learning task as compared with unobserved examinees not given an adaptation period and with observed examinees, regardless of whether an adaptation period was given (Gavett & McCaffrey, 2007).

Although the aforementioned studies have investigated the effects of a third party observer on neuropsychological test performance at the group level, no published studies in the neuropsychological literature have examined the contribution of individual examinee characteristics. One feature that can be expected to have a role in modulating the effects of social facilitation is the examinee's anxiety. However, comparisons of performance of individuals high and low in anxiety under observed and unobserved conditions in the social psychology literature have been somewhat inconclusive. For example, while Ganzer (1968) found that more highly anxious individuals demonstrated impairments particularly during the initial and later stages of learning on a nonsense syllable list-learning task, Martens (1969) found that high anxiety participants learned a complex motor task more quickly than those participants low in trait anxiety. Conflicting findings such as these suggest that a number of other variables may also contribute to the effects that an individual's anxiety will have on his or her performance, including whether a given test is timed. For instance, Siegman (1956) found that participants high in anxiety performed significantly worse on the timed subtests of the Wechsler Adult Intelligence Scale (WAIS) as compared with the untimed subtests, whereas performance on the two types of tests among low anxiety participants did not differ. In addition, in a test of experimenter- versus self-pacing, Mayer (1977) found that participants low in trait anxiety performed similarly in both conditions, while those high in trait anxiety performed significantly better when allowed to self-pace.

While no published studies in the neuropsychological literature have examined the contribution of anxiety to social facilitation or third party observer phenomena, a number of studies have looked directly at the influence of anxiety on neuropsychological test performance. For example, Buckelew and Hannay (1986) found that while performance on a variety of neuropsychological tests was not affected by trait anxiety, those participants high in state anxiety performed more poorly on a simple word fluency test and the block design subtest from the WAIS as compared with participants low in state anxiety. These two tests were rated as being significantly more difficult than the other tests administered, including the Digit Symbol subtest from the WAIS

and the FTT, suggesting that high levels of state anxiety may be associated with poorer performance on difficult but not necessarily easy tests.

In another study investigating anxiety and neuropsychological test performance, King, Hannay, Masek, and Burns (1978) found that for women only, higher trait anxiety as assessed with the State-Trait Anxiety Inventory (STAI) was associated with poorer performance on both the FTT and the dominant hand and both hand subtests of the form board, a precursor to the Tactual Performance Test (TPT). Additionally, in an investigation of the effects of various personality traits on performance on 13 neuropsychological tests among 57 subjects with toxic encephalopathy and 57 healthy referents, Persson, Österberg, Karlson, and Ørbæk (2000) found that within the healthy group, high trait anxiety was associated with worse performance on measures of visual reaction time, visual search, and response inhibition. When collapsed across subject groups, high trait anxiety was also associated with poorer performance on the Digit Symbol subtest of the WAIS-R. Trait anxiety was not associated with performance on measures of verbal fluency, general knowledge, spatial ability, or verbal memory. Interestingly, while healthy subjects low in trait anxiety demonstrated better performance than the toxic encephalopathy subjects on 8 of the 13 tasks, those healthy subjects high in trait anxiety exhibited superior performance only on a test of verbal memory. These results suggest that trait anxiety may have a clinically as well as statistically significant impairing effect on performance on certain neuropsychological tasks.

As previously discussed, many social facilitation studies have suggested that performance on neuropsychological tests may be impaired in the presence of many types of third party observers across a number of different domains. However, there has been limited research specifically examining the effects of a third party observer on performance on non-computerized tests of executive function. The accurate assessment of executive functioning capabilities is important in neuropsychological testing, especially given associations found between executive functioning and quality of life in some populations (e.g., Alptekin et al., 2005; Fujii, Wylie, & Nathan, 2004). Therefore, one goal of the present study was to investigate the effect of a neutral observer on performance of neuropsychological tests of executive functioning, including phonemic (letter) and semantic (category) verbal fluency tests, the TMT, and the TPT. Given previous research demonstrating adverse effects of observer presence on performance of complex or novel tasks, it was hypothesized that the presence of a third party observer would be associated with impaired performance on tests of executive functioning. More specifically, it was predicted that impairment due to observer presence would be considerable on the verbal fluency tests, in accordance with those findings of Kehrer et al. (2000) on the COWAT and of Buckelew and Hannay (1986) on the simple word fluency test. Performance differences on the TMT between observation groups, however, were predicted to be small or nonexistent, given null findings of both Kehrer et al. (2000) and Lynch (2005) on this test. Given the complexity of and need for cognitive flexibility required on the TPT, it was predicted that impairments on this test in the presence of an observer would be large.

Although previous research has suggested that anxiety may impair performance on various neuropsychological tests, interactions between anxiety and presence of a third party observer on neuropsychological tasks have not been investigated. Given previous research suggesting poorer performance of anxious individuals on complex non-motor tasks, it was hypothesized that there would be a main effect of anxiety on performance of tests of executive functioning such that high anxiety would be associated with poorer performance. However, given the simple nature of the TMT—part A, combined with findings that high anxiety is associated with greater speed (e.g., Leon & Revelle, 1985), it was predicted that performance on this test would be better among high anxiety individuals as compared with individuals low in anxiety. In addition, a significant observation condition by anxiety interaction was predicted such that the presence of a third party observer would be associated with greater decrements in performance for high state and trait anxiety individuals as compared with low anxiety subjects.

1. Methods

1.1. Participants

After gaining approval of the human subjects institutional review board, 79 college undergraduates were recruited from introductory psychology classes. Informed consent was obtained and subjects of each gender were randomly assigned to either the experimental or the control group, to ensure roughly equivalent ratios of males to females in each group. The experimental group was observed by a third party observer, while the control group was not observed during test administration. Data from five subjects in the experimental condition and four subjects in the control condition were discarded for the following reasons: two participants exhibited cheating behaviors on one of the tests, two withdrew before completing all tests, and two were under the obvious influence of intoxicating substances. Additionally, two cases were discarded due to missing data and one due to experimenter error. Thus, 70 subjects were included in the final analysis, 35 in each group.

Participants included 44 males and 26 females (comprising 63 and 37% of the sample, respectively), ranging in age from 18 to 38 ($M = 19.56$, $S.D. = 3.08$). There were no statistically significant differences between groups in terms of age or gender.

1.2. Measures

Each participant was administered five tests in the following order: (1) Fear of Negative Evaluation scale (FNE), (2) phonemic (letters F, A, and S) and semantic (animal naming) verbal fluency tests, (3) Trail Making Test (TMT), parts A and B (4) Tactual Performance Test (TPT), and (5) State-Trait Anxiety Inventory (STAI).

1.3. Procedures

The FNE, verbal fluency tests, TMT, TPT, and STAI were administered according to standard procedures (Benton, Hamsher, & Sivan, 1994; Reitan & Wolfson, 1993; Spielberger, 1983; Watson & Friend, 1969). The same examiner, who was blind to the hypotheses of the study, administered all tests while the same third party observer was present during testing for the experimental group. Both the examiner and observer were female.

In the experimental group, participants were informed that an observer would be in the room, although the reason for the observer's presence was not divulged to either participants or the examiner. The observer sat approximately 1 m behind and to the left of the subject, facing the examiner. Although the observer took occasional notes during testing, she did not interrupt or directly interfere with the testing process, and took efforts to remain as unobtrusive as possible. The duration of the testing session for both groups was approximately 45 min.

1.4. Analyses

A $2 \times 2 \times 2$ between-subjects multivariate analysis of variance (MANOVA) was performed to determine whether three independent variables (IVs: observation condition, state anxiety, and trait anxiety) were related to performance on tests of executive functioning, as measured by nine dependent variables (DVs): fluency-FAS, fluency-animals, TPT-localization, TPT-memory, TPT-dominant hand, TPT-nondominant hand, TPT-both hands, TMTB-time, and TMTA-time. Given the goal of investigating associations among performance, observation, and anxiety and not of evaluation apprehension per se, as well as in the interest of maintaining adequate power, FNE scores were omitted from the final analyses. This decision was reinforced by recent findings suggesting that the scale may lack sensitivity at higher levels of fear of negative evaluation (Rodebaugh et al., 2004). TPT-total time scores were also excluded so as to avoid singular correlations with other TPT time scores. Additionally, error scores on both parts of the TMT were excluded from the final analyses given likely ceiling effects revealed upon initial inspection and in the interest of preserving adequate power.

Median splits were performed on the state and trait anxiety inventory scores to divide subjects into high and low state ($Mdn = 37.0$) and trait ($Mdn = 38.0$) anxiety groups. The median state anxiety score for this sample was 0.5 points lower and the median trait anxiety score 3.0 points higher than those of the sample of 102 undergraduates used in Leon and Revelle (1985). Additionally, mean trait anxiety scores for the low and high trait anxiety groups were within a standard deviation of those reported for low and high trait anxiety, respectively, in Buckelew and Hannay (1986). These similarities suggest that the median split used resulted in an appropriate and normative classification of subjects into low and high anxiety groups.

2. Results

Table 1 lists the multivariate F values for the combined DVs for each of the IVs, as well as for the condition by state anxiety and condition by trait anxiety interactions. Additionally, univariate F values are listed for those individual DVs considered likely to reach significance in a univariate context. Roy–Bargmann stepdown F s are also listed for the individual DVs, as the use of these may be warranted in order to reduce the effects of shared variance given the presence of correlations greater than .30 (in a positive or negative direction) between DVs. However, given the lack of adequate previous research on associations of observation and anxiety with these particular DVs and the consequent difficulty in predicting which variables are likely to be most influenced by the IVs, both univariate and stepdown F s were examined. DVs were entered into the analysis in the above-listed order. Table 1 also lists eta squared (η^2) values as indications of effect sizes for all multivariate main effects and interactions as well as for each statistically significant univariate comparison. Table 2 lists η^2 values for all univariate comparisons regardless of statistical significance. In accordance with convention, cutoffs of .01, .06, and .14 are used as indicators of small, medium, and large effects, respectively (Haase, Ellis, & Ladany, 1989).

Table 1. Tests of main effects and interactions of observation condition, state anxiety, and trait anxiety

IV	DV	η^2	Wilks' value (F)	Univariate F	Stepdown F
Observation condition		.28 ^{†††}	.722 (2.31), $p = .03^*$		
	Fluency-animals	.12 ^{††}		8.10 ^a	7.69
State anxiety		.22 ^{†††}	.777 (1.72), $p = .11$		
Trait anxiety		.23 ^{†††}	.771 (1.78), $p = .09$		
	TPT-localization	.16 ^{†††}		11.79 ^b	10.15 [*]
Condition by state anxiety		.21 ^{†††}	.792 (1.58), $p = .15$		
Condition by trait anxiety		.27 ^{†††}	.735 (2.16), $p = .04^*$		
	Fluency-animals	.13 ^{††}		9.48 ^a	7.64

*Significant at the $p \leq .05$ level, [†]small effect size, ^{††}medium effect size, ^{†††}large effect size.

a

Significance level cannot be evaluated but would reach $p < .05$ in univariate context.

b

Significance level cannot be evaluated but would reach $p < .01$ in univariate context.

Table 2. Effect sizes (η^2) for univariate comparisons within each multivariate comparison

	Observation condition	State anxiety	Trait anxiety	Condition by state anxiety	Condition by trait anxiety
Fluency-FAS	.01 [†]	.01 [†]	.0 [†]	.05 [†]	.03 [†]
Fluency- animals	.12 ^{††}	.08 ^{††}	.04 [†]	.11 ^{††}	.13 ^{††}
TMTA-time	.00	.08 ^{††}	.06 ^{††}	.02 [†]	.02 [†]
TMTB-time	.00	.07 ^{††}	.03 [†]	.03 [†]	.00
TPT-dominant	.00	.07 ^{††}	.02 [†]	.00	.00
TPT- nondominant	.00	.01 [†]	.02 [†]	.00	.01 [†]
TPT-both	.00	.05 [†]	.04 [†]	.00	.01 [†]
TPT-memory	.00	.00	.07 ^{††}	.02 [†]	.02 [†]
TPT- localization	.08 ^{††}	.02 [†]	.16 ^{†††}	.00	.03 [†]

[†]small effect size, ^{††}medium effect size, ^{†††}large effect size.

Using the Wilks' criterion to evaluate the main effects of each of the three IVs, the combined DVs were found to be significantly affected by observation condition, with approximately 28% of the variance in performance accounted for by condition. Examination of univariate *F*s reveals that performance on the fluency-animals test appeared to be significant at the $p \leq .05$ level, with the application of a Bonferroni correction for a final p value of .006. The stepdown *F* approaches significance, suggesting that some of the variance shared with observation condition may be accounted for through overlapping variance with other DVs. However, these results still suggest that performance on the fluency-animals test was particularly influenced by the presence of a third party observer. Inspection of means and standard deviations (see Table 3) reveals that performance on this test was poorer in the observation condition as compared with the control condition.

Table 3. Group means and standard deviations for observation and trait anxiety (TA) groups

	Control			Observed		
	Low TA	High TA	Total	Low TA	High TA	Total
Fluency-FAS: total words	37.21 (10.26)	40.00 (14.63)	38.49 (12.33)	36.56 (8.27)	36.32 (8.25)	36.43 (8.14)
Fluency-animals: total words	19.37 (5.36)	22.25 (6.98)	20.69 (6.23)	18.88 (3.54)	17.21 (3.63)	17.97 (3.63)
TMTA: time (s)	28.41 (11.74)	25.06 (4.14)	26.88 (9.13)	27.15 (7.87)	26.06 (4.80)	26.56 (6.31)
TMTA: errors ^a	.21 (.42)	.25 (.58)	.23 (.49)	.13 (.34)	.26 (.45)	.20 (.41)
TMTB: time (s)	55.03 (17.32)	54.66 (15.74)	54.86 (16.38)	56.39 (22.74)	52.11 (10.91)	54.07 (17.20)
TMTB: errors ^a	.37 (.60)	.31 (.60)	.34 (.59)	.19 (.40)	.05 (.23)	.11 (.32)
TPT-dominant: time (min)	5.78 (2.87)	5.44 (2.16)	5.63 (2.54)	5.83 (3.11)	5.83 (2.34)	5.83 (2.67)
TPT-nondominant: time (min)	3.87 (1.43)	4.29 (3.53)	4.06 (2.58)	4.86 (3.44)	3.53 (1.59)	4.13 (2.65)
TPT-both: time (min)	2.07 (1.08)	2.01 (.97)	2.04 (1.02)	2.22 (1.06)	1.78 (.88)	1.98 (.98)
TPT-total: time (min) ^a	11.72 (4.69)	11.74 (6.17)	11.73 (5.33)	12.91 (6.66)	11.14 (4.29)	11.95 (5.48)
TPT-memory: total shapes	7.53 (1.22)	8.00 (1.21)	7.74 (1.22)	7.06 (1.81)	8.00 (1.00)	7.57 (1.48)
TPT-localization: total shapes	4.79 (1.81)	5.44 (2.22)	5.09 (2.01)	2.88 (1.71)	5.26 (2.10)	4.17 (2.26)

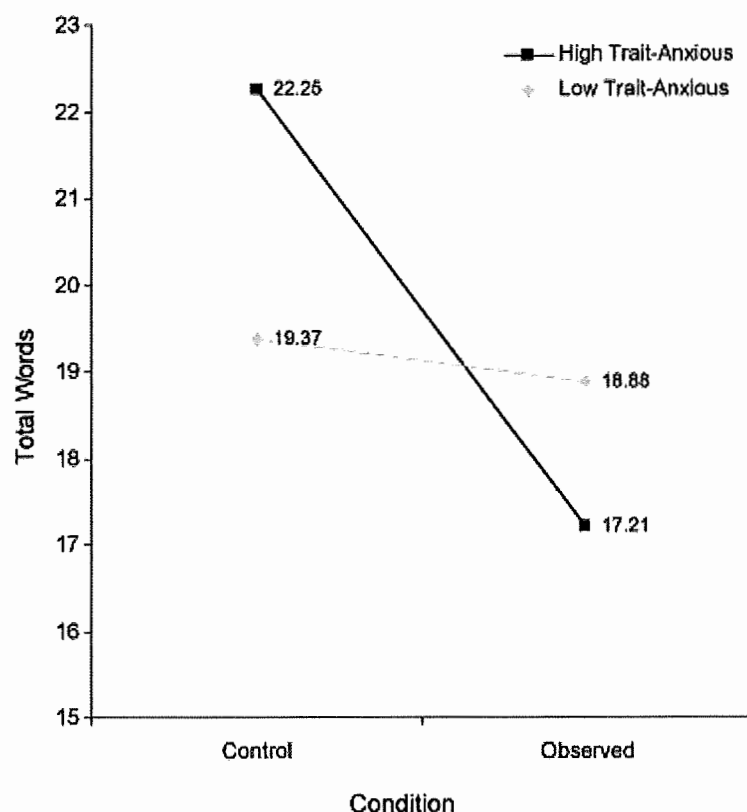
a

Variable not included in final analyses.

Main effects of state anxiety and trait anxiety were not found to be significant. However, informal inspection of univariate and stepdown *F*s for each DV reveals that performance on the TPT-localization subtest appeared to be significantly related to trait anxiety. Examination of group means for this subtest reveals superior performance for the high anxiety group ($M = 5.34$, $S.D. = 2.13$) as compared with the low anxiety group ($M = 3.91$, $S.D. = 1.99$). Inspection of η^2 values reveals that effect sizes for all multivariate main effects and for the effect of trait anxiety on TPT-localization score are large. A medium effect size was found for the association of observation condition with the fluency-animals test (see Table 1).

The Wilks' criterion was also used to investigate separate interactions between observation condition and state and trait anxiety. Although the interaction between condition and state

anxiety was not significant, performance on the combined DVs was found to be significantly affected by the interaction between observation condition and trait anxiety, with 27% of the variance in performance accounted for by the interaction. Examination of univariate F 's reveals that performance on the fluency-animals test appeared to be significantly associated with the observation condition by trait anxiety interaction. The stepdown F approaches significance, again suggesting that some of the variance shared with the condition by trait anxiety interaction may be accounted for through overlapping variance with other DVs. Further examination of the interaction suggests that the presence of a third party observer is associated with greater impairment on performance of the fluency-animals test among individuals high in trait anxiety as compared with those low in trait anxiety (see Fig. 1). Inspection of η^2 values reveals that effect sizes for both multivariate interactions are large. Additionally, a medium effect size of the condition by trait anxiety interaction on the fluency-animals test was found (see Table 1). Table 3 lists group means and standard deviations on each DV for low and high trait anxious groups within both observation conditions.



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Fig. 1. Observation condition by trait anxiety interaction on fluency-animals test.

3. Discussion

The findings from this study suggest that the presence of a third party observer is associated with poorer performance on certain tests of executive functioning, thereby adding to the existing neuropsychological literature on the negative effects of third party observation on test performance. Performance on the fluency-animals test seems to be particularly impaired by observer presence, although the mean score for the observed group was within a standard deviation of that for age- and education-matched norms ($M = 19.8$, $S.D. = 4.2$; Tombaugh, Kozak, & Rees, 1999).

Results from this study also imply that performance on tests of executive functioning may be influenced by trait anxiety. Although the multivariate analysis was not significant, univariate analysis suggested that low trait anxiety may be associated with worse performance on the TPT-localization subtest. Inspection of norms for TPT performance reveals that subjects classified in the present study as low in trait anxiety performed more than a standard deviation below that of age- and education-appropriate norms ($M = 6.47$, $S.D. = 2.44$; Yeudall, Reddon, Gill, & Stefanyk, 1987). This finding is somewhat surprising given the difficult nature of the task and the more common finding that high anxiety is associated with worse performance on complex or novel tasks. However, this analysis did not account for third party observer effects.

Another aim of the present study was to examine interactions among observation condition and state and trait anxiety. Although there were no significant findings associated with state anxiety, the multivariate observation condition by trait anxiety interaction was found to be significant, suggesting that the presence of a third party observer differentially affects performance among individuals high and low in trait anxiety. Results additionally suggested that this disparity is particularly pronounced for performance on the fluency-animals test. Although group means for high and low trait anxiety subjects in the control and observed conditions were all within a standard deviation of age- and education-appropriate norms (Tombaugh et al., 1999), high anxiety subjects in the control condition performed over a half-standard deviation above the normed mean while those in the observed condition performed over a half-standard deviation below this mean. In contrast, low anxiety subjects performed within a quarter-standard deviation below the normed mean in both observation conditions. These results suggest that while high trait anxiety may have a facilitating effect on semantic fluency in less stressful situations, individuals high in trait anxiety may be especially vulnerable to the potential negative impact of an added stressor such as a third party observer.

Interestingly, investigation of group means on the localization subtest of the TPT, performance on which was also shown to be influenced by trait anxiety, reveals an opposite pattern. While performance among subjects high in trait anxiety was within a half-standard deviation below an age- and education-appropriate normed mean (Yeudall et al., 1987) in each condition, performance among subjects low in trait anxiety differed to a greater degree between observation groups. Whereas the mean performance of low trait anxiety subjects in the control condition was

within a standard deviation of the normed mean, performance in the observed condition was more than a standard deviation below the appropriate normed mean. Additionally, in examining how these scores would be interpreted in computing the general neuropsychological deficit scale (NDS) score of the Halstead-Reitan Neuropsychological Test Battery (Reitan & Wolfson, 1993), individuals scoring within a standard deviation of the low anxiety control group mean on the TPT-localization subtest would be considered to be performing either within normal limits (NDS = 0 or 1) or in the mild-to-moderate deficit range (NDS = 2). Those individuals performing within a standard deviation of the low anxiety observed group mean on this test, however, would be considered to be performing either in the mild-to-moderate (NDS = 2) or severe (NDS = 3) deficit range. Thus, although the univariate test for the observation condition by trait anxiety interaction on the TPT-localization subtest was not statistically significant, examination of appropriate norms and scoring conventions suggests a clinically significant interaction such that individuals low in trait anxiety may be more susceptible to the possible adverse impact of observer presence on performance of certain tests such as those assessing recall for spatial location.

Examination of performance patterns among subjects in each observation condition is warranted in order to elucidate potential mechanisms surrounding social facilitation and anxiety effects on tests of executive functioning. As hypothesized, performance on a verbal fluency test and on a subtest of the TPT were associated with significant third party observer or observer by anxiety effects. Additionally, in accordance with findings of Kehrer et al. (2000) and Lynch (2005), performance on the TMT did not differ between observation groups. Scores on the TMT were also similar among high and low anxiety subjects. With respect to the nature of the associations among anxiety, observation, and performance, these may have varied in part due to the different nature of the tests used in the present study. For example, high trait anxiety was associated with a greater negative impact of observer presence on performance of the fluency-animals test, as compared with low trait anxiety. However, this relationship was not found for the localization subtest of the TPT. Given the oral nature of responding on the fluency-animals test, it is possible that evaluation apprehension and overall arousal rose to an impairing level among individuals already prone to anxiety when an observer was present. Additionally, spontaneous cognitive flexibility may be particularly vulnerable to the potentially anxiety-inducing and impairing effects of a third party observer. The timed nature of the fluency-animals test likely serves as an additional source of anxiety or arousal; as discussed previously, in comparison with untimed tasks, timed tests have been associated with worse performance among anxious individuals (Siegman, 1956). On the TPT-localization subtest, however, responses cannot be readily observed by an individual sitting 1 m behind the examinee. Furthermore, this test is not timed.

While the present study provides further support for the association between observer presence and poorer neuropsychological test performance, in addition to shedding light on interactions of observation with examinee anxiety, certain limitations of the study should be noted. First, self-rating scales were used to determine subjects' levels of anxiety, and given that self-report scales

are often prone to social desirability response sets, confounds may have been present in examining interactions between anxiety and social facilitation effects. An additional limitation of this study is that all subjects were college undergraduates; this homogeneity among participants limits the generalizability of the findings of this study. Future research on the effects of observer presence and anxiety on neuropsychological test performance in other populations is warranted.

Despite these limitations, the present study contributes to the existing literature suggesting that the validity of neuropsychological test results obtained while a third party observer is present is significantly compromised. Furthermore, these findings have added to the previous research by suggesting that impairments in performance that result from the presence of a third party observer occur not only in tests of effort, attention, concentration, learning, and memory, but in tests of executive functioning as well. The statistically significant finding that performance on tests of verbal fluency may be negatively impacted by the presence of a third party observer replicated that of Kehrner et al. (2000). Additionally, this study is the first known to demonstrate an effect of observer presence on performance of a subtest of the TPT. The medium and large effect sizes found suggest that these associations between test performance and observer presence are clinically as well as statistically significant. Findings from the present study also provide evidence that examinee trait anxiety interacts with third party observation to yield different performance patterns among individuals high and low in anxiety.

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APP-589



Presence of Third Party Observers During Neuropsychological Testing

Official Statement of the National Academy of Neuropsychology

Approved 5/15/99

Forensic neuropsychological evaluations are often constrained by the demand that a third party observer be present during the course of interview and formal testing. This demand may originate from counsel's desire to ensure that the neuropsychologist does not interrogate or unfairly question the plaintiff with respect to issues of liability and to ascertain if test procedures are accurately administered. In general, neuropsychologists should have the right to carry out their examination in a manner that will not in any way jeopardize, influence or unduly pressure their normal practice.

The presence of a third party observer during the administration of formal test procedures is inconsistent with recommendations promulgated in *The Standards for Educational and Psychological Testing* (APA, 1985) and Anastasi (1988), that the psychological testing environment be distraction free. More recently, standardized test manuals (for example, *The WAIS-III, WMS-III Technical Manual*; The Psychological Corporation, 1997) have specifically stated that third party observers should be excluded from the examination room to keep it free from distraction. The presence of a third party observer in the testing room is also inconsistent with the requirements for standardized test administration as set forth in the APA's *Ethical Principles Of Psychologists and Code Of Conduct* (APA, 1992) in that it creates the potential for distraction and/or interruption of the examination (McSweeney et al., 1998).

A second issue that relates to the potential influence of the presence of a third party observer is the reliance upon normative data. Neuropsychological test measures have not been standardized in the presence of an observer. In fact, neuropsychological test measures have been standardized under a specific set of highly controlled circumstances that did not include the presence of a third party observer. The presence of a third party observer introduces an unknown variable into the testing environment which may prevent the examinee's performance from being compared to established norms and potentially precludes valid interpretation of the test results (McCaffrey, Fisher, Gold, & Lynch, 1996). Observer effects can be such that performance on more complex tasks declines, in contrast to enhanced performance on overlearned tasks, leading to a spuriously magnified picture of neuropsychological deficit (McCaffrey et al., 1996). Likewise, observation of an examination being conducted for a second opinion may fundamentally alter the test session, in comparison to the initial examination that the patient has already undergone, potentially creating an adversarial atmosphere, and increasing the risk of motivational effects related to secondary gain. Observer effects can be magnified by the presence of involved parties who have a significant relationship with the patient (e.g.

legal representatives who have a stake in the outcome of the examination; cf. Binder and Johnson-Greene, 1995). Thus, the presence of a third party observer during formal testing may represent a threat to the validity and reliability of the data generated by an examination conducted under these circumstances, and may compromise the valid use of normative data in interpreting test scores. Observer effects also extend to situations such as court reporters, attorneys, attorney representatives, viewing from behind one-way mirrors and to electronic means of observation, such as the presence of a camera which can be a significant distraction (McCaffrey et al., 1996). Electronic recording and other observation also raises test security considerations that are detailed in the National Academy of Neuropsychology's position statement on Test Security.

It should be noted that there are circumstances that support the presence of a neutral, non-involved party in nonforensic settings. One situation might be when students or other professionals in psychology observe testing as part of their formal education. These trainees have sufficient instruction and supervision in standardized measurement and clinical procedures, such that their presence would not interfere with the assessment process. Other situations might include a parent's calming presence during an evaluation of a child.

The weight of accumulated scientific and clinical literature with respect to the issue of third party observers in the forensic examination provides clear support for the official position of the National Academy of Neuropsychology that neuropsychologists should strive to minimize all influences that may compromise accuracy of assessment and should make every effort to exclude observers from the evaluation.

The NAN Policy and Planning Committee

Bradley Axelrod, Ph.D.

Jeffrey Barth, Ph.D., Chair

David Faust, Ph.D.

Jerid Fisher, Ph.D.

Robert Heilbronner, Ph.D.

Glenn Larrabee, Ph.D.

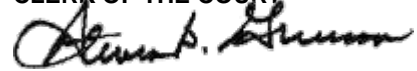
Neil Pliskin, Ph.D., Vice Chair

Cheryl Silver, Ph.D.

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EXHIBIT C



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Attorneys for Plaintiff,
Joshua Green

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Joshua Green, an individual,

Plaintiff,

vs.

Ferrellgas, Inc., a foreign corporation;
Mario S. Gonzales, an individual; **Carl J. Kleisner**, an individual; Does I through XXX, inclusive and Roes Business Entities I through XXX, inclusive

Defendants.

Mario S. Gonzalez, an individual;

Cross-Claimant,

vs.

Ferrellgas, Inc., a foreign corporation;
Carl J. Kleisner, an individual; DOES 1 through 100 inclusive; and ROE Corporations 101 through 200;

Cross-Defendants.

Case No.: A-19-795381-C
Dept. No.: XXXI

Joshua Green's Opposition to Defendants' Motion to Compel Rule 35 Examination

Hearing date: November 19, 2020
Hearing time: 9:00 a.m.



Mario S. Gonzalez, an individual;

Third-Party Plaintiff,

vs.

**BBQ Guys Manufacturing, LLC dba
Blaze Outdoor Products.**, a foreign
corporation; **Home Depot USA, Inc.**, a
foreign corporation; **KSUN
Manufacturing**, a foreign corporation;
Does 200 through 300 inclusive; and
ROE Corporation 301 through 400;

Third-Party Defendants.

Ferrellgas, Inc., a foreign corporation;

Counter-Claimant,

vs.

Mario S. Gonzalez, an individual; DOES
1 through 100 inclusive; and ROE
Corporations 101 through 200;

Counter-Defendants

Carl J. Kleisner, an individual;

Counter-Claimant,

vs.

Mario S. Gonzalez, an individual; DOES
1 through 100 inclusive; and ROE
Corporations 101 through 200;

Counter-Defendants.

I.

Introduction

Defendants in this matter, Ferrellgas, Inc., Mario S. Gonzalez, and Carl J. Kleisner, seek to compel a Rule 35 Examination of Plaintiff, Joshua Green (“Josh”) based on the falsehood he has been diagnosed with a traumatic brain injury. While Plaintiff does acknowledge he recently sought treatment for Post Traumatic Stress Disorder and generalized anxiety disorder, he has *not* been diagnosed with a traumatic brain injury.¹ This apparent deficiency led Defendants to seek a Rule 35 consistent with neuropsychologist, Dr. Lewis Etcoff.²

Plaintiff does agree, however, that Josh’s psychological and physical state at issue in this litigation. And Plaintiff’s counsel agrees, given the extent of Josh’s injuries, that good cause may exist for a defense medical examination. In fact, Plaintiff’s counsel agreed to *two* separate Rule 35 Exams—one physical and one psychological—if Defense counsel met certain parameters to safeguard the interests of Josh.³ These parameters are relatively standard in personal injury cases and usually met freely by Defense counsel. Defense counsel did not respond to these parameters until October 7th—**16 days later**.⁴ Then, they did not file the instant motion to compel until nearly *three weeks* later, on October 27th.

Further, Defendants have yet to identify their proposed physician for Josh’s physical Rule 35 Examination. This is clearly a violation of NRCP 35, and improper for

¹ See Medical Records from Michael Elliott & Associates at GREEN 1086, as Exhibit 1. These records suggest Joshua undergo a screening for traumatic brain injury, but due to his epilepsy, he has not done so.

² Defs. Mot. to Compel at 7:21–22.

³ See Letter to Defense counsel dated September 21, 2020, as Exhibit 2.

⁴ See Letter to Plaintiff’s counsel dated October 7, 2020, as Exhibit 3.

Defendant to compel such as this time. Additionally, Plaintiff's counsel contests Defendants' employment of Dr. Lewis Etcoff as he is (1) improper given Josh's diagnoses and (2) not available for a Rule 35 Examination until March 2021, thus unnecessarily delaying this matter.

Finally, the remainder of parameters set forth in Plaintiff's September 21st letter are reasonable and should be ordered by this Court. The parties remain contested on the following parameters:

1. The physician will only answer questions regarding the parts of his body at issue in this litigation. The physician shall not make inquiries into Joshua's past medical status, current unrelated medical status, or any events related to his life or the explosion;
2. Joshua will be permitted to audio record the examination;
3. Joshua will be accompanied by a silent observer during the examination;
4. Defense counsel agrees that should the physician or their support staff violate any of the conditions mentioned here, Joshua's counsel will be able to comment on such violation at trial.

II.

Law and Argument

Nevada Rules of Civil Procedure Rule 35 provides pertinent parts:

(1) In General. The court where the action is pending may order a party whose mental or physical condition — including blood group — is in controversy to submit to a physical or mental examination by **a suitably licensed or certified examiner**. The court has the same authority to order a party to produce for examination a person who is in the party's custody or under the party's legal control.

(2) Motion and Notice; Contents of the Order.

(A) The order may be made only on motion for good cause and on notice to all parties and the person to be examined.

(B) The order must specify the time, place, manner, conditions, and *scope of the examination*, **as well as the person or persons who will perform it**. The examination must take place in an appropriate professional setting in the judicial district in which the action is pending, unless otherwise agreed by the parties or ordered by the court.

1 Additionally, Nevada Revised Statute 52.380, an **inherent statutory right**,
2 defines audio recording Rule 35 Examinations and attendance by an observer:

3 NRS 52.380 Attendance by an observer:

- 4 1. An observer may attend an examination but shall not participate in or
5 disrupt the examination.
- 6 2. The observer attending the examination pursuant to subsection 1 may be:
 - 7 (a) An attorney of an examinee or party producing the examinee; or
 - 8 (b) A designated representative of the attorney, if:
 - 9 1) The attorney of the examinee or party producing the
10 examinee, in writing, authorizes the designated
11 representative to act on behalf of the attorney during the
12 examination.
 - 13 2) The designated representative presents the authorization to
14 the examiner before the commencement of the examination.
- 15 3. The observer attending the examination pursuant to subsection 1 may
16 make an audio or stenographic recording of the examination.
- 17 4. The observer attending the examination pursuant to subsection 1 may
18 suspend the examination if an examiner:
 - 19 (a) Becomes abusive towards an examinee; or
 - 20 (b) Exceeds the scope of the examination, including, without
21 limitation, engaging in unauthorized diagnostics, tests or
22 procedures.
- 23 5. An examiner may suspend the examination if the observer attending the
24 examination pursuant to subsection 1 disrupts or attempts to participate
25 in the examination.
- 26 6. If the examination is suspended pursuant to subsection 4 or 5, the party
27 ordered to produce the examinee may move for a protective order
28 pursuant to the Nevada Rules of Civil Procedure.
7. As used in this section:
 - (a) "Examination" means a **mental** or physical examination ordered
by a court for the purpose of discovery in a civil action.
 - (b) "Examinee" means a person who is ordered by a court to submit
to an examination.
 - (c) "Examiner" means a person who is ordered by a court to conduct
an examination.

**A. Given Josh's actual diagnoses, Dr. Lewis Ectoff is not a suitability licensed
or certified examiner.**

Although Dr. Ectoff's educational background is in psychology, he has specialized
in neuropsychology for the last twenty years, he has advertised himself as a clinical
neuropsychologist.⁵ Dr. Ectoff boasts various credentials and affiliations in

⁵ See Dr. Lewis Ectoff 2020 curriculum vitae, as Exhibit 4.

neuropsychology:⁶

PROFESSIONAL CREDENTIALS

2006	Fellow, National Academy of Neuropsychology
2002	Added Credentials in Forensic Neuropsychology, American Board of Professional Neuropsychology
1995	Fellow, American College of Professional Neuropsychology
1992	Diplomate, American Board of Professional Neuropsychology

PROFESSIONAL MEMBERSHIPS

American Psychological Association

- Division 40 (Neuropsychology)
- Division 41 (American Psychology-Law Society)

National Academy of Neuropsychology

American Academy of Clinical Neuropsychology

National Register of Health Service Providers in Psychology #33910

Nevada State Psychological Association

Associate Member, Clark County Bar Association

Neuropsychology is primarily focused on the relationships between the brain and behavior, diagnosing brain disorders, and assessing cognitive functioning.⁷ While psychology seeks to treat behavioral issues or mood, such as depression, anger, and anxiety.⁸

According to Psychology Today, vast differences exist between psychology and neuropsychology. Psychologists treat patients through “psychotherapy.”⁹ Psychologists focus on coping skills and breaking through barriers presented through either long-term problem, such as depression and anxiety, or short term problems like stress and grief.¹⁰ Neuropsychologists, however, “evaluate the functional capabilities of a person’s brain.”¹¹ They typically “address neurobehavioral disorders that are considered to be developmental disorders of the nervous system,”

⁶ *Id.*

⁷ <https://www.apa.org/ed/graduate/specialize/neuropsychology>

⁸ <https://www.apa.org/topics/about-psychologists>

⁹ <https://www.psychologytoday.com/us/blog/the-fifth-vital-sign/201809/what-are-the-differences-between-psychology-specialties>

¹⁰ *Id.*

¹¹ *Id.*

such as dementia, Alzheimer's and ADHD.¹² Plainly stated, "clinical psychologist differs from a neuropsychologist, because they primarily focus on emotions and behaviors, as well as the associated therapies" and a neuropsychologist has "specialized training in brain behavior and how to form treatments from a diagnosis based on a series of cognitive tests taken by a patient."

Josh's diagnoses align with psychology—not neuropsychology. Josh presented to Michael Elliott, Ph.D with "symptoms of anxiety, depression and trauma, including flashbacks."¹³ These flashbacks are intensified whenever he sees flames.¹⁴ His depression is described as coming in "waves" that are "very noticeable" and lead him to withdraw from relationships.¹⁵ This symptomology ultimately led Dr. Elliott to diagnose Josh with Post Traumatic Stress Disorder, generalized anxiety, reaction to severe stress, and unspecified symptoms and signs involving cognitive functions and awareness.¹⁶

Dr. Elliott's diagnoses align with Josh's own understanding of his emotional state. During his deposition on May 18, 2020, Josh described these *very* experiences to Defense counsel:¹⁷

Mr. McMullen: I'm not sure we can separate the two, but what I'm really asking is did you feel that you had any kind of psychological issues from this accident, whether it be depression, anxiety, paranoia, or anything like that, that you wanted a healthcare professional to help you?

Josh Green: I -- at the time I was talking to Lauren and the rabbi on a continual basis so I felt that it was -- talking to them and dealing with them with the issues was enough. And then I started cutting time back talking to Lauren and everything was going okay. And then, you know, now I actually last Friday I went to a psychologist for an evaluation and to see, just because a lot of the effects that happened due to the -- from the explosion has caused **emotional** and different effects of like -- you know, I'm not able to work as much. I'm **afraid of grills**. I used to be a big caterer in town, and now I have to ask the person if they have

¹² *Id.*

¹³ Exhibit 1 at GREEN 1088.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at GREEN 1093-94.

¹⁷ See Deposition transcript of Plaintiff, Joshua Green Volume I at 52:20-53:16, as Exhibit 5.

a grill or what I'm cooking on because I'm *terrified* of grills.

When Josh's deposition reconvened on June 29th, Josh delved even further into his depression, anxiety, and stress:¹⁸

Mr. McMullen: Do you have any PTSD symptoms, in your opinion, other than what you've told me? Are you fearful of using propane?

Josh Green: Yep. I mean. I'm fearful of using propane. I'm fearful of using grills. **I'm afraid of fire.** I mean, I went to O, a show at the Bellagio, with my boss, and I was sitting there and there was guy on fire and I was like, 'Oh look. It's me.' You know, anything that I see that has to do with a guy on fire or, you know, any of that, it brings back *memories*. And that's the biggest thing, is that it's always -- I'm always being -- you know, I'm always remembering the situation because it was so **dramatic** and the fact that I was in the hospital for a while. I was in a lot of treatment with them ripping off my bandages and just like the whole process was extremely *emotional* and devastating to everything that I've done after the accident.

For his adult patients, Dr. Etcoff describes his evaluations for adults as identifying "personality disorders," "impulse-control disorders," and "memory or intellectual deterioration."¹⁹ While Defendants may argue these treatments are relevant to Josh's mental state, they vastly differ from the diagnoses on file for this case. If a Rule 35 Examination is ordered, it should be conducted by a **psychologist**, not a provider that focuses his entire practice on neuropsychology.

Also, Dr. Etcoff's availability is unsensible given the deadlines and circumstances of this case. Although Defendants have also filed a Motion to Extend Discovery Deadlines (the outcome of which is still pending), Dr. Etcoff cannot conduct a Rule 35 Examination for nearly five months.²⁰ That is entirely unreasonable and supports Plaintiff's contention that Defendants' need retain another physician.

B. Nevada Revised Statute 52.380 offers the inherent right for an examinee to be accompanied by a silent observer and to audio record

¹⁸ See Deposition transcript of Plaintiff, Joshua Green Volume II at 298:10-299:3, as Exhibit 6.

¹⁹ http://www.dretcoff.com/?page_id=48

²⁰ Defs. Mot. to Compel at 8:1-4. "The date and time is to be determined based upon this Court's order, though the earliest date of availability is currently in early March."

during a Rule 35 Examination—including a psychological Rule 35.

The latest version of NRS 52.380 plainly states that: 1) An observer may attend a mental examination but shall not participate in or disrupt the examination²¹ and that 2) The observer attending the examination ... may make an audio or stenographic recording of the examination.²²

Plaintiff is aware NRS 52.380 conflicts with the provisions in NRCP 35, however, the statute affects the substantive right inherent in a physical examination. In a Bench Bar Meeting on October 8, 2019 presided over by Judge Alf, a discussion was held with Commissioner Truman regarding the recent enactment of NRS 52.380. Specifically, Judge Hardy asked Commissioner Truman whether NRS 52.380 or Rule 35 controls when there is a conflict. To answer Judge Hardy's question, Commissioner Truman answered that when the NRS and the NRCP conflict, NRS 52.380 controls.

This conflict of laws, and which standard should apply in District Court, has been determined numerous times by Commissioner Truman and the results are always the same. NRS 52.380 controls since an examination for the purposes of providing an expert report, whose opinions will be presented to a jury, must be controlled by the NRS since the presentation and admissibility of evidence is substantive. Contrary to what the defendant believes, information gathered for the purposes of presentation at trial is not procedural. A mental examination is not procedural since the information gathered will be used to refute evidence that Josh was injured.

And the Defendant's arguments that a mental examination for purposes of providing evidence at trial fails upon a simple analysis of the intent of a mental examination to analyze the Plaintiff's injuries.

²¹ See NRS 52.380(1) and NRS 52.380(7)(a).

²² See NRS 52.380(3).

C. Questions surrounding Josh’s past medical status, current unrelated medical status, and the mechanics of the explosion are improper and should not be permitted.

Defendants claim hindering Dr. Etcoff from questioning Josh on his “past and current unrelated medical status, as well as inquiring into life events and the subject incident itself” will render the results “inaccurate and ineffective.” Under *Schlatter v. Eighth Jud. Dist. Ct.*, Josh is not required to disclose prior or unrelated medical treatment or conditions.²³ Josh understands he will be required to answer questions about his current mental and emotional state, and maybe even the burns and scars that are the subject of this litigation. He will not, however, allow the Defense (or Dr. Etcoff) to violate his privacy or engage in a fishing expedition into obscure aspects of his past and medical status.

Questions about the explosion itself need to be limited to solely *how* Josh felt before the explosion, during the explosion, while he was engulfed in flames, and how it continues to affect his mental and emotional state. Dr. Etcoff delving into the mechanics or liability of the explosion is improper. For example, Dr. Etcoff cannot ask Josh who he believes is at fault for the explosion, what he believes caused the explosion, if Josh believes there is anything he could have done to prevent the explosion, etc.

This Court readily acknowledges expert witnesses can only opine regarding their “field of expertise.”²⁴ Moreover, expert witnesses need to have “special knowledge, skill, experience, training, or education will assist the jury.”²⁵ Dr. Etcoff does not possess the special knowledge of a propane technician, an electrician, a contractor, a blast recreation expert, etc. Therefore, any questions into the *liability* aspect of this case are wholly improper and would ultimately be considered inadmissible at trial.

²³ *Schlatter v. Eighth Jud. Dist. Ct.*, 561 P.2d 1342 (Nev. 1977).

²⁴ *Staccato v. Valley Hosp.*, 123 Nev. 526, 170 P.3d 503, 2007 Nev. LEXIS 61, 123 Nev. Adv. Rep. 49.

²⁵ *Id.*

D. If Defendants do not adhere this Court's order, a sanctions hearing is proper.

Every court in Nevada has the power "[t]o compel obedience to its lawful judgments, orders and process, and to the lawful orders of its judge out of court in an action or proceeding pending therein."²⁶ This power is not subject to statutory abrogation.²⁷ "Disobedience or resistance to any lawful ... order ... issued by the court or judge at chambers" "shall be deemed contempt."²⁸

Defendants are requesting this Court issue an Order compelling Josh to appear for a Rule 35 Examination; Plaintiff is requesting this Court require any Rule 35 Examination be ordered consistent with the parameters he set forth in his September 21st letter. Essentially, both parties are asking for *an order*.

Thus, if such an *order* is violated (by either party), this Court can order a sanctions hearing. Plaintiff is forthcoming with his intention to seek the sanction of commenting of the violation of these parameters at trial.

III.

Conclusion

Plaintiff does not dispute Rule 35 Examinations are proper given the damages in this case, however, Defendants have failed to properly identify the physician that will conduct the physical Rule 35 (or even present any arguments provided to the same). They also chose a wholly inappropriate examiner for the psychological Rule 35—neuropsychologist Dr. Lewis Etcoff—who does not have availability for five months.

In addition, they refuse to adhere to reasonable parameters to protect Josh from harassment, including a **statutory right** afforded in NRS 52.380 and commonly

²⁶ NRS 1.210(3).

²⁷ *In re Determination of Relative Rights of Claimants & Appropriators of Waters of Humboldt River Stream Sys. & Tributaries*, 118 Nev. 901, 909, 59 P.3d 1226, 1231 (2002).

²⁸ NRS 22.010.

1 recognized case law regarding questions of liability.

2 Plaintiff hereby requests that if this Court issue an Order compelling Josh Green
3 to appear for a Rule 35 Psychological Examination, they do so consistent with the
4 following parameters:

5 1. The physician and any support staff in his office will treat Joshua with the
6 utmost respect during his examination;

7 2. The Defense Medical Examination scheduled will be the only one allowed
8 in this matter;

9 3. Joshua shall not be required to sign any paperwork the day of the
10 examination. Should the examination require Joshua to complete any paperwork, it
11 should be provided to Joshua's counsel at least two (2) weeks in advance of the
12 examination;

13 4. Defense counsel will provide the physician with copies of all relevant
14 medical records for review prior to the examination, and the physician will indicate
15 in his report what records he was provided;

16 5. The physician will produce a copy of the entire file related to the
17 examination, including test materials or raw data, no later than thirty (30) days
18 following the examination;

19 6. The physician will forward a copy of the examination report to Joshua's
20 counsel at the same time it is sent to defense counsel, without delay, pursuant to
21 N.R.C.P. 35(b)(1);

22 7. The physician will accurately report the findings and test results;

23 8. The physician will only answer questions regarding the parts of his body
24 at issue in this litigation. The physician shall not make inquiries into Joshua's past
25 medical status, current unrelated medical status, or any events related to his life or
26 the explosion;

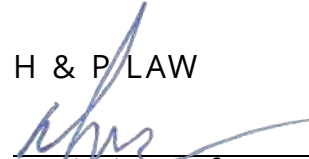
27 9. Defense counsel will not attend the examination;

28 10. Joshua will be permitted to audio record the examination;

- 1 11. Joshua will be accompanied by a silent observer during the examination;
2 12. Joshua will not be required to wait in the physician's waiting room for
3 longer than fifteen (15) minutes before commencement of the examination;
4 13. Questions regarding liability may not be asked at any point during the
5 examination. The physician will not use the examination to attempt to take any
6 statements from Joshua;
7 14. X-rays and radiographic images may not be taken during the
8 examination. If any such studies are necessary, counsel shall provide justification in
9 writing to Joshua's counsel two (2) weeks prior to the examination;
10 15. Defense counsel agrees that should the physician or their support staff
11 violate any of the conditions mentioned here, Joshua's counsel will be able to
12 comment on such violation at trial.

13 Also, as Defendants have yet to properly present an argument for the physical
14 Rule 35 Examination they are requesting, Plaintiff reserves the right to assert
15 parameters for that Rule 35.

16 DATED this 9th day of November 2020. H & P LAW

17 
18 Marjorie Hauf, Esq.
19 Nevada Bar No.: 8111
20 Matthew G. Pfau, Esq.
21 Nevada Bar No.: 11439

22 Attorneys for Plaintiff,
23 Joshua Green
24
25
26
27
28

Certificate of Service

I hereby certify that on the 9th day of November 2020, service of the foregoing **Joshua Green's Opposition to Defendants' Motion to Compel Rule 35 Examination** was made by required electronic service to the following individuals:

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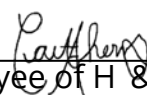

An Employee of H & P LAW

EXHIBIT “1”

Michael Elliott and Associates

Patient: Joshua Green

Provider: Dr. Michael Elliott

Office: Henderson

DOB: 02/12/1982

Visit: 05/20/2020 11:00AM

Address: 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012

Sex: M

Chart: GRJO000002

Primary Payer ID:

Secondary Payer ID:

Chief Complaint: Initial Interview

History of Present Illness:

Joshua Green describes the location to be medial Patient reports severe headaches since his accident.

Difficulty focusing and following conversations/trains of thought. Patient states location as medial, radiating from the center of his head..

The quality of pain is described as aching, constant, sharp, radiating pain and a severity / intensity level of 4 out of 10 Severity varies depending on stress/exhaustion levels, mood..

This duration of the problem stated is as follows: symptoms are --, steady

Duration comments include: Duration is guided by the above mentioned factors. stress/exhaustion levels, mood.

Patient explains the timing/onset of signs/symptoms to be abrupt.

The patient states signs and symptoms occurred during physical exertion, during mental exertion, at work, with familial stress Patient reports he is unable to work his usual shifts of 8 to 10 hours as a Chef. He describes his previous romantic relationship as tumultuous and as part of the stressors that would aggravate his condition.

The signs and symptoms described exacerbate with movement

Modifying Factors Comments include: Patient describes chef duties as high stress and fast paced.

Associated symptoms include: headache

Assessment:

Patient was assessed in a 60 minute clinical interview to determine current and prior levels of functioning, impact on activities of daily living and to determine if further neuropsychological testing is required.

Mr. Green is a 38 year old Caucasian male who self describes as "Driven and hard working." He reports starting several restaurants throughout his career as a chef and is currently managing the kitchen for a new restaurant that he started last year. Besides the complex tasks involved in starting businesses and running a high volume kitchen, he has a history of being able to schedule workers, track and maintain inventories, as well as submit billing and paperwork to various vendors. Since Mr. Green's accident and injury, he has been unable to complete his work responsibilities in a timely and efficient manner. He reports struggling with constant headaches that are exacerbated while at work. He also reports difficulties with memory and following a train of thought, an essential skill in his line of work. Since his accident and injury, Mr. Green reports several difficulties when using grills. He states he is now "afraid" of grilling, and avoids the use of gas grills when possible, which is preventing him from taking full advantage of his chef and restaurateur skills. He stated he is losing confidence in himself, and is concerned that he will not be able to continue his career.

Mr. Green's symptoms and behaviors are consistent with patients that have suffered brain trauma through a blast injury. Memory loss, headaches, and the personality changes he describes are indicators of a possible

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 05/20/2020 11:00AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

traumatic brain injury. Though there are also several confounds that may be impacting his symptoms. Mr. Thompson has a diagnosed learning disability, he has a history of seizures, and he was in a major car accident in the past. Therefore, it is strongly recommended that Mr. Green be referred for an brain MRI to determine if he has lesions or anomalies that are consistent with traumatic brain injuries due to blast shockwaves. These results will help determine if Mr. Green should receive a full neuropsychological evaluation to then determine severity of injuries, impact on current and future levels of functioning, as well as to guide treatment recommendations and support services.

Type	Code	Description
ICD-10-CM Condition	F06.4	Anxiety disorder due to known physiological condition
ICD-10-CM Condition	F41.1	Generalized anxiety disorder
ICD-10-CM Condition	Z13.850	Encounter for screening for traumatic brain injury

Plan:

REFERRALS: Brain MRI

Type	Code	Modifiers	Quantity	Description
CPT	90791		1.00 UN	PSYCH DIAGNOSTIC EVALUATION

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Visit:** 07/01/2020 9:00AM**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Sex:** M**Chart:** GRJO000002**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Cognitive and Emotional Deficits following accident on 6/18/2018**Subjective:**

Client shared that he is recovering gradually. He notes continued physical ailments including pain in his hands and chronic headaches. He reports having to have decreased his work load due to limited capacity after accident. He reports strong connection to his Rabbi and spirituality, as well as having received support from a shaman. Since accident he has made some progress emotionally and notes that he had changes his priorities to focus more on relationships. However, he reports that he still has flashbacks to the accident, especially whenever he sees flames. He also reports waves of depression which are very noticeable and cause him to withdraw from relationships and engagements temporarily. Further he reports difficulty with cognition and short term memory. Specifically he reports issues with recall and notes that he frequently loses his train of thought. He reports that attempts to manage symptoms through social support as well as through use of cannabis to manage pain and anxiety.

Objective:

At time of session, client had just awoken and appeared mildly disheveled, but the appointment was early in the day and this was not too abnormal. His attitude was calm and cooperative throughout session. He did not demonstrate any abnormal behaviors or psychomotor changes. His speech was WNL. Affect appeared mood congruent. Mood appeared euthymic, and at times mildly depressed. His thought processes appeared goal-directed and logical. He did not demonstrate any maladaptive or abnormal thought content. Perception seemed normal. Memory concentration appeared distractible, and congruent to his report of short term memory and cognitive impairment.

Assessment:

Assessment was provided via telehealth (video call) due to COVID 19 restrictions. Client presents with symptoms of anxiety, depression and trauma, including flashbacks. He reports difficulty with ADLs due to symptoms including impaired ability to work as well as impaired mood and relational functioning.

Type	Code	Description
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified
ICD-10-CM Condition	F41.9	Anxiety disorder, unspecified
ICD-10-CM Condition	R41.9	Unspecified symptoms and signs involving cognitive functions and awareness

Problems:

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder, unspecified	10	F41.9		active	Sept. 1, 2020, noon

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 07/01/2020 9:00AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Unspecified symptoms and signs involving cognitive functions and awareness	10	R41.9		active	Sept. 1, 2020, noon
Reaction to severe stress, unspecified	10	F43.9		active	July 1, 2020, 9 a.m.

Plan:

Formal standardized neuropsychological testing may be indicated, pending review of records, due to indications of presence of traumatic brain injury.

Treatment for reported cognitive deficits is also recommended, as is ongoing coaching or CBT for post-traumatic stress injury. EMDR is also indicated.

Type	Code	Modifiers	Quantity	Description
CUSTOM	00004		1.00 UN	Coaching

Michael Elliott and Associates

Patient: Joshua Green

Provider: Dr. Michael Elliott

Office: Henderson

DOB: 02/12/1982

Visit: 09/01/2020 12:00PM

Address: 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012

Sex: M

Chart: GRJO000002

Primary Payer ID:

Secondary Payer ID:

Chief Complaint: Cognitive and Emotional Deficits following accident on 6/18/2018

History of Present Illness:

Patient reports severe headaches since his accident. Difficulty focusing and following conversations/trains of thought. Patient states location as medial, radiating from the center of his head. Severity varies depending on stress/exhaustion levels, mood. Duration seems to be guided by the stress/exhaustion levels, mood.

Patient reports he is unable to work his usual shifts of 8 to 10 hours as a Chef. He describes his previous romantic relationship as tumultuous and as part of the stressors that would aggravate his condition; he also describes symptoms as exacerbated by movement.

Med / Fam / Social History:

Joshua Green is a 38-year-old Jewish male. He did not indicate his race. He considers himself to be very devoutly religious.

He lives in an apartment and has lived there for less than a year. He lives with his wife.

When asked about his dietary habits, he indicated that his diet is not nutritious. He says he eats breakfast, lunch, and dinner.

In his spare time the patient enjoys team sports, individual sports, sporting events, movies, and television.

Developmental History:

At the time of his delivery he was premature. As a child the patient was somewhat happy and recalls that he was rarely ill. As a teenager he was somewhat happy and remembers being healthy. Before age 18 he had close friends with whom he could discuss nearly anything. He has more than one such friend now.

He is not aware of childhood problems with toilet training or with learning to sit up, crawl, stand, walk, talk, feed himself, or dress himself. He does, however, report a childhood problem with enuresis. He does not report any childhood fears or phobias. He remembers that before age 13 he frequently had accidents, was short-tempered, and was a show-off. He recalls lying frequently.

He does not report a history of being sexually molested, running away from home, having suicidal preoccupations, or attempting suicide as a child or teenager. He reports no unusual eating habits as a teenager.

He recalls physically maturing later than most of the boys he knew. He felt that he could discuss nothing about sex with his parents. He began dating at the age of 18 or younger. He usually dated less than once a month. He dated only one person and remembers that his parents did not comment upon the individual he dated. After

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Visit:** 09/01/2020 12:00PM**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Sex:** M**Chart:** GRJO000002**Primary Payer ID:****Secondary Payer ID:**

the first time he had heterosexual intercourse he reportedly felt happy and nervous. Currently, he enjoys sexual intercourse a great deal.

Family of Origin:

Patient was raised by his natural parents. He does not report having any brothers or sisters.

He reports that his mother loved him too much and gave him enough time and attention. He recalls that he could always talk to his mother about problems. He claims that his mother did not criticize him even when she should have. He reports that his mother always praised him for his accomplishments. She was reasonably strict and allowed him little freedom. His mother usually punished him when he misbehaved. To punish the patient psychologically, his mother would take away privileges.

He reports that his father loved him and gave him enough time and attention. He was always able to talk to his father about problems. He claims that his father accepted him but criticized him when necessary. He reports that his father occasionally praised him for his accomplishments. His father was very strict, although reasonable in some areas, and allowed him little freedom. Punishment always resulted when his father discovered that he had misbehaved. To punish the patient psychologically, his father would put him in "time-out".

Educational History:

He reports that his elementary school performance was about average, that he had problems learning to read and write, and that he was placed in special classes for students with learning problems. He denies having any serious behavioral problems in elementary school. In general, he greatly enjoyed elementary school and describes himself as being popular with most schoolmates.

In high school he received mostly B's but he was classified as learning disabled and was placed in special classes for students with learning problems. His extracurricular activities included athletics. He remembers having difficulty in high school because of serious illness. He reports no major antisocial behaviors in high school. The patient describes himself as being somewhat popular with other students and as being generally happy in high school.

The patient reports graduating from high school. He reports attending but not finishing college and a formal training school operated by an employer.

Marital History:

The patient reports his primary sexual orientation to be heterosexual. He is currently married and living with his wife. He reports being married only once. The patient has no children. He lists his partner's race as white, religion as Jewish, and gender as female. His partner has a college education and is not employed. He reports no problems in his relationship with his partner.

Occupational History / Financial Status:

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Visit:** 09/01/2020 12:00PM**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Sex:** M**Chart:** GRJO000002**Primary Payer ID:****Secondary Payer ID:**

The client is employed full-time and is paid a regular salary. He is employed in an industry other than those listed on the inventory. He indicated that the type of job he has is not listed on the inventory. He has had his present job for less than one year and reports being very happy with his work. He is not thinking about changing jobs at this time. Over the past year his household income has remained about the same and is more than sufficient to pay for basic necessities. However, he is experiencing money problems because of debt.

Legal History:

He has filed a lawsuit concerning personal injury. There are no charges currently pending against him.

Military History:

The client has never served in the United States military.

Symptom Screen:

The last physical examination the patient had was more than a year ago; he recalls having no problems at that time. The patient's last dental exam was within the last six months. He is currently having problems with his teeth. He reports having had surgery performed more than once. He believes that he is currently in good health. The patient reports that he is allergic to certain foods.

His family history includes cancer. His history includes epilepsy. He is near-sighted. His history also includes hemorrhoids and kidney stones.

The patient has recently had a problem with intolerance to heat. In addition, he has experienced numb/painful/discolored fingers. He reports urinary urgency.

The patient no longer drinks alcohol. No usual diagnostic signs of psychosocial impairment caused by alcohol use were reported.

He has used cannabis and currently uses it several times a week. He admits to using drugs nearly every day for a month or more. He reports no increase in drug tolerance. No usual diagnostic signs of psychosocial impairment caused by drug use were reported by him.

No episodes of depressed mood, diminished energy, loss of appetite, sleep disturbance, or suicidal ideation lasting two or more weeks were reported by the patient. He indicates that he has experienced repeated episodes of persistent elated mood and increased energy level accompanied by heavy spending and irritability. He does not report having experienced thought broadcasting, thought insertion, thought withdrawal, auditory distortions and hallucinations, grandiose beliefs, persecutory beliefs, or feelings of being controlled.

He has experienced more than four anxiety or panic attacks that were situation-specific. No phobias were mentioned. He denies having had unwanted, repetitive thoughts or having performed repetitive acts. He reports having experienced peculiar tastes in food or drink at least twice. He has experienced a highly stressful

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Visit:** 09/01/2020 12:00PM**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Sex:** M**Chart:** GRJO000002**Primary Payer ID:****Secondary Payer ID:**

situation with prolonged consequences including intrusive memories and avoidance of certain situations. His current sleep pattern is characterized by trouble falling asleep. He reports having used mental health services or counseling for a problem that was not primarily related to alcohol or drug use.

Assessment:

Assessment was provided via Telehealth and in person with patient due to COVID-19 protocol. Dates of service comprising this report include 5/15/20 and 5/20/20, as well as impressions from follow-up treatment sessions on 7/1/20 and 9/1/20.

Patient presented with complaints of cognitive and emotional deficits following accident. A formal psychological evaluation was performed which consisted of an initial interview, as well as the MMPI-2-RF, MCMI-IV, and P3.

Patient's scores on instruments yielded valid profiles on across all three instruments and indicate that Mr. Green gave his best effort. However, the instruments also suggest that Mr. Green may be underreporting his symptoms and that interpretation of his results may need to be modulated upward to more accurately reflect his present psychological functioning. Continued treatment and follow-up psychological testing is recommended to further analyze the severity of his stress injury.

Clinical interview and test data indicate that Mr. Green meets DSM-5 diagnostic criteria for: Unspecified Trauma and Stressor Related Disorder (F43.9); Anxiety Disorder, Unspecified (F41.9); Unspecified Mild Neurocognitive Disorder (R41.9).

Further evaluation and testing is required to rule out the present of Posttraumatic Stress Disorder (F43.1), as well as rule out Mild Neurocognitive Disorder due to Traumatic Brain Injury (G31.84). Formal neuropsychological testing is recommended to assess Mr. Green apparent cognitive deficits.

It is evident that Mr. Green has suffered a post-traumatic stress injury due to the accident. As a consequence, Mr. Green may require long-term support and be susceptible to further trauma as a result.

Type	Code	Description
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified
ICD-10-CM Condition	F41.9	Anxiety disorder, unspecified
ICD-10-CM Condition	R41.9	Unspecified symptoms and signs involving cognitive functions and awareness

Problems:

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder due to known physiological condition	10	F06.4		active	July 1, 2020, 9 a.m.
Generalized anxiety disorder	10	F41.1		active	July 1, 2020, 9 a.m.

Michael Elliott and Associates**Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 09/01/2020 12:00PM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Encounter for screening for traumatic brain injury	10	Z13.850		active	July 1, 2020, 9 a.m.
Anxiety disorder, unspecified	10	F41.9		active	Sept. 1, 2020, noon
Unspecified symptoms and signs involving cognitive functions and awareness	10	R41.9		active	Sept. 1, 2020, noon
Reaction to severe stress, unspecified	10	F43.9		active	July 1, 2020, 9 a.m.

Plan:

1. It is recommended that Mr. Green continue to participate in coaching or individual psychotherapy.
 2. A medical examination for pharmacological intervention is recommended for Mr. Green. A medicinal intervention may help to alleviate emotional and attentional issues.
 3. Mr. Green should consider participating in a Biofeedback/Heartmath program. This program offers highly effective and practical solutions for reducing stress, anxiety, depression and sleeplessness.
 4. Due to the symptoms associated with PTSD, Mr. Green should consider participating in Eye Movement Desensitization & Reprocessing (EMDR) therapy. EMDR is a treatment designed to alleviate distress associated with traumatic memories.
 5. Formal neuropsychological testing is recommended, pending evaluation by a neurologist and review of records.
 6. A follow-up psychological evaluation is recommended in the next 3-6 months, as treatment progresses.
- REFERRALS: Brain MRI

Type	Code	Modifiers	Quantity	Description
CPT	96132		1.00 UN	NRPSYC TST EVAL PHYS/QHP 1ST

EXHIBIT "2"



MARJOIRE HAUF, ESQ. *†
MATTHEW G. PFAU, ESQ.*‡
ADAM GANZ, ESQ. *†φ
CARA XIDIS, ESQ. *

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* Licensed in Nevada
† Licensed in Arizona
‡ Licensed in California
φ Of Counsel

September 21, 2020

Via Electronic Service

Michael McMullen, Esq.
BAKER STERCHI COWDEN & RICE LLC
2400 Pershing Road, Suite 500
Kansas City, Missouri 64108

Re: Green v. Ferrellgas, Inc., Gonzalez
and Kleisner
Case No: A-19-795381-C

Mr. McMullen,

Your client has requested a medical examination of Plaintiff Joshua Green. A Defense Medical Examination ("DME") is not an entitlement, but rather is allowed through stipulation of the parties or by order of the Court.

Joshua is willing to undergo the examination, if you will agree to the conditions outlined below. Please obtain approval of the conditions from physician, so we may prepare a stipulation and order reflecting the parties' agreement to the examination and conditions.

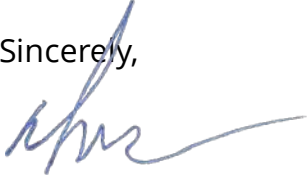
1. The physician and any support staff in his office will treat Joshua with the utmost respect during his examination;
2. The Defense Medical Examination scheduled will be the only one allowed in this matter;
3. Joshua shall not be required to sign any paperwork the day of the examination. Should the examination require Joshua to complete any paperwork, it should be provided to Joshua's counsel at least two (2) weeks in advance of the examination;

4. Defense counsel will provide the physician with copies of all relevant medical records for review prior to the examination, and the physician will indicate in his report what records he was provided;
5. The physician will produce a copy of the entire file related to the examination, including test materials or raw data, no later than thirty (30) days following the examination;
6. The physician will forward a copy of the examination report to Joshua's counsel at the same time it is sent to defense counsel, without delay, pursuant to N.R.C.P. 35(b)(1);
7. The physician will accurately report the findings and test results;
8. The physician will only answer questions regarding the parts of his body at issue in this litigation. The physician shall not make inquiries into Joshua's past medical status, current unrelated medical status, or any events related to his life or the explosion;
9. Defense counsel will not attend the examination;
10. Joshua will be permitted to audio record the examination;
11. Joshua will be accompanied by a silent observer during the examination;
12. Joshua will not be required to wait in the physician's waiting room for longer than fifteen (15) minutes before commencement of the examination;
13. Questions regarding liability may not be asked at any point during the examination. The physician will not use the examination to attempt to take any statements from Joshua;
14. X-rays and radiographic images may not be taken during the examination. If any such studies are necessary, counsel shall provide justification in writing to Joshua's counsel two (2) weeks prior to the examination;

15. Defense counsel agrees that should the physician or their support staff violate any of the conditions mentioned here, Joshua's counsel will be able to comment on such violation at trial.

Please contact our office with any questions or concerns.

Sincerely,

A handwritten signature in blue ink, appearing to read 'MPfau', with a long horizontal flourish extending to the right.

Matthew G. Pfau, Esq.

CC: James P.C. Silvestri, Esq., Steven M. Goldstein, Esq., and Gina Gilbert Winspear, Esq.

EXHIBIT “3”



Gregorio V. Silva
816.471.2121
gsilva@bscr-law.com
Kansas City Office

October 7, 2020

By Email and E-Service
mpfau@courtroomproven.com

Matt G. Pfau, Esq.
H&P Law
8950 W. Tropicana Avenue #1
Las Vegas, Nevada 89147

Re: **Green v. Ferrellgas, Inc., Mario Gonzalez and Carl Kleisner**
Case No.: A-19-795381-C
Rule 35 Examination

Dear Mr. Pfau:

Please accept this correspondence in response to the letter from your office dated September 21, 2020 regarding Ferrellgas' request to conduct a Rule 35 examination of Plaintiff in the above referenced matter.

We do not agree to execute a stipulation and order reflecting your requirements for agreeing to a Rule 35 examination as detailed in your correspondence. We cannot agree to the following numbered requirements, as explained in further detail below.

Paragraph Numbered 2 – Our office cannot agree to limiting examinations to a single Rule 35 examination. First, Plaintiff alleges both physical and psychological damages as a result of this incident. As such, our office does not agree to a limit of one examination when there is more than one alleged injury/condition at issue. Furthermore, Plaintiff alleges claims for relief against multiple defendants and cannot in good faith allow only a single medical examination.

Additionally, our office cannot agree to this requirement because the current need for a Rule 35 examination arose from Plaintiff's recent disclosure of additional treating physicians and alleged injuries. Our office cannot agree to limit future requests for medical examinations should Plaintiff disclose additional treating physicians or alternative injuries again.

Paragraph Numbered 5 – Our retained expert, Lewis M. Etcoff, Ph.D., A.B.N. will not agree to produce his file to Plaintiff or Plaintiff's counsel. Dr. Etcoff will agree to release the requested materials

to Plaintiff's psychologist. Dr. Etcoff will not agree to release the materials to counsel or parties because they are copyrighted materials that will become ineffective if disclosed to the public and used by other claimants to prepare for future examinations.

Paragraph Numbered 8 – This request does not make sense in that our office has retained Dr. Etcoff to evaluate the psychological impact, as a result of your recent disclosure of Dr. Elliott's treatment for a Traumatic Brain Injury and other neurological issues. Determining the impact the Subject Incident had on Mr. Green requires an understanding of Mr. Green's past medical status and events of his life and inquiries regarding the same are relevant to evaluating the impact of the incident on Mr. Green.

Paragraph Numbered 10 – Dr. Etcoff will agree to allow an audio recording of his interview with Mr. Green. However, Dr. Etcoff will not agree to allow an audio recording of the testing performed. Dr. Etcoff will not agree to recording of his testing in any manner. Dr. Etcoff will agree to provide a transcript of the interview with Mr. Green to Plaintiff's counsel.

Paragraph Numbered 11 – Dr. Etcoff will not agree to allow a silent observer to attend any part of his evaluation. Dr. Etcoff has advised that in his experience a silent observer does not remain silent during the evaluation. Dr. Etcoff has also advised that the relevant medical literature demonstrates that an observer's presence during an examination distorts the results of the examination. Dr. Etcoff is agreeable to allowing a person of your choosing to accompany Mr. Green and remain in the waiting room.

Paragraph Numbered 15 – Our office will not agree to any stipulation that allows Plaintiff's counsel to comment at trial on violations of Plaintiff's conditions. Should Plaintiff believe such a comment is relevant to the litigation, that issue should be determined by the Court at time of trial.

We are agreeable to all other conditions detailed in your correspondence. Please advise if you are agreeable to stipulating to a Rule 35 examination as detailed in this correspondence. If you are not agreeable to stipulating to allowing an examination, please provide availability the week of October 12-16, 2020 to participate in an EDCR 2.34 conference on this matter.

Best regards.

Sincerely yours,

BAKER STERCHI COWDEN & RICE, L.L.C.



Gregorio V. Silva

GVS/

EXHIBIT “4”

Lewis M. Etcoff, Ph.D., A.B.N.

Nevada Licensed Psychologist No. 129
Diplomate, American Board of Professional Neuropsychology #257
Fellow, National Academy of Neuropsychology
Fellow, The American College of professional Neuropsychology

CURRICULUM VITAE 2020

NAME: LEWIS M. ETCOFF, Ph.D.
ADDRESS: 8475 S. Eastern Avenue, Suite 205
Las Vegas, Nevada 89123
PHONE: (702) 876-1977
FACSIMILE: (702) 876-0238
DATE OF BIRTH: October 17, 1951

EDUCATION

1978 - 1983 Doctor of Philosophy in Clinical Psychology
University of Toledo, Toledo, Ohio (APA-approved)

1982 - 1983 Doctoral Internship in Clinical Psychology
Wright-Patterson Air Force Base Medical Center, Ohio (APA-approved)

1977 - 1978 Undergraduate Psychology Courses
University of Toledo, Toledo, Ohio

1973 - 1975 Master of Arts in Contemporary Jewish Studies
Lown School of Jewish Communal Service and
Florence Heller School for the Advanced Studies of Social Welfare
Brandeis University, Waltham, Massachusetts

1969 - 1973 Bachelor of Arts in Political Science, *cum laude*
Brandeis University, Waltham, Massachusetts

PROFESSIONAL EXPERIENCE

2008 – present Lay Member, Las Vegas Panel C, Fee Dispute Arbitration Committee, State Bar of Nevada

2008 – 2017 Adjunct Professor of Neuropsychology, Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada

2008 – 2011 Supervising Neuropsychologist and Part-Time Professor of Neuropsychology, Center for Autism and Developmental Disabilities, Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada

2004 – 2008 Reviewer, *Journal of Applied Neuropsychology*

2002 – 2014 Adjunct Assistant Professor of Clinical Psychology, University of Nevada, Las Vegas

2001 - 2014 Doctoral Psychology Practicum Site Supervisor, University of Nevada, Las Vegas

1999 - 2008 Professional Advisory Council, American Board of Disability Analysts

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2020 CURRICULUM VITAE
PAGE 2

1995 - 1999 Reviewer, *Archives of Clinical Neuropsychology*

1995 - 2008 Committee Member, Advisor to Expert Panel, Admissions Department, State Bar of Nevada

1993 - 2008 Clinical Assistant Professor, Department of Family and Community Medicine, University of Nevada School of Medicine

1992 - 1998 State of Nevada Oral Licensing Test Examiner and Oral Licensing Test Developer for the Nevada State Board of Psychological Examiners

1992 - 2019 Examiner of Diplomate Applicant Work Product, American Board of Professional Neuropsychology

1992 - 1995 Consulting Neuropsychologist, Nevada Appellate and Postconviction Project

1988 - 1997 Consulting Clinical Psychologist, Eighth Judicial District Family Court and Child Custody Division

1985 – present Private Practice, Lewis M. Etcoff, Ph.D. & Associates

1983 - 1985 Clinical Psychologist, United States Air Force Hospital, Nellis Air Force Base, Nevada

1983 - 1985 Chief of Neuropsychodiagnostics, USAF Hospital Nellis (TAC), Nellis AFB, Las Vegas, Nevada

PROFESSIONAL CREDENTIALS

2006 Fellow, National Academy of Neuropsychology

2002 Added Credentials in Forensic Neuropsychology, American Board of Professional Neuropsychology

1995 Fellow, American College of Professional Neuropsychology

1992 Diplomate, American Board of Professional Neuropsychology

PROFESSIONAL MEMBERSHIPS

American Psychological Association

- Division 40 (Neuropsychology)
- Division 41 (American Psychology-Law Society)

National Academy of Neuropsychology

American Academy of Clinical Neuropsychology

National Register of Health Service Providers in Psychology #33910

Nevada State Psychological Association

Associate Member, Clark County Bar Association

PROFESSIONAL LEADERSHIP POSITIONS

2011-2012	Member, Continuing Education Committee, Nevada Psychological Association
2011-2012	Membership Committee Chair, Nevada Psychological Association
2004 - 2005	Secretary, Board of Directors, Nevada State Psychological Association
2000 - 2004	Co-Chair, Membership / Continuing Education Committee, Nevada State Psychological Association
1996 - 1997	President, Nevada State Psychological Association
1995 - 1996	President-Elect, Nevada State Psychological Association
1995 - 1997	Board of Directors, Nevada State Psychological Association
10/21/95	Chairperson, Nevada State Psychological Association Strategic Planning Session
1994	Co-Chair, Nevada State Psychological Association Federal Advocacy
1993 - 1994	Chairman, Nevada State Psychological Association 1994 Annual State Conference
1992 - 1993	Chairman, Public Education Committee, Nevada State Psychological Association

PUBLIC SERVICE RECOGNITION

1996	Outstanding Contributor to the Nevada State Psychological Association
1993 - 1994	American Academy of Family Physicians
1991	National Association of School Psychologists

PUBLICATIONS

Nunez A, San Miguel LE, Barchard KA, Etcoff L, Allen DN (Submitted 10/1/18). Wechsler Intelligence Scale for Children-Fourth Edition (WISC-IV) Sort Form Accuracy in Children with Attention-Deficit/Hyperactivity Disorder (ADHD): Does Primary Language Matter? *Psychological Assessment*.

Graves SJ, Freeman AJ, Paul MG, Etcoff L, Allen DN, (Submitted 7/13/18). Improving accuracy of ADHD-inattentive diagnoses with symptom rating scales. *Psychological Assessment*.

Parke EM, Thaler NS, Etcoff LM, Allen DN (in press). Intellectual profiles in children with attention deficit hyperactivity disorder and comorbid learning and motor disorders. *Journal of Attention Disorders*.

Mayfield A, Parke EM, Barchard KA, Thaler NS, Etcoff, L, Allen DN (2018). Equivalence of Mother and Father Ratings of ADHD in Children. *Child Neuropsychology*, 24(2), 166-183. doi: 10.1080/09297049.2016.1236186.

Mayfield, Abigail R., Parke, Elyse M., Barchard, Kimberly A., Zenisek, RyAnna P., Thaler, Nicholas S., Etcoff, Lewis M., Allen, Daniel N. (2016): Equivalence of mother and father ratings of ADHD in children, *Child Neuropsychology*, doi: 10.1080/ 09297049.2016.1236186

Parke EM, Mayfield A, Barchard KA, Thaler NS, **Etcoff LM**, Allen DN (2015). Factor structure of symptom dimensions in ADHD. *Psychological Assessment*, 27(4), 1427-1437. doi: 10.1037/pas0000121

Thaler NS, Barchard KA, Parke E, **Etcoff L**, Jones P, Allen DN (2015). Factor structure of the Wechsler Intelligence Scale for Children – Fourth Edition in children with ADHD. *Journal of Attention Disorders*, 19(12), 1013-1021. doi: 10.1177/1087054712459952

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Thaler, N. S., Barchard, K. A., Parke, E., Jones, W. Paul, **Etcoff, L. M.**, & Allen, D. N. (2012). Factor structure of the Wechsler Intelligence Scale for Children: Fourth Edition in children with ADHD. *Journal of Attention Disorders*, 1087054712459952, first published on October 16, 2012.

Etcoff, L.M., Sims, K.E., Abbott, S.M., & Carro, M.G. (2002 - 2003). A psycholegal perspective: The lack of neuropsychological examination following significant brain trauma can be costly. *Advances in Medical Psychotherapy*, 11, 9-18.

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Etcoff, L.M. & Kampfer, K. (1996). Nonverbal learning disability. In K. Anchor (Ed.), *Disability analysis handbook: Tools for independent practice* (pp. 219-234). Iowa: Kendall/Hunt Publishing Company.

Etcoff, L.M. (1993). Sexual abuse allegations: Separating fact from fiction. *Nevada Family Law Report*, 8, 1-3.

PROFESSIONAL POSTER PRESENTATIONS

2016 Graves S, Parke EM, **Etcoff L**, San Miguel L, Allen DN (2016). *The Relationship between the Woodcock-Johnson-III and the Batteria-III in Children with ADHD and Learning Disorders*. *Archives of Clinical Neuropsychology*, 31(6), 598. Presented at the 36th Annual Conference of the National Academy of Neuropsychology, October 19-22, Seattle, WA.

2015 Mayfield AR, Ciobanu C, **Etcoff L**, Allen DN (2015). *Utility of WISC-IV Short Forms in Attention-Deficit/Hyperactivity Disorder (ADHD)*. *Archives of Clinical Neuropsychology*, 30(6), 533. Presented at the 35th annual meeting of the National Academy of Neuropsychology Conference, Austin, TX., USA.

2013 Parke EM, Hart JS, Baldock D, Barchard KA, **Etcoff LM**, Allen DN (2013). *Intelligence and achievement predictors of Attention Deficit Hyperactivity Disorder and Learning Disorders*. *Archives of Clinical Neuropsychology*, 28(6), 518. Presented at the 33rd Annual Conference National Academy of Neuropsychology, November 7-10, San Diego, CA.

- 2012 Parke E, Thaler NS, **Etcoff LM**, Allen DN (2012). *Neurocognitive differences among learning disabilities. Archives of Clinical Neuropsychology*, 27(6), 590. Presented at the 32nd National Academy of Neuropsychology, Memphis, TN.
- 2012 Hart JS, Cox JL, Woolery H, Safko E, Thaler NS, **Etcoff LM**, Allen DN (2012). *WISC-IV profiles in children with learning disabilities*. Western Psychological Association 91st Annual Convention, April 26-29, San Francisco, CA.
- 2012 Farcello, C. A., Boucher, J., Wood, N., Thaler, N. S., **Etcoff, L. M.**, & Allen, D. N. (April 2012). *The relationship between processing and symptomatology in ADHD*. Poster presented at the 92nd Annual Convention of the Western Psychological Association, San Francisco, CA.
- 2012 Umuhoza, D., Baldock, D. Hart, J. L., Thaler, N. S., & **Etcoff, L. M.** (April 2012). *Parental differences in symptom rating scales in children with ADHD*. Poster presented at the 92nd Annual Convention of the Western Psychological Association, San Francisco, CA.
- 2012 Hart, J. S., Cox, J. L., Woolery, H., Safko, E., Thaler, N. S., **Etcoff, L. M.** & Allen, D. N. (April 26, 2012). *WISC-IV profiles in children with learning disabilities*. Poster presented at the Western Psychological Association Convention, San Francisco, CA.
- 2011 Farcello, C., Boucher, J., Wood, N., Thaler, N. S., **Etcoff, L. M.** & Allen, D. N. *The relationship between processing speed and ADHD*.
- 2011 Thaler, N. S., Bello, D. T., Woolery, H., & **Etcoff, L. M.** (November 2011). *WISC-IV cluster subtypes predict diagnoses, symptom ratings, and outcome in children with ADHD*. Poster presented at the 31st National Academy of Neuropsychology, Marco Island, FL.
- 2011 Thaler, N. S., Allen, D. N., Bello, D. T., & **Etcoff, L. M.** (November 2011). *Confirmatory factor analysis of the WISC-IV in children with ADHD*. Poster presented at the 31st National Academy of Neuropsychology, Marco Island, FL.
- 2011 Umuhoza, D., Baldock, D., Hart, J. S., Cox, J. L., Thaler, N. S., & **Etcoff, L. M.** (November 2011). *Confirmatory factor analysis of the WISC-IV in children with ADHD*. Poster presented at the 31st National Academy of Neuropsychology, Marco Island, FL.

PROFESSIONAL PRESENTATIONS SINCE 2009

- 09/19/16 **Neuropsychological Test used in Forensic Neuropsychology**
Presentation to Federal Public Defender's (approved by Nevada State Bar)
Las Vegas, Nevada
- 03/10/16 **Destigmatizing Learning Disabilities**
Presentation to the Alexander Dawson School, Las Vegas, Nevada
- 02/14/16 **How to Assist Teachers to Help Students with Anxiety**
Presentation to the Las Vegas Day School, Las Vegas, Nevada
- 08/23/13 **Understanding Children with Special Needs**
Presentation to the Solomon Schechter Day School of Las Vegas, Las Vegas, Nevada
- 10/01/12 **Psychology Careers**
Presentation to University of Nevada Las Vegas Psi Chi Honor Society, Las Vegas, Nevada

- 07/31/12 **How to Match Your Child to a School**
Presentation to the Solomon Schechter Day School of Las Vegas, Las Vegas, Nevada
- 07/08/11 **Forensic Neuropsychology: A Case Study:**
Presentation to Physicians Assistants at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada
- 06/18/11 **Working as a Team in Torts of Emotional Distress or Brain Injury: Attorney, Paralegal and Forensic Psychologist:**
Presentation to the Nevada Paralegal Association in conjunction with the Legal Assistant Division of the State Bar of Nevada, Las Vegas, Nevada
- 01/21/11 **Attention-Deficit/Hyperactivity, Learning Disorders & Psychological Tests:**
Presentation to 2nd Year Medical Students at Touro University School of Osteopathic Medicine, Henderson, Nevada
- 10/01/10 **Attention Deficit Hyperactivity Disorder: Signs and Symptoms, Classroom Tips, Suggestions for Working with Parents from Preschool – 8th Grade:**
Presentation to Las Vegas Day School, Las Vegas, Nevada
- 08/25/10 **Forensic Neuropsychology: A Case Study:**
Presentation to Physicians Assistants at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada
- 08/18/10 **Course Director, Typical vs. Atypical Development: When to Seek Out an Evaluation for Your Child:**
Presentation to The Meadows School, Las Vegas, Nevada
- 05/07/10 **Clinical Vignettes:**
Presentation to 2nd Year Medical Students in Behavioral Medicine / Psychiatry Course at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada
- 04/16/10 **Brain-Behavior Relationships:**
Presentation to 2nd Year Medical Students in Behavioral Medicine / Psychiatry Course at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada
- 03/18/10 **Somatoform and Factitious Disorders:**
Presentation to 2nd Year Medical Students in Behavioral Medicine / Psychiatry Course at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada
- 02/09/10 **Neuropsychological Assessments in Disability Cases:**
Presentation to State Farm Health Insurance Case Managers, Bally's Hotel, Las Vegas, Nevada
- 01/28/10 **Attention Deficit Hyperactivity Disorder:**
Presentation as a Panelist to the general community, sponsored by Lexis Preparatory School, Las Vegas, Nevada
- 09/23/09 **Forensic Neuropsychology: A Case Study:**
Presentation to Medical Students at Touro University Nevada, College of Osteopathic Medicine, Henderson, Nevada (with Teri Belmont, Ph.D.)

CONTINUING EDUCATION WORKSHOPS AND CONFERENCES SINCE 2009

- 11/13-16/19 **National Academy of Neuropsychology (4.5 hours CE). Including:**
- **Supervision and Ethics during Neuropsychological Training and Beyond: A Competency Based Approach (Daniel Gizzo, Ph.D.)**
 - **Serving as a Neuropsychological Expert: Some Things to Know (Daniel Marson, Ph.D., JD)**
 - **The Teen Brain (Jay N. Giedd, MD)**
 - **Unilateral Neglect (Kenneth M. Heilman, MD)**
 - **Hot Topics in Traumatic Brain Injury (Kristen Dams-O'Connor, Ph.D.)**
 - **How your Microbiome Speaks to your Brain, and What it is Saying (Rob Knight, Ph.D.)**
 - **Contemporary Ethical Considerations in Forensic Neuropsychology: Practical Perspectives from a Neuropsychologist and a Lawyer (Scott D. Bender, Ph.D.)**
 - **Paper Session TBI: (Wsley Cole, Ph.D.)**
- 08/17/19 **Nevada Laws 2019: Opioids, Pain and Beyond (3 hours CE)**
Tour University College of Osteopathic Medicine
- 07/17/19 **Remaining Current in Your Forensic Practice: MMPI-2-RF (1.5 hours CE)**
Presented by Martin Sellbom, Ph.D., Live Webinar, Pearson Clinical Assessments
- 07/16/19 **Use of the MMPI-2-RF in the Evaluation of Spine Surgery and Spinal Cord Stimulator Candidates (1 hour CE)**
Live Webinar, Pearson Clinical Assessments
- 01/25/19 **Personal Injury Evaluations: Law and Psychological Practice (7 hours CE)**
Presented by Craig R. Lareau, Ph.D., ABFP, American Academy of Forensic Psychology, Las Vegas, Nevada
- 09/29/18 **Evidence-Based Suicide Intervention (2.0 hours CE)**
Presented by Noelle L. Lefforge, Ph.D., MHA, CGP, University Nevada Las Vegas, The Practice
- 05/04/18 **Ethics and Risk Management in the Digital World 2.0 (6.0 Ethics CE)**
Presented by Daniel O. Taube, J.D., Ph.D. Nevada Psychological Association
- 04/04/18 **(On Demand) Subpoenas and Deposition Testimony: An Overview for Practitioners (1.5 hours CE)**
Presented by Daniel O. Taube, J.D., Ph.D., The Trust
- 11/04/17 **Assessing Reports of Trauma in Forensic Contexts (7.0 hours CE)**
Presented by Christina A. Pietz, Ph.D., ABPP, American Academy of Forensic Psychology, Las Vegas, Nevada
- 10/25-28/17 **National Academy of Neuropsychology (16 hours CE) Including:**
- **Mild Traumatic Brain Injury: Outcome, Postconcussion Syndrome, and Forensic Assessment (Glenn J. Larrabee, Ph.D.)**
 - **Forensic Methods: Causation Analysis, Work Ability Evaluation, and Impairment Rating (for Cognitive Impairment, Mental Disorders, and**

Chronic Pain) as Published in the American Medical Association's Guides Library (Robert Barth, Ph.D.)

- **Diverse Brains** (Morton Ann Gernsbacher, Ph.D.)
- **Neuropsychology of Cognitive Aging and Dementia: Advances in Clinical Diagnosis and Treatment** (Kathleen A. Welsh-Bohmer, Ph.D., Joseph and Kathleen Bryan Alzheimer's Disease Research Center/Duke University)
- **Practical Update on Ethics in Clinical and Forensic Neuropsychology** (Christopher Grote, Ph.D.)
- **Integrating into the Future Role of Neuropsychology: What will Practice Be Like in 5 + Years?** (John E. Meyers, Psy.D.)
- **Challenges Associated with TBI Research and Clinical Practice in the DoD and VA: Diagnostics, Pathology, and Ethics** (Patrick Armistead-Jehle, Ph.D., Wesley R. Cole, Ph.D., Robert D. Shura, Psy.D.)
- **Clearing the Smoke : Assessing the Impact of Marijuana Use on Cognition and Related Variables** (Staci A. Gruber, Ph.D.)

- 07/20/17 **Sluggish Cognitive Tempo: A Dinemnsional Approach to Attention in Children (1.5 hours CE)**
Presented by Lisa A. Jacobson, Ph.D., NCSP, National Academy of Neuropsychology
- 10/21/16 **Why People Die by Suicide (6.0 hours CE)**
Presented by Thomas Joiner, Ph.D., Nevada Psychological Association, Las Vegas, Nevada
- 09/17/16 **APA Saga of Torture Interrogation- Lessons for Psychological Ethics in Institutional Settings (6.0 hours CE)**
Presented by Jean Maria Arrigo, Ph.D. and David Debatto, M.A, SSG
- 09/16/16 **Spine IME, Clark County Bar Association (2.0 hours CLE)**
Presented by David Oliveri, M.D., Thomas E. Winner, Esq., Lawrence J. Smith, Esq.
- 04/22/16 **Advanced Legal Practice Issues: Depositions and Testimony for Experts (1.5 hours CE)**
Presented by Bonny J. Forrest, J.D., Ph.D., Webinar, National Academy of Neuropsychology
- 04/15-17/16 **Annual Conference of the American Academy of Pediatric Neuropsychology: Advances in the Clinical Practice of Pediatric Neuropsychology: Assessment, Management & Intervention (3 APA-CE hours)**
Division of Continuing Studies Training Outreach, Indiana University - Purdue University Fort Wayne, Las Vegas, Nevada
- 04/15/16 **Clinical and Forensic Assessment of Medically Unexplained Symptoms (1.5 hours CE)**
Presented by Laurence M. Binder, Ph.D., Webinar, National Academy of Neuropsychology
- 02/19/16 **Nevada Legal and Ethical Issues for Mental Health Clinicians (6.25 hours CE)**
Presented by Susan Lewis, Ph.D., J.D., Live Webcast, PESI, Inc.
- 01/21/16 **Understanding Autism Spectrum Disorder and the Neurodevelopmental Disorders in the DSM-5 (3.0 hours CE)**
Presented by Greg Neimeyer, Ph.D., Live Webcast, American Psychological Association
- 08/18/15 **Overview of the Millon Clinical Multiaxial Inventory – IV (MCMI-IV) (1 hour webinar)**
Presented by Amy Dilworth Gabel, Ph.D., NCSP, Pearson Education Inc.

- 05/08/15 **The Current Procedural Terminology (CPT) System as a Model for Professional Psychological Services (6.0 hours CE)**
Presented by Antonio E. Puente, Ph.D., Nevada Psychological Association (NPA) – Las Vegas, Nevada.
- 12/16/14 **Unleashing the Power of the WISC-V (1 hour online webinar)**
Presented by Amy Dilworth Gabel, Ph.D., Pearson Education Inc.
- 11/22/14 **Hot Topics in Ethics & Risk Management in Psychological Practice (6.0 hours CE)**
Presented by Eric Harris, Ed.D., J.D., Nevada Psychological Association (NPA) – Henderson, Nevada.
- 08/15/14 **Developing an Effective Outpatient Treatment Plan for Eating Disorder Patients (3.0 hours CE)**
Presented by Anthony Paulson, Ph.D. and Valerie Piacitelli, MSW, Nevada Psychological Association (NPA) – Las Vegas, Nevada.
- 10/23/13 **Legally Blunt: Tackling Legal Questions Psychologists Encounter (1.0 hour CE)**
Presented by Gary Lenkeit, Ph.D., Shera Bradley, Ph.D., and Margaret Pickard, Esq., Nevada Psychological Association (NPA) – Las Vegas, Nevada.
- 10/05/13 **NPA 2013 Legislative Retreat (4.0 hours CE)**
Nevada Psychological Association (NPA) – Las Vegas, Nevada.
- 10/04/13 **Diagnosing Autism and Related PDDs, Pediatric Bipolar Disorder, ADHD and Applications of the BASC-2 in Behavioral RTI: An Advanced Training on the BASC-2 (6.0 hours CE)**
Nevada Psychological Association (NPA) – Presented by Cecil R. Reynolds, Ph.D. Las Vegas, Nevada.
- 07/20/13 **DSM-5: What You Need to Know (4.0 hours CE)**
Nevada Psychological Association (NPA) – Presented by Dodge Slagle, D.O., FAPA and Barry Cole, M.S. DFAPA, Las Vegas, Nevada.
- 06/01/13 **Dementia 2013 (6.25 hours CE)**
Nevada Psychological Association (NPA) - Las Vegas, Nevada.
- 06/22/12 **Psychological Approaches to Chronic Pain and Addiction (6.0 hours CE)**
Nevada Psychological Association (NPA) – Presented by Mel Pohl, Ph.D. and Leanne Earnest, Ph.D., Henderson, Nevada.
- 03/10/12 **Update on Third Party Observers: Practice Strategies and Ethical Considerations (1.5 hours CE)**
American College of Professional Neuropsychology – Presented by Robert J. McCaffrey, Ph.D., Las Vegas, Nevada.
- 03/10/12 **AAPN Working Group on Empirically-Defined Disorders of Attention (EDDA): A Neuropsychological Taxonomy of Attention Disorders – A Workshop Sponsored by Pearson (3 hours CE)**
American College of Professional Neuropsychology – Presented by James Hale (Chair): Peter Entwistle, Emilie Crevier-Quintin, Sally Frutiger, Teresa Baily, Ted Wasserman, Cynthia Riccio, Hilary Gomes, Hanna Kubas, Maggie Topiak, & Margaret Semrud-Clikeman (Discussant), Las Vegas, Nevada.

- 03/09/12 **Dancing with your Attorney: Steps to be Followed for Effective Courtroom Testimony (3 hours CE)**
American College of Professional Neuropsychology – Presented by Bill Anzalone, J.D., Las Vegas, Nevada.
- 01/21/12 **Adventures on the Electronic Frontier: Ethics and Risk Management in the Digital Era (6 hours CE)**
Nevada Psychological Association (NPA) – Presented by Jeffrey Younggren, Ph.D., ABPP, Reno, Nevada.
- 04/29/11 **Psychopharmacology Update: Integration of Medication and Psychological Treatments (6 hours CE)**
Nevada Psychological Association (NPA) Annual Conference – Presented by Morgan Sammons, Ph.D., APBB & Steven Tulkin, Ph.D., M.S.
- 04/05/11 **Minnesota Multiphasic Personality Inventory – 2 (MMPI-2) Webinar**
- 03/25/11 **Practicum Training: Models of Supervision (3 hours CE)**
The University of Nevada, Las Vegas Clinical Psychology Program – Presented by Michelle G. Carro, Ph.D., Las Vegas, Nevada
- 03/12/11 **Reframing Nonverbal Learning Disorder: Identifying Clinical Subgroups (3 hours CE)**
American College of Professional Neuropsychology – Presented by Gail M. Grodzinsky, Ph.D., ABPdN, Las Vegas, Nevada
- 03/12/11 **Biopsychosocial Outcome from Mild Traumatic Brain Injury (3 hours CE)**
American College of Professional Neuropsychology – Presented by Grant L. Iverson, Ph.D., Las Vegas, Nevada
- 03/11/11 **The Personality Assessment Inventory (PAI): A Significant Improvement in Personality Assessment (3 hours CE)**
American College of Professional Neuropsychology – Presented by Steven M. Schwartz, Ph.D., Las Vegas, Nevada
- 03/11/11 **The Neurobiology of Exceptional Ability (3 hours CE)**
American College of Professional Neuropsychology – Presented by Nadia Webb, Psy.D., Las Vegas, Nevada
- 11/13/10 **Ethics and Ethical Decision Making for Nevada Psychologists (6 hours CE)**
Nevada Psychological Association – Presented by Stephen Behnke, Ph.D., Reno, Nevada
- 11/11/10 **Listening to the Body: Understanding the Language of Stress-Related Symptoms (6 hours CE)**
IBP – Presented by William Sieber, Ph.D., Las Vegas, Nevada
- 03/19/10 **Update in Practicum Training: Consideration of Behavioral Benchmarks in Competency Evaluation (2 hours CE)**
The University of Nevada, Las Vegas Clinical Psychology Program – Presented by Michelle G. Carro, Ph.D., Las Vegas, Nevada

- 02/27/10 **Pediatric Psychopharmacology Updates 2009 (3 hours CE)**
The American College of Professional Neuropsychology – Presented by John Courtney, Psy.D.,
MP, ABN, ABPdN, Las Vegas, Nevada
- 11/11-13/09 **National Academy of Neuropsychology (12 hours CE). Including:**
- **The Neuropsychological Impact of Psychotropic Medications: How to Avoid a False Positive Diagnosis of Cognitive Compromise** (Simon F. Crowe, Ph.D.)
 - **Pain Psychology for Neuropsychologists** (Kevin J. Bianchini, Ph.D. and Kevin W. Greve, Ph.D.)
 - **Making Test Classification Decisions Practical** (Richard I. Frederick, Ph.D.)
 - **Neuroanatomy Through Clinical Cases** (Hal Blumenfeld, M.D., Ph.D.)
 - **Forensic Grand Rounds** (Robert L. Denney, Psy.D., Kevin J. Bianchini, Ph.D., F. William Black, Ph.D., and Diana Goldstein, Ph.D.)
- 05/06/09 **Ethical Principles in Health Care (2 hours CE)**
Presented at Touro University Nevada, College of Osteopathic Medicine

Updated: 1/7/2020

Lewis M. Etcoff, Ph.D., A.B.N.

Nevada Licensed Psychologist No. 129
Diplomate, American Board of Professional Neuropsychology #257
Fellow, National Academy of Neuropsychology
Fellow, The American College of Professional Neuropsychology

2020

RATE AND FEE SCHEDULE

FORENSIC PSYCHOLOGICAL/NEUROPSYCHOLOGICAL EVALUATIONS

Professional Hourly Fee

Lewis Etcoff, Ph.D.	\$ 470.00 per hour
Associate/Advanced Doctoral Student	\$ 330.00 per hour

Retainer (I do not accept liens)

Records Review (at the time the records review is requested)	\$ 4,500.00
One-day Evaluation	\$ 4,500.00
Two-day Evaluation	\$ 7,500.00

Evaluation Cancellation (If my office is not given four working days' notice, the retaining party will forfeit the scheduling retainer, which will be considered a no-show fee).

TRAVEL COSTS (Evaluation, Deposition, Trial Testimony)

Outside Las Vegas area for each hour spent in transit \$ 470.00 per hour

Reimbursement

I will require reimbursement for all expenses related to the travel but not limited to:

Airfare, lodging, food, vehicle rental and gasoline.

Unexpected Delays (preventing my ability to return to Las Vegas for next regularly scheduled day of work) \$1,750.00 per day

DEPOSITION FEES

Deposit (for up to 2 hours of my time)	\$1,200.00
(Must be paid in advance before my office will schedule a time for the deposition)	
Each additional hour	\$ 600.00 per hour
Preparation Time	\$ 470.00 per hour
(If my office is not given three working days' notice of deposition cancellation or postponement, the attorney forfeits the entire \$ 1,200.00 deposit).	

TESTIMONY FEES (Trial, Arbitration, Mediation)

Half-day (morning or afternoon)	\$2,500.00
If testimony extends into both half-days	\$5,000.00
Full day	\$5,000.00

Retainer:	\$2,500.00
Trial Preparation:	\$ 470.00 per hour

PHOTOCOPY FEES

Black and White copies	\$ 0.60 per page
Color copies	\$ 0.89 per page

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(702) 876-1977 • FAX (702) 876-0238
www.dretcoff.com

EXHIBIT “5”

In the Matter Of:
A-19-795381-C
GREEN
vs
FERRELLGAS, INC. et al.

Videotaped Deposition Of:
JOSHUA GREEN, VOLUME I
May 18, 2020



702-805-4800
scheduling@envision.legal

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA GREEN, an)
individual,)
)
Plaintiff,) Case No.: A-19-795381-C
) Dept. No.: C
vs.)
)
FERRELLGAS, INC., a foreign)
corporation; MARIO S.)
GONZALEZ, an individual;)
CARL J. KLEISNER, an)
individual; DOES I through)
XXX, inclusive, and ROES)
BUSINESS ENTITIES I through)
XXX, inclusive,)
)
Defendants.)
)
)
AND ALL RELATED ACTIONS.)
)

VOLUME I

VIDEOTAPED DEPOSITION OF JOSHUA GREEN

LAS VEGAS, NEVADA

MONDAY, MAY 18, 2020

Reported by: Monice K. Campbell, NV CCR No. 312
Job No.: 4446

Page 2

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VIDEOTAPED DEPOSITION OF JOSHUA GREEN, held at

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Envision Legal Solutions, located at 700 South 3rd

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Street, Las Vegas, Nevada, on Monday, May 18, 2020,

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at 9:36 a.m., before Monice K. Campbell, Certified

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Court Reporter, in and for the State of Nevada.

6

7

APPEARANCES:

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For the Plaintiff, Joshua Green:

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Page 3

1

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I N D E X

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JOSHUA GREEN

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Examination By Mr. McMullen

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<p style="text-align: right;">Page 6</p> <p>1 * * * * *</p> <p>2 LAS VEGAS, NEVADA; MONDAY, MAY 18, 2020</p> <p>3 9:36 A.M.</p> <p>4 * * * * *</p> <p>5 THE VIDEOGRAPHER: This begins the</p> <p>6 video-recorded deposition of Joshua Green for the</p> <p>7 matter entitled Joshua Green versus Ferrellgas,</p> <p>8 Incorporated, Case Number A-19-795381-C. We're at</p> <p>9 700 South Third Street, Las Vegas, Nevada.</p> <p>10 Today's date is Monday, May 18, 2020,</p> <p>11 and the time is approximately 9:36 a.m.</p> <p>12 I am the videographer, Jordan Leads. The</p> <p>13 court reporter is Monice Campbell with Envision.</p> <p>14 Will counsel please identify yourselves</p> <p>15 and then the reporter will administer the oath.</p> <p>16 MR. McMULLEN: I'm Mike McMullen for</p> <p>17 Ferrellgas.</p> <p>18 MR. AVAKIAN: David Avakian for</p> <p>19 Home Depot.</p> <p>20 MR. GOLDSTEIN: Steven Goldstein for</p> <p>21 Mario Gonzalez.</p> <p>22 MS. WINSPEAR: Gina Winspear for</p> <p>23 Defendant Kleisner.</p> <p>24 MR. PFAU: Matt Pfau for the plaintiff,</p> <p>25 Joshua Green.</p>	<p style="text-align: right;">Page 8</p> <p>1 It's important we don't talk at the same</p> <p>2 time, so if you'll wait until I'm done with my</p> <p>3 question before you answer, I'll try to wait until</p> <p>4 you're done with the last answer before a new</p> <p>5 question because the court reporter is taking it</p> <p>6 down. It makes it easier for her.</p> <p>7 Since we're across the table from one</p> <p>8 another, I can tell when you nod and shake the</p> <p>9 head, which is just fine, but we also need an</p> <p>10 audible response. Also, a yes or no is better than</p> <p>11 an uh-uh or uh-huh.</p> <p>12 Understood?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Is there any reason, whether it be</p> <p>15 mental, physical, emotional, or medication-related,</p> <p>16 anything at all that you can think of that might</p> <p>17 interfere with your ability to understand and</p> <p>18 answer my questions today?</p> <p>19 A. No.</p> <p>20 Q. If you need to take a break, that's fine.</p> <p>21 We will do that.</p> <p>22 So we're here to talk about an</p> <p>23 unfortunate accident on June 18 of 2018 and the</p> <p>24 lawsuit you have pending in Clark County District</p> <p>25 Court.</p>
<p style="text-align: right;">Page 7</p> <p>1 Whereupon,</p> <p>2 JOSHUA GREEN,</p> <p>3 having been sworn to testify to the truth, the whole</p> <p>4 truth, and nothing but the truth, was examined and</p> <p>5 testified under oath as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. McMULLEN:</p> <p>9 Q. Good morning.</p> <p>10 A. Good morning.</p> <p>11 Q. Please state your name, please.</p> <p>12 A. Joshua Ross Green.</p> <p>13 Q. May I call you Josh?</p> <p>14 A. Yes.</p> <p>15 Q. Josh, my name is Mike McMullen. I'm a</p> <p>16 lawyer from Kansas City. I represent Ferrellgas.</p> <p>17 Have you ever been in a deposition</p> <p>18 before, a setting like this with lawyers asking</p> <p>19 questions?</p> <p>20 A. No.</p> <p>21 Q. Let me try to give you a few ground</p> <p>22 rules. I'm going to ask you questions and I don't</p> <p>23 want you to answer any question that you don't</p> <p>24 understand. So if it's unclear for any reason,</p> <p>25 tell me and I'll try to rephrase.</p>	<p style="text-align: right;">Page 9</p> <p>1 Let me say first that regardless of how</p> <p>2 this happened or who's at fault, I'm personally</p> <p>3 sorry that you were injured, and I intend to be</p> <p>4 respectful during the deposition. But I hope you</p> <p>5 understand that I have to do the job for my client,</p> <p>6 so please don't take my questions personally and</p> <p>7 I'll be as respectful as possible.</p> <p>8 A. Yes.</p> <p>9 Q. My purpose here is to get the facts and</p> <p>10 your best testimony as to what happened, talk about</p> <p>11 your injuries and your recovery, and explore the</p> <p>12 basis for your claims.</p> <p>13 If after you've answered a question,</p> <p>14 sometime later you think, "Oh, I forgot something</p> <p>15 else," or you want to change your answer, that's</p> <p>16 fine. I want to get your best testimony.</p> <p>17 If you don't remember something, just</p> <p>18 tell me you don't remember. And I'm not here to</p> <p>19 grill you or ask you to guess or speculate. Just</p> <p>20 tell the truth. Do the best you can.</p> <p>21 Okay so far?</p> <p>22 A. Yes.</p> <p>23 Q. All right. Now, you've already responded</p> <p>24 to interrogatories. Do you remember that, written</p> <p>25 questions? Your lawyer probably helped you.</p>

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<p>1 A. Yes.</p> <p>2 Q. And that will shorten things and I'll</p> <p>3 refer to those.</p> <p>4 Did you do anything to prepare for your</p> <p>5 deposition today?</p> <p>6 A. No. Just -- I just talked to my lawyer.</p> <p>7 Q. Don't ever tell me anything you talked</p> <p>8 about --</p> <p>9 A. Okay.</p> <p>10 Q. -- because that's privileged.</p> <p>11 Did you do anything besides meet with</p> <p>12 Mr. Pfau?</p> <p>13 A. No.</p> <p>14 Q. Let's start with some background</p> <p>15 information.</p> <p>16 I know your birth date. February 12,</p> <p>17 1982, in Manhasset, New York?</p> <p>18 A. Yes.</p> <p>19 Q. You currently reside at</p> <p>20 2609 Centaurus Street?</p> <p>21 A. Yes.</p> <p>22 Q. In Henderson, Nevada?</p> <p>23 A. Yes.</p> <p>24 Q. How long have you lived there?</p> <p>25 A. I lived there six months after the</p>	<p>1 A. Yes.</p> <p>2 Q. What do they do?</p> <p>3 A. My father is a second-grade teacher and</p> <p>4 my mother doesn't do anything -- or stays at home.</p> <p>5 Q. Don't put that on the record.</p> <p>6 A. She's a stay-at-home wife, mom, whatever.</p> <p>7 Disability.</p> <p>8 Q. How long have they lived in Henderson?</p> <p>9 A. Twelve years, I believe.</p> <p>10 Q. Do you keep in touch with them?</p> <p>11 A. Yes.</p> <p>12 Q. How often do you see them?</p> <p>13 A. Before the Coronavirus, I saw them once a</p> <p>14 week, usually every Sunday. I would make it a</p> <p>15 point to see them every Sunday.</p> <p>16 Q. And I imagine you intend to do that when</p> <p>17 the pandemic has passed?</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe you're fairly close to</p> <p>20 your parents?</p> <p>21 A. Yes. I'm very close to my parents.</p> <p>22 Q. I imagine you have spoken to them about</p> <p>23 this accident?</p> <p>24 A. Yes.</p> <p>25 Q. And about how you're doing?</p>
Page 11	Page 13
<p>1 accident and then I moved for about six months and</p> <p>2 then I went back. So I've been there about four</p> <p>3 months.</p> <p>4 Q. So you lived there during the six months</p> <p>5 before the accident?</p> <p>6 A. No. After the accident.</p> <p>7 Q. After.</p> <p>8 A. Like before -- before and in between the</p> <p>9 accident, and then when I -- then I stayed there in</p> <p>10 between -- so I started there. Because I was in</p> <p>11 Miami. So I came back from Miami. I went to my</p> <p>12 parents' house.</p> <p>13 And then when I went to my parents'</p> <p>14 house, I was there. And then during this accident</p> <p>15 I was also living there. After the accident I</p> <p>16 stayed there, and then I moved into my business</p> <p>17 partner's house because it was closer to my work.</p> <p>18 Q. Your parents are Laurence and Sheila?</p> <p>19 A. Yes.</p> <p>20 Q. They live in Henderson?</p> <p>21 A. Yes.</p> <p>22 Q. I see. So let's start at the beginning</p> <p>23 here and try to move forward.</p> <p>24 Your parents are still living and they</p> <p>25 live in Henderson?</p>	<p>1 A. Yes.</p> <p>2 Q. Do you have any siblings?</p> <p>3 A. No. Only child. My mom couldn't have</p> <p>4 any more kids after me because I was premature. I</p> <p>5 was 4 pounds 9 ounces when I was born, and</p> <p>6 that's -- that was a lot -- due to that, I had a</p> <p>7 learning disability and was in the resource room</p> <p>8 and a lot of other stuff. My parents were told</p> <p>9 when I was four years old that I would never read,</p> <p>10 write, be able to function as a normal kid. And</p> <p>11 that was totally wrong.</p> <p>12 Q. So at the time you were born, they</p> <p>13 anticipated a learning disability but, in fact,</p> <p>14 that didn't happen?</p> <p>15 A. No. I did have -- when I grew up, in</p> <p>16 elementary school I was in a learning disability</p> <p>17 group where I was learning -- a disabled room or</p> <p>18 whatever you -- resource room. And then in high</p> <p>19 school, I had one period that I went to a resource</p> <p>20 room.</p> <p>21 Q. What's the nature of the learning</p> <p>22 disability?</p> <p>23 A. Reading and writing, understanding the --</p> <p>24 understanding reading, writing, and getting out</p> <p>25 what I am thinking.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q. So that was an issue, that you had 2 special classes in elementary school and high 3 school? 4 A. Yes. 5 Q. Do you still have that type of 6 disability? 7 A. I mean, I'll always have that disability 8 but I've overcome it to the point -- especially me 9 being a chef, it doesn't -- I don't really have to 10 read, write, do a lot of that stuff. But I also, 11 you know, take -- my artistic abilities have come 12 out with being a chef. 13 Q. Are you able to read and write? 14 A. Yes. 15 Q. Is it just that you may not read or write 16 as quickly as someone else? 17 A. Yeah, read, write, as quickly as somebody 18 else, or reading something and not understanding 19 what I'm reading compared to other individuals. 20 Q. So you're able to read and write; it's 21 just slower? 22 A. Yes. 23 Q. And you can understand if you take your 24 time -- 25 A. Yes.</p>	<p style="text-align: right;">Page 16</p> <p>1 activities? 2 A. Yes. 3 And sleeping would bother me because, you 4 know, it was all the way up my arms and my hands 5 and I had bandages wrapped around, and it was just 6 like every time I moved, every time I did 7 something, it would pull from the bandages. I 8 mean, excruciating pain. 9 Q. So she helped you with bandage changes? 10 A. Mm-hmm. 11 Q. She helped with you eating? 12 A. Yes. 13 Q. What else did she help you with? 14 A. Washing my body. 15 Q. Bathing? 16 A. Yeah. I mean, anything -- mostly 17 driving, which -- driving. I mean, mostly anything 18 that I needed to use my hands. Sometimes couldn't 19 pick up the phone, so she would either hold the 20 phone or put it on speaker or something to that 21 effect. 22 Q. So she helped you with your recovery 23 period for some months? 24 A. Yes. 25 Q. How long?</p>
<p style="text-align: right;">Page 15</p> <p>1 Q. -- and read it carefully? 2 Have your parents assisted you in any way 3 with your recovery? 4 A. I mean, when -- after the accident, my 5 mother helped me a lot with -- I mean, I couldn't 6 shower. I had to wear special sleeves to shower. 7 So she helped with that. Doing things around the 8 house. 9 I mean, after, you know -- between three 10 and six months -- or from the accident until, you 11 know, six months, I've had a lot of issues and 12 problems doing stuff like driving, doing -- you 13 know, feeding myself, doing stuff around the house. 14 I mean, it was affecting my hands and my arms, so 15 anything that I had to do with that, you know, it 16 affected it. 17 Q. I think you testified you were living 18 with your parents after the accident for some 19 period of time? 20 A. Yes. 21 Q. Did you say six months? 22 A. Yes. 23 Q. And it's during that six-month period 24 that you're now explaining how your parents -- your 25 mother in particular would help you with daily</p>	<p style="text-align: right;">Page 17</p> <p>1 A. About -- I mean, she was helping me to 2 the point until where I moved out. And then after 3 I moved out, I lived with my business partner 4 because he knew of the situation. And so I lived 5 there for a short period of time because it was -- 6 like I said, I was closer to work. 7 And driving 40 minutes to work every day 8 was -- you know, especially with my hands, or like 9 sitting -- because my parents would drive me, so I 10 would sit on the side. It was just -- it was 11 uncomfortable moving around and all that stuff 12 so... 13 Q. When you say your business partner, do 14 you mean Mr. Sadie? 15 A. Yes. 16 Q. So now I'm going to go back and get the 17 geography straight. 18 I know you graduated from high school 19 in -- what year was it? 20 A. 2000. 21 Q. And that was Syosset? How do you say it? 22 A. Syosset, yeah. 23 Q. Syosset. Where is that? 24 A. Long Island, New York. 25 Q. So where did you move after New York?</p>

<p style="text-align: right;">Page 18</p> <p>1 Miami?</p> <p>2 A. No. After New York, I came here.</p> <p>3 Q. What first brought you here?</p> <p>4 A. School.</p> <p>5 Q. That's right. You went to UNLV?</p> <p>6 A. Yes.</p> <p>7 Q. Why did you come here for school?</p> <p>8 A. It was the best hotel restaurant</p> <p>9 management school in the country at the time, and</p> <p>10 that's what I was getting myself into. I didn't --</p> <p>11 I thought I wanted to own and operate restaurants,</p> <p>12 which I do now, and so I was right. And then --</p> <p>13 but I also was -- I didn't really have the</p> <p>14 ability -- or I didn't think I was going to be a</p> <p>15 chef at that time. I was focusing more on the</p> <p>16 running hospitality, businesses and restaurants and</p> <p>17 so on and so forth.</p> <p>18 Q. Management side?</p> <p>19 A. Yes.</p> <p>20 Q. So after high school, you came here to go</p> <p>21 to UNLV?</p> <p>22 A. Yes.</p> <p>23 Q. What year was that?</p> <p>24 A. 2001 -- or actually the end of 2000.</p> <p>25 Q. Did you graduate?</p>	<p style="text-align: right;">Page 20</p> <p>1 jumped ahead a little, but that's all right. It</p> <p>2 will move us along. I want to focus now</p> <p>3 specifically on education, which we may have</p> <p>4 covered. I know you graduated from high school in</p> <p>5 2000, then you went to UNLV, and you left there, as</p> <p>6 you explained, to work at Walt Disney World.</p> <p>7 And that was -- so you started UNLV in</p> <p>8 2001. When did you leave?</p> <p>9 A. 2004, '5, something around there.</p> <p>10 Q. Then you went to Walt Disney World?</p> <p>11 A. No. I left to do my catering business.</p> <p>12 My Disney World was in between the time I was in</p> <p>13 college, so I --</p> <p>14 Q. Oh, I'm sorry.</p> <p>15 A. My second semester of college I went to</p> <p>16 Disney World, stayed there, then I came back, and</p> <p>17 then I went back again.</p> <p>18 Q. And when you went back, you were done</p> <p>19 with school?</p> <p>20 A. No. I was still -- I was in an</p> <p>21 externship program.</p> <p>22 Q. I see.</p> <p>23 A. So I was getting credit for working at</p> <p>24 Disney World. That was why it was so good for me</p> <p>25 because I was getting on-the-job training while I</p>
<p style="text-align: right;">Page 19</p> <p>1 A. No.</p> <p>2 Q. Why not?</p> <p>3 A. I actually -- because I started working</p> <p>4 and I owned my own business at that time.</p> <p>5 After -- during my first semester in</p> <p>6 college, I got accepted to one of the most</p> <p>7 prestigious internships/externship program in the</p> <p>8 country, which is Walt Disney World. So I got</p> <p>9 accepted to that, and I went and worked at</p> <p>10 Cinderella's Royal Table, which is the number 1</p> <p>11 restaurant in Disney World and it's in the castle.</p> <p>12 It's the hardest reservation to get in</p> <p>13 Disney World.</p> <p>14 So when I got that job, I took it. And</p> <p>15 then I ended up staying there -- I went for a year,</p> <p>16 then I came back, and then I went back for another</p> <p>17 year because it was just such a good program. So I</p> <p>18 went to an externship program there.</p> <p>19 Then I came back, and that's when I</p> <p>20 started working on the Strip, and I was working and</p> <p>21 going to school at the same time. And then after</p> <p>22 that, after that I started my own catering personal</p> <p>23 chef business and had that business for a long</p> <p>24 time, about two years.</p> <p>25 Q. Because of how I asked the questions, we</p>	<p style="text-align: right;">Page 21</p> <p>1 was getting credit for school.</p> <p>2 Q. I see. And then at some point you</p> <p>3 decided to leave UNLV --</p> <p>4 A. Yes.</p> <p>5 Q. -- before graduation, and I think you</p> <p>6 explained that, but tell me what you did at that</p> <p>7 point.</p> <p>8 A. That was -- I mean, I left school because</p> <p>9 I had a very profitable business at that time doing</p> <p>10 catering and meal prep and --</p> <p>11 Q. What was the name of that business?</p> <p>12 A. Greens Gourmet.</p> <p>13 Q. Greens?</p> <p>14 A. Gourmet.</p> <p>15 Q. So just a little bit more about</p> <p>16 education.</p> <p>17 Have you had any other formal education</p> <p>18 besides high school and UNLV classes?</p> <p>19 A. No.</p> <p>20 Q. Any vocational school or culinary school?</p> <p>21 A. No.</p> <p>22 Q. Any military service?</p> <p>23 A. No.</p> <p>24 Q. I understand from your interrogatory</p> <p>25 responses you are never married?</p>

<p style="text-align: right;">Page 22</p> <p>1 A. No.</p> <p>2 Q. Any children?</p> <p>3 A. I actually -- I am married now, but I</p> <p>4 wasn't married.</p> <p>5 Q. When did you get married?</p> <p>6 A. A week ago.</p> <p>7 Q. Congratulations.</p> <p>8 What's your wife's name?</p> <p>9 A. Lauren.</p> <p>10 Q. So I understand you had no previous</p> <p>11 marriages?</p> <p>12 A. Yep.</p> <p>13 Q. Have you fathered any children?</p> <p>14 A. No.</p> <p>15 Q. Before this accident -- or I should say</p> <p>16 before you married Lauren, did you have any</p> <p>17 dependents?</p> <p>18 A. No.</p> <p>19 Q. Does Lauren work in the same business?</p> <p>20 A. Travel.</p> <p>21 Q. Just a little bit about UNLV. You told</p> <p>22 me you went there because it's a highly regarded</p> <p>23 school for hotel restaurant management, and then</p> <p>24 you decided you wanted to get more on the actual</p> <p>25 gourmet or chef side of things.</p>	<p style="text-align: right;">Page 24</p> <p>1 business, whether management or chef? Would that</p> <p>2 be when you were doing the externship?</p> <p>3 A. I mean, my first job in Las Vegas was</p> <p>4 working at UNLV at the dining commons.</p> <p>5 Q. All right.</p> <p>6 A. And I was working -- and then I was a</p> <p>7 teacher's assistant for Chef Claude Lambertz at</p> <p>8 UNLV, and that's where I started learning a lot of</p> <p>9 that stuff.</p> <p>10 And then I was a chef at Danny Boulud at</p> <p>11 the Wynn. Then I worked at Kerry Simon's --</p> <p>12 Q. Are these in Las Vegas?</p> <p>13 A. Yes. Kerry Simon's at the Hard Rock.</p> <p>14 Then I started my own personal chef</p> <p>15 business -- oh, no. I then worked for</p> <p>16 Arizona Catering, which was doing all the stuff --</p> <p>17 all the shows at MGM, so like helping with</p> <p>18 rockstars and all different, you know, kind of like</p> <p>19 personal catering for personal -- for events.</p> <p>20 That's where I took my next venture into</p> <p>21 my own business, doing personal chef catering,</p> <p>22 weekly meals, and that was called Greens Gourmet.</p> <p>23 I started that with a hundred bucks in my pocket</p> <p>24 and generated millions of dollars.</p> <p>25 I had a business partner who I worked</p>
<p style="text-align: right;">Page 23</p> <p>1 A. Yes.</p> <p>2 Q. How much school did you have total at</p> <p>3 UNLV before you left?</p> <p>4 A. Four years. I had four credits left.</p> <p>5 Q. Just four left?</p> <p>6 A. Yeah.</p> <p>7 Q. Why not finish?</p> <p>8 A. I actually was -- I was going to finish a</p> <p>9 couple of years ago, you know, when I had more</p> <p>10 time, but when my business started, I was very,</p> <p>11 very busy, and I was young and immature at the</p> <p>12 time, so I had to just either -- I didn't want to</p> <p>13 juggle -- I was trying not to juggle as much -- you</p> <p>14 know, I was trying focus on my business, and I</p> <p>15 thought that was the right move and -- I mean, it</p> <p>16 was.</p> <p>17 Q. Let's talk about your employment before</p> <p>18 Pies N' Fries. You've told me a little bit</p> <p>19 already. Just walk me through from the time you</p> <p>20 first started working after -- I guess you were</p> <p>21 still in school before Pies N' Fries. Tell me the</p> <p>22 kinds of -- Fries N' Pies -- the positions where</p> <p>23 you worked and what you were doing there.</p> <p>24 A. Starting when?</p> <p>25 Q. What's the first job you had in the</p>	<p style="text-align: right;">Page 25</p> <p>1 with at the time. His name is Dimitri and we</p> <p>2 started this business together. We brought on an</p> <p>3 investor, and once we brought on the investor, they</p> <p>4 kind of sideswiped me and I got the pushed out of</p> <p>5 the company.</p> <p>6 Q. What was the name of that company?</p> <p>7 A. Greens Gourmet.</p> <p>8 Q. And how long was it in existence?</p> <p>9 A. It was in existence for about two years.</p> <p>10 I went and worked for a famous guy named</p> <p>11 Kimbo Slice. And when I was working for Kimbo</p> <p>12 Slice, that's when I was in Miami and LA. And what</p> <p>13 I was working there, they had a lot of business --</p> <p>14 you know, they were controlling a lot of the</p> <p>15 business at the time.</p> <p>16 Tony Kalar or the guy -- the other</p> <p>17 partner was helping me with my money, accountant,</p> <p>18 stuff like that, and they were doing stuff illegal.</p> <p>19 And to that way, they -- I started seeing money</p> <p>20 deplete from the account and different things like</p> <p>21 that. And then they teamed up against me and</p> <p>22 they -- you know, they thought they could do it</p> <p>23 themselves and they forced me out, and three months</p> <p>24 later they were bankrupt.</p> <p>25 Q. This is still Greens Gourmet you're</p>

<p style="text-align: right;">Page 26</p> <p>1 talking about?</p> <p>2 A. Yes. After that, we had a -- I started a</p> <p>3 huge aviation company which was called Air Green</p> <p>4 and it was catering to private jets, and that's</p> <p>5 really where we made a lot of our money.</p> <p>6 Q. Is that still in business?</p> <p>7 A. No.</p> <p>8 Q. Why not?</p> <p>9 A. When they took it over, they kept it</p> <p>10 going for about three months and then they closed</p> <p>11 because they couldn't keep it going. Because</p> <p>12 they -- they thought that they could do it</p> <p>13 themselves, and I was the glue holding it together.</p> <p>14 Q. So that's a different company than Greens</p> <p>15 Gourmet?</p> <p>16 A. No, it was the same.</p> <p>17 Q. Same?</p> <p>18 A. Mm-hmm.</p> <p>19 Q. So that operation just started a new</p> <p>20 venture --</p> <p>21 A. Yeah.</p> <p>22 Q. -- that was the aviation?</p> <p>23 A. Yes.</p> <p>24 Q. But this is where you ran into trouble</p> <p>25 with these people who you thought were doing things</p>	<p style="text-align: right;">Page 28</p> <p>1 what I -- for what my -- for what I do, you know.</p> <p>2 Being a chef, you can be a chef in a</p> <p>3 fine-dining restaurant but also at a McDonald's or</p> <p>4 a fast casual restaurant. So I just wanted to</p> <p>5 learn every single avenue or every single way that</p> <p>6 I can make myself better in the restaurant</p> <p>7 industry.</p> <p>8 Q. So if I understand -- correct me if I'm</p> <p>9 wrong -- you moved to different opportunities when</p> <p>10 you thought they could be better for your education</p> <p>11 and experience?</p> <p>12 A. Yes. And different things that -- you</p> <p>13 know, learning Italian food and learning Chinese</p> <p>14 food and learning Asian food at different locations</p> <p>15 helps you broaden your horizons and make myself</p> <p>16 better, and that's why I was a personal chef for</p> <p>17 eight years for some of the biggest celebrities,</p> <p>18 you know, due to all that experience.</p> <p>19 Q. So for all of your jobs in the industry,</p> <p>20 when you left, was that your choice or were you</p> <p>21 ever fired from a job?</p> <p>22 A. No, a lot of it was either my choice or a</p> <p>23 better situation or -- for example, like this, I</p> <p>24 was forced out, but -- I don't even remember the</p> <p>25 last time I was fired.</p>
<p style="text-align: right;">Page 27</p> <p>1 that were illegal?</p> <p>2 A. Well, I thought they were helping me, but</p> <p>3 they weren't.</p> <p>4 Q. Did you end up in any litigation with</p> <p>5 them?</p> <p>6 A. No.</p> <p>7 Q. Which, by the way, have you ever brought</p> <p>8 a lawsuit before this one?</p> <p>9 A. No.</p> <p>10 Q. Has anyone ever sued you?</p> <p>11 A. No.</p> <p>12 Q. So I notice you've had a lot of different</p> <p>13 opportunities and businesses. In particular when</p> <p>14 you worked in Las Vegas, you moved around to</p> <p>15 different opportunities.</p> <p>16 Is that just the nature of the business,</p> <p>17 that you worked one place for a while and then</p> <p>18 maybe you see a better opportunity? Why would you</p> <p>19 move around?</p> <p>20 A. Well, I mean, being a chef, you try to</p> <p>21 get as much experience from different environments.</p> <p>22 Hence I worked at Black Angus Grill, which was like</p> <p>23 a fast casual steakhouse or you could say, you</p> <p>24 know, a less-expensive steakhouse. That was for</p> <p>25 learning the -- learning different environments for</p>	<p style="text-align: right;">Page 29</p> <p>1 I think the only time I was fired was in</p> <p>2 high school, and that was because I -- the line was</p> <p>3 all the way down, and I was working at the grocery</p> <p>4 store and I went to get a sandwich. We only had a</p> <p>5 15-minute break. I went to eat the sandwich and</p> <p>6 pay for it and they said I stole it.</p> <p>7 That's the only time I ever got -- you</p> <p>8 know, I'm a very hard worker, very determined. I</p> <p>9 focus on my jobs. I mean, you can see, I've</p> <p>10 never -- you know, I've always worked long, long,</p> <p>11 long hours, you know. I'm an entrepreneur. I've</p> <p>12 always tried to make myself better in my money, my</p> <p>13 life, my world, you know, everything around me. So</p> <p>14 I've tried to better myself.</p> <p>15 Q. So except for what happened with the</p> <p>16 sandwich in high school and Greens Gourmet, where</p> <p>17 you had some partners who you thought were acting</p> <p>18 unscrupulously and forced you out, every other job</p> <p>19 you've had, you made the decision to move on to</p> <p>20 something else?</p> <p>21 A. Yes.</p> <p>22 Q. I understand for a time you were the</p> <p>23 registered agent for a company called</p> <p>24 EPMM Nevada, LLC, based in Denver.</p> <p>25 Does that ring a bell?</p>

<p style="text-align: right;">Page 30</p> <p>1 A. Yes.</p> <p>2 Q. What was that?</p> <p>3 A. It was called EdiPure Nevada and never</p> <p>4 registered in the State of Nevada. It was an</p> <p>5 edible company. Me being a chef and my best friend</p> <p>6 owned and operated the company in California and</p> <p>7 Colorado, so -- I actually met him in Disney World.</p> <p>8 So him knowing that I was a chef, he asked me to</p> <p>9 help him with some edibles and stuff that would</p> <p>10 help him in his market. And that was really the</p> <p>11 only thing.</p> <p>12 Q. By "edibles," you mean marijuana-infused</p> <p>13 food?</p> <p>14 A. Yes.</p> <p>15 Q. Why wasn't it registered -- just</p> <p>16 curious -- in Nevada?</p> <p>17 A. What do you mean?</p> <p>18 Q. Sorry. You said it was not registered in</p> <p>19 Nevada?</p> <p>20 A. It never came to fruition in Nevada. It</p> <p>21 never -- we never got a Nevada kitchen and that's</p> <p>22 why. And then there was problems with the -- above</p> <p>23 EdiPure in Colorado, and now they're not even -- I</p> <p>24 don't even think they're in business anymore.</p> <p>25 Q. If you can just summarize why the</p>	<p style="text-align: right;">Page 32</p> <p>1 A. Full time, yeah. Yes.</p> <p>2 Q. I should ask you first, was it a</p> <p>3 full-time job?</p> <p>4 A. Yes, it was.</p> <p>5 Q. How did you get that job?</p> <p>6 A. Through connections. I just -- I'm a</p> <p>7 very well-known personal chef, and I've worked for</p> <p>8 a lot, a lot of people, and through connections, he</p> <p>9 was looking for somebody and I ended up, you know,</p> <p>10 working for him.</p> <p>11 He asked me to do a tasting. I did a</p> <p>12 tasting and he loved it, so...</p> <p>13 Q. This was when you were living in Miami?</p> <p>14 Is that how you first met him?</p> <p>15 A. No. I met him when I was here. I've</p> <p>16 opened a lot of other restaurants in town. And I</p> <p>17 was consulting a restaurant called Protein Source,</p> <p>18 and the owner of Protein Source was his security</p> <p>19 guard, and that's how I had got the tasting.</p> <p>20 And then I worked for him 12 hours --</p> <p>21 12 to 14 hours a day for seven days a week and</p> <p>22 did -- I mean, I remember I did 146 days straight.</p> <p>23 So you can tell that I'm a very hard, determined</p> <p>24 worker and I don't really need days off, and I --</p> <p>25 you know. That's it.</p>
<p style="text-align: right;">Page 31</p> <p>1 business didn't work. I'm trying to understand why</p> <p>2 it closed.</p> <p>3 A. That's stuff that I don't even know. I</p> <p>4 wasn't privy to that information. The</p> <p>5 information -- the only reason that I was even on</p> <p>6 that was because I was the one who was trying to</p> <p>7 bring -- when marijuana was legal in Nevada, I</p> <p>8 tried to bring EdiPure or the edibles company to</p> <p>9 Nevada.</p> <p>10 Q. But before you could do that, the company</p> <p>11 closed or --</p> <p>12 A. After -- when I was trying to do that, we</p> <p>13 had to give them some money, and the owner of the</p> <p>14 company didn't want to give him some money and</p> <p>15 that's really what happened. So it just never</p> <p>16 happened.</p> <p>17 Q. It failed for financial reasons?</p> <p>18 A. Yes.</p> <p>19 Q. So I understand you were a personal chef</p> <p>20 to Dan Bilzerian?</p> <p>21 A. Yes.</p> <p>22 Q. For three years?</p> <p>23 A. Yes.</p> <p>24 Q. Was that the last full-time job you had</p> <p>25 before you opened Fries N' Pies?</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. So you worked for him for three years?</p> <p>2 A. Yes.</p> <p>3 Q. Why did you leave? Why did you stop</p> <p>4 working there?</p> <p>5 A. I actually left because I thought the</p> <p>6 edible business was going to be more promising than</p> <p>7 it was.</p> <p>8 Q. You said in interrogatory responses that</p> <p>9 your annual income, I think you were estimating,</p> <p>10 when you worked for Mr. Bilzerian was about 52,000?</p> <p>11 A. Yes, around there.</p> <p>12 Q. I'm just curious how you determined that.</p> <p>13 Were you paid an hourly wage?</p> <p>14 A. Yes, I was.</p> <p>15 Q. What was the wage?</p> <p>16 A. \$32 an hour.</p> <p>17 Q. So it was purely wage-based?</p> <p>18 A. Yes.</p> <p>19 Q. Based on the hours, that was your income?</p> <p>20 A. Yeah, but it was only for a certain</p> <p>21 amount of hours. Some hours were -- it was like</p> <p>22 you only get paid -- it was a 12-hour -- it was</p> <p>23 10:00 to 10:00 every day, so it was a 12-hour day,</p> <p>24 but you -- you capped out at a certain -- I think</p> <p>25 it was like \$350 a day or something.</p>

<p style="text-align: right;">Page 34</p> <p>1 Q. So you mentioned that you -- I think you</p> <p>2 mentioned that you had opened other restaurants</p> <p>3 other than Fries N' Pies?</p> <p>4 A. Yes.</p> <p>5 Q. Let's talk about that. How many</p> <p>6 restaurants have you personally been involved,</p> <p>7 either you yourself were opening or assisting</p> <p>8 others opening a restaurant?</p> <p>9 A. Greens Gourmet -- I mean,</p> <p>10 Greens & Proteins, Protein House, Protein Source,</p> <p>11 SkinnyFATS, and Fries N' Pies.</p> <p>12 Q. So Greens & Protein?</p> <p>13 A. Mm-hmm.</p> <p>14 Q. Was that a brick and mortar or was that a</p> <p>15 catering service?</p> <p>16 A. It was brick and mortar.</p> <p>17 Q. How about Protein House?</p> <p>18 A. Brick and mortar.</p> <p>19 Q. How about Protein --</p> <p>20 A. -- Source, brick and mortar.</p> <p>21 Q. What was the next one you mentioned?</p> <p>22 A. SkinnyFATS.</p> <p>23 Q. SkinnyFATS.</p> <p>24 A. Brick and mortar.</p> <p>25 Q. So like Fries N' Pies, these were all</p>	<p style="text-align: right;">Page 36</p> <p>1 why I created that. My last name is Green. So I</p> <p>2 was going for -- you know, using my last name and</p> <p>3 then using like something that had to do with</p> <p>4 healthy, and healthy was just coming around at that</p> <p>5 time.</p> <p>6 Q. How about on the management side? And by</p> <p>7 that I mean actually obtaining the lease on the</p> <p>8 space, having renovations made, bringing in the</p> <p>9 appropriate equipment, hiring employees. I'm</p> <p>10 calling that the management or business side.</p> <p>11 Would you have involvement in that or was that</p> <p>12 somebody else?</p> <p>13 A. Yeah. Greens and Proteins, I didn't.</p> <p>14 Protein House, I did until I left, and that was</p> <p>15 because -- I just left because I had SkinnyFATS,</p> <p>16 and I just opened SkinnyFATS, so -- but I was</p> <p>17 always a -- I got paid on it. I was a consultant,</p> <p>18 you know. So none of -- and then SkinnyFATS, I was</p> <p>19 a -- I did everything for. I mean, I was the chef.</p> <p>20 I was the line cook. I brought in equipment. I</p> <p>21 mean, I managed. I did everything.</p> <p>22 Q. How about financing? Did you have a</p> <p>23 partner?</p> <p>24 A. I had a partner, yes.</p> <p>25 Q. And would the partner be somebody who was</p>
<p style="text-align: right;">Page 35</p> <p>1 eating establishments that had a fixed location?</p> <p>2 A. Yes.</p> <p>3 Q. That's what I meant by "brick and</p> <p>4 mortar."</p> <p>5 A. Yes.</p> <p>6 Q. People could come in and sit down and</p> <p>7 dine in, correct?</p> <p>8 A. Yes.</p> <p>9 Q. So for those other four instances that</p> <p>10 you mentioned, what was your role in opening the</p> <p>11 business?</p> <p>12 A. I was just the creator and the concept --</p> <p>13 you know, the creator of the food, the menu</p> <p>14 creator, the concept creator.</p> <p>15 Q. What does "concept creator" mean?</p> <p>16 A. Creating the concept, creating like the</p> <p>17 environment, the menu, the way that it flows, you</p> <p>18 know. Just creating the whole concept from A to Z.</p> <p>19 Q. Including the type of food and the</p> <p>20 environment that you thought was appropriate for</p> <p>21 that food?</p> <p>22 A. Yes. And it was like new-age stuff. I</p> <p>23 mean, Greens and Proteins before -- you know, it's</p> <p>24 been open eight years now, and before that, there</p> <p>25 was really no healthy fast food in town and that's</p>	<p style="text-align: right;">Page 37</p> <p>1 knowledgeable in opening a restaurant on the</p> <p>2 management side?</p> <p>3 A. He never opened a restaurant before, but</p> <p>4 he was a very smart operator in, you know,</p> <p>5 business. He was my best friend. So we opened it</p> <p>6 together.</p> <p>7 Q. Which restaurant are you talking about?</p> <p>8 A. SkinnyFATS.</p> <p>9 Q. And who was that person?</p> <p>10 A. Reed Slobusky.</p> <p>11 Q. Oh, boy. How do you spell that?</p> <p>12 A. S-l-o-b-u-s-k-y.</p> <p>13 Q. And Reed is R-e-i-d?</p> <p>14 A. R-e-e-d.</p> <p>15 Q. So Reed Slobusky was your partner in</p> <p>16 opening?</p> <p>17 A. Yes.</p> <p>18 Q. When did you open SkinnyFATS?</p> <p>19 A. 2013, I think. 2013 or '14.</p> <p>20 Q. Was SkinnyFATS the restaurant that you</p> <p>21 opened before Fries N' Pies?</p> <p>22 A. Yes.</p> <p>23 Q. Is SkinnyFATS still in business?</p> <p>24 A. Yes.</p> <p>25 Q. Are you still involved?</p>

<p style="text-align: right;">Page 38</p> <p>1 A. I have a little percentage.</p> <p>2 Q. Did your role change at SkinnyFATS?</p> <p>3 A. Yeah. I don't -- I just have a little --</p> <p>4 I had an incident. I was working there a year and</p> <p>5 a half, 16, 17 hours a day, and then I had a</p> <p>6 seizure on the line. I have epilepsy.</p> <p>7 So I had a seizure and I ended up in the</p> <p>8 hospital for a month. And then after that, I</p> <p>9 couldn't work on the line.</p> <p>10 Q. When you say "line," do you mean cooking?</p> <p>11 A. Yeah. I could work, but I had to take a</p> <p>12 step back of working as many hours as I was.</p> <p>13 Q. You were working too many hours, you had</p> <p>14 a seizure, you were hospitalized, and then you</p> <p>15 reduced your involvement?</p> <p>16 A. Yes.</p> <p>17 Q. On a permanent basis?</p> <p>18 A. Yes.</p> <p>19 Q. Is that because of health issues?</p> <p>20 A. Yes.</p> <p>21 Q. Let's talk about that. You've already</p> <p>22 disclosed your epilepsy. But just to get some</p> <p>23 details, when were you first diagnosed with</p> <p>24 epilepsy?</p> <p>25 A. I mean, I was first diagnosed after I had</p>	<p style="text-align: right;">Page 40</p> <p>1 before this accident?</p> <p>2 A. Kidney stones.</p> <p>3 Q. Kidney stones. When did that happen?</p> <p>4 A. I think when I was 22, something like</p> <p>5 that. I don't remember exactly, but I had a kidney</p> <p>6 stone out here. I actually had three surgeries. I</p> <p>7 had a kidney stone here that I didn't know what</p> <p>8 happened and they tried to figure it out, and then</p> <p>9 I ended up going to the best hospital in the</p> <p>10 country, Cornell in New York, and I ended up --</p> <p>11 they did a whole major surgery of removing the</p> <p>12 kidney stones, going into the kidney, removing</p> <p>13 them, and I haven't had that problem since.</p> <p>14 Q. So you had three surgeries for kidney</p> <p>15 stones?</p> <p>16 A. Yes.</p> <p>17 Q. When did you have those surgeries?</p> <p>18 A. In between 22 and the earlier years of my</p> <p>19 life, like between 20 and 25. I don't remember</p> <p>20 exactly the exact time.</p> <p>21 Q. Years ago?</p> <p>22 A. Yeah.</p> <p>23 Q. Have you had any complications or issues</p> <p>24 regarding kidney stones since then?</p> <p>25 A. Uh-uh.</p>
<p style="text-align: right;">Page 39</p> <p>1 my first seizure. I actually was in a really bad</p> <p>2 car accident when I was 23 years old. I fell</p> <p>3 asleep at the wheel and I flipped my car seven</p> <p>4 times. I ended up in a ditch and I flipped seven</p> <p>5 times. I walked out with no visible scrapes or</p> <p>6 scratches or anything. Nothing happened.</p> <p>7 Q. What kind of car does that?</p> <p>8 A. It was a Chrysler Sebring.</p> <p>9 Q. Air bag go off?</p> <p>10 A. Everything, yeah.</p> <p>11 Q. You had your seatbelt on and so on?</p> <p>12 A. Yes. But I was sleeping, so I don't --</p> <p>13 you know, my body was so relaxed. What the doctor</p> <p>14 told me was after that -- after that incident, my</p> <p>15 whole body reconfigured itself. I never had any</p> <p>16 issues with anything.</p> <p>17 So I was -- I was allergic to shellfish</p> <p>18 after. I had lactose intolerance after. I started</p> <p>19 developing seizures after. I started -- a bunch of</p> <p>20 issues started happening after that.</p> <p>21 Q. So seizures I get could be a serious</p> <p>22 issue, and in fact, that's why you reduced your</p> <p>23 role at SkinnyFATS.</p> <p>24 Any other medical issues that were</p> <p>25 significant enough that you required treatment</p>	<p style="text-align: right;">Page 41</p> <p>1 Q. So it sounds like -- tell me if I'm</p> <p>2 wrong -- the only --</p> <p>3 MR. McMULLEN: Sorry?</p> <p>4 MR. PFAU: His answer was "uh-uh." I</p> <p>5 just want to make sure that that's a no.</p> <p>6 THE WITNESS: No.</p> <p>7 MR. McMULLEN: Thank you. I didn't catch</p> <p>8 that.</p> <p>9 BY MR. McMULLEN:</p> <p>10 Q. I'm glad your kidney stone issues are</p> <p>11 resolved. The only medical condition that I am</p> <p>12 aware of before this accident is that you mentioned</p> <p>13 seizures.</p> <p>14 A. Yes. Epilepsy.</p> <p>15 Q. Are there any other medical issues,</p> <p>16 whether they be injuries or illnesses, any kind of</p> <p>17 condition that required any professional treatment</p> <p>18 before this accident?</p> <p>19 A. No.</p> <p>20 Q. Are your seizures under control with</p> <p>21 medication?</p> <p>22 A. I started taking medication from</p> <p>23 Dr. Evangelista and that medication was giving me</p> <p>24 extremely bad side effects, and that's actually</p> <p>25 where marijuana has come in and I haven't had a</p>

<p style="text-align: right;">Page 42</p> <p>1 seizure for three and a half years because of 2 marijuana and CBD.</p> <p>3 My first seizure was at Tao. I grabbed a 4 security guard. This is when they didn't even know 5 I had epilepsy. My first seizure was a grand mal 6 seizure. I grabbed the security guard and said, 7 "I'm going to fall down," and he didn't believe me 8 or didn't -- whatever. And I ended up falling and 9 I peed. When I -- every single thing that could 10 come out of me came out of me.</p> <p>11 Q. That was your first seizure?</p> <p>12 A. Yes.</p> <p>13 Q. When did that happen?</p> <p>14 A. Like when I was 25, I think.</p> <p>15 Q. So you're 37 or 38 today?</p> <p>16 A. 38.</p> <p>17 Q. When was the last time you had a seizure?</p> <p>18 A. About three and a half years ago. My 19 last one was with a girl I was dating.</p> <p>20 Q. Did this happen -- the one that you're 21 referencing, did that happen at SkinnyFATS?</p> <p>22 A. No. That was after.</p> <p>23 Q. Okay. Well, I was asking about the last 24 time you had a seizure.</p> <p>25 A. Yeah. It was after SkinnyFATS.</p>	<p style="text-align: right;">Page 44</p> <p>1 A. No, sir.</p> <p>2 Q. Were there any conditions -- and I'm 3 asking this very broadly, so if there aren't any, 4 we can move on, but I would like to know if there 5 is anything mental, physical, emotional, 6 psychological, anything at all, any condition 7 before this accident that impacted your daily life 8 other than the seizures which I understand were 9 under control with medical marijuana.</p> <p>10 Anything else?</p> <p>11 A. No. I mean, can you just -- just so I'm 12 making sure that I'm answering your question, 13 psychological -- I mean, I went to a therapist when 14 I was younger for most of my life for, you know, 15 how to deal with learning disability, how to cope 16 with all that stuff.</p> <p>17 So that's -- in a psychological way, that 18 was the only thing. But when I came out to Vegas, 19 no, I've never had any issues like -- I'm good with 20 friends. I'm a very popular person, you know.</p> <p>21 Q. When was the last time you saw a 22 therapist or healthcare professional for any 23 emotional or psychological issues?</p> <p>24 A. I mean, I stopped seeing someone when I 25 was -- when I left New York, and then when I was</p>
<p style="text-align: right;">Page 43</p> <p>1 Q. I see. But about three and a half years 2 ago?</p> <p>3 A. Yes.</p> <p>4 Q. And you were seeing Dr. Evangelista --</p> <p>5 A. Yes.</p> <p>6 Q. -- for your epilepsy?</p> <p>7 A. Yes.</p> <p>8 Q. You explained that --</p> <p>9 A. He's a neurologist.</p> <p>10 Q. -- the medicine he put you on had bad 11 side effects, so you ultimately began using medical 12 marijuana?</p> <p>13 A. Yes.</p> <p>14 Q. Did you begin doing that about three and 15 a half years ago?</p> <p>16 A. As a result to -- yes.</p> <p>17 Q. And since then, no seizures?</p> <p>18 A. Yes.</p> <p>19 Q. So that's a true statement, you've had no 20 seizures?</p> <p>21 A. Had no seizures.</p> <p>22 Q. Right. For the past three and a half 23 years?</p> <p>24 A. Yes, sir.</p> <p>25 Q. Are you taking any other medications?</p>	<p style="text-align: right;">Page 45</p> <p>1 out here, I haven't seen anybody.</p> <p>2 And then I saw someone at a place called 3 Pathways where my mom recommended me to go. I saw 4 her for about two months, but...</p> <p>5 Q. When was that?</p> <p>6 A. I don't remember the exact time. I think 7 it was maybe five, six years ago.</p> <p>8 Q. What condition were you trying to 9 address?</p> <p>10 A. I was just -- I went through -- I went 11 through a lot of -- because of the whole SkinnyFATS 12 situation, I went through some issues of -- when I 13 left there, it was very emotional for me, so I had 14 to go -- I just wanted to see somebody of a doctor 15 stature, of just talking to somebody and getting my 16 feelings out on the situation.</p> <p>17 Q. The situation was --</p> <p>18 A. Of SkinnyFATS.</p> <p>19 Q. And I think I understand. The SkinnyFATS 20 situation was that you were reducing your role 21 there because of the seizure?</p> <p>22 A. Yes. But I was also -- it was just 23 affecting me in ways because I wasn't able to be 24 there on a continual basis. I wasn't able to do 25 what I planned to do and help the company move</p>

<p style="text-align: right;">Page 46</p> <p>1 forward in the way that I wanted it to move 2 forward.</p> <p>3 Q. And that was psychologically troubling? 4 A. Yes.</p> <p>5 Q. And that's why you saw someone at 6 Pathways for two months five or six years ago? 7 A. Yes.</p> <p>8 Q. Have you had any therapy or counseling or 9 any mental health issues or treatment since then? 10 A. No. About two years ago, I went to see a 11 shaman in Miami, somebody that I'm very close to 12 growing up in high school. I met her out here. We 13 connected through some way. And I knew that she 14 was, you know, training and taking herself to 15 another level in her life, and then I heard she 16 helped one of my other friends, so I went to her. 17 I stayed with her for three months in Miami, and 18 she kind of helped me get back to the happy self 19 that I always was. I mean, the whole situation 20 with SkinnyFATS made me a very negative person.</p> <p>21 Q. The shaman, what's her name? 22 A. Lauren Unger.</p> <p>23 Q. Forgive me. I have some idea about 24 shamans, but maybe you can educate me, how she was 25 helping you.</p>	<p style="text-align: right;">Page 48</p> <p>1 everything. 2 And when I -- when I was -- actually, the 3 way it happened, I was at Fries N' Pies and Mario 4 calls me and says -- it was the day after Fathers' 5 Day, and he said, "Why don't you come over for a 6 barbecue?" I said okay, and then I was driving to 7 his house and I called my business partner because 8 my business partner wanted to do pizzas because we 9 were trying out stuff.</p> <p>10 So he was like, "Why don't we make" -- 11 before I left, he was like, "Why don't we make 12 pizzas today?" And I was like, "Well, I have this 13 barbecue to go to." And I went to the barbecue and 14 the explosion happened.</p> <p>15 But before -- before -- when I was at -- 16 you know, when I was with Lauren, that was right 17 before the time that I opened up Fries N' Pies.</p> <p>18 Q. So I think you said you were living with 19 her for about two months? 20 A. Three months.</p> <p>21 Q. So I gather you had a friendship in 22 addition to the assistance she was giving you? 23 A. Yes.</p> <p>24 Q. At the end of that three months, did you 25 feel like you were back to --</p>
<p style="text-align: right;">Page 47</p> <p>1 A. She would just help me realize like that 2 my life wasn't -- you know, my life's important. 3 It's better to be happy than sad. It's better to 4 be a positive person than being a negative person. 5 So I just -- she just helped me be a better person 6 and find my inner self that I can be happy. And 7 that's where it led to, like.</p> <p>8 You know, after I left her, I was never 9 happier than I ever was. Super contained with 10 myself, content with myself, knew exactly what I 11 wanted. Still know exactly what I want. She just 12 opened my eyes to a lot of different things.</p> <p>13 Q. If I understand correctly, the reason you 14 went to Pathways and the reason you spent time with 15 Lauren Unger, the shaman in Miami, was because of 16 what occurred at SkinnyFATS? 17 A. Mm-hmm.</p> <p>18 Q. Psychologically how that impacted you? 19 A. Yes.</p> <p>20 Q. So you said that was two years ago. Was 21 that before this accident or after? 22 A. It was actually right before this 23 accident. I came back here because I was about to 24 open up Fries N' Pies, and I was going through all 25 the steps of opening Fries N' Pies, hiring, I mean,</p>	<p style="text-align: right;">Page 49</p> <p>1 A. Yeah.</p> <p>2 Q. -- where you wanted to be? 3 A. I felt like a different person.</p> <p>4 Q. Did you feel like -- 5 A. I felt like a million dollars.</p> <p>6 Q. All right. So just before this 7 accident -- 8 A. Yes.</p> <p>9 Q. -- a matter of a few days, you had 10 completed some sort of treatment with Laura Unger 11 in Miami for three months? 12 A. Yes.</p> <p>13 Q. And that was to help you psychologically 14 recover from -- how would you describe it? Was it 15 depression or -- how would you describe your mental 16 state as a result of the SkinnyFATS? 17 A. Depression, negativity, just thinking 18 that everyone was out to get me. I was just a 19 super negative person. And I was trying to do 20 other things, like I started a weekly meal 21 business, but I was still in that negative state of 22 mind where I couldn't get out of it. And that's -- 23 that was why I closed that business.</p> <p>24 But a lot of -- you know, I wasn't the 25 person that I knew I could have been, you know, so</p>

<p style="text-align: right;">Page 50</p> <p>1 that's why I needed help that way.</p> <p>2 Q. But that is, in fact, why you closed or</p> <p>3 at least took yourself out of SkinnyFATS, because</p> <p>4 of the negativity that you were feeling?</p> <p>5 A. Well, because I wasn't -- no. It was</p> <p>6 because I wasn't able to -- from the doctor's</p> <p>7 rules, I wasn't able to work a certain amount of</p> <p>8 time on the line.</p> <p>9 Q. I see. That was because of the epilepsy?</p> <p>10 A. Yes.</p> <p>11 Q. And as a result of that, you had</p> <p>12 psychological issues because you couldn't work</p> <p>13 there as much anymore?</p> <p>14 A. Correct.</p> <p>15 Q. And eventually you left?</p> <p>16 A. Correct.</p> <p>17 Q. The business continued on?</p> <p>18 A. Correct.</p> <p>19 Q. Still thriving today?</p> <p>20 A. Yes.</p> <p>21 Q. Does Mr. Slobusky still work there?</p> <p>22 A. Yes.</p> <p>23 Q. Are you friends?</p> <p>24 A. Are we friends? No, we're not.</p> <p>25 Q. Why not?</p>	<p style="text-align: right;">Page 52</p> <p>1 emotional counseling or therapy of any kind since</p> <p>2 this accident?</p> <p>3 A. Since this accident, I've actually seen a</p> <p>4 rabbi and talked to a rabbi every single day. I</p> <p>5 was never into Judaism before. When I came out</p> <p>6 here, no one even knew I was Jewish. And actually,</p> <p>7 after the -- I never practiced.</p> <p>8 And then after the accident, I actually</p> <p>9 became extremely into religion. The rabbi came to</p> <p>10 the hospital for two hours, sat with me. We did</p> <p>11 tefillin. It was the first time I ever did</p> <p>12 tefillin, and it just opened my eyes to whole</p> <p>13 nother avenue of life.</p> <p>14 Q. I appreciate that. And I hear you saying</p> <p>15 that you became very devout about your religion.</p> <p>16 A. Yes.</p> <p>17 Q. And is that why you were seeing the</p> <p>18 rabbi?</p> <p>19 A. Yes.</p> <p>20 Q. I'm not sure we can separate the two, but</p> <p>21 what I'm really asking is did you feel that you had</p> <p>22 any kind of psychological issues from this</p> <p>23 accident, whether it be depression, anxiety,</p> <p>24 paranoia, or anything like that, that you wanted a</p> <p>25 healthcare professional to help you?</p>
<p style="text-align: right;">Page 51</p> <p>1 A. We just -- we went separate ways after --</p> <p>2 I mean, there was different things that he could</p> <p>3 have done to help me and he chose not to, and</p> <p>4 that's just where it's led to then.</p> <p>5 Q. You had some disagreements with</p> <p>6 Mr. Slobusky?</p> <p>7 A. Yes.</p> <p>8 Q. So you parted ways?</p> <p>9 A. Yes.</p> <p>10 Q. Other than the therapy, I'll call it -- I</p> <p>11 don't know what you say when you see a shaman.</p> <p>12 A. That's fine.</p> <p>13 Q. The therapy that Laura Unger provided,</p> <p>14 did you have any other healthcare from any</p> <p>15 specialist for your psychological condition?</p> <p>16 A. No.</p> <p>17 Q. Take any medication, for example?</p> <p>18 A. No.</p> <p>19 Q. The only medication you've been taking is</p> <p>20 medical marijuana to treat your epilepsy seizures,</p> <p>21 correct?</p> <p>22 A. Correct.</p> <p>23 Q. And that's true to the present time?</p> <p>24 A. Yes.</p> <p>25 Q. Have you had any other psychological,</p>	<p style="text-align: right;">Page 53</p> <p>1 A. I -- at that time I was talking to Lauren</p> <p>2 and the rabbi on a continual basis so I felt that</p> <p>3 it was -- talking to them and dealing with them</p> <p>4 with the issues was enough. And then I started</p> <p>5 cutting time back with talking to Lauren and</p> <p>6 everything was going okay.</p> <p>7 And then, you know, now I actually --</p> <p>8 last Friday I went to a psychologist for evaluation</p> <p>9 and to see, just because a lot of the effects that</p> <p>10 happened due to the -- from the explosion has</p> <p>11 caused emotional and different effects of like --</p> <p>12 you know, I'm not able to work as much. I'm not</p> <p>13 able to work with grills. I'm afraid of grills. I</p> <p>14 used to be a big caterer in town, and now I have to</p> <p>15 ask the person if they have a grill or what I'm</p> <p>16 cooking on because I'm terrified of grills.</p> <p>17 I mean, I worked for a personal -- I'm a</p> <p>18 personal chef right now because I only work a</p> <p>19 certain amount of hours a day because it's too hard</p> <p>20 on my body to do. Like my hands, I've got to be</p> <p>21 very careful with my hands because there's only</p> <p>22 one -- you know, the baby layer of skin now because</p> <p>23 all my skin was taken off when -- in the accident.</p> <p>24 So getting back to that state of being</p> <p>25 able to handle ice cold things and handle hot</p>

<p style="text-align: right;">Page 54</p> <p>1 things, it's been to this day that I've had major 2 problems handling.</p> <p>3 Q. I appreciate you're being very 4 forthcoming and that's helpful, and I'm going to 5 come back and get into those issues in more detail.</p> <p>6 The question right now is just focusing 7 on emotional and psychological issues after the 8 accident. You told me that you have been seeing a 9 rabbi daily since the accident?</p> <p>10 A. Yes.</p> <p>11 Q. Is there anyone else that you talked to, 12 I guess before last Friday, when you had an 13 evaluation, with regard to emotional or 14 psychological issues resulting from this accident?</p> <p>15 A. No. Just the shaman and the rabbi.</p> <p>16 Q. Okay. So you did talk to Lauren after 17 the accident?</p> <p>18 A. Yes.</p> <p>19 Q. And how often did you see her to discuss 20 the accident?</p> <p>21 A. I mean, we talk -- we usually talk every 22 week. After the accident, I was talking to her 23 about two, three times a week.</p> <p>24 Q. Is she still in Miami?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 56</p> <p>1 or is that to help your emotional or psychological 2 issues?</p> <p>3 A. Both.</p> <p>4 Q. Before last Friday, had you seen any 5 medical professional for any psychological issues 6 due to this accident?</p> <p>7 A. No.</p> <p>8 Q. Whose idea was it that you go see this 9 psychological -- go for a psychological evaluation?</p> <p>10 A. Just people around me, my parents, you 11 know, the rabbi. I was talking to Lauren about it 12 and she just said that maybe I should seek medical 13 help to really -- to talk to somebody that can help 14 me with more of understanding things that are 15 happening in my brain and things that are happening 16 due to the -- you know, to the emotional distress 17 of everything that I've dealt with, with the 18 accident.</p> <p>19 Q. What's the name of the doctor or 20 professional you saw for a psychological evaluation 21 last Friday?</p> <p>22 A. It was Dr. Michael-something. I don't 23 remember the last name.</p> <p>24 Q. Did you get any kind of written report or 25 diagnosis?</p>
<p style="text-align: right;">Page 55</p> <p>1 Q. So you talk to her by phone?</p> <p>2 A. Yes.</p> <p>3 Q. How long are these phone calls?</p> <p>4 A. It just depends. When we were talking a 5 lot, it was anywhere from 30 minutes to an 6 hour-plus.</p> <p>7 Q. Talking about the accident and your 8 feelings and so on from the accident?</p> <p>9 A. Yes. And how to get over the -- how to 10 get over it and how to keep maintaining my life of 11 how I left when I -- you know, before the accident. 12 And when I left her and when I felt the way -- you 13 know, I was the happiest I've ever been, and then 14 this explosion happened.</p> <p>15 Q. How long did you talk to Lauren Unger 16 after the accident?</p> <p>17 A. I mean, I talk to her to this day.</p> <p>18 Q. Still two or three times a week?</p> <p>19 A. Now I talk to her maybe once a week.</p> <p>20 Q. Does she charge you for this?</p> <p>21 A. No, she doesn't.</p> <p>22 Q. Just helping as a friend?</p> <p>23 A. Yes.</p> <p>24 Q. And when you're talking to the rabbi, is 25 that about deepening your understanding of religion</p>	<p style="text-align: right;">Page 57</p> <p>1 A. From -- not yet, no.</p> <p>2 Q. We'll come back to that. I want to move 3 on to some other areas first. I think we've 4 covered -- but tell me if I'm wrong -- all of 5 the employment experience you've had before 6 Fries N' Pies?</p> <p>7 A. Yes.</p> <p>8 Q. Did you have before Fries N' Pies -- and 9 I know about the other restaurants -- any other 10 source of income?</p> <p>11 A. No.</p> <p>12 Q. How did you learn how to open a 13 restaurant on the management side? Did you have 14 any schooling or training on how to do that?</p> <p>15 A. No, just learning from people, from 16 on-the-job training.</p> <p>17 Q. So you've had several stabs at this and 18 it appears they were all successful?</p> <p>19 A. Yes.</p> <p>20 Q. Well, I understand what happened with the 21 first Greens operation, where you were forced out. 22 After that, Greens and Protein?</p> <p>23 A. Still operating. Five, I think. I think 24 five or six restaurants now.</p> <p>25 Q. Why are you not associated with that?</p>

<p style="text-align: right;">Page 58</p> <p>1 A. I was just the creator and the developer 2 of the menu.</p> <p>3 Q. You weren't an owner or manager?</p> <p>4 A. No.</p> <p>5 Q. So you had a role to play, but once that 6 was completed, you moved on?</p> <p>7 A. Yes.</p> <p>8 Q. You had no ownership interest?</p> <p>9 A. No.</p> <p>10 Q. And no management responsibility?</p> <p>11 A. No.</p> <p>12 Q. How about Protein House; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. Again, were you the creator?</p> <p>15 A. Creator, concept creator, and then I set 16 up the staff and I put a manager in place and 17 that's why I left that location.</p> <p>18 Q. Did you have any ownership interest?</p> <p>19 A. I had ownership due to the manager that I 20 put in place. The manager did not end up working, 21 so I -- that was where it forfeited.</p> <p>22 Q. I guess I want to make sure we're 23 understanding each other. When I say "ownership 24 interest," I mean --</p> <p>25 A. I do not have any ownership interest at</p>	<p style="text-align: right;">Page 60</p> <p>1 Q. How about Protein --</p> <p>2 A. Protein Source I still work with to this 3 day. And --</p> <p>4 Q. What's your role there?</p> <p>5 A. I've just -- I'm concept creator and 6 menu. To this day, they've had the same menus. 7 That's the same thing with SkinnyFATS. 8 They've had the same menu from day one until now. 9 I was the one that created it.</p> <p>10 Q. So Protein Source, was that like, you 11 told me, Greens and Proteins? You were the 12 creator?</p> <p>13 A. Yes.</p> <p>14 Q. You did haven't any ownership or 15 management involvement?</p> <p>16 A. No. I was a consultant and was paid for 17 it.</p> <p>18 Q. At SkinnyFATS, you told me about that.</p> <p>19 A. Yep.</p> <p>20 Q. Did you have ownership interest in 21 SkinnyFATS?</p> <p>22 A. At the beginning, yes. I was supposed to 23 have a lot more that I had, yes.</p> <p>24 Q. It sounds like you had had a falling out 25 with Mr. Slobusky?</p>
<p style="text-align: right;">Page 59</p> <p>1 this time.</p> <p>2 Q. When you opened Protein House, was there 3 a business agreement that gave you a percentage of 4 the profits?</p> <p>5 A. A percentage based on my management -- if 6 my manager stayed a certain amount of time, that's 7 how I would benefit from it.</p> <p>8 Q. I see. Are you still working with 9 Protein House?</p> <p>10 A. I am not.</p> <p>11 Q. Why not?</p> <p>12 A. I put in a manager and the manager didn't 13 work, so we severed ties after that. There was 14 no -- it was -- everything was fine.</p> <p>15 Q. Why didn't the manager work out?</p> <p>16 A. He just had -- he was a different manager 17 style than they wanted, and he just -- I thought he 18 was perfect for the situation, but he's a little 19 overweight and he's -- this is a health food store, 20 and it's different to -- it's different lifestyle, 21 and it just didn't work for him.</p> <p>22 Q. Did you try to find a health-nut manager 23 to take his place?</p> <p>24 A. They just chose to -- they were going to 25 do it themselves.</p>	<p style="text-align: right;">Page 61</p> <p>1 A. Yes.</p> <p>2 Q. Otherwise you would still be there 3 perhaps in a management capacity?</p> <p>4 A. Yeah, in a different way of working the 5 line, but yeah -- I mean, not working the line, but 6 yes.</p> <p>7 Q. With some ownership interest originally?</p> <p>8 A. Yes. Yes.</p> <p>9 Q. All right. So we've been going about an 10 hour. Do you want to take a break?</p> <p>11 A. I'm good.</p> <p>12 MR. McMULLEN: Is everybody else okay?</p> <p>13 ^^male speaker: Maybe a quick break.</p> <p>14 MR. McMULLEN: Five minutes? Let's take 15 five minutes.</p> <p>16 THE VIDEOGRAPHER: The time is 17 approximately 10:35 a.m. We're off the record. 18 (Recess had.)</p> <p>19 THE VIDEOGRAPHER: We're back on the 20 record. The time is approximately 10:48 a.m.</p> <p>21 BY MR. McMULLEN:</p> <p>22 Q. Josh, we're back after a break.</p> <p>23 Do you feel all right today? You okay 24 continuing?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 62</p> <p>1 Q. Anything you need to change or add to any</p> <p>2 answers before?</p> <p>3 A. No.</p> <p>4 Q. Okay. You mentioned that you speak with</p> <p>5 a rabbi daily and I just probably should get the</p> <p>6 name of that rabbi. What's his name?</p> <p>7 A. Motti Harlig, M-o-t-t-i, H-a-r-l-i-g.</p> <p>8 Q. H-a-r-l-i-g?</p> <p>9 A. Yes.</p> <p>10 MR. McMULLEN: Let's go off the record.</p> <p>11 THE VIDEOGRAPHER: The time is 10:49 a.m.</p> <p>12 We are off the record.</p> <p>13 (Recess had.)</p> <p>14 THE VIDEOGRAPHER: We're back on the</p> <p>15 record. The time is approximately 10:55 a.m.</p> <p>16 BY MR. McMULLEN:</p> <p>17 Q. Josh, we had another break thanks to the</p> <p>18 air blower outside. We're going to try again here.</p> <p>19 You had just given me the name of your</p> <p>20 rabbi. What synagogue is that?</p> <p>21 A. Chabad of Las Vegas. It's on Arville and</p> <p>22 Charleston.</p> <p>23 Q. How long have you known the rabbi there?</p> <p>24 A. Two and a half years or two years -- how</p> <p>25 long has it been since the accident? So the time</p>	<p style="text-align: right;">Page 64</p> <p>1 told you before, and I used to do a lot of quick</p> <p>2 setups, which means taking propane tanks and</p> <p>3 setting them up and putting them onto equipment</p> <p>4 that I need to use for the catering, which could be</p> <p>5 a fryer. The grills were run off propane. I mean,</p> <p>6 anything that's portable runs off propane. So I</p> <p>7 would be dealing with that a lot.</p> <p>8 Q. That's grills. What else?</p> <p>9 A. Grills, friers. I mean, anything you can</p> <p>10 physically rent from a kitchen that has a gas</p> <p>11 outlet or something that has to be, you know,</p> <p>12 generated by gas, that was -- that the way we used</p> <p>13 it was through propane.</p> <p>14 Q. And this was during your catering</p> <p>15 business. How long did you do that?</p> <p>16 A. Two, three years, and then, you know,</p> <p>17 with SkinnyFATS, I did a lot of catering for them.</p> <p>18 And then -- I mean, when I set up a lot of the</p> <p>19 other restaurants like Protein House, I helped with</p> <p>20 configuring all the equipment. So I had to -- you</p> <p>21 know, not propane technically, but gas lines, and</p> <p>22 so I -- and especially with Fries N' Pies, I went</p> <p>23 through all the building stages of that.</p> <p>24 So knowing about gas lines, knowing about</p> <p>25 propane, knowing about how to operate with gas and</p>
<p style="text-align: right;">Page 63</p> <p>1 since -- from the accident to now.</p> <p>2 Q. And you've seen him daily since the</p> <p>3 accident?</p> <p>4 A. Yeah. I've seen him pretty much daily</p> <p>5 since the accident. I talk to him every single</p> <p>6 day.</p> <p>7 Q. Is there anyone other than the rabbi and</p> <p>8 Lauren who you've turned to for any guidance or</p> <p>9 support due to this accident?</p> <p>10 A. I mean, just my parents, but that's just,</p> <p>11 you know, talking to my parents like parents.</p> <p>12 Q. Sure.</p> <p>13 So I'm going to change gears and ask you</p> <p>14 a little bit about propane and propane appliances</p> <p>15 and equipment. I just want to get an idea of what</p> <p>16 your knowledge is about that.</p> <p>17 I know that you had used -- based on</p> <p>18 interrogatory responses, you had used Mr. Gonzalez'</p> <p>19 grill one time before the accident date?</p> <p>20 A. Yes.</p> <p>21 Q. And we will get back to that.</p> <p>22 What other experience have you had before</p> <p>23 the accident with propane equipment?</p> <p>24 A. Well, I -- sorry.</p> <p>25 I used to do a lot of a catering, like I</p>	<p style="text-align: right;">Page 65</p> <p>1 how to operate with all those types of things that</p> <p>2 have to do with the kitchen and, you know, all the</p> <p>3 equipment. I'm pretty -- you know, I would say I'm</p> <p>4 pretty self-sufficient and know what I'm doing with</p> <p>5 equipment.</p> <p>6 Q. So that was part of your professional</p> <p>7 life to know how to use that equipment?</p> <p>8 A. Yes.</p> <p>9 Q. And how to use it safely?</p> <p>10 A. Yes.</p> <p>11 Q. And that would be -- it sounds like when</p> <p>12 you were catering you used all different kinds of</p> <p>13 propane equipment, including grills, at the</p> <p>14 customer site?</p> <p>15 A. Yes.</p> <p>16 Q. And when it comes to the various</p> <p>17 restaurants you told me about, did they all use gas</p> <p>18 equipment?</p> <p>19 A. Most -- a lot of them, except SkinnyFATS</p> <p>20 used all electrical equipment.</p> <p>21 Q. So the ones that used gas, I imagine was</p> <p>22 that natural gas on the utility line?</p> <p>23 A. Yes.</p> <p>24 Q. But you were equally attentive to the gas</p> <p>25 equipment when it was inside the restaurant?</p>

<p style="text-align: right;">Page 66</p> <p>1 A. Yes.</p> <p>2 Q. That was part of your job?</p> <p>3 A. Yes. And when I do -- when I did a lot</p> <p>4 of catering stuff before, I did -- you know, I did</p> <p>5 a lot of, like I said -- and I used to use a lot of</p> <p>6 barbecue grills out at other people's houses that</p> <p>7 were generated through propane and I never had a</p> <p>8 problem before.</p> <p>9 Q. I saw something -- I don't remember if it</p> <p>10 was in an interrogatory or social media -- I think</p> <p>11 you said something like, as a professional chef,</p> <p>12 that friends often ask you for help when cooking or</p> <p>13 grilling. Does that ring a bell?</p> <p>14 A. Yes.</p> <p>15 Q. What did you mean by that?</p> <p>16 A. Oh, I mean when I'm at somebody's house</p> <p>17 or just chilling or just hanging out and they say,</p> <p>18 "Oh, we've got a chef here. Let him help me." Or,</p> <p>19 "You know how to cook. Jump on the grill." There</p> <p>20 is always someone referring to me as helping them</p> <p>21 cook.</p> <p>22 Q. So during your catering business which</p> <p>23 you had for two or three years, was it a regular</p> <p>24 assignment to set up propane grills at a customer</p> <p>25 location?</p>	<p style="text-align: right;">Page 68</p> <p>1 grill all the time and had no problems.</p> <p>2 Q. Did you use propane at home? Just</p> <p>3 curious.</p> <p>4 A. When I was younger, I used propane. My</p> <p>5 dad actually is a big guy on charcoal, so he</p> <p>6 started to move grills to charcoal.</p> <p>7 Q. Do you happen to recall who your propane</p> <p>8 supplier was when you used propane at home?</p> <p>9 A. No, I don't.</p> <p>10 Q. Do you own a grill yourself?</p> <p>11 A. Right now?</p> <p>12 Q. Yes.</p> <p>13 A. I don't.</p> <p>14 Q. Did you at one time?</p> <p>15 A. At the places that I currently lived at</p> <p>16 that time, we did have grills that I used.</p> <p>17 Q. Including propane grills?</p> <p>18 A. Yes.</p> <p>19 Q. And you used those?</p> <p>20 A. Yes.</p> <p>21 Q. Did you ever see or read a manual for a</p> <p>22 propane grill?</p> <p>23 A. I mean, I've read about propane and how</p> <p>24 to be careful with propane and how to -- you know,</p> <p>25 how to operate it, what happens if it's on and you</p>
<p style="text-align: right;">Page 67</p> <p>1 A. Yes. We would do that pretty regularly.</p> <p>2 Q. Would that include grills that were</p> <p>3 similar to Mr. Gonzalez' grill?</p> <p>4 A. It was just propane tanks that we would</p> <p>5 set up to -- you know, a free-standing grill or</p> <p>6 free-standing friers or stuff like that, which are</p> <p>7 actually more dangerous than a grill that's built</p> <p>8 into a system.</p> <p>9 Q. You know, I'm glad you made that</p> <p>10 distinction. So Mr. Gonzalez' grill operated on</p> <p>11 propane, but it was piped into a residential</p> <p>12 propane service, right?</p> <p>13 A. Yes.</p> <p>14 Q. And the catering jobs you had where you</p> <p>15 set up a propane grill used a portable cylinder?</p> <p>16 A. Yes, sometimes. And then sometimes, like</p> <p>17 I said, I left -- I would work at people's houses</p> <p>18 that had grills that would use the same way at</p> <p>19 Mario's house with the propane tanks and the same</p> <p>20 way and I never had an issue before.</p> <p>21 Q. I see. So it was hard-piped into an</p> <p>22 existing residential propane system?</p> <p>23 A. Yes. Because a lot of the places that I</p> <p>24 have worked before are, you know, high-end people</p> <p>25 that had -- you know, Dan Bilzerian, I used his</p>	<p style="text-align: right;">Page 69</p> <p>1 don't -- and you smell it and all different types</p> <p>2 of things that pertain to propane because of my job</p> <p>3 before.</p> <p>4 Q. Sure.</p> <p>5 So you have read safety information about</p> <p>6 propane and how to use a propane grill safely?</p> <p>7 A. Yes.</p> <p>8 Q. And that was important to you because not</p> <p>9 only as a professional, but also for safety</p> <p>10 reasons, you would want to read that information</p> <p>11 before you used the equipment; is that right?</p> <p>12 A. Yes.</p> <p>13 Q. All right. So I guess you've had lots of</p> <p>14 experience making a connection to a propane</p> <p>15 cylinder or turning a valve on or off for a propane</p> <p>16 grill like the one that Mario had?</p> <p>17 A. Yes.</p> <p>18 Q. For probably many years?</p> <p>19 A. Yes.</p> <p>20 Q. Okay. So talking about propane itself,</p> <p>21 this might help us.</p> <p>22 MR. McMULLEN: Let's mark this, please.</p> <p>23 (Exhibit Number 1 was marked.)</p> <p>24 BY MR. McMULLEN:</p> <p>25 Q. Josh, I've handed you a document that's</p>

<p style="text-align: right;">Page 70</p> <p>1 in the case. It's been Bates-stamped with little 2 FG numbers in the bottom right. This is FG19 3 through 28. 4 And the reason I'm sharing it with you is 5 this is actually the new customer letter that 6 Ferrellgas sent to Mario. And if you go to FG25, 7 FG25 through 28 is a propane safety brochure. 8 Have you seen something like this before? 9 A. I've seen this on other things, yes. 10 Q. All right. So you knew before the 11 accident, for example, that propane has an odor to 12 it? 13 A. Yes. 14 Q. And that's a warning agent so you can 15 smell leaking gas? 16 A. Yes. 17 Q. Did you know what that smelled like 18 before the accident? 19 A. I have smelt it before, yes. 20 Q. Under what circumstances did you make 21 that -- did you smell it? 22 A. I've smelt it when other tanks or other, 23 you know, before when I've been in catering 24 instances, the tank hasn't worked or it's maybe -- 25 the malfunction of it is wrong, so you can smell</p>	<p style="text-align: right;">Page 72</p> <p>1 Q. You knew, of course, that it should be 2 handled very carefully? 3 A. Yes. 4 Q. So just looking at this brochure, it has 5 a section here about "If you smell gas, avoid 6 flames or sparks. Leave the area immediately. 7 Shut off the gas." 8 Did you know that before this accident? 9 A. Before the accident, yes. 10 Q. So I need to ask you a few other 11 questions about background. And I won't dwell on 12 them, but I need to ask you a few things simply to 13 do my job here. 14 In response to interrogatories about any 15 criminal history, you responded that you were 16 arrested for an unpaid parking ticket but no 17 charges were filed; is that right? 18 A. Yes. 19 MR. PFAU: Okay. I'd like to object to 20 that question. Past criminal history has no 21 relevance. 22 BY MR. McMULLEN: 23 Q. Have you had any other arrests other than 24 that one you told us about? 25 MR. PFAU: Object to the form. Past</p>
<p style="text-align: right;">Page 71</p> <p>1 that it's wrong, or the connections not hooked up 2 all the way and you could smell it and I would 3 know. 4 Q. What does it smell like? 5 A. Like a foul odor, in a way. 6 Q. Would rotten eggs come to mind -- 7 A. Yeah. 8 Q. -- something like that? 9 Did you know what to do if you smelled 10 that odor? 11 A. I mean, I would just shut it off and 12 either get a new tank or find a solution and not 13 use it. 14 Q. Did you know that if you smelled that 15 odor, it could be the warning of a leak? 16 A. Yes. 17 Q. And that you should turn it off and get 18 away? 19 A. Yes. 20 Q. You knew that propane, obviously, is 21 flammable and explosive? 22 A. Yes. 23 Q. Did you know it was heavier than air 24 before this accident? 25 A. Yes.</p>	<p style="text-align: right;">Page 73</p> <p>1 criminal history has no relevance. 2 BY MR. McMULLEN: 3 Q. You can answer the question. 4 A. I was arrested for a DWI. 5 Q. When did that happen? 6 A. Five years ago, maybe. Maybe seven or 7 eight years ago, actually. 8 Q. We have the date on that as July 10, 9 2014. Does that sound right? 10 A. Yes. 11 Q. What happened? 12 MR. PFAU: Objection. It carries forward 13 from those questions anything related to past 14 criminal history. 15 BY MR. McMULLEN: 16 Q. You can answer. 17 A. I had people in the car and we were 18 smoking marijuana and a bike cop pulled up on the 19 side and saw that there was smoke in the car and 20 told me to roll down the windows. 21 When I rolled down the windows, he asked 22 me to step out and I did so, and then he did a test 23 and he said I failed, but... 24 Q. According to the records, a bench warrant 25 was issued as a result of that incident.</p>

<p style="text-align: right;">Page 74</p> <p>1 MR. PFAU: Same objections.</p> <p>2 BY MR. McMULLEN:</p> <p>3 Q. Do you recall that warrant was issued?</p> <p>4 MR. PFAU: Same objections.</p> <p>5 THE WITNESS: No.</p> <p>6 BY MR. McMULLEN:</p> <p>7 Q. How was it resolved?</p> <p>8 MR. PFAU: Same objections apply to the</p> <p>9 line of questioning related to past criminal</p> <p>10 history.</p> <p>11 BY MR. McMULLEN:</p> <p>12 Q. You can answer.</p> <p>13 A. I had a lawyer.</p> <p>14 Q. Did you plead or what happened? Was it</p> <p>15 reduced?</p> <p>16 A. No. It was just reduced and it was</p> <p>17 dropped.</p> <p>18 Q. Any other arrests or criminal history?</p> <p>19 A. No.</p> <p>20 MR. PFAU: Same objections related to</p> <p>21 past criminal history.</p> <p>22 Josh, slow down a little bit.</p> <p>23 MR. McMULLEN: He needs to have a chance</p> <p>24 to object.</p> <p>25 / / /</p>	<p style="text-align: right;">Page 76</p> <p>1 A. I believe so.</p> <p>2 Q. How was it resolved?</p> <p>3 A. I've been paying payments to them.</p> <p>4 Q. Any other tax liens?</p> <p>5 MR. PFAU: Same objections --</p> <p>6 THE WITNESS: Not that I know of.</p> <p>7 MR. PFAU: -- to past criminal history</p> <p>8 line of questioning.</p> <p>9 BY MR. McMULLEN:</p> <p>10 Q. So you've explained, moving on, that for</p> <p>11 epilepsy, you use marijuana for medical reasons.</p> <p>12 So I presume you have a medical prescription for</p> <p>13 marijuana?</p> <p>14 A. I had a medical -- I had a medical card</p> <p>15 that I used to use, but now because of the state</p> <p>16 laws, it's -- you know, you can get it without a</p> <p>17 medical card. But at the -- I did have a medical</p> <p>18 card before it became legal.</p> <p>19 Q. Was that through Dr. Evangelista?</p> <p>20 A. It was not. It was through another</p> <p>21 doctor.</p> <p>22 Q. Do you recall what the prescription was</p> <p>23 for in terms of what type of marijuana and what</p> <p>24 dosage and how frequently you were to use it for</p> <p>25 medical purposes?</p>
<p style="text-align: right;">Page 75</p> <p>1 BY MR. McMULLEN:</p> <p>2 Q. So tax liens. I understand you had a</p> <p>3 couple of IRS tax liens?</p> <p>4 MR. PFAU: Same objections related to</p> <p>5 past criminal history.</p> <p>6 BY MR. McMULLEN:</p> <p>7 Q. A tax lien in April 2013 for a business</p> <p>8 debt just under \$5,000? Does that ring a bell?</p> <p>9 MR. PFAU: Same objections apply.</p> <p>10 THE WITNESS: ^^Does it recall? No.</p> <p>11 BY MR. McMULLEN:</p> <p>12 Q. You don't remember that or is it</p> <p>13 incorrect?</p> <p>14 A. I don't remember it.</p> <p>15 Q. Do you remember an IRS federal tax lien</p> <p>16 that was filed in 2011 for an individual debt in</p> <p>17 the amount of \$12,000?</p> <p>18 MR. PFAU: Same objections.</p> <p>19 BY MR. McMULLEN:</p> <p>20 Q. \$12,915?</p> <p>21 MR. PFAU: Same objections related to</p> <p>22 past criminal history.</p> <p>23 THE WITNESS: Yes.</p> <p>24 BY MR. McMULLEN:</p> <p>25 Q. Was that resolved?</p>	<p style="text-align: right;">Page 77</p> <p>1 A. Well, it was a marijuana that contained</p> <p>2 CBD. CBD is a cannabinoid from the THC plant that</p> <p>3 helps you with your relaxation, nervous -- your</p> <p>4 joints, things in the brain that, you know,</p> <p>5 technically, I'm not a doctor, so I can't tell you,</p> <p>6 but the cannabinoids from the -- it's one of the</p> <p>7 biggest reasons why people smoke marijuana, is to</p> <p>8 cure -- or not to cure, but to help epilepsy.</p> <p>9 The number one lady -- and it's called</p> <p>10 Charlotte's Web. It's the number one CBD marijuana</p> <p>11 in the United States and that is controlled for</p> <p>12 epilepsy itself.</p> <p>13 Q. I appreciate that. My questions are more</p> <p>14 specific. If you recall, what I'm asking is when</p> <p>15 you first obtained a prescription for medical</p> <p>16 marijuana, do you recall what the prescription said</p> <p>17 about the type of marijuana and how much and how</p> <p>18 frequently you should use it for medical purposes?</p> <p>19 A. It was a 2:1 ratio of THC to CBD, so it</p> <p>20 had 2:1 ratio of -- the THC was two parts to one of</p> <p>21 the CBD. And I used to take a tincture under my</p> <p>22 tongue.</p> <p>23 Q. Do they quantify that in the</p> <p>24 prescription, how much you're supposed to use?</p> <p>25 A. It was just a drop.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q. And how often were you supposed to use 2 it?</p> <p>3 A. I used it every day.</p> <p>4 Q. You'd just take a drop of this under your 5 tongue?</p> <p>6 A. Yes.</p> <p>7 Q. How often each day?</p> <p>8 A. Once a day.</p> <p>9 Q. So one drop once a day under your tongue?</p> <p>10 A. One --</p> <p>11 Q. Pinch?</p> <p>12 A. Well, it's full -- it's a droplet, like a 13 dropper, so you take the whole dropper.</p> <p>14 Q. Okay. One dropper under your tongue once 15 a day, that was the prescription?</p> <p>16 A. Yes.</p> <p>17 Q. Do you continue to do that?</p> <p>18 A. Yes. I take it now, yes.</p> <p>19 Q. In the same way?</p> <p>20 A. Yes.</p> <p>21 Q. The same amount?</p> <p>22 A. Yes.</p> <p>23 Q. So as you pointed out, I am aware that in 24 Nevada since January 1 of '17, marijuana is legal 25 for recreational use.</p>	<p style="text-align: right;">Page 80</p> <p>1 asking, on average, each day, how much do you 2 smoke?</p> <p>3 A. I mean, it's -- it could be at least a 4 half a gram to, you know, maybe two grams, but it 5 just depends on the day. It depends on how I'm 6 feeling. Like I said, I don't overdo it. I do it 7 for medical purposes. I do it because it helps my 8 headaches. I mean, that's the reason, is it helps 9 my headaches and I haven't had a seizure for three 10 and a half years.</p> <p>11 Q. Are you familiar with the Nevada 12 marijuana law restrictions on recreational use?</p> <p>13 A. In what regards?</p> <p>14 Q. Let me rephrase the question. 15 Are you familiar with the restrictions 16 imposed by Nevada law on recreational marijuana 17 use?</p> <p>18 A. I mean, you can't have more than an ounce 19 of weed on you or you can't -- is that what you're 20 looking for?</p> <p>21 Q. I'm just asking for your understanding of 22 what the law is on limitations for recreational 23 use.</p> <p>24 You mentioned one of them. You can't 25 have more than an ounce on your person?</p>
<p style="text-align: right;">Page 79</p> <p>1 A. Yes.</p> <p>2 Q. Do you use marijuana recreationally?</p> <p>3 A. I use marijuana because it helps me with 4 my seizures, and I haven't had a seizure in two and 5 a half years.</p> <p>6 Q. I mean, beyond what you told me the 7 prescription called for, which was one drop under 8 your -- one dropper under your tongue per day, do 9 you use marijuana beyond that?</p> <p>10 A. I do. I smoke maybe one -- you know, I 11 don't overdo it. I take one hit here and there 12 because I have extremely bad headaches due to -- 13 due to this accident and due to the epilepsy. So 14 that's -- that's why. If I get -- if I get 15 headaches, I take a little puff here and there and 16 it helps me. Controls my nerves in my brain or 17 whatever.</p> <p>18 Q. When you say "a hit here and there," do 19 you smoke daily?</p> <p>20 A. I do.</p> <p>21 Q. How much?</p> <p>22 A. I mean, I take a hit at one -- you know, 23 it just depends on if I -- my headaches and stuff 24 like that. That's really what it depends on.</p> <p>25 Q. So you say you smoke daily, and I'm just</p>	<p style="text-align: right;">Page 81</p> <p>1 A. Yes. You're not allowed to have 2 not-sealed or quick -- you know, have it to your 3 ability in the car, like, you know. You can't have 4 it accessible.</p> <p>5 Q. You can't smoke in public, correct?</p> <p>6 A. Yes.</p> <p>7 Q. You can't drive under the influence, 8 correct?</p> <p>9 A. Yes.</p> <p>10 Q. You can only buy it from the state, 11 correct?</p> <p>12 A. Yes.</p> <p>13 Q. And you can only have a limited amount at 14 one time?</p> <p>15 A. Yes.</p> <p>16 Q. Your understanding is no more than an 17 ounce; is that correct?</p> <p>18 A. Yes.</p> <p>19 Q. Have you ever violated any of those 20 restrictions?</p> <p>21 A. No.</p> <p>22 Q. So you told us in response to 23 interrogatories that you smoked marijuana the day 24 of the accident before the accident happened, and I 25 want to ask a few questions about that.</p>

<p style="text-align: right;">Page 82</p> <p>1 We will talk about the accident day in 2 more detail, but I understand Mr. Gonzalez invited 3 you over to cook steaks at -- he said come over 4 about 6:30 p.m.? Does that sound right? 5 A. Yes. 6 Q. What time did you actually arrive? Do 7 you know? 8 A. I believe at around -- between 6:15 and 9 6:30. 10 Q. Did you smoke marijuana with Mr. Gonzalez 11 that evening after you arrived? 12 A. I believe -- from my recollection, I 13 believe we did at that time. 14 Q. Was that shortly after you arrived? 15 A. Yes. It was right before the accident. 16 Q. The accident happened at about 7:00 -- 17 what time? Do you know? 18 A. I don't remember exactly on the time. 19 Q. There's a medical record indicating you 20 were admitted at about 7:30, I believe. 21 What's your best estimate as to when the 22 accident occurred? 23 A. About 7:00 o'clock. 24 Q. What did -- specifically, do you know 25 what type of marijuana you and Mr. Gonzalez were</p>	<p style="text-align: right;">Page 84</p> <p>1 it does on other people with me. 2 Q. How does THC affect you? 3 A. It helps my -- it helps control the 4 nervousness of my brain and stuff that -- it helps 5 me relax, helps my anxiety levels, and it just 6 helps keep me calm. 7 Q. Does it have any other effect? 8 A. No. 9 Q. Have you ever known marijuana to impact 10 your judgment in any way? 11 A. No. 12 Q. How about your ability to perceive, 13 smell, taste, see, hear? 14 A. No. 15 Q. How about reaction time? 16 A. No. 17 Q. So your testimony is that whether it's 18 medical or recreational use of marijuana, it has no 19 impact on you other than calming you down? 20 A. Exactly. 21 Q. So you were sharing marijuana with 22 Mr. Gonzalez right before the accident, true? 23 A. I believe so. 24 Q. How much marijuana did he ingest or take 25 in?</p>
<p style="text-align: right;">Page 83</p> <p>1 smoking before the accident? 2 A. No. It was his. 3 Q. How much marijuana did you smoke? 4 A. I took one hit of a bowl. 5 Q. Does one hit literally mean just one 6 puff? 7 A. Yes. 8 Q. You said in response to interrogatories 9 that as a frequent smoker of medical marijuana, 10 that marijuana, quote, "does not have much of an 11 effect on his mental capacity," ending quote. Is 12 that correct? 13 A. Yes. 14 Q. What does that mean? 15 A. It means I can do the same stuff that I 16 do when I'm not high, when I'm high, and it has no 17 effect to me. 18 Q. Well, you said it does not have much 19 effect. So I presume it has some effect? 20 A. I mean, obviously, weed has a THC 21 component which makes you high. To a lot of other 22 people, it makes you tired, it makes you not alert, 23 it makes you maybe change your ways or your 24 decisions. But in my regards with marijuana, with 25 marijuana use, it doesn't have the same effects as</p>	<p style="text-align: right;">Page 85</p> <p>1 A. I believe one hit as well. 2 Q. We will get into later -- we have some 3 social media and texting that I understand that you 4 and Mr. Gonzalez are good friends. True? 5 A. Yes. 6 Q. And he's invited you over to his house on 7 many -- 8 A. Yes. 9 Q. -- occasions for grilling, true? 10 A. Yes. 11 Q. And on those occasions it's common that 12 you all will share some marijuana, true? 13 A. Yes. 14 Q. And on those occasions is it the case 15 that you and Mr. Gonzalez only have one puff each? 16 A. Sometimes. I mean, we -- as both 17 smokers, we don't overdo it. I mean, we don't 18 smoke like other people just, you know, to be 19 nonfunctional. You know, I don't do it for that 20 purpose. 21 Q. Have you ever done that? 22 A. Smoked to get to the point where I'm 23 belligerent? 24 Q. No, just smoked to where you've overdone 25 it, in your view.</p>

<p style="text-align: right;">Page 86</p> <p>1 A. No.</p> <p>2 Q. Never?</p> <p>3 A. No. I mean, when I first -- I never</p> <p>4 over -- even when I was young, you know, I never</p> <p>5 overdid it, no.</p> <p>6 Q. Do you have rules for employees at the</p> <p>7 various restaurants you've opened about safety</p> <p>8 rules for operating cooking equipment, including</p> <p>9 gas grills and ovens?</p> <p>10 A. For -- in my restaurants, the manuals --</p> <p>11 I do have manuals for the, like, pizza oven and for</p> <p>12 the grills and stuff that they had -- they were</p> <p>13 allowed to look at or, you know, had privy to the</p> <p>14 information to go to.</p> <p>15 Q. Did those rules include that you do not</p> <p>16 want an employee who's operating a gas oven or</p> <p>17 other gas equipment -- you do not want them to be</p> <p>18 ingesting alcohol, marijuana, or other drugs while</p> <p>19 they're cooking; is that true?</p> <p>20 A. Yes. But I also had rules that if you</p> <p>21 had a medical condition or had something that</p> <p>22 made -- you know. If you were using marijuana for</p> <p>23 a medical purpose, it was a different sort of</p> <p>24 situation.</p> <p>25 Q. Sure. Because that would be a doctor's</p>	<p style="text-align: right;">Page 88</p> <p>1 What's the purpose of that rule?</p> <p>2 A. I mean, the purpose of it is that, you</p> <p>3 know, you don't want anyone drinking, you know,</p> <p>4 doing anything that can inhibit their</p> <p>5 decision-making with the gas grill.</p> <p>6 Q. Because, as you testified before, you</p> <p>7 want to handle gas carefully?</p> <p>8 A. Yes. And other -- but like I said</p> <p>9 before, in my situation, I have smoked marijuana</p> <p>10 and handled equipment from -- my whole life.</p> <p>11 Q. Regarding medicinal use of marijuana?</p> <p>12 A. Yes. And I know how -- you know, and</p> <p>13 that's also, with my employees, you know, I know</p> <p>14 who's telling the truth, who's not telling the</p> <p>15 truth, and who -- you know.</p> <p>16 Q. Just so we're on the same page, I'm</p> <p>17 talking about a rule that says "Recreational use of</p> <p>18 marijuana is prohibited for employees who are</p> <p>19 operating gas equipment." True?</p> <p>20 A. Yes. But that's anywhere in an</p> <p>21 establishment, when you sign paperwork -- when you</p> <p>22 sign paperwork saying that you're going to join</p> <p>23 a -- to join their group or their restaurant or</p> <p>24 whatever it is, you sign paperwork stating that,</p> <p>25 you know, you know the situation and you will not</p>
<p style="text-align: right;">Page 87</p> <p>1 prescription for a particular medical treatment,</p> <p>2 right?</p> <p>3 A. Correct.</p> <p>4 Q. But otherwise, your rules at the</p> <p>5 restaurants for employees using gas equipment is</p> <p>6 that they would not be allowed to use recreational</p> <p>7 marijuana or drink alcohol or take other drugs</p> <p>8 before operating that equipment, true?</p> <p>9 A. Yes.</p> <p>10 Q. Did that rule apply to you also?</p> <p>11 A. In what regards? In regards of my</p> <p>12 restaurant or in regards of being outdoors at a</p> <p>13 location?</p> <p>14 Q. At any time did you apply that rule to</p> <p>15 yourself?</p> <p>16 A. I have, but also because of my medical</p> <p>17 conditions, I -- you know, sometimes I do smoke for</p> <p>18 headaches and other purposes that I -- you know,</p> <p>19 which helps me with my condition.</p> <p>20 Q. Right. I'm talking about other than for</p> <p>21 medical purposes.</p> <p>22 A. No.</p> <p>23 Q. Why would you have a rule for employees</p> <p>24 that you don't want them smoking marijuana</p> <p>25 recreationally before they operate gas equipment?</p>	<p style="text-align: right;">Page 89</p> <p>1 use drugs or alcohol.</p> <p>2 Q. Employees have to sign that they will</p> <p>3 follow those rules.</p> <p>4 A. Correct.</p> <p>5 Q. That's required for their employment.</p> <p>6 A. Correct.</p> <p>7 Q. And in part, that's for their safety and</p> <p>8 the safety of people in the restaurant?</p> <p>9 A. Yes.</p> <p>10 Q. Let's talk about the grill that was</p> <p>11 involved in this accident.</p> <p>12 So you told us that you were at the</p> <p>13 Gonzalez residence on one previous occasion where</p> <p>14 you were using the grill -- I think you said for a</p> <p>15 large party?</p> <p>16 A. Yes.</p> <p>17 Q. I want to ask you about that.</p> <p>18 Do you remember roughly when that</p> <p>19 occurred or how long before this accident?</p> <p>20 A. I don't. Within a year, I believe, but</p> <p>21 I'm not sure exactly.</p> <p>22 Q. You said in an interrogatory that you</p> <p>23 were using it on and off for an entire day.</p> <p>24 Do you remember that?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 90</p> <p>1 Q. What kind of party was it?</p> <p>2 A. A pool party.</p> <p>3 Q. How many people were there?</p> <p>4 A. Over 20.</p> <p>5 Q. Do you remember what you were cooking?</p> <p>6 A. I did an omelette station and different</p> <p>7 stuff like that for a brunch.</p> <p>8 Q. So you were cooking throughout the day,</p> <p>9 different things?</p> <p>10 A. Yeah.</p> <p>11 Q. When you say for an entire day, is that</p> <p>12 eight hours? Ten hours? How long were you there?</p> <p>13 A. About six to eight hours.</p> <p>14 Q. Cooking the whole time?</p> <p>15 A. On and off, yes.</p> <p>16 Q. So you start with the breakfast item,</p> <p>17 brunch item, dinner item; is that how it worked?</p> <p>18 A. No. I mean, you know, you have brunch</p> <p>19 items, hot dogs, hamburgers.</p> <p>20 Q. A variety of food?</p> <p>21 A. Yes.</p> <p>22 Q. Who else was cooking at that time?</p> <p>23 A. No one, I believe.</p> <p>24 Q. Do you remember who else was there</p> <p>25 besides you and Mr. Gonzalez, perhaps his wife?</p>	<p style="text-align: right;">Page 92</p> <p>1 I'm not sure exactly because there was a flat top</p> <p>2 that he brought in to use. We had another grill to</p> <p>3 use. So I don't remember if that was the time or</p> <p>4 not, but there was another grill that I used</p> <p>5 because there was something wrong with either --</p> <p>6 there was something wrong with that grill or -- but</p> <p>7 I know that there was -- you know, I knew of the</p> <p>8 problem of that grill.</p> <p>9 And then -- and then that's when I --</p> <p>10 when I came back this day, to this day I came back</p> <p>11 and I said -- you know, when we sat at the table, I</p> <p>12 said, "Mario, is the grill good?"</p> <p>13 He's like, "Yes. Ferrellgas just came</p> <p>14 two days before and said okay, signed off on it,"</p> <p>15 blah, blah, blah, blah, blah. Everything was good.</p> <p>16 And then he started -- he's like "Okay,</p> <p>17 I'm going to put these steaks on." He started</p> <p>18 putting the steaks on the grill. And --</p> <p>19 Q. Rest assured, we're going to talk about</p> <p>20 that and I want to know all those details. I</p> <p>21 appreciate your patience.</p> <p>22 Before I get to the accident in this</p> <p>23 case, I'm asking about the history of the grill</p> <p>24 before that. And in your interrogatory responses</p> <p>25 you said there was a previous occasion, which we</p>
<p style="text-align: right;">Page 91</p> <p>1 A. I mean, his wife and his friends. I</p> <p>2 don't remember exactly.</p> <p>3 Q. I think you told me that was within a</p> <p>4 year before this accident?</p> <p>5 A. I would say.</p> <p>6 Q. Were there any problems with the</p> <p>7 operation of the grill at that time that you can</p> <p>8 recall?</p> <p>9 A. No, not at the time.</p> <p>10 Q. We're talking about the first time now.</p> <p>11 A. The first time, no. There was another</p> <p>12 time that the grill didn't work at his house. I</p> <p>13 don't believe we used it. And that's when</p> <p>14 Ferrellgas was called, and then that's -- and then</p> <p>15 that leads up to this situation.</p> <p>16 Q. Right. We're going to talk about that.</p> <p>17 I'm still asking before the last time you used the</p> <p>18 grill, which resulted in this accident, the only</p> <p>19 previous time I'm aware of is the one we're</p> <p>20 discussing where there was a large party and you</p> <p>21 were there for six to eight hours. That's what I'm</p> <p>22 discussing now.</p> <p>23 Did you have any problems with the grill</p> <p>24 at that time?</p> <p>25 A. There might have been a grill problem.</p>	<p style="text-align: right;">Page 93</p> <p>1 just talked about, a large party, you were there</p> <p>2 for six to eight hours and were cooking on and off</p> <p>3 for the entire day.</p> <p>4 A. Yes.</p> <p>5 Q. Okay. Was there any other time besides</p> <p>6 the accident date that you used this grill?</p> <p>7 A. I don't know if it was that day or after,</p> <p>8 but the specific time that I remember, he said that</p> <p>9 he was having a problem with the grill. I don't</p> <p>10 remember if it was that day. I know he brought in</p> <p>11 another grill and used the flat top to cook and</p> <p>12 stuff like that.</p> <p>13 I do remember -- from my memory, I</p> <p>14 remember using the grill that day, but I also know</p> <p>15 that there was a time that I either went over to</p> <p>16 his house to use the grill and it wasn't</p> <p>17 operational or something to that effect because</p> <p>18 that's how this whole story led up to me asking him</p> <p>19 how the grill was.</p> <p>20 Q. I follow you.</p> <p>21 So at some point before the accident</p> <p>22 date, you're not sure when, you became aware there</p> <p>23 was a problem with the grill that we're talking</p> <p>24 about in this case and so you used another grill, a</p> <p>25 portable grill.</p>

<p style="text-align: right;">Page 94</p> <p>1 A. Yes.</p> <p>2 Q. Do you know what the problem was with the</p> <p>3 grill at that time?</p> <p>4 A. I don't.</p> <p>5 Q. How did it come to your attention?</p> <p>6 A. We were -- we were talking about the</p> <p>7 grill in some regards, Mario was talking about it,</p> <p>8 and that's how I know about it, from Mario telling</p> <p>9 me that the grill was not working.</p> <p>10 Q. Other than that, did he give you any</p> <p>11 detail as to what was going on with it or why it</p> <p>12 wasn't working?</p> <p>13 A. No. I just knew something about the</p> <p>14 line. Like he said something with the line, but I</p> <p>15 don't know anything else to the effect.</p> <p>16 Q. And that conversation when you became</p> <p>17 aware of a problem with this grill might have been</p> <p>18 the big party?</p> <p>19 A. It might have.</p> <p>20 Q. Might have been some other time, but it</p> <p>21 was well before the accident day?</p> <p>22 A. Yes.</p> <p>23 Q. And your best memory is he said it wasn't</p> <p>24 working and it was something with the line?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 96</p> <p>1 A. Yes.</p> <p>2 I said, "Is the grill fixed?"</p> <p>3 He said, "Yes."</p> <p>4 I said, "Are you sure? It's able to be</p> <p>5 used?"</p> <p>6 He said, "Yes. Ferrellgas came out.</p> <p>7 They signed paperwork saying two days before that</p> <p>8 it was operational, ready to use. There was no</p> <p>9 problems with it."</p> <p>10 Q. I understand that, and we are going to</p> <p>11 talk about it. I just want to have a clear record</p> <p>12 on what you know about problems with this grill</p> <p>13 before that happened.</p> <p>14 A. Yep.</p> <p>15 Q. And you remember a previous conversation</p> <p>16 he said something was wrong with the hose, but you</p> <p>17 don't remember more?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know who installed that grill?</p> <p>20 A. No.</p> <p>21 Q. Or when?</p> <p>22 A. No.</p> <p>23 Q. Or who installed the hose?</p> <p>24 A. No.</p> <p>25 Q. Do you know how often Mr. Gonzalez used</p>
<p style="text-align: right;">Page 95</p> <p>1 Q. Was he any more specific as to which</p> <p>2 line? Was he talking about the hose under the</p> <p>3 grill or some other line? Do you know?</p> <p>4 A. The hose under the grill connected to the</p> <p>5 propane line.</p> <p>6 Q. I know I'm really scraping your memory</p> <p>7 here, and I appreciate your patience.</p> <p>8 Anything else you can recall that he told</p> <p>9 you about the grill not working properly on that</p> <p>10 prior occasion other than there was something wrong</p> <p>11 with the line, meaning the hose under the grill?</p> <p>12 A. No.</p> <p>13 Q. Did he say it was leaking?</p> <p>14 A. No. I mean, he didn't -- he just said</p> <p>15 that there was a problem and that was it.</p> <p>16 Q. Did he say how he was going to fix it?</p> <p>17 A. He said he was going to call Ferrellgas</p> <p>18 and he was going to have them come out and check</p> <p>19 it, and he was going to do -- you know, to get it</p> <p>20 fixed.</p> <p>21 So under my -- under what I -- when I</p> <p>22 went to his house, I asked him, I said, "The grill</p> <p>23 is fixed?" He said "Yes."</p> <p>24 Q. You're talking about on the accident day</p> <p>25 now?</p>	<p style="text-align: right;">Page 97</p> <p>1 the grill?</p> <p>2 A. No.</p> <p>3 Q. Do you know if he did any maintenance</p> <p>4 work or repairs on it?</p> <p>5 A. No.</p> <p>6 Q. Did Mr. Gonzalez tell you before the</p> <p>7 accident that he had had a problem with the hose</p> <p>8 getting hot and that he called Ferrellgas about</p> <p>9 that a few days before the accident?</p> <p>10 Did he tell you that?</p> <p>11 A. I don't remember.</p> <p>12 Q. Because I'll share with you that</p> <p>13 Mr. Gonzalez' handyman -- do you know Chad Brown?</p> <p>14 A. No, I don't.</p> <p>15 Q. -- discovered three or four days before</p> <p>16 this accident that that hose in the cabinet for the</p> <p>17 grill was hot. And when Mr. Gonzalez came home, he</p> <p>18 found it was also hot. He also found that when he</p> <p>19 touched the cabinet, the metal cabinet, that he got</p> <p>20 an electric shock.</p> <p>21 Did Mr. Gonzalez tell you about any of</p> <p>22 those things?</p> <p>23 A. No.</p> <p>24 Q. Did you even know about it before just</p> <p>25 now, when I mentioned it?</p>

<p style="text-align: right;">Page 98</p> <p>1 A. No. Like I said, I just know about the 2 line, that, you know, it was leaking, and that was 3 it. 4 Q. Well, you know that now, about this 5 accident. 6 A. Yes. 7 Q. I'm asking -- it's kind of tough because 8 I'm asking you to search different parts of your 9 brain for different time frames. I'm now asking 10 you, before this accident happened, if Mr. Gonzalez 11 ever told you, "Hey, a few days ago that line was 12 really hot and I got an electric shock and I called 13 Ferrellgas." 14 Did he tell you any of that? 15 A. No. Because when we talked about it, he 16 said that it was fixed. 17 Q. Did he say what was fixed? 18 A. No. He said Ferrellgas came out and 19 fixed the line and everything was good to go. 20 Q. Did he tell you that an electrician came 21 out? 22 A. No. I didn't know anything about an 23 electrician after -- until after the incident. 24 Q. Do you know Mr. Carl Kleisner? 25 A. Do I? No.</p>	<p style="text-align: right;">Page 100</p> <p>1 know. 2 Q. Do you know -- 3 A. He used that grill a lot, so I don't 4 know. 5 Q. Has he used it since the accident? 6 A. I don't know. 7 Q. Has anyone used it since the accident? 8 A. I don't know. I know -- because I've 9 been to his house -- he has another grill, like a 10 little grill. 11 Q. Do you know Rob Vickery? 12 A. (Witness shook head.) 13 Q. Do you know anyone who works for 14 Ferrellgas? 15 A. No. 16 Q. Have you talked to anyone at Ferrellgas 17 about this accident? 18 A. No. 19 MR. McMULLEN: So I want to show you some 20 pictures in case it helps your memory on a few 21 things. 22 Let's mark this, please. This will be 23 Exhibit 2, I think. 24 (Exhibit Number 2 was marked.) 25 / / /</p>
<p style="text-align: right;">Page 99</p> <p>1 Q. Do you know who that is? 2 A. I mean, from -- you know, now I do, yeah. 3 Q. After. Okay. 4 Before this accident, you didn't know 5 Mr. Kleisner and you didn't know he had come out? 6 A. No. 7 Q. You didn't know what work he had done? 8 A. No. 9 Q. You've already testified Mr. Gonzalez 10 told you that Ferrellgas came out and, according to 11 Mr. Gonzalez, told you that Ferrellgas said you 12 could use the grill. 13 A. Yes. 14 Q. Did he tell you what work Mr. -- what 15 work Ferrellgas did? 16 A. No. He just said that they came out, 17 fixed the line, and made sure that the grill was 18 operational. 19 Q. Did Mr. Gonzalez say whether he had used 20 the grill since then? 21 A. No. I think that was the first -- I 22 believe that was the first time he used it. 23 Q. Was just before your accident? 24 A. But I don't -- you know, I don't know if 25 he used it the day before or anything. I don't</p>	<p style="text-align: right;">Page 101</p> <p>1 BY MR. McMULLEN: 2 Q. Josh, I've had marked a series of 3 photographs. There's five pictures, all stapled 4 together. And I'll represent to you that there was 5 an inspection by various experts on the case at 6 Mr. Gonzalez' place last Friday, May 15. And these 7 pictures were taken by an electrical expert for 8 Ferrellgas. 9 Do you recognize the first picture? Does 10 that look like the porch at the Gonzalez place? 11 A. That looks like the outside house, but I 12 am never behind there, so I don't know. 13 Q. Okay. The reason I'm sharing these 14 pictures with you is they show various cords, an 15 electrical outlet, and then there's two pictures 16 that show the pumps for the koi pond, and the last 17 picture shows an extension cord. 18 Did Mr. Gonzalez say anything to you 19 about electrical problems he was having with the 20 pump for the koi pond or any other electrical 21 problems before this accident? 22 A. No. 23 Q. Did you know about any electrical work 24 that was done -- 25 A. No.</p>

<p style="text-align: right;">Page 102</p> <p>1 Q. -- at his house before the accident?</p> <p>2 A. No.</p> <p>3 Q. Did he tell you anything about lights</p> <p>4 that were flickering or breakers that had</p> <p>5 tripped --</p> <p>6 A. No.</p> <p>7 Q. -- anything like that?</p> <p>8 You didn't have any idea about that?</p> <p>9 A. No.</p> <p>10 Q. Do you know where the breaker box is</p> <p>11 located for the outdoor electrical equipment?</p> <p>12 A. No, I do not.</p> <p>13 Q. Did Mr. Gonzalez ever say anything about</p> <p>14 breakers tripping for the outdoor electrical</p> <p>15 equipment?</p> <p>16 A. Not to me, no.</p> <p>17 Q. You had no knowledge of that?</p> <p>18 A. I had no knowledge.</p> <p>19 Q. So before this accident, Mr. Gonzalez</p> <p>20 didn't say anything to you about electrical</p> <p>21 problems that were affecting the backyard</p> <p>22 electrical equipment?</p> <p>23 A. No, sir.</p> <p>24 Q. Including that he himself had had an</p> <p>25 electrical shock from the grill?</p>	<p style="text-align: right;">Page 104</p> <p>1 Q. Is that what you're saying you don't</p> <p>2 remember?</p> <p>3 A. Yeah. I don't remember that.</p> <p>4 Q. You don't think that was there at the</p> <p>5 time of the accident?</p> <p>6 A. I just don't remember it. I don't know</p> <p>7 if it was there or not there, but I don't remember</p> <p>8 that.</p> <p>9 Q. So if you go to the next-to-last --</p> <p>10 A. I remember cooking on a grill that was</p> <p>11 like that when I did that thing I just told you,</p> <p>12 but I don't remember it -- I thought it was a</p> <p>13 pull-in grill. I don't remember it being there.</p> <p>14 Q. So you're not sure if that's what you</p> <p>15 were cooking on before?</p> <p>16 A. No, no, no. I was cooking on this thing.</p> <p>17 Q. "This thing," can you --</p> <p>18 A. I was cooking on the grill, the propane</p> <p>19 grill, this.</p> <p>20 Q. So you're now pointing to the grill</p> <p>21 that's shown in the next-to-last picture, which is</p> <p>22 the fourth page of Exhibit 3.</p> <p>23 Can you hold that up and maybe show it to</p> <p>24 other counsel so they know? And if you'll show the</p> <p>25 camera for me.</p>
<p style="text-align: right;">Page 103</p> <p>1 A. No.</p> <p>2 MR. McMULLEN: Here's the next one,</p> <p>3 please.</p> <p>4 (Exhibit Number 3 was marked.)</p> <p>5 BY MR. McMULLEN:</p> <p>6 Q. So I've handed you -- or the court</p> <p>7 reporter has handed you what we've marked as</p> <p>8 Exhibit 3, and this is another series of pictures</p> <p>9 that have been taken of the back kitchen area.</p> <p>10 These are, again, five pictures stapled together,</p> <p>11 marked Exhibit 3.</p> <p>12 The first one shows the grill and kitchen</p> <p>13 area. Do you see that?</p> <p>14 A. Mm-hmm.</p> <p>15 Q. Does that look like the way it did when</p> <p>16 you were there?</p> <p>17 A. I don't remember this grill, but I might</p> <p>18 be wrong.</p> <p>19 Q. Which grill?</p> <p>20 A. This side grill.</p> <p>21 Q. If you'll turn in about -- to the very</p> <p>22 last picture, I think they refer to that as "the</p> <p>23 griddle."</p> <p>24 Do you see that?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 105</p> <p>1 That's the grill that you recall</p> <p>2 cooking --</p> <p>3 A. Yes.</p> <p>4 Q. -- both the first time you were there,</p> <p>5 cooking for the large party, and also when the</p> <p>6 accident happened?</p> <p>7 A. No.</p> <p>8 Q. No?</p> <p>9 A. No.</p> <p>10 Q. Different grill?</p> <p>11 A. The griddle, which I -- I remember --</p> <p>12 from my memory -- I might be totally wrong. From</p> <p>13 my memory, I thought it was a pull-in grill where</p> <p>14 it was a griddle and I was cooking on the griddle.</p> <p>15 I might be wrong. It might be it was inside the --</p> <p>16 put on the island over there, but that's what I</p> <p>17 cooked at the party on.</p> <p>18 Q. So you're testifying --</p> <p>19 A. And I believe that the grill was on and I</p> <p>20 used it for a little bit of time or whatever during</p> <p>21 that party, but that was all.</p> <p>22 Q. Okay. So just so I'm clear, we're</p> <p>23 looking at Exhibit 3, a series of photos, and the</p> <p>24 fourth page is the page you just held up to the</p> <p>25 camera.</p>

<p style="text-align: right;">Page 106</p> <p>1 You recall that grill when the accident 2 happened?</p> <p>3 A. Mm-hmm.</p> <p>4 Q. That's the grill?</p> <p>5 A. Yes.</p> <p>6 Q. And you recall the same grill was there 7 the previous time you were there cooking?</p> <p>8 A. Yes.</p> <p>9 Q. But you were using another grill?</p> <p>10 A. I was using that flat top because it was 11 for breakfast.</p> <p>12 Q. The flat top being the griddle, which was 13 the last page?</p> <p>14 A. Yes.</p> <p>15 Q. So now you do remember that as something 16 you were using?</p> <p>17 A. Yes, I did use it, but what I remember -- 18 I thought it was a pull-in -- like a -- you know, 19 like a pull-in flat top.</p> <p>20 Q. Portable?</p> <p>21 A. Yes, portable flat top.</p> <p>22 Q. But you also recall using the grill that 23 was involved in the accident --</p> <p>24 A. Yes.</p> <p>25 Q. -- the earlier time you were there, and</p>	<p style="text-align: right;">Page 108</p> <p>1 Q. Sorry?</p> <p>2 A. The mouse.</p> <p>3 Q. Yeah. We'll get to that.</p> <p>4 So Mario starts -- you testified that 5 before the accident, Mr. Gonzalez started the 6 grill.</p> <p>7 A. Yes.</p> <p>8 Q. And that would have been between 6:30 and 9 6:45 sometime, roughly?</p> <p>10 A. Yes.</p> <p>11 Q. Was it dark?</p> <p>12 A. No. I believe -- it was June, so no. It 13 was getting dark.</p> <p>14 Q. So I meant to ask, if you'd go back to 15 Exhibit 3, which is our pictures of the grill. Do 16 you see there's some lights, light fixtures --</p> <p>17 A. Yes.</p> <p>18 Q. -- that are mounted to the back wall?</p> <p>19 A. Yes.</p> <p>20 Q. Were any of those turned on?</p> <p>21 A. I don't think so, but I don't -- I can't 22 tell you because I don't remember.</p> <p>23 Q. If you go to the second page of 24 Exhibit 3, you see those lights are closer up?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 107</p> <p>1 that's the same grill we see in this picture?</p> <p>2 A. Yes.</p> <p>3 Q. So you get there about 6:30. The 4 accident, we discussed earlier, was around 7:00 -- 5 was that your estimate? -- or shortly after?</p> <p>6 A. Yeah. I mean, I think it happened, from 7 my memory, between 6:45 and 7:00 o'clock.</p> <p>8 Q. Is when the accident occurred?</p> <p>9 A. Yes.</p> <p>10 Q. What time was the grill put in operation 11 the day of the accident?</p> <p>12 A. Mario handled the whole -- the grill. 13 That's the whole point of it, is that he was -- he 14 was handling it. He said, "I'm going to come over 15 and" -- "I'm going to cook for you." And that's 16 how it -- you know.</p> <p>17 Q. So he put the grill in operation?</p> <p>18 A. Yeah.</p> <p>19 MR. McMULLEN: Let's mark this, please. 20 (Exhibit Number 4 was marked.)</p> <p>21 MR. McMULLEN: Is that 4?</p> <p>22 BY MR. McMULLEN:</p> <p>23 Q. To help with our discussion, I've marked 24 a few more pictures. This is Exhibit 4.</p> <p>25 A. Eww.</p>	<p style="text-align: right;">Page 109</p> <p>1 Q. It's closer picture.</p> <p>2 If you go to the third page, there is 3 another light you can see to the left of the sink. 4 I don't know if that's a real lantern or an 5 electric lantern that's made to look like an 6 old-time thing.</p> <p>7 Do you know?</p> <p>8 A. I don't know.</p> <p>9 Q. Do you remember ever seeing that lit up?</p> <p>10 A. No.</p> <p>11 Q. If you turn to the next page, which is 12 the grill, when the grill is in operation, do you 13 get these lights on the knobs?</p> <p>14 Do you remember that?</p> <p>15 A. I don't remember that, no.</p> <p>16 Q. Do you see up just above the grill grate 17 itself there appear to be a couple of orange lamps? 18 Do you remember those being on?</p> <p>19 A. I don't remember.</p> <p>20 Q. When you are saying you don't remember, 21 are you saying you don't remember one way or the 22 other?</p> <p>23 A. No. I don't remember them being on.</p> <p>24 Q. You don't remember them being on?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 110</p> <p>1 Q. Is that true for all the lamps we just 2 talked about?</p> <p>3 A. Yeah. I mean, I wasn't paying attention 4 to the lights, so I don't remember.</p> <p>5 Q. So looking through these pictures on 6 Exhibit 3, you see behind the sink, there's an 7 electrical outlet?</p> <p>8 A. Which one?</p> <p>9 Q. It's the second page of Exhibit 3.</p> <p>10 A. Yes.</p> <p>11 Q. Do you remember anything being plugged in 12 there?</p> <p>13 A. Anything being plugged in where?</p> <p>14 Q. The outlet behind the sink that we see on 15 the second page of Exhibit 3.</p> <p>16 A. No.</p> <p>17 Q. There is another outlet right behind the 18 grill. You can see the edge of it in this picture?</p> <p>19 A. Mm-hmm.</p> <p>20 Q. Was anything plugged in there?</p> <p>21 A. No, I don't remember.</p> <p>22 Q. Do you remember before Mr. Gonzalez 23 started the grill or after, before the accident, if 24 he turned any switches on or off, any lights came 25 on or off?</p>	<p style="text-align: right;">Page 112</p> <p>1 Did you ever look inside that cabinet?</p> <p>2 A. No.</p> <p>3 Q. Have you ever seen what's in there before 4 the accident?</p> <p>5 A. No.</p> <p>6 Q. So this is the first time you've seen 7 under the grill, is these pictures?</p> <p>8 A. I mean, yes.</p> <p>9 Q. Okay. Did you know he had a rat problem?</p> <p>10 A. No. Now I do. But I didn't know.</p> <p>11 MR. GOLDSTEIN: Objection. One rat does 12 not make a problem.</p> <p>13 BY MR. McMULLEN:</p> <p>14 Q. Did you know he had a rat under the 15 grill?</p> <p>16 A. No.</p> <p>17 MR. GOLDSTEIN: Objection.</p> <p>18 MR. PFAU: That is a mouse.</p> <p>19 MR. GOLDSTEIN: And objection. I don't 20 know if that rat was there at the time.</p> <p>21 MR. McMULLEN: Wow. They're pretty 22 sensitive about rats and mice.</p> <p>23 MR. GOLDSTEIN: Rats and attorneys go 24 hand in hand.</p> <p>25 MR. PFAU: I want a clear record of what</p>
<p style="text-align: right;">Page 111</p> <p>1 A. No, sir.</p> <p>2 Q. Do you remember any cords being plugged 3 in or disconnected, anything electrical, before 4 this accident?</p> <p>5 A. No, sir.</p> <p>6 Q. Do you remember any lights flickering 7 before the accident?</p> <p>8 A. No, sir.</p> <p>9 Q. Did you turn on any switches or plug 10 anything in before the accident?</p> <p>11 A. No, sir.</p> <p>12 Q. So let's go to Exhibit 4.</p> <p>13 A. With the rat?</p> <p>14 Q. Well, we'll get to the rat.</p> <p>15 The first picture, is that a view of the 16 cabinet under the grill?</p> <p>17 A. Yes.</p> <p>18 Q. Do you remember Mr. Gonzalez opening 19 those doors to turn on the valve that we see there 20 to start the grill?</p> <p>21 A. No.</p> <p>22 Q. Are you saying that you don't remember 23 one way or the other or --</p> <p>24 A. I don't remember him doing that.</p> <p>25 Q. You don't remember him doing that.</p>	<p style="text-align: right;">Page 113</p> <p>1 animal this was.</p> <p>2 THE WITNESS: A mouse.</p> <p>3 MR. GOLDSTEIN: Mouse, rat, whatever.</p> <p>4 MR. McMULLEN: I'll be really careful 5 with this next one.</p> <p>6 BY MR. McMULLEN:</p> <p>7 Q. Josh, did you have any idea that there 8 were any rodents of any kind --</p> <p>9 A. No.</p> <p>10 Q. -- under the grill before this accident?</p> <p>11 A. No.</p> <p>12 Q. Did Mr. Gonzalez tell you that he had any 13 issues or problems with rats or mice or rodents on 14 the property, including under the grill?</p> <p>15 A. No.</p> <p>16 Q. Let's look at that picture, the picture 17 with the rodent. That's the third picture of 18 Exhibit 4.</p> <p>19 Do you know what he's laying on? Do you 20 know what that tube is?</p> <p>21 A. I don't.</p> <p>22 Q. Have you ever seen that before?</p> <p>23 A. No.</p> <p>24 Q. Were you standing close by when 25 Mr. Gonzalez put the grill in operation the day of</p>

<p style="text-align: right;">Page 114</p> <p>1 the accident?</p> <p>2 A. I believe it was -- I believe it was on</p> <p>3 when I got there, or like when I got to the house,</p> <p>4 I mean, he put it on like right when I got there or</p> <p>5 right before. I didn't see anything. I just knew</p> <p>6 that he was like -- he just told me that -- I asked</p> <p>7 him. I said, "Oh, the grill's fixed?"</p> <p>8 And he said -- I'll never forget it. He</p> <p>9 said, "Yes, the grill's fixed. They came and</p> <p>10 signed off on it two days ago."</p> <p>11 I said, "They're able to use it?"</p> <p>12 "Yes, able to use it."</p> <p>13 Q. So we talked about how you remember a</p> <p>14 previous time where Mr. Gonzalez told you the grill</p> <p>15 wasn't working, but you don't remember when he told</p> <p>16 you that. It might have been when you cooked for</p> <p>17 the party, except that you remember it was</p> <p>18 operating then, true?</p> <p>19 A. Yes.</p> <p>20 Q. So you think it was sometime between then</p> <p>21 and the accident date that he mentioned to you the</p> <p>22 grill wasn't working?</p> <p>23 A. Yes.</p> <p>24 Q. You're just not sure when?</p> <p>25 A. Right.</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes.</p> <p>2 Q. All right. We've been over that. You</p> <p>3 don't know because he didn't tell you what was</p> <p>4 wrong with the grill at that time?</p> <p>5 A. Yes.</p> <p>6 Q. He just said it wasn't working, but he</p> <p>7 did say there was a problem with the hose?</p> <p>8 A. Yes.</p> <p>9 Q. Months before he told you there was a</p> <p>10 problem with the hose?</p> <p>11 A. Yes. He said there was a problem with</p> <p>12 the hose and that people were coming out to fix it.</p> <p>13 Gas -- you know, Ferrellgas has been out there</p> <p>14 trying to fix it.</p> <p>15 Q. On that earlier occasion?</p> <p>16 A. Huh?</p> <p>17 Q. I want to keep our timeline straight.</p> <p>18 A. Yes.</p> <p>19 Q. I know on the accident date he told you</p> <p>20 he had a problem a few days before and Ferrellgas</p> <p>21 came out.</p> <p>22 A. Yes.</p> <p>23 Q. I want to be really clear. The previous</p> <p>24 time, which you think was months earlier, he</p> <p>25 mentioned to you the grill wasn't working and there</p>
<p style="text-align: right;">Page 115</p> <p>1 Q. It could have been months or even a year</p> <p>2 before; you just don't know?</p> <p>3 A. Yes. Excuse me.</p> <p>4 Q. So when we now talk about Mr. Gonzalez</p> <p>5 telling you on the day of the accident that the</p> <p>6 grill was fixed, you don't know if that's the same</p> <p>7 issue as what he told you before?</p> <p>8 A. No. But I mean, when I asked him, I</p> <p>9 said, "Is the grill fixed and it's operational?"</p> <p>10 He said, "Yes, it's fixed. It's operational. And</p> <p>11 it was filled or okayed by Ferrellgas."</p> <p>12 Q. And the reason you asked him on the</p> <p>13 accident date if the grill was fixed is because at</p> <p>14 some time in the past he had told you that it</p> <p>15 wasn't working?</p> <p>16 A. Yes.</p> <p>17 Q. But that was more than a few days before</p> <p>18 the accident?</p> <p>19 A. Yes, sir.</p> <p>20 Q. It was at least months before?</p> <p>21 A. Yes, sir.</p> <p>22 Q. Maybe a year?</p> <p>23 A. I mean, I don't think it was a year,</p> <p>24 but --</p> <p>25 Q. Months?</p>	<p style="text-align: right;">Page 117</p> <p>1 was a problem with the gas hose, correct?</p> <p>2 A. Correct.</p> <p>3 Q. Did he tell you anything else about the</p> <p>4 situation at the time?</p> <p>5 A. No, just that Ferrellgas was coming --</p> <p>6 had been coming to check it out and make sure that</p> <p>7 it was, you know, operational.</p> <p>8 Q. On the previous time?</p> <p>9 A. Yes.</p> <p>10 Q. So twice?</p> <p>11 A. I'm lost now.</p> <p>12 Q. Let me go through. This is my --</p> <p>13 MR. PFAU: Mike, I think it's --</p> <p>14 MR. McMULLEN: This is my fault because I</p> <p>15 need to make it clear so we have a clear record.</p> <p>16 MR. PFAU: Can we maybe define the</p> <p>17 time -- we understand there's two times that he had</p> <p>18 some knowledge about the grill and the operation of</p> <p>19 the grill, one at the party and one some other time</p> <p>20 before.</p> <p>21 THE WITNESS: But that might have been</p> <p>22 the party. That's what I'm saying. I don't know</p> <p>23 directly when I knew about the problem, but I knew</p> <p>24 that there was a problem with the grill, and I knew</p> <p>25 that he had Ferrellgas coming out to check it. So</p>

<p style="text-align: right;">Page 118</p> <p>1 that's what I knew.</p> <p>2 BY MR. McMULLEN:</p> <p>3 Q. And that's the instance that occurred</p> <p>4 months before the accident date?</p> <p>5 A. Yes.</p> <p>6 Q. So that instance also involved Gonzalez</p> <p>7 telling you that Ferrellgas was coming out to fix</p> <p>8 it?</p> <p>9 A. Yes, sir.</p> <p>10 Q. But at that time, it was not working?</p> <p>11 A. Right.</p> <p>12 Q. He said they were coming?</p> <p>13 A. They said -- yeah. He said they were</p> <p>14 coming, they were fixing it. They came by and</p> <p>15 checked it out, and then -- you know, and then --</p> <p>16 because the last time I knew that -- so I knew it</p> <p>17 was broken.</p> <p>18 And then when I went to his house on that</p> <p>19 day, I even asked him on the phone, "Hey, the</p> <p>20 grill's working?" He said "Yes."</p> <p>21 And then when I went there, I said, "Hey,</p> <p>22 the grill's working? It's fine to use?" He said</p> <p>23 "Yes."</p> <p>24 Q. All right. So getting back to our</p> <p>25 timeline of events, when you arrived at about 6:30,</p>	<p style="text-align: right;">Page 120</p> <p>1 A. He did that. He put the steaks on the</p> <p>2 grill.</p> <p>3 Q. And we will get into the details of this</p> <p>4 later, but just to have the timeline straight, it's</p> <p>5 my understanding that at some point after the</p> <p>6 steaks had been cooking, he asks you to keep an eye</p> <p>7 on them and he went in the house?</p> <p>8 A. Yes.</p> <p>9 Q. How long were the steaks on the grill</p> <p>10 before he asked you to keep an eye on them?</p> <p>11 A. He put them on and he went inside. He</p> <p>12 has four kids. He went inside. I don't know what</p> <p>13 he was doing. I don't know. When he put them on,</p> <p>14 he closed the grill. And when he -- he went inside</p> <p>15 and he said, "Keep an eye on them." I said "Okay."</p> <p>16 Me being a chef, you know, I know how to</p> <p>17 cook steaks and keep an eye on them, so I -- it was</p> <p>18 on for like four to five minutes, but I -- when you</p> <p>19 know cooking, you can hear if something's burning</p> <p>20 or if something's getting cooked too much. And I</p> <p>21 heard like -- it was like cracking and it was</p> <p>22 like -- you could hear it was like burning, burning</p> <p>23 the steaks, right?</p> <p>24 So then --</p> <p>25 Q. This is with the lid closed?</p>
<p style="text-align: right;">Page 119</p> <p>1 the grill was either already on or he put it into</p> <p>2 operation very quickly after you arrived?</p> <p>3 A. Yes.</p> <p>4 Q. Do you know if he lit the grill with the</p> <p>5 lid down or up?</p> <p>6 A. I don't know how he lit the grill. All I</p> <p>7 remember is him putting the steaks on the grill.</p> <p>8 Q. Did he warm up the grill for a time</p> <p>9 before he put the steaks on?</p> <p>10 A. It might have been. I'm not sure.</p> <p>11 Q. Well, how long were you there before he</p> <p>12 put the steaks on?</p> <p>13 A. Maybe ten -- ten minutes.</p> <p>14 Q. So during that time was the grill in</p> <p>15 operation?</p> <p>16 A. From what I remember, yeah, the grill was</p> <p>17 on.</p> <p>18 Q. So you arrive, and either it's already in</p> <p>19 operation or very soon after you arrive, Gonzalez</p> <p>20 puts the grill in operation, true?</p> <p>21 A. Yes.</p> <p>22 Q. And then the grill is in operation for</p> <p>23 maybe ten minutes, and then he puts the steaks on?</p> <p>24 A. Yes.</p> <p>25 Q. Did he do that or did you do that?</p>	<p style="text-align: right;">Page 121</p> <p>1 A. Yeah.</p> <p>2 So when I went to open the lid and flip</p> <p>3 the steak. As soon as I went to flip the steak,</p> <p>4 there was an explosion.</p> <p>5 Q. Let's make sure this is correct or that I</p> <p>6 am understanding correctly. We've been through</p> <p>7 this.</p> <p>8 You arrive. It's burning or he puts it</p> <p>9 in operation for about ten minutes. Then</p> <p>10 Mr. Gonzalez puts the steaks on the grill, correct?</p> <p>11 A. Yes.</p> <p>12 Q. Then he closes the grill and asks you to</p> <p>13 keep an eye on them after they've been there about</p> <p>14 four or five minutes?</p> <p>15 A. Yes, sir.</p> <p>16 Q. So the two of you were there together</p> <p>17 with the steaks cooking for four or five minutes?</p> <p>18 A. No. He put the steaks on the grill and</p> <p>19 walked inside.</p> <p>20 Q. Oh, I see. And then it was four or</p> <p>21 five minutes after that --</p> <p>22 A. Right.</p> <p>23 Q. -- before the accident?</p> <p>24 A. It was four to five minutes until I went</p> <p>25 to turn the steak.</p>

<p style="text-align: right;">Page 122</p> <p>1 Q. Got it.</p> <p>2 A. And then the explosion.</p> <p>3 Q. So he goes inside. You're keeping an eye</p> <p>4 on the steaks, although the lid is closed, true?</p> <p>5 A. Yes, sir.</p> <p>6 Q. But you hear a cracking sound which you</p> <p>7 associate with the steaks might be burning?</p> <p>8 A. Yes.</p> <p>9 Q. So you open the lid?</p> <p>10 A. Yes.</p> <p>11 Q. And then you flip the steaks?</p> <p>12 A. I'm about to flip the steaks.</p> <p>13 Q. Did you have a tool underneath them?</p> <p>14 A. Yes.</p> <p>15 Q. And that's when the incident happened?</p> <p>16 A. Yes.</p> <p>17 Q. It didn't happen when the lid was raised;</p> <p>18 it happened when you started to flip the steaks?</p> <p>19 A. Yes, but that was -- I went to open it,</p> <p>20 flip the steak, and "poof" (indicating).</p> <p>21 Q. Right. How would you describe the</p> <p>22 fireball or flash fire?</p> <p>23 First, did it make a noise?</p> <p>24 A. It was the loudest noise I've ever heard.</p> <p>25 Q. Loudest noise you've ever heard?</p>	<p style="text-align: right;">Page 124</p> <p>1 because of my jeans. I had jeans on. So -- it</p> <p>2 wasn't -- you know, jeans don't burn as fast as --</p> <p>3 I had a shirt on, a V-neck T shirt from H&M, and it</p> <p>4 went up in flames like that.</p> <p>5 Q. How tall do you think the flame was?</p> <p>6 Above your height?</p> <p>7 A. Yes.</p> <p>8 Q. Several feet above your height?</p> <p>9 A. I would be telling you a lie if I told</p> <p>10 you -- I just know that I was engulfed in it.</p> <p>11 Q. At least six feet?</p> <p>12 A. Yes.</p> <p>13 Q. So during the ten minutes that the grill</p> <p>14 was on before Mr. Gonzalez put the steaks on, did</p> <p>15 you notice anything at all that appeared unusual</p> <p>16 with how the grill was operating?</p> <p>17 A. No, sir.</p> <p>18 Q. Was the lid closed at that time?</p> <p>19 A. No, I don't believe so.</p> <p>20 Q. So are you standing nearby at the time?</p> <p>21 A. I'm sitting at a table right next door --</p> <p>22 right next to the grill. If you look at the patio,</p> <p>23 there's a table -- oh, right here.</p> <p>24 There's a table right in where everybody</p> <p>25 sits, and then there's a TV that hangs.</p>
<p style="text-align: right;">Page 123</p> <p>1 A. Yeah. I mean, from being in that -- it</p> <p>2 sounded like a bomb went off. And the way I know</p> <p>3 it was so loud is because Mario's neighbor, this</p> <p>4 guy Chris Trillo, is good friends with my business</p> <p>5 partner, he called my business partner to tell him</p> <p>6 that I was just in a thing because he heard the</p> <p>7 explosion.</p> <p>8 I mean, he obviously didn't know it was</p> <p>9 me until he came over to talk to Mario, whatever</p> <p>10 the case is, but like he -- it was so loud that he</p> <p>11 heard it next door.</p> <p>12 Q. How big was the flame or how high; do you</p> <p>13 recall?</p> <p>14 A. It was huge.</p> <p>15 Q. Do you have an estimate? I know you're</p> <p>16 in the middle of this and it's traumatic, so I'm</p> <p>17 not trying to push you if you don't remember, but</p> <p>18 do you recall how high the flame was?</p> <p>19 A. I mean, the flame was -- I was engulfed</p> <p>20 in a fireball, if that makes any sense. And I'm</p> <p>21 5'8", so that fireball was huge.</p> <p>22 Q. Above you?</p> <p>23 A. It engulfed my shoes. My shoes -- he has</p> <p>24 them. They were burnt. My pants were burnt. And</p> <p>25 the only reason I was saved through my pants is</p>	<p style="text-align: right;">Page 125</p> <p>1 Q. I've been there. I recall that.</p> <p>2 How far was the table, do you estimate,</p> <p>3 from the grill when you were sitting there at that</p> <p>4 time?</p> <p>5 A. Seven to ten feet.</p> <p>6 Q. So you arrive, the grill is burning for</p> <p>7 ten minutes before the steaks go on, and you're</p> <p>8 sitting at the table?</p> <p>9 A. Yes, sir.</p> <p>10 Q. Is Mr. Gonzalez there with you?</p> <p>11 A. He was, yes.</p> <p>12 Q. Anyone else?</p> <p>13 A. No.</p> <p>14 Q. Was anyone else present during this whole</p> <p>15 accident scenario?</p> <p>16 A. Inside.</p> <p>17 Q. His wife was there?</p> <p>18 A. Yes.</p> <p>19 Q. Anyone else?</p> <p>20 A. The kids. And I think his -- I think</p> <p>21 someone else, a nanny or somebody.</p> <p>22 Q. Was anybody else outside with you?</p> <p>23 A. No.</p> <p>24 Q. So when you and Mr. Gonzalez are sitting</p> <p>25 there for ten minutes, the grill is operating and</p>

<p style="text-align: right;">Page 126</p> <p>1 the lid is up, true?</p> <p>2 A. True.</p> <p>3 Q. Do you hear, see, or smell anything at</p> <p>4 all unusual in the grill area during that time?</p> <p>5 A. No, sir.</p> <p>6 Q. Then he puts the steaks on with the lid</p> <p>7 open?</p> <p>8 A. Yes.</p> <p>9 Q. And the steaks cook for four or five</p> <p>10 minutes, and he goes inside and says, "Keep an eye</p> <p>11 on it"?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Actually, he's inside during that four or</p> <p>14 five minutes; is that right?</p> <p>15 A. Yes.</p> <p>16 Q. So you're there together for ten minutes.</p> <p>17 The grill is running, no problems. He says, "Keep</p> <p>18 an eye on it." He goes inside for four or five</p> <p>19 minutes.</p> <p>20 Did he close the lid before he went</p> <p>21 inside?</p> <p>22 MR. PFAU: Objection. Asked and</p> <p>23 answered.</p> <p>24 BY MR. McMULLEN:</p> <p>25 Q. Well, you said the lid was closed when</p>	<p style="text-align: right;">Page 128</p> <p>1 A. Yes.</p> <p>2 Q. Is there anything about your previous</p> <p>3 testimony that you need to change or add to?</p> <p>4 A. No, sir.</p> <p>5 Q. All right. I've got a few follow-up</p> <p>6 loose ends from where we left off. Then we'll</p> <p>7 finish talking about the accident and move on.</p> <p>8 So you told me about the marijuana that</p> <p>9 you and Mr. Gonzales had right before the accident.</p> <p>10 Was that sitting at the table?</p> <p>11 A. Yes.</p> <p>12 Q. And you described that as a bowl?</p> <p>13 A. Yes, sir.</p> <p>14 Q. And I did go to college in California, so</p> <p>15 I have some idea what that is, but why don't you</p> <p>16 tell me. What do you mean by a bowl?</p> <p>17 A. It's a glass pipe that you put the</p> <p>18 marijuana in and you smoke it.</p> <p>19 Q. Do you know what type of marijuana was in</p> <p>20 the bowl that day?</p> <p>21 A. I don't.</p> <p>22 Q. Do you know how much?</p> <p>23 A. Well, a normal bowl does not hold more</p> <p>24 than like .2 grams, so it was a very minimal of --</p> <p>25 we didn't -- Mario put it in there, so I don't know</p>
<p style="text-align: right;">Page 127</p> <p>1 you heard the crackling, so I'm trying to remember</p> <p>2 who closed the lid.</p> <p>3 A. I think he closed it. I'm not sure if he</p> <p>4 closed it or I closed it, but from what I remember,</p> <p>5 I believe he closed it and I went and opened it.</p> <p>6 Q. I think Matt's right. I misspoke.</p> <p>7 When Mr. Gonzalez put the steaks on, he</p> <p>8 closed the grill?</p> <p>9 A. I believe that's what happened.</p> <p>10 Q. That's when he says "Keep an eye on them"</p> <p>11 and went inside for four or five minutes?</p> <p>12 A. Yes.</p> <p>13 Q. And then you hear the noise, the</p> <p>14 crackling. You open the lid. And when you start</p> <p>15 to turn the steak, the accident happens.</p> <p>16 Is that all accurate?</p> <p>17 A. Yes.</p> <p>18 MR. McMULLEN: Let's go off the record.</p> <p>19 THE VIDEOGRAPHER: The time is</p> <p>20 approximately 12:04 p.m. We're off the record.</p> <p>21 (Recess had.)</p> <p>22 THE VIDEOGRAPHER: We're back on the</p> <p>23 record. The time is approximately 1:18 p.m.</p> <p>24 BY MR. McMULLEN:</p> <p>25 Q. Josh, did you have a good lunch break?</p>	<p style="text-align: right;">Page 129</p> <p>1 exactly how much.</p> <p>2 Q. How many hits could you take off of that?</p> <p>3 A. Probably four. We only had two. I had</p> <p>4 one, he had one, and then he put the steaks on.</p> <p>5 Q. Was anyone else out there with you at</p> <p>6 that time?</p> <p>7 A. No.</p> <p>8 Q. Did Mr. Gonzales or did you do</p> <p>9 anything -- let me show you Exhibit 4 again.</p> <p>10 You've got it in front of you. It's the picture --</p> <p>11 the first picture in Exhibit 4 is the cabinet</p> <p>12 door's open and I told you about that -- that</p> <p>13 valve.</p> <p>14 Do you see the valve there with the</p> <p>15 yellow handle?</p> <p>16 A. Mm-hmm.</p> <p>17 Q. The second picture is a close-up, and</p> <p>18 I'll represent to you that's a cutoff valve that</p> <p>19 would control the propane going to the hose that</p> <p>20 went to the grill. You can actually see the hose</p> <p>21 there as well after the accident.</p> <p>22 I think you testified before, but I want</p> <p>23 to be sure, at least while you were there, did you</p> <p>24 see Mr. Gonzales open that cabinet and turn that</p> <p>25 valve?</p>

<p style="text-align: right;">Page 130</p> <p>1 A. No, sir.</p> <p>2 Q. Did you open that cabinet at any time?</p> <p>3 A. No, sir.</p> <p>4 Q. Do you know if Mr. Gonzales did any kind</p> <p>5 of inspection or leak test of the hose before he --</p> <p>6 A. No.</p> <p>7 Q. -- lit the grill?</p> <p>8 A. No, sir.</p> <p>9 Q. So I think we've got the timeline</p> <p>10 straight. Mr. Gonzales goes inside. You think he</p> <p>11 closes the lid after he puts the steaks on. He</p> <p>12 goes inside, and he's there for four or five</p> <p>13 minutes, and then the accident happens, correct?</p> <p>14 A. (No audible response.)</p> <p>15 Q. Yes?</p> <p>16 A. Yes. Sorry.</p> <p>17 Q. So were you sitting at the table or</p> <p>18 standing next to the grill during that four or</p> <p>19 five minutes?</p> <p>20 A. I was sitting at the table.</p> <p>21 Q. At some point you got up. Was that when</p> <p>22 you heard the noise?</p> <p>23 A. No. When he went inside and I heard the</p> <p>24 crackling of the steaks being cooked. That's when</p> <p>25 I got up and went to flip the steak.</p>	<p style="text-align: right;">Page 132</p> <p>1 same noise before and you associated it with a</p> <p>2 steak that's ready to turn over?</p> <p>3 A. Yes.</p> <p>4 Q. Did you hear any other noises before that</p> <p>5 coming from the grill area?</p> <p>6 A. No.</p> <p>7 Q. Anything at all?</p> <p>8 A. No.</p> <p>9 Q. Sitting at the table, did you smell</p> <p>10 anything unusual?</p> <p>11 A. No, sir.</p> <p>12 Q. Did you smell any gas odors, sitting at</p> <p>13 the table?</p> <p>14 A. No.</p> <p>15 Q. How about when you went up to the grill</p> <p>16 to flip the steaks, did you smell any odors then?</p> <p>17 A. No.</p> <p>18 Q. How about when you opened the lid and you</p> <p>19 were about to turn the steak, did you smell any</p> <p>20 odors?</p> <p>21 A. No.</p> <p>22 Q. Were you still hearing the noise when you</p> <p>23 opened the lid?</p> <p>24 A. When I opened it, I saw the grill marks</p> <p>25 were extremely into the meat, so it was the right</p>
<p style="text-align: right;">Page 131</p> <p>1 Q. I see. So you were actually sitting at</p> <p>2 the table first for ten minutes while he was there</p> <p>3 with you, correct?</p> <p>4 A. Yes.</p> <p>5 Q. And then he gets up, shuts the lid, he</p> <p>6 goes inside?</p> <p>7 A. Yes.</p> <p>8 Q. And you stay at the table?</p> <p>9 A. Yes.</p> <p>10 Q. Until you hear the crackling noise?</p> <p>11 A. Yes.</p> <p>12 Q. So it was loud enough you could hear it</p> <p>13 while you were sitting at the table seven or</p> <p>14 eight feet away?</p> <p>15 A. Yes.</p> <p>16 Q. What's your best description of that</p> <p>17 noise?</p> <p>18 A. Just like wood burning on a fire and you</p> <p>19 just hear crack, crack, crack, and then I just, you</p> <p>20 know, as a chef, as a trained chef, I know when</p> <p>21 steaks or meat or anything, you know, is burning.</p> <p>22 You can -- I'm not saying it was burnt and I could</p> <p>23 smell, but you could tell that, you know, it's</p> <p>24 definitely -- you definitely have to flip it.</p> <p>25 Q. In your experience you had heard that</p>	<p style="text-align: right;">Page 133</p> <p>1 decision to turn them over. And I think I only got</p> <p>2 one over and then, when it exploded, I think they</p> <p>3 all burnt and she made tacos out of them.</p> <p>4 Q. How many steaks were on the grill?</p> <p>5 A. I think four to six.</p> <p>6 Q. So you think you got the first one</p> <p>7 flipped and then the accident happened?</p> <p>8 A. Yeah. It was as soon as I turned that --</p> <p>9 as soon as I opened that lid and gave the grill</p> <p>10 oxygen, it was -- I was engulfed.</p> <p>11 Q. Well, I want to be clear that the flash</p> <p>12 fire didn't really occur until you flipped the</p> <p>13 steak?</p> <p>14 A. I went, I opened it, and then as soon as</p> <p>15 I like -- it was like motion, like open, flip, and</p> <p>16 then as soon as that happened, then it exploded.</p> <p>17 Q. I got you.</p> <p>18 Did you see any grease burning on the</p> <p>19 grill?</p> <p>20 A. No.</p> <p>21 Q. Did you see any flames from the steaks</p> <p>22 themselves before the flash fire?</p> <p>23 A. No. I mean, you see flames coming up</p> <p>24 from the grill, you know, but like very little,</p> <p>25 just as a normal grill would be.</p>

<p style="text-align: right;">Page 134</p> <p>1 Q. That was my next question. If you 2 recall, I know this happened rapidly and it's hard 3 maybe to remember, but if you recall, before the 4 flash fire, when you opened the lid, could you see 5 the burner flames? 6 A. The burner flames, they were on, yes. 7 Q. Was there anything unusual about their 8 appearance? 9 A. No. 10 Q. Their color or their height? 11 A. No. 12 Q. They looked normal to you? 13 A. Yes. 14 Q. So for 14 or 15 minutes while this grill 15 was in operation, you didn't notice anything 16 unusual, you didn't hear or see anything unusual 17 until you heard the crackling, which told you that 18 the meat was starting to burn, opened the lid, and 19 then the accident happens? 20 A. Yes. 21 Q. Before this accident had you ever 22 experienced any previous accident or even a minor 23 experience with propane or natural gas where it 24 ignited and you had a quick poof? 25 Had you ever experienced anything like</p>	<p style="text-align: right;">Page 136</p> <p>1 A. No, sir. 2 Q. Do you feel like you have a pretty good 3 memory of those events? 4 A. Yes, sir. 5 Q. And the timing? 6 A. Yes. 7 Q. All right. So from your interrogatory 8 response, I understand the next thing you did is 9 you ran into some sprinklers to put out the fire? 10 A. Yep. 11 Q. And Mr. Gonzales took you to 12 Spring Valley Hospital? 13 A. Yes, sir. 14 Q. And later you were transferred by 15 ambulance to University Medical Center Burn Unit? 16 A. Yes. 17 Q. Why did Mr. Gonzales take you to the 18 hospital? Why didn't somebody call 911 or call an 19 ambulance? 20 A. Because his house literally is -- I think 21 it's a total of less than ten miles from the 22 hospital, and if you go from his house straight up 23 Sunset, you could get to that -- the hospital 24 faster than an ambulance. 25 So -- and when it did happen, my skin was</p>
<p style="text-align: right;">Page 135</p> <p>1 that before this accident? 2 A. Not to -- not to what happened, no. I 3 mean -- 4 Q. Not like this, I understand, but had you 5 ever seen a quick flash of propane before? 6 A. I mean, lighting other -- lighting other 7 stuff for catering and stuff like that, I've seen 8 little like -- you know, because initially, when 9 the propane goes in, it goes like a little pop. 10 I've seen that, but that's, you know, normal. Not 11 opening a hood and then an explosion, you know. I 12 mean, this was the craziest thing I've ever seen. 13 Q. Do you know if Mr. Gonzales ignited the 14 grill first to put it in operation with a 15 push-button device or did he light it manually? 16 A. I don't know. 17 Q. You don't remember? 18 A. I don't remember. 19 Q. You testified before, he may have 20 actually lit it before you got there. 21 A. Yes. 22 Q. Is there anything else about the timing 23 or the sequence of events or the events themselves 24 that evening up through the time we had the flash 25 fire that you haven't told me?</p>	<p style="text-align: right;">Page 137</p> <p>1 completely off my hands. So I technically thought 2 I would never cook again. And that was the biggest 3 thing of my whole incident, is that, you know, I'm 4 a chef, a trained chef. I have a significant 5 amount of restaurants. And I was -- you know, I 6 was able -- I thought I was never going to be able 7 to cook again. 8 And, you know, so when you see that, when 9 you see -- and your skin's all the melting off and 10 you see all of it, you get to the point where 11 you're just, "Take me as quick as you can," and 12 that's what he did. 13 I mean, his wife -- his wife was the one 14 who said, "Take him now." 15 Q. Didn't want to wait for an ambulance? 16 A. No. 17 Q. I understand. 18 A. And the pain -- like I told you, I had 19 kidney stones before. This pain was the worst pain 20 I've ever had in my life. And the burns in the 21 hospital, like, no one can -- nobody at this table 22 can even envision what it is to take gauze off a 23 burn that's up your hand, that they have to rip it, 24 and it rips every single time. It's like the most 25 painful experience.</p>

<p style="text-align: right;">Page 138</p> <p>1 Q. No one actually witnessed the fireball 2 besides you, correct?</p> <p>3 A. I don't think so. I mean, I know they 4 heard it, but I don't think they saw it.</p> <p>5 Q. So I'm going to change gears now and ask 6 you about some other things.</p> <p>7 You testified before, as a professional 8 chef and just for safety reasons, it's important to 9 read and follow all the equipment manufacturers' 10 instructions and warnings when you're using gas 11 equipment like a grill.</p> <p>12 A. Yes, sir.</p> <p>13 Q. So I wanted to ask you about the manual 14 in this case, which I've had marked.</p> <p>15 MR. McMULLEN: I thought we marked it. 16 This will be Number 5. 17 (Exhibit Number 5 was marked.)</p> <p>18 BY MR. McMULLEN:</p> <p>19 Q. So Mr. -- Josh, here I've got the grill 20 manual.</p> <p>21 Have you seen this before?</p> <p>22 A. No.</p> <p>23 Q. So I just wanted to call your attention 24 to a few things, if you'd go to page 7. 25 Are you on page 7?</p>	<p style="text-align: right;">Page 140</p> <p>1 never put it on. I never turned it. I never did 2 anything in that regards. The only thing I did was 3 help a friend not burn his steaks, and due to that, 4 I was -- it was an explosion.</p> <p>5 It doesn't matter if I was -- if it was 6 anyone else or anything. I mean, his kids were 7 about to be outside. So it doesn't -- I mean, I 8 didn't put the grill on. I didn't do anything with 9 the grill. The grill was already on. The grill 10 was already there.</p> <p>11 I mean, it was me helping a friend -- I 12 mean, technically, has nothing to do with the 13 operations of a grill. I know how to operate a 14 grill. I'm a trained chef. I can physically 15 operate a grill. I can turn it on. I can turn it 16 off. I can do anything and everything that has to 17 do with the operation of a grill.</p> <p>18 And I've read plenty of manuals to 19 grills, but at the end of the day, with this grill, 20 I did not do anything wrong. I didn't turn it on. 21 I didn't do anything that would make me read a 22 manual.</p> <p>23 Now, if you're telling me that I was 24 going to use the manual -- I was going to use the 25 grill for myself and I was going to, you know -- if</p>
<p style="text-align: right;">Page 139</p> <p>1 A. Yes.</p> <p>2 Q. Could you -- just so we have the camera 3 oriented, could you hold that up for the camera, 4 page 7, so they know what we're talking about?</p> <p>5 A. (Witness complies.)</p> <p>6 Q. All right. Thanks.</p> <p>7 So you see at the top it says "Important 8 Safety Information," and it has "Warning" in big 9 letters, right?</p> <p>10 A. Yes.</p> <p>11 Q. Then it says, quote, "Please read this 12 manual carefully and before using your Blaze grill 13 to ensure proper operation, installation, 14 servicing, and to reduce the risk of fire burn 15 hazard or other injury."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. A few lines further on, it says, "Do not 19 operate this appliance without having read this 20 manual." Is that right?</p> <p>21 A. Yes.</p> <p>22 Q. You did not read this manual before you 23 operated the grill, true?</p> <p>24 A. No, I didn't, but as well I wasn't 25 technically using the grill. Because if you see, I</p>	<p style="text-align: right;">Page 141</p> <p>1 Mario wanted -- if he read this, then, you know, 2 that's the same question, obviously, anyone would 3 have asked him, "Did you read this before?" And if 4 his answer is no, then there's a problem.</p> <p>5 But for me, I just -- I was helping out a 6 friend with a grill that all of a sudden it 7 exploded.</p> <p>8 Q. Did you ask Mr. Gonzales if he had read 9 the manual before he put the grill in operation?</p> <p>10 A. Did I ask him? No. I did not ask him 11 those questions.</p> <p>12 Q. Do you know if he read the manual before?</p> <p>13 A. He owns the -- he owns the appliance, so 14 it's in his best interests to have read it before.</p> <p>15 Q. Do you know if Mr. Gonzales read the 16 manual before putting the grill in operation?</p> <p>17 A. I don't.</p> <p>18 Q. Mr. Gonzales had already started the 19 grill. You've made that clear. That's not 20 something you did.</p> <p>21 A. Right.</p> <p>22 Q. But Mr. Gonzales did ask you to watch 23 over the operation of the grill for four or five 24 minutes while he was gone, true?</p> <p>25 A. Yes.</p>

<p style="text-align: right;">Page 142</p> <p>1 Q. Did you read this manual before the first</p> <p>2 time you used the grill, when there was the big</p> <p>3 party we talked about and you were cooking all day?</p> <p>4 A. No, I did not read it.</p> <p>5 Q. So if you go on to -- did you ever ask</p> <p>6 Mr. Gonzales for the manual?</p> <p>7 A. No. It wouldn't even come up to me to</p> <p>8 read a grill -- a manual about a grill because I've</p> <p>9 been doing this for so long that I know how grills</p> <p>10 operate, I know how they work, I know what they</p> <p>11 smell like. I mean, anything and everything that</p> <p>12 has to do with a grill, I pretty -- would say I'm</p> <p>13 comfortable with.</p> <p>14 Q. But you don't know if he ever read it?</p> <p>15 A. No. I don't know.</p> <p>16 Q. And you didn't ask him if he had read it?</p> <p>17 A. No.</p> <p>18 Q. So if we go to page 10. Page 10, you see</p> <p>19 there about the middle of the page it says in bold</p> <p>20 type, underlined, "Never cook without the drip pan</p> <p>21 in place."</p> <p>22 Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. Do you know what a drip pan is?</p> <p>25 A. I do.</p>	<p style="text-align: right;">Page 144</p> <p>1 A. I don't.</p> <p>2 Q. Do you know what condition the drip pan</p> <p>3 was in at the time just before this accident?</p> <p>4 A. No, I don't.</p> <p>5 Q. Did you ask Mr. Gonzales about that?</p> <p>6 A. No. But like I said numerous amounts of</p> <p>7 times, because I was -- because I was helping out a</p> <p>8 friend of -- just finish cooking a steak, that's --</p> <p>9 you know, that is the reason why I didn't ask him</p> <p>10 to read or look at any other thing. I was just,</p> <p>11 you know, helping him out.</p> <p>12 Q. If the drip pan wasn't cleaned, that</p> <p>13 could pose a hazard; correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it wouldn't matter if you're just</p> <p>16 helping out a friend or if you're there for any</p> <p>17 reason. If you're operating the grill, that could</p> <p>18 pose a hazard?</p> <p>19 A. Yes, it can. But there's also -- I've</p> <p>20 been in certain situations where a drip pan is</p> <p>21 extremely covered and there's no fires.</p> <p>22 Q. In this situation you don't know what the</p> <p>23 condition of the drip pan was, right?</p> <p>24 A. I don't, no.</p> <p>25 Q. You see the next line on page 10, it</p>
<p style="text-align: right;">Page 143</p> <p>1 Q. What does it do?</p> <p>2 A. A drip pan takes all the grease and</p> <p>3 everything and it falls onto the pan so it doesn't</p> <p>4 fall into the gas or anything under that.</p> <p>5 Q. Where was the drip pan located on this</p> <p>6 grill?</p> <p>7 A. Like I said, I just was helping him out,</p> <p>8 so I don't -- technically, I know where a drip pan</p> <p>9 is on a grill. It's under the knobs and it usually</p> <p>10 pulls out. But at this moment, I wasn't checking</p> <p>11 for a drip pan. I wasn't checking for anything. I</p> <p>12 just was helping a friend out, opening the grill.</p> <p>13 Q. Do you know if Mr. Gonzales checked the</p> <p>14 drip pan?</p> <p>15 A. I have no clue if he checked it or</p> <p>16 didn't.</p> <p>17 Q. Did you ask him?</p> <p>18 A. No.</p> <p>19 Q. Is it important to clean the drip pan</p> <p>20 after each use? Do you know?</p> <p>21 A. Yes, it is.</p> <p>22 Q. Why is that?</p> <p>23 A. Because that can cause a fire.</p> <p>24 Q. Do you know if Mr. Gonzales cleaned the</p> <p>25 drip pan after the last use?</p>	<p style="text-align: right;">Page 145</p> <p>1 says -- also in bold font, underlined, right</p> <p>2 underneath the drip pan business -- "Never operate</p> <p>3 this grill while under the influence of alcohol or</p> <p>4 drugs."</p> <p>5 Did I read that correctly?</p> <p>6 A. You did.</p> <p>7 Q. Do you agree with that?</p> <p>8 A. Yes.</p> <p>9 Q. What does "under the influence" mean to</p> <p>10 you?</p> <p>11 A. Under the influence would be having drugs</p> <p>12 or alcohol in your system. But like I've said</p> <p>13 before, the reason I have marijuana in my system is</p> <p>14 due to headaches, due to epilepsy, due to different</p> <p>15 medical conditions, and that's why I have it.</p> <p>16 It's the same reason why, when I was</p> <p>17 there, you know, when I was with Mario, taking --</p> <p>18 and I've said this numerous amounts of times --</p> <p>19 taking one hit -- I operate machinery every day in</p> <p>20 my restaurants on marijuana. Never had a problem.</p> <p>21 Never had an issue.</p> <p>22 Q. The medicinal marijuana that you told me</p> <p>23 about, that was taking a drop of liquid under your</p> <p>24 tongue once a day, correct?</p> <p>25 A. Correct.</p>

<p style="text-align: right;">Page 146</p> <p>1 Q. The marijuana that you were smoking with 2 Mr. Gonzales was recreational marijuana, true? 3 A. Same thing. Marijuana being 4 recreational, marijuana being medical is the same 5 thing. 6 Q. Recreational marijuana does have the 7 possibly of influencing your behavior, true? 8 A. They both do. But recreational 9 marijuana -- I was taking it for specific reasons. 10 Q. Understood. But I'm just asking, when do 11 you know that you're under the influence of 12 marijuana? 13 A. I mean, on a normal basis I'm always 14 under the influence of marijuana. So at the end of 15 the day, me having a medical condition and being 16 epileptic and being -- having seizures, that's why 17 I smoke marijuana. 18 Q. If it's true that you're under the 19 influence of marijuana, then under these 20 instructions you should not be operating the grill, 21 correct? 22 A. Correct. But technically, I wasn't -- if 23 I -- if I operated it to the point where I've 24 turned it on and I -- I can understand that. But 25 me helping -- me going to it and opening the grill</p>	<p style="text-align: right;">Page 148</p> <p>1 A. Before the accident, no. And like I 2 said, again, and I'm going to say it again, but me 3 having -- me doing any of this in this booklet has 4 no pertain to me at all. All I was doing was, went 5 up to a grill, I opened the grill and I flipped the 6 steak, and all of a sudden I -- it was in flames. 7 Me -- the person that you need to talk to 8 about this operation of the grill or of anything is 9 Mario, because Mario was the one that turned it on. 10 Mario is the one that used it. Mario is the one 11 that did anything with that grill. 12 All I did was do what any other normal 13 person would do and go and flip the steak. All of 14 a sudden I flip a steak and I end up in flames and 15 my hands are gone and all my skin's gone. My 16 shirt's on fire. 17 I ended up getting lucky there was a 18 sprinkler on and I stopped, dropped, and rolled, 19 like you learn in elementary school. I stopped, 20 dropped, and rolled, and I put out the fire on 21 myself. If I didn't do that, I would have been in 22 flames and we would have been talking about a lot 23 more difficult situation than it is now, you know. 24 I got blown up by a situation that had no 25 control over me at all. I had no control over the</p>
<p style="text-align: right;">Page 147</p> <p>1 and flipping a steak has nothing to do with me 2 being high or me not being high. It has no -- no 3 circumstance at all. 4 Q. So the next -- two pages on is page 12. 5 It talks about, at the bottom, "Never use water on 6 grease fires." And I was just curious if you had 7 any experience with how to control grease fires 8 using a propane grill. 9 A. Yeah. You put salt on it. 10 Q. Salt? 11 A. Yes. 12 Q. Did you ever have experience with a 13 grease fire using Mr. Gonzales' grill? 14 A. No, sir. 15 Q. So next, if you go to page 14, do you see 16 in the middle of the page there, it says, "Before 17 each use, visually inspect the gas supply hose for 18 cracks, cuts, or excessive wear. Replace the hose 19 if necessary. Check for gas leaks before each 20 use." 21 Did I read that correctly? 22 A. Yes, sir. 23 Q. Did you inspect the hose for wear or 24 check for gas leaks at any time before this 25 accident?</p>	<p style="text-align: right;">Page 149</p> <p>1 situation. Like I said before, I did not put on 2 the grill. I did not turn the grill. I did not do 3 anything with that grill that was not supposed to 4 be done. 5 The only thing I did was open it, gave it 6 oxygen, and turned a steak, and all of a sudden I'm 7 in flames. So nothing in here has to do with me at 8 all. Nothing. 9 Q. Do you know if Mr. Gonzales inspected the 10 hose or checked for gas leaks before he put the 11 grill in operation? 12 A. Like I said, I don't know. I wasn't 13 checking him, so I don't know. 14 Q. Did you ask him if he did those things? 15 A. No, I did not ask him. 16 Q. So we can -- 17 A. But that's also -- when you're at a 18 friend's house or you're talking, you don't ask 19 somebody, hey, did you use -- did you read the 20 grill instructions or did you check the gas pipes. 21 You think everything is -- you never think that 22 because usually, when you're using a grill or 23 you're using some type of equipment, you always 24 think it's safe to use. 25 Q. So just to speed up things, on page --</p>

<p style="text-align: right;">Page 150</p> <p>1 that was page 14 we were looking at. If you go to 2 15, do you see the big warning in the middle there? 3 Can you hold that up for the camera, 4 please. 5 It says, "Warning, Gas Leak Warnings," 6 right? 7 A. Yep. 8 Q. And you see, here again, the second time, 9 in all caps, "Never use the grill without first 10 leak testing the gas connections including all of 11 the valves, fittings, lines, etc." 12 Did I read that correctly? 13 A. Yes, sir. 14 Q. And just to move along, same thing on 15 page 16. It says, "Checking for Gas Leaks." 16 That's the next page. 17 Do you see "Checking for Gas Leaks"? 18 A. Yes, sir. 19 Q. It says, "Perform a leak test before each 20 use." And then below that it gives instructions on 21 how to do that by using a leak test solution. 22 Are you familiar with that process? 23 A. Yes. I know how to do that. 24 Q. Have you done that before? 25 A. In other circumstances, yes.</p>	<p style="text-align: right;">Page 152</p> <p>1 A. Yes. 2 Q. And you would agree that's good advice? 3 A. Yes. 4 Q. It also says in several places to inspect 5 the hose before each use. That's on page 15 and 6 17. I think there's at least one other time. 7 You'd agree that's good advice? 8 A. Yes, sir. 9 Q. For safety? 10 A. Yes. 11 Q. Do you know if Mr. Gonzales ever 12 inspected the hose before he put the gas grill back 13 in operation before the accident? 14 A. No, I don't. 15 Q. Did you ask him about that? 16 A. I just asked him if the grill was -- if 17 the grill was able to use, like he told me -- he 18 said that Ferrellgas came, checked it out, and they 19 said it was fine to use and they signed off on it. 20 Q. Did you see anything they signed? You 21 referred to paperwork and I've not seen that 22 paperwork. 23 A. No, I haven't. 24 Q. Okay. 25 A. He just told me that it was -- it was</p>
<p style="text-align: right;">Page 151</p> <p>1 Q. So you know how to make the leak test 2 solution and it says you put that on the lines and 3 joints and connections. 4 Is that something you've done before? 5 A. Yes, with other equipment. 6 Q. Okay. 7 A. Not with this grill. 8 Q. So then on page 17, we have a fourth time 9 the manual says, "All gas piping and connections 10 must be tested for leaks," it says, "before each 11 use." 12 Do you see that? 13 A. Yes, sir. 14 Q. And finally, on page 20, under "Warning," 15 and then you go to the middle of the page, do you 16 see in bold type there, "Always check for leaks 17 before every use." 18 Do you see that? 19 A. Yes, sir. 20 Q. You would agree with me that at least the 21 manufacturer of the grill thinks it's very 22 important that you check for leaks before each 23 use -- 24 A. Yes. 25 Q. -- since they said it five times.</p>	<p style="text-align: right;">Page 153</p> <p>1 good to use and -- and like I said, he was the one 2 that put it on. If it was different, like, you 3 know, if I'd put it on, it's a different situation. 4 But he put it on, he had it done, and it was all, 5 you know. He was -- he did it all. 6 Q. Before this accident, just to summarize, 7 you simply didn't know if anyone had checked, 8 inspected that gas hose or done a leak test, right? 9 A. No. 10 Q. Do you have an understanding today -- and 11 don't talk to me about anything your lawyer told 12 you. But other than that, do you have any 13 understanding as to how this accident happened? 14 A. What do you mean, how it happened? 15 Q. Why or how this happened? 16 A. No. I ask that question all the time. I 17 ask why did it happen to me? Why is it happening? 18 Why did it happen? Why am I in flames? Why am I 19 in the burn unit? I mean, I ask the same 20 questions. 21 Q. So on page 20 of Exhibit 5, we looked at 22 that a moment ago. Underneath where it says 23 "Always check for leaks before every use," the 24 paragraph after that, it says, "It's required that 25 there be a shutoff valve installed at the gas</p>

<p style="text-align: right;">Page 154</p> <p>1 supply source," which I'll represent to you is in</p> <p>2 Exhibit 4. We've got a picture of it through the</p> <p>3 open cabinet doors. It's the yellow-handled valve.</p> <p>4 And according to this manual, that valve should be</p> <p>5 turned off when the appliance is not in use.</p> <p>6 Do you know if that handle was normally</p> <p>7 off when the appliance wasn't in use or if it was</p> <p>8 left on?</p> <p>9 A. I have no clue.</p> <p>10 Q. Okay. Fair enough.</p> <p>11 By the way, when you heard the crackling</p> <p>12 noise and went up to the grill and opened the</p> <p>13 hood -- let me get a good picture here in just a</p> <p>14 moment.</p> <p>15 If you turn to Exhibit 3, the front page</p> <p>16 looks like this. I'm looking at the second</p> <p>17 photograph in this group, and you see the grill</p> <p>18 there, just to the right of center. How do you</p> <p>19 open the lid? Is this a handle?</p> <p>20 A. Yes.</p> <p>21 Q. That metal ridge there?</p> <p>22 A. Yes.</p> <p>23 Q. Is that what you use to open the lid?</p> <p>24 A. Yes.</p> <p>25 Q. When you did that, was it hot?</p>	<p style="text-align: right;">Page 156</p> <p>1 Mr. Gonzales had told you some months</p> <p>2 before this accident that he had had a problem with</p> <p>3 the grill, in particular the hose, correct?</p> <p>4 A. Correct.</p> <p>5 Q. All right. Then on the day of the</p> <p>6 accident, he did not say anything to you about what</p> <p>7 had happened just a few days before, that the hose</p> <p>8 was hot or that he had a shock?</p> <p>9 A. No.</p> <p>10 Q. He didn't tell you about that?</p> <p>11 A. No.</p> <p>12 Q. But because he had told you several</p> <p>13 months before there was a problem with the hose,</p> <p>14 you asked him if the grill was okay and he said it</p> <p>15 had been fixed?</p> <p>16 A. There was a problem with the grill that I</p> <p>17 knew of. I didn't know directly if it was the</p> <p>18 hose. I knew there was a problem with the grill,</p> <p>19 and that's why I asked him, before I even came to</p> <p>20 his house, I said, "Is the grill" -- "Is everything</p> <p>21 okay with the grill?"</p> <p>22 Q. And he said Ferrellgas had come out a few</p> <p>23 days before?</p> <p>24 A. And checked it, yes.</p> <p>25 Q. And checked it. All right.</p>
<p style="text-align: right;">Page 155</p> <p>1 A. I don't remember. I mean, I opened it</p> <p>2 quick and -- just opened it like I would open any</p> <p>3 other grill.</p> <p>4 Q. Was there anything unusual or sticks out</p> <p>5 in your mind when you grabbed ahold of that --</p> <p>6 A. No.</p> <p>7 Q. -- hood?</p> <p>8 Just to summarize, there wasn't anything</p> <p>9 unusual about the operation of the grill that you</p> <p>10 could detect until the moment of the flash fire?</p> <p>11 A. Yes, sir.</p> <p>12 Q. Just as you were flipping the steak?</p> <p>13 A. Yes, sir.</p> <p>14 Q. Up until then, everything seemed normal?</p> <p>15 A. Yes.</p> <p>16 Q. The crackling noise seemed normal to you</p> <p>17 as well. You had heard that before?</p> <p>18 A. Yes. I mean, like I've been working</p> <p>19 around meat and stuff for, you know, 18-plus years.</p> <p>20 I know if something's burning or not.</p> <p>21 Q. I think that's it on the manual. Thanks.</p> <p>22 One thing I want to be sure of. We went</p> <p>23 round and round on it last time before lunch, so I</p> <p>24 appreciate your patience, but it could be</p> <p>25 confusing, so just to be sure.</p>	<p style="text-align: right;">Page 157</p> <p>1 A. And gave him the okay.</p> <p>2 Q. But just so I'm clear, when he mentioned</p> <p>3 there was a problem with the grill months before,</p> <p>4 he did mention there was a hose issue?</p> <p>5 A. I -- as of my remembrance, I remember him</p> <p>6 telling me there was a problem with the grill.</p> <p>7 Q. Did he say anything about the hose?</p> <p>8 A. I don't remember exactly.</p> <p>9 Q. Okay.</p> <p>10 A. I know there -- I know he said that there</p> <p>11 was a problem with the grill and a leak, but that</p> <p>12 was -- you know, that's all I know. And then</p> <p>13 that's why I asked him. Before I even went to his</p> <p>14 house, I asked him, you know, the question, "Is the</p> <p>15 grill okay to use?"</p> <p>16 Q. Okay. When he told you there was a</p> <p>17 problem with the grill and there was a leak, that's</p> <p>18 what he told you months before?</p> <p>19 A. Yes.</p> <p>20 Q. All right. I think we're clear now.</p> <p>21 Thank you.</p> <p>22 So you responded to interrogatories in</p> <p>23 this case, I'm sure you'll recall. Mr. Gonzales</p> <p>24 sent you interrogatories and Ferrellgas sent you</p> <p>25 interrogatories, and that will help us along here.</p>

<p style="text-align: right;">Page 158</p> <p>1 And if you like, I'll give you my copy if 2 it helps, if anything's unclear. I want to talk 3 about your injuries. All right? 4 A. Mm-hmm. 5 Q. You told us about your injuries in 6 response to Mr. Gonzales' Interrogatory Number 9. 7 The question was: "Please describe in as much 8 detail as possible all physical injuries, ailments, 9 or symptoms experienced by you which you allege 10 resulted from the subject incident." 11 And I'll hand that to you in case you 12 want to refer to it. There were bullet points 13 provided as to all the various conditions. 14 And I guess the first thing I want to do 15 is summarize what you have there and see if you 16 want to add to it or change anything. You're free 17 to do that. 18 As for burns, it indicates second-degree 19 burns to abdominal wall, both forearms, left hand, 20 head, face, and neck. Is that accurate? 21 A. Yes. 22 Q. And that's accurate as you sit here 23 today? 24 A. Yes. 25 Q. There were no other burn injuries.</p>	<p style="text-align: right;">Page 160</p> <p>1 University Medical, also they said first and second 2 degree. And when you were admitted to the Burn 3 Unit, first and second degree, 5 percent, second 4 degree, 3 percent. 5 So I don't know where the third-degree 6 diagnosis is coming from. Do you remember what 7 doctor has told you that? 8 A. No. Like I said, I was under so much 9 medication in the hospital, and that's what I was 10 told in the hospital. 11 Q. Okay. And you're obviously not a doctor 12 yourself. 13 A. Right. 14 Q. So maybe the fair thing is to just let 15 the records and the doctors address that. You 16 don't remember who told you that. 17 A. No. 18 Q. But you remember someone said you had 19 third-degree burns? 20 A. Yes. 21 Q. Was it a doctor? 22 A. I believe so. 23 Q. Do you remember what hospital or 24 treatment center you were at? 25 A. It was at UMC because that's really where</p>
<p style="text-align: right;">Page 159</p> <p>1 That's a complete summary? 2 A. Yeah, that's a complete summary. 3 Q. So I have looked through all the medical 4 records, and I don't expect that you have 5 necessarily done that, and some of these questions 6 might be better for your treaters. And if that's 7 the case, just tell me. 8 I am not aware of anyplace in the records 9 where it indicates you had third-degree burns. 10 Do you have an understanding that you had 11 third-degree burns anywhere? 12 A. From when I went into the hospital or at 13 the hospital, that's what I was told, that I had 14 third-degree burns, especially on my hands. 15 Q. Did you have any skin grafts? 16 A. No, I didn't. 17 Q. So there's various records which I can 18 show you from Spring Valley Hospital which indicate 19 you were only there for a couple hours and then you 20 were transferred to the Burn Unit at University 21 Medical Center. 22 But when you were admitted to Spring 23 Valley Hospital, they indicated first-degree burns 24 19 percent, second degree, 18 percent. 25 When you got to the Burn Unit at</p>	<p style="text-align: right;">Page 161</p> <p>1 I talked to more doctors. 2 Q. All right. 3 A. I mean, as soon as I went to 4 Spring Valley, I got -- I went -- as soon as I got 5 in there, they pumped me with so much medication. 6 Q. Would it be fair to say that anytime 7 you're under heavy medication, you're not going to 8 trust your memory or what was said at that time, or 9 do you have a firm memory that somebody said 10 third-degree burns? 11 A. No, I'm -- I just have a memory that 12 someone told me third-degree burns. 13 I mean, I can tell you that when I was -- 14 under -- in the hospital at UMC, under medication, 15 I had a lawyer come in and make me sign paperwork 16 that had to do with -- being sent from Mario or 17 someone that was close to Mario, but they sent -- 18 they came, they sat there, and they made me sign 19 paperwork; hence, that's why Matt is my lawyer now. 20 But that was -- that was also a big 21 issue, that they made me sign paperwork under 22 the -- when I was under medication. 23 Q. The first lawyer who you talked to made 24 you sign? 25 A. Some lawyer. I don't even know what</p>

<p style="text-align: right;">Page 162</p> <p>1 lawyer it was. I don't even remember the name. 2 But it was a guy and a girl, and they came in and 3 sat in the room and told me to sign paperwork. And 4 that's how Matt was brought to me. 5 Q. That sounds like you had conversations 6 with lawyers and I'm not going to touch that. 7 Matt's your lawyer here today, correct? 8 A. Yes. But I'm just telling you, under 9 the -- you know, someone sending a lawyer to the 10 hospital, that's -- that's -- you know. 11 MR. McMULLEN: Let's take a five-minute 12 break. I'm going to organize my records and we'll 13 continue. Thank you. 14 THE VIDEOGRAPHER: The time is 15 approximately 2:00 p.m. We're off the record. 16 (Recess had.) 17 THE VIDEOGRAPHER: We're back on the 18 record. The time is approximately 2:11 p.m. 19 (Exhibit Number 6 was marked.) 20 BY MR. McMULLEN: 21 Q. Josh, I want to share with you just a few 22 medical records. I had planned to go through more 23 and there's no point. We can just talk about it. 24 But there are a few I want to show you. 25 Exhibit 6 is when you were discharged</p>	<p style="text-align: right;">Page 164</p> <p>1 Q. So if you had oral pain medicine, they 2 were able to change your dressings. 3 Do you agree with that? 4 A. Yes. 5 Q. It says: "He will be discharged with 6 outpatient dressing changes by BCU clinic daily." 7 Do you recall that's what occurred? You 8 were discharged; you could do your dressing changes 9 at home? 10 A. No. I had to go into the unit to get 11 them changed. 12 Q. Beg your pardon. That's right. You had 13 to go -- that's what it says. Go to the clinic and 14 they did it? 15 A. Yes. 16 Q. After that, your parents helped you? 17 A. Yes. 18 Q. It says: "Work/school instructions: You 19 may return to work in two weeks," at the bottom, 20 "sooner if able to tolerate." 21 Do you see that? 22 A. Yes, sir. 23 Q. So on June 24, according to the Burn Unit 24 discharge summary, they felt you could return to 25 work in two weeks or sooner, if you could tolerate</p>
<p style="text-align: right;">Page 163</p> <p>1 from UMC Burn Unit. 2 A. Mm-hmm. 3 Q. That happened on June 24, so I believe it 4 was six days after the accident. 5 So you were in the Burn Unit for six 6 days? Does that sound right? 7 A. Yeah, six to eight days. 8 Q. Okay. Well, it would have been the 9 19th through the 24th. So five or six days? 10 Does that sound wrong? 11 A. No. Six days I think is right. 12 Q. Okay. So a couple -- two or three things 13 here I just want to check on with you. 14 It talks about the hospital course about 15 two-thirds of the way down? 16 A. Mm-hmm. 17 Q. And it's got a description there of your 18 injuries, that you were admitted for pain control 19 and monitoring the progression of burns. It talks 20 about treatment and so forth, and then it says: 21 "On the day of discharge, he demonstrated 22 stabilization of his burns and was able to tolerate 23 dressing changes with oral medication." 24 Do you see where it says that? 25 A. Yes, sir.</p>	<p style="text-align: right;">Page 165</p> <p>1 it, which would be about July 7. 2 When did you actually return to work? 3 A. I don't know -- I don't know the exact 4 date that I returned to work, but I do know that we 5 were supposed to open the restaurant in July and we 6 ended up opening the first day of August. 7 Q. We'll talk about that. I'm just asking 8 your recollection of when did you return to work 9 after this accident? 10 A. I mean, I didn't fully return to work. I 11 mean, technically -- I didn't return -- I didn't 12 fully return to work until -- I'd say until like 13 August 1st. I mean, that's when I started, you 14 know, doing stuff for the restaurant and so on and 15 so forth. The other times I had stuff on my arms 16 and, you know, I wasn't able to do what I was 17 normal -- or planning on doing. 18 Q. So I need to understand. I'm not 19 disputing that you needed to wait longer, but I 20 just need to find out why since, according to the 21 discharge report, medically they thought you could 22 return to work by July 7 or so. 23 Was that mistaken or was there something 24 else going on? 25 A. No. Just it's the difference of</p>

<p style="text-align: right;">Page 166</p> <p>1 returning to work and cooking as a chef or 2 returning to work and just sitting there monitoring 3 people. 4 I mean, me sitting there cooking and 5 having heat, there's no possible way -- I mean, you 6 can ask the people that were around me. There is 7 no possible way that could have happened. 8 Q. Because of the heat from the stove? 9 A. The heat from the stove, on my arms, my 10 hands. I mean, everything that was affected by the 11 burns, it all -- I mean, anytime I went near heat 12 or near cold or -- it would hurt. 13 Q. But as you said, you felt you would be 14 able to return to monitor what other people were 15 doing? 16 A. Yes. When I'm standing around, I can 17 monitor. I can tell somebody to do something and 18 so on and so forth. 19 Q. Did you do that? 20 A. I went back to work and hired people and 21 did the -- finished the process of what I needed to 22 do to complete -- complete what I needed to as well 23 as open the restaurant. 24 Q. So even though you weren't ready to cook 25 because of the heat associated with the stove, did</p>	<p style="text-align: right;">Page 168</p> <p>1 A. Yes. 2 Q. And why is that? 3 A. Just the pain that I was in. 4 Q. On the subject of pain, if you'll turn to 5 the next page, second page of Exhibit 6, it says: 6 "Instructions. We encourage the use of ibuprofen 7 for pain at up to 2400 milligrams per day for up to 8 two weeks." 9 It also says, second bullet point: "We 10 encourage the use of Tylenol in combination with 11 ibuprofen for pain control." 12 I don't see any other reference to pain 13 medications at the time of discharge. Were there 14 any? 15 A. No. Just this. 16 Q. Over the counter? 17 A. Yeah. 18 Q. Did you take ibuprofen? 19 A. Yes, I did. 20 Q. And Tylenol? 21 A. Yes. 22 Q. Anything else for pain? 23 A. No. Marijuana. 24 Q. Did you ask for anything stronger for 25 pain, medication?</p>
<p style="text-align: right;">Page 167</p> <p>1 you go back to work full time about July 7 to 2 help -- 3 A. I mean, it wasn't full time, no. 4 Q. Why not? 5 A. It's just because, as I said to you, I 6 wasn't able to do what I would be doing full time. 7 Q. So you would disagree with the medical 8 summary here that you could go back to work in two 9 weeks. You weren't ready to go back? 10 A. No, I don't think so. 11 Q. You weren't ready to go back and -- 12 A. Not to a full-time chef, no. 13 Q. Did you work part time? 14 A. I mean, I was there. I guess you could 15 say I worked part time. 16 Q. When did you first go back to work part 17 time after the accident? 18 A. I don't have an exact date. 19 Q. Can you give me an estimate? Was it by 20 the middle of July? 21 A. Middle of July. 22 Q. To do part-time work, supervising others? 23 A. Yeah. 24 Q. Did you feel you couldn't go back any 25 sooner than that?</p>	<p style="text-align: right;">Page 169</p> <p>1 A. No. I actually can't -- I'm allergic to 2 Demerol, codeine, and that's -- and I don't take 3 any -- any other medication makes me faint. 4 Q. Are there any stronger pain medications 5 than ibuprofen or Tylenol that you could take if 6 you wanted to? 7 A. I don't -- I think there is one, but I 8 don't really take any -- even when I had my kidney 9 stones, I didn't -- I didn't take strong pain 10 medication. 11 Q. Were you able to control your pain after 12 you were discharged using ibuprofen and Tylenol? 13 A. With the help of marijuana, yes. 14 Q. So those three things together, you were 15 able to control your pain? 16 A. Yes. 17 Q. So if you were able to control your pain, 18 was there some reason you couldn't return to work 19 part time sooner than the middle of July? 20 A. No, just the bothering of when you're a 21 chef and you're in heat and you have a chef coat on 22 or you have a long-sleeve shirt on -- because I 23 have to cover my burns, and I have gauze on my arms 24 and all that stuff -- it gets really, really hot. 25 It gets itchy.</p>

<p style="text-align: right;">Page 170</p> <p>1 And them saying that I can -- in two 2 weeks I can return to work, they don't know what I 3 actually do. You know, as a chef, you can't -- 4 it's physically impossible to put a chef coat on, 5 have your bandages get all hot and sweaty under 6 there, and it just starts getting itchy, it starts 7 burning, it starts hurting. 8 And so that's why at that time, I just 9 did the stuff that I needed to do of hiring, making 10 sure that the restaurant was going to open on time, 11 and so on and so forth because I had a partner and 12 I had -- I was supposed to open the restaurant a 13 month before, and then due to this, I ended up 14 opening a month later. 15 Q. So you needed to stay away from the heat 16 but you could work in other places of the 17 restaurant? 18 A. Yes, but the heat and then working on the 19 line, working as a chef was very, very hard. 20 Q. So when you first returned you worked 21 part time to help get the restaurant open, staying 22 out of the kitchen? 23 A. Correct. 24 Q. And you think you did that beginning the 25 middle of July?</p>	<p style="text-align: right;">Page 172</p> <p>1 BY MR. McMULLEN: 2 Q. This is a record marked Exhibit 7, 3 three pages, from the UMC Burn and Wound Clinic 4 dated July 3. 5 Do you have that in front of you? 6 A. Yes. 7 Q. And I told you before that all the 8 records I've seen talk about first and second 9 degree. This is an example. At the bottom it says 10 "Assessment and Plan." It talks about 11 second-degree burns. But we'll leave that for 12 later. 13 I certainly don't dispute that you had 14 serious injuries. However, it looks like the 15 treatment was working and you made a good recovery. 16 Would you agree? 17 A. Yes. 18 Q. And if you turn to the second page of 19 Exhibit 7, as of July 3, a couple weeks after the 20 accident, it says the burn has healed and you were 21 instructed to apply lotion three or four times at 22 home. 23 Do you see that? 24 A. Yes. 25 Q. Do you have any reason to disagree with</p>
<p style="text-align: right;">Page 171</p> <p>1 A. Yeah. I mean, I did that all the way 2 until -- we started -- we opened. 3 Q. When you opened on -- was it August 1 you 4 opened? 5 A. Yeah. 6 Q. Were you back to full time by August 1? 7 A. I mean, I wasn't full time until, you 8 know, technically -- I mean, I worked full time, 9 but to really like -- it was when all the bandages 10 and everything was off and then the scars were gone 11 and it stopped bothering me with burns -- you know, 12 with sweating and all that stuff. 13 Q. Do you remember when you first went back 14 full time, when that was? 15 A. I would say full, full time like in 16 October. 17 Q. Not until October? 18 A. Yeah. Like full, full time, like doing 19 everything that I could physically do and be a 20 chef, yes. 21 Q. Actually work in the kitchen, that's what 22 you mean? 23 A. Yes. 24 MR. McMULLEN: Let's mark this. 25 (Exhibit Number 7 was marked.)</p>	<p style="text-align: right;">Page 173</p> <p>1 that? 2 A. No. 3 Q. It also says at the top of page 3 that at 4 least at that time, on July 3 of '18, your pain 5 score was zero. No pain. Is that accurate? 6 A. I mean, as it says -- it says no pain, 7 but, I mean, who knows at that time. 8 Q. And then at the bottom, just above 9 "Wound Care," there's a -- there's a space there 10 for percentage healed. It says "100 percent 11 healed." 12 Do you see that? 13 A. Yep. 14 Q. Is that accurate? 15 A. From the paper, yes. I can't tell you 16 because it's not -- you know, it's not that time 17 and I don't know -- I can't go back in my head and 18 tell you. 19 Q. Well, let's be fair. You're not a 20 doctor. 21 A. Yep. 22 Q. And for sure you've had some discomfort 23 and pain after that, right? 24 A. Yes. 25 Q. And I'm not arguing about that. I'm</p>

<p style="text-align: right;">Page 174</p> <p>1 asking if you have any reason to disagree that the</p> <p>2 burn specialist reported that your burns were</p> <p>3 100 percent healed as of July 3 of '18.</p> <p>4 Do you have any reason to dispute that?</p> <p>5 A. No.</p> <p>6 (Exhibit Number 8 was marked.)</p> <p>7 BY MR. McMULLEN:</p> <p>8 Q. So I'm just about done with the medical</p> <p>9 records. According to the records we have, you</p> <p>10 went to the Las Vegas Pain Relief Center later in</p> <p>11 July.</p> <p>12 Do you remember that, going there?</p> <p>13 A. Yes.</p> <p>14 Q. I can show you the record, but just to</p> <p>15 move along, according to those records, they wrote</p> <p>16 down that you were knocked to the ground by an</p> <p>17 explosion, but I don't see that in any other</p> <p>18 records.</p> <p>19 Did this explosion knock you to the</p> <p>20 ground?</p> <p>21 A. I mean, it pushed me back to the fact</p> <p>22 that -- you know, I was engulfed in flames, and I</p> <p>23 fell -- I went backwards. I mean, that's -- that's</p> <p>24 what happened. I don't know --</p> <p>25 Q. Well, I think there's an indication in</p>	<p style="text-align: right;">Page 176</p> <p>1 MR. PFAU: Is that a "yes," Josh?</p> <p>2 THE WITNESS: Yes.</p> <p>3 MR. McMULLEN: Sorry?</p> <p>4 MR. PFAU: He answered with a "mm-hmm."</p> <p>5 MR. McMULLEN: Oh, thanks.</p> <p>6 BY MR. McMULLEN:</p> <p>7 Q. After the single visit to the pain relief</p> <p>8 center on July 16 of 2018, I don't have records for</p> <p>9 any other care or treatment at all for this</p> <p>10 accident until you went to the Henderson</p> <p>11 Dermatology and Skin Center in June of 2019; is</p> <p>12 that correct?</p> <p>13 There is a gap of about a year where</p> <p>14 you -- almost exactly a year where you had no</p> <p>15 healthcare treatment for this incident?</p> <p>16 A. No, I believe that's it.</p> <p>17 Q. Okay. Then I want to show you Exhibit 8</p> <p>18 is the dermatology -- Henderson Dermatology.</p> <p>19 MR. PFAU: Exhibit 9?</p> <p>20 MR. McMULLEN: We marked that 8, didn't</p> <p>21 we?</p> <p>22 MR. PFAU: Didn't we already have an</p> <p>23 Exhibit 8?</p> <p>24 MR. McMULLEN: Off the record.</p> <p>25 THE VIDEOGRAPHER: The time is</p>
<p style="text-align: right;">Page 175</p> <p>1 the file that you -- did you roll on the ground to</p> <p>2 try and put out the fire?</p> <p>3 A. Yeah. But when the burn -- when the</p> <p>4 explosion happened, I did get pushed back.</p> <p>5 Q. Did you fall onto the ground because of</p> <p>6 the explosion?</p> <p>7 A. I believe so.</p> <p>8 Q. Because it knocked you back off your</p> <p>9 balance?</p> <p>10 A. Yeah.</p> <p>11 Q. You're not saying the explosive force</p> <p>12 blew you off your feet?</p> <p>13 A. No.</p> <p>14 Q. But you did fall back?</p> <p>15 A. Yes.</p> <p>16 Q. All right.</p> <p>17 Are you claiming back pain from this</p> <p>18 accident?</p> <p>19 A. No.</p> <p>20 Q. After the last visit to Las Vegas Pain</p> <p>21 Relief Center, which appears to be a single visit</p> <p>22 on July 16 -- does that sound right?</p> <p>23 A. Yes.</p> <p>24 Q. Just went there once?</p> <p>25 A. Mm-hmm.</p>	<p style="text-align: right;">Page 177</p> <p>1 approximately 2:28 p.m. We're off the record.</p> <p>2 (Discussion off the record.)</p> <p>3 THE VIDEOGRAPHER: We're back on the</p> <p>4 record. The time is approximately 2:31 p.m.</p> <p>5 BY MR. McMULLEN:</p> <p>6 Q. It's been brought to my attention that</p> <p>7 I've messed up on our exhibits or I may have, so</p> <p>8 just to be clear, Exhibit 6, which is the Burn</p> <p>9 Center discharge, that's also FG288 and 289.</p> <p>10 Exhibit 7 is the UMC Burn Unit record</p> <p>11 dated July 3. There are no Bates numbers on this</p> <p>12 copy. That's where we talked about there wasn't</p> <p>13 any pain and the burns were 100 percent healed.</p> <p>14 That was July 3. That's Exhibit 7.</p> <p>15 The next Exhibit is Exhibit 8. Do you</p> <p>16 have Exhibit 8 in front of you --</p> <p>17 A. Yes, sir.</p> <p>18 Q. -- from the Henderson Dermatology and</p> <p>19 Skin Cancer.</p> <p>20 The record I didn't show you we just</p> <p>21 discussed was Las Vegas Pain Relief Center, and you</p> <p>22 agreed you were only there a single time on</p> <p>23 July 16; that's all you recall, correct?</p> <p>24 A. The Las Vegas Pain Center? That's</p> <p>25 Jon Petrick, Dr. Petrick? I went there three</p>

<p style="text-align: right;">Page 178</p> <p>1 times.</p> <p>2 Q. Do you remember after July 16 you went</p> <p>3 there?</p> <p>4 A. Yeah. I went there three times.</p> <p>5 Q. All right.</p> <p>6 A. If that's the same -- I believe that's</p> <p>7 the same place.</p> <p>8 Q. We only have records for one visit, so I</p> <p>9 don't know. Maybe we just don't have all the</p> <p>10 records.</p> <p>11 Do you remember how many -- when you were</p> <p>12 there after July of '18?</p> <p>13 A. I don't. I don't remember dates.</p> <p>14 Q. Before we went off the record, I think</p> <p>15 you agreed -- but feel free to change your</p> <p>16 testimony -- that there was a gap of about a year</p> <p>17 where there was no treatment between July of '18</p> <p>18 and June of '19. Is that not right?</p> <p>19 A. No, I think that's -- I think that's</p> <p>20 right.</p> <p>21 Q. Okay. All right. So let's talk about</p> <p>22 the last record, then, which is Exhibit 8,</p> <p>23 Henderson Dermatology.</p> <p>24 Is that the last time you had any care or</p> <p>25 treatment for anything related to this accident,</p>	<p style="text-align: right;">Page 180</p> <p>1 A. Yes.</p> <p>2 Q. Did they provide any treatment?</p> <p>3 A. No.</p> <p>4 Q. Did you see them one --</p> <p>5 A. They just said that -- oh, and it was for</p> <p>6 tingling in my hands and stuff like that because I</p> <p>7 had a -- from this accident, I've had a huge</p> <p>8 sensitivity issue with feeling hot and feeling</p> <p>9 cold.</p> <p>10 Q. So you saw them for cuts and scrapes to</p> <p>11 your hands and also tingling in your hands?</p> <p>12 A. Yes.</p> <p>13 Q. But they didn't provide any treatment?</p> <p>14 A. I mean, they just told me to use the</p> <p>15 same -- that's why I stopped going to Henderson</p> <p>16 Dermatology because they all gave me the same</p> <p>17 \$75 ointment that you can -- cream that you just</p> <p>18 put on your arms.</p> <p>19 Q. You saw this other dermatology clinic</p> <p>20 three months ago just once?</p> <p>21 A. Yes.</p> <p>22 Q. Then you went to Henderson Dermatology?</p> <p>23 A. I went to Henderson a while before.</p> <p>24 Q. That was June of 2019?</p> <p>25 A. Yeah.</p>
<p style="text-align: right;">Page 179</p> <p>1 was Henderson Dermatology on June 17?</p> <p>2 A. No. There was another one that I went</p> <p>3 to. I went to another skin person three months</p> <p>4 ago, four months ago.</p> <p>5 Q. Who was that?</p> <p>6 A. I don't remember.</p> <p>7 Q. What was that for?</p> <p>8 A. It was for -- to check on my -- because I</p> <p>9 had problems with my hands. I was getting cuts and</p> <p>10 burns -- and like scrapes really, really -- like on</p> <p>11 anything on my hands. So I was just -- I went to</p> <p>12 the doctor to check out my skin. It was a skin</p> <p>13 person.</p> <p>14 Q. Three months ago?</p> <p>15 A. Yeah.</p> <p>16 Q. Dermatology?</p> <p>17 A. Yeah.</p> <p>18 Q. Do you remember the name of the provider?</p> <p>19 A. I don't. It was -- the address, it was</p> <p>20 on like Cheyenne and -- I don't remember exactly.</p> <p>21 It was in that area.</p> <p>22 Q. And this was for cuts and scrapes to your</p> <p>23 hands?</p> <p>24 A. Yeah.</p> <p>25 Q. Is that related to this accident?</p>	<p style="text-align: right;">Page 181</p> <p>1 Q. More than once?</p> <p>2 A. No. Just once.</p> <p>3 Q. Henderson just once?</p> <p>4 A. Just because they said the same thing as</p> <p>5 the other person. "Just put cream on it."</p> <p>6 Q. So to keep the timeline straight, you</p> <p>7 went to Las Vegas Pain Relief Center in 2018?</p> <p>8 A. Mm-hmm.</p> <p>9 Q. Like I say, we just have a record for</p> <p>10 July 16, but you think it was three times?</p> <p>11 A. Yes.</p> <p>12 Q. However, you think it was then about a</p> <p>13 year of no treatment anywhere until June of '19,</p> <p>14 when you went to Henderson Dermatology, correct?</p> <p>15 A. Yes.</p> <p>16 Q. Only one time?</p> <p>17 A. Yes. Because throughout that time I was</p> <p>18 having a lot of problems with my skin and my hands.</p> <p>19 Q. And then the last time you had any care</p> <p>20 or treatment was three months ago in 2020, so March</p> <p>21 or April?</p> <p>22 A. I think -- I think March. It was</p> <p>23 before -- maybe February. February or March.</p> <p>24 Because it was before this whole virus.</p> <p>25 Q. So in February or March of this year, you</p>

<p style="text-align: right;">Page 182</p> <p>1 went to a dermatologist, you don't remember the 2 name, one time, but you didn't receive any 3 treatment. They said, "Keep using the ointment?" 4 A. Yes. 5 Q. Which is expensive? 6 A. Yes. 7 Q. The Henderson Dermatology record, let's 8 talk about that, Exhibit 8, because I have some 9 confusion. 10 It says "Chief" -- page 2. And to help 11 the record, this has Bates Numbers FG234 to 240. 12 On FG239, the second page: "HPI: This 13 is a 37-year-old male who comes in for a chief 14 complaint of a burn. The burn was caused by 15 exposure to a propane tank. The burn is 16 blistering, first degree, and painful and moderate 17 in severity." 18 Do you see that? 19 A. Mm-hmm. Yes. 20 Q. But then down below -- and I mean, you're 21 familiar with the first-degree burn is sunburn, 22 right? 23 A. Yes, sir. 24 Q. Then as it says here: "Sunburns usually 25 resolve within seven to ten days."</p>	<p style="text-align: right;">Page 184</p> <p>1 know what I mean? Or I bang a desk, I get a cut or 2 whatever. 3 Q. Have any treating doctors told you that 4 this is a condition from the accident? 5 A. They told me -- they told me that that's 6 going to happen, yes, because the skin is so 7 fragile. 8 Q. And the treatment for it is the ointment? 9 A. Yeah, ointment or just being careful. 10 Q. So that's why you went to Henderson? 11 A. Yes. 12 Q. And they basically told you, as we 13 discussed, "Use the ointment"? 14 A. Yes. 15 Q. Have you been using the ointment? 16 A. I have. 17 Q. Do you use it on a regular basis? 18 A. Not anymore, but yes, I did. 19 Q. Why not anymore? 20 A. To the point where now it's gotten to the 21 point where I'm -- I'm not having the reactions 22 that -- you know, I get burns and stuff and I put 23 the ointment on that, but I haven't needed to use 24 it. 25 Q. But you're saying that this condition has</p>
<p style="text-align: right;">Page 183</p> <p>1 So my confusion is, are you saying that 2 you had sunburn in June 2019 from this accident a 3 year before? 4 A. No. 5 Q. Is this a separate thing? 6 A. No. I don't know. I mean, I went in 7 telling them my skin was -- you know, that my skin 8 was hurting and my burns were -- I was getting cuts 9 and all this different stuff. So I don't know. 10 Q. Where was the sunburn? 11 A. I don't even know of a sunburn, to be 12 honest with you. 13 Q. Well, here it tells us. On your forearm, 14 arms, and trunk. Does that ring a bell? 15 A. Yeah, but it wasn't sunburn. 16 Q. Well, first degree. 17 Do you relate this to the accident? 18 A. Yeah. 19 Q. In what way? 20 A. Well, I was getting all this -- I was 21 getting burns and cuts and all these different 22 things from -- my skin was so fragile that I was 23 just getting -- I mean, you can see, I get burns 24 and cuts on the -- in any way, shape, or form, it 25 doesn't matter if I bang an elbow, I get a cut, you</p>	<p style="text-align: right;">Page 185</p> <p>1 improved? 2 A. Slightly. 3 Q. Not as bad as it was? 4 A. Not as bad, yes. 5 Q. So you've stopped using the ointment? 6 A. Yes. 7 Q. When did you stop using the ointment? 8 A. I just stopped in like March. 9 Q. So I'm guessing you still want to be 10 careful about not bruising or scraping or cutting 11 your arms or hands, and not getting sunburned, but 12 it's not as fragile as it was. Is that a fair 13 statement? 14 A. Yes. 15 Q. And that's been the case since April? 16 When you stopped using the ointment. I'm sorry. 17 A. No. March. 18 Q. March. 19 Have we now covered all the medical 20 appointments? 21 A. I believe so. 22 Q. You did say that you consulted with a 23 psychiatrist or was it a psychologist? 24 A. Psychologist. 25 Q. Who was that? Did you --</p>

<p style="text-align: right;">Page 186</p> <p>1 A. Michael White.</p> <p>2 Q. Michael White.</p> <p>3 Is he here in Las Vegas?</p> <p>4 A. Yes. I think that's his name.</p> <p>5 Q. And what prompted you to see him?</p> <p>6 A. Just talking to Lauren and talking to my</p> <p>7 rabbi, they -- after talking to them, you know, all</p> <p>8 for so many weeks and years, and they told me that</p> <p>9 it would be beneficial to me to go see somebody.</p> <p>10 Q. See them for what?</p> <p>11 A. To talk to them about -- I mean, I had a</p> <p>12 lot of issues from this. You know, I was</p> <p>13 working -- I was working 15, 16-hour days before</p> <p>14 this accident, and I was extremely, you know,</p> <p>15 determined and everything, and then this accident</p> <p>16 happened.</p> <p>17 It caused me a lot of frustration. It</p> <p>18 caused me a lot of pain in the ability of not</p> <p>19 working as much. I wasn't able to put as much time</p> <p>20 in as I wanted to, being a chef, because of the</p> <p>21 heat and the excruciating pain that I would get.</p> <p>22 And then I actually shortened my hours at</p> <p>23 Fries N' Pies.</p> <p>24 Right now, I started in January, I</p> <p>25 started working as a personal chef due to this</p>	<p style="text-align: right;">Page 188</p> <p>1 just have a lot of, you know, thoughts and</p> <p>2 psychological feelings of -- you know, before this</p> <p>3 accident, I was extremely, extremely happy. I was</p> <p>4 happy with my -- you know, internally happy, which</p> <p>5 I wasn't before I saw Lauren and -- you know, and</p> <p>6 the rabbi and they took me to this place where I</p> <p>7 was, you know, in a good position.</p> <p>8 And then -- and then after the accident,</p> <p>9 it just made me into a little bit of a different</p> <p>10 person. You know, I secluded myself from a lot of</p> <p>11 people just because I -- I didn't want to either</p> <p>12 see people or -- you know, I didn't want to see</p> <p>13 people because of my burns and have to explain it.</p> <p>14 I mean, after this situation, I had to</p> <p>15 explain burns to everybody, why -- you know, what</p> <p>16 happened with your arms, what happened with this,</p> <p>17 what happened with that, blah, blah, blah, and it</p> <p>18 takes a lot of toll on you, especially after this</p> <p>19 whole situation of going through this whole -- you</p> <p>20 know, going through the situation for me took a lot</p> <p>21 of toll on my body and me.</p> <p>22 Q. So I just want to focus a little bit more</p> <p>23 on the psychological.</p> <p>24 Before you saw Michael White, a</p> <p>25 psychologist here in Las Vegas last Friday, you had</p>
<p style="text-align: right;">Page 187</p> <p>1 incident because it's easier for me to work as a</p> <p>2 personal chef than it is on a line in a fast-paced</p> <p>3 environment.</p> <p>4 Q. Is that a part-time job?</p> <p>5 A. Right now, yes. But like, you know, at</p> <p>6 that job he asked me to use the grill. I don't --</p> <p>7 I don't use the grill. I had someone else --</p> <p>8 actually, two weeks ago, they wanted ribs and I</p> <p>9 made these ribs. And they asked -- they asked me</p> <p>10 to grill them, and I couldn't grill them, so I had</p> <p>11 someone else do it.</p> <p>12 And then there was another time that they</p> <p>13 wanted steak grilled and I can't -- I don't use a</p> <p>14 grill. So he had one of his friends grill the</p> <p>15 steak.</p> <p>16 Q. These two instances, is this at</p> <p>17 Fries N' Pies or just --</p> <p>18 A. No. That's at my client's house right</p> <p>19 now.</p> <p>20 Q. The personal chef?</p> <p>21 A. Yes.</p> <p>22 Q. So you saw Michael White because of</p> <p>23 frustration that you can't work as hard or as much</p> <p>24 because of heat in the kitchen causes you pain?</p> <p>25 A. Yeah. And I just -- I have a lot of -- I</p>	<p style="text-align: right;">Page 189</p> <p>1 not attempted to see any --</p> <p>2 A. Well, I was talking to my rabbi and I was</p> <p>3 talking --</p> <p>4 Q. Let me finish the question.</p> <p>5 A. Yeah. Sorry.</p> <p>6 Q. You had not attempted to see any medical</p> <p>7 specialists for psychological issues.</p> <p>8 You talked to your rabbi and to the</p> <p>9 shaman, right?</p> <p>10 A. Mm-hmm. Yes.</p> <p>11 Q. So the first time you've sought any</p> <p>12 professional medical help would be last Friday?</p> <p>13 A. Yes.</p> <p>14 Q. For psychological issues?</p> <p>15 A. Yes.</p> <p>16 Q. And did Mr. -- or Dr. White give you any</p> <p>17 diagnosis?</p> <p>18 A. Not yet, no.</p> <p>19 Q. What did he do?</p> <p>20 A. He gave me a bunch of paperwork and a</p> <p>21 bunch of questionnaires, and I had to go through</p> <p>22 everything. And then they told me they would call</p> <p>23 me.</p> <p>24 Q. Did he do any testing?</p> <p>25 A. Yes, questions.</p>

<p style="text-align: right;">Page 190</p> <p>1 Q. Interview?</p> <p>2 A. That type of testing. I mean, it was</p> <p>3 like 400 questions.</p> <p>4 Q. In writing?</p> <p>5 A. Computer.</p> <p>6 Q. Do you know what the test was called?</p> <p>7 A. I don't.</p> <p>8 Q. Or what it was for?</p> <p>9 A. I think it was just to go over what --</p> <p>10 what the problems that I had.</p> <p>11 Q. A psychological evaluation?</p> <p>12 A. Yeah.</p> <p>13 Q. Are you seeking medical treatment for</p> <p>14 psychological issues?</p> <p>15 A. Besides that doctor, no.</p> <p>16 Q. Well, this doctor would be a source of</p> <p>17 treatment, I suppose.</p> <p>18 Are you looking for treatment from him?</p> <p>19 A. Yes.</p> <p>20 Q. But at this point he's not given you a</p> <p>21 diagnosis, much less a treatment plan. You're</p> <p>22 waiting on that?</p> <p>23 A. Yes, I'm waiting on that.</p> <p>24 Q. I want to make sure I fully understand</p> <p>25 the psychological conditions that you're</p>	<p style="text-align: right;">Page 192</p> <p>1 Q. You'd rather be by yourself unless they</p> <p>2 come to your house?</p> <p>3 A. I don't really have people in my house</p> <p>4 either.</p> <p>5 Q. Oh. You just stay by yourself?</p> <p>6 A. I mean, yeah. Like I said, I worked a</p> <p>7 lot. I used to work work work work. I mean, you</p> <p>8 can tell from all my experiences with my</p> <p>9 restaurants and so on and so forth. I mean, I've</p> <p>10 worked my whole life.</p> <p>11 And now it's -- you know, after this</p> <p>12 accident, it made me realize that, you know, if you</p> <p>13 don't have your health, your happiness, nothing</p> <p>14 else matters.</p> <p>15 You know, I worked 16-hour days on lines</p> <p>16 and now I can't -- you know, I don't have the</p> <p>17 ability to do the same stuff that I was doing</p> <p>18 because now I -- you know, if I work long hours, my</p> <p>19 skin bothers me or my hands bother me or it's too</p> <p>20 hot or it's cold. It's like -- you know.</p> <p>21 I mean, now you can see, I developed this</p> <p>22 callus on my finger because I use a knife all the</p> <p>23 time, but that was -- I never had that problem</p> <p>24 before.</p> <p>25 Q. So let me break this down so we can --</p>
<p style="text-align: right;">Page 191</p> <p>1 complaining about from this accident.</p> <p>2 I understand, you've been very clear that</p> <p>3 before you felt fulfilled, you were happy, you were</p> <p>4 busy, and now you're frustrated, you are not as</p> <p>5 happy as you were, and in particular, you feel</p> <p>6 like -- you say you seclude yourself from other</p> <p>7 people, so you're not as social; is that true?</p> <p>8 A. Yes.</p> <p>9 Q. You don't go out socially as much?</p> <p>10 A. Nope.</p> <p>11 Q. You prefer to stay home by yourself; is</p> <p>12 that what you're saying?</p> <p>13 A. Yeah. I stay home a lot. I have a</p> <p>14 really tight-knit group of friends and that's...</p> <p>15 Q. You don't like to go out in public?</p> <p>16 A. Yeah.</p> <p>17 Q. True statement?</p> <p>18 A. Yes.</p> <p>19 Q. Or to socialize in public?</p> <p>20 A. Yes.</p> <p>21 Q. So when you get together with friends, do</p> <p>22 they come to your house?</p> <p>23 A. It depends, you know. Like, I mean, if I</p> <p>24 go to someone's house, it's got to be for a big</p> <p>25 reason.</p>	<p style="text-align: right;">Page 193</p> <p>1 part of the purpose of this deposition is for you</p> <p>2 to explain to me as best you can -- and I</p> <p>3 appreciate you are -- what your conditions are from</p> <p>4 this accident. That's what we're talking about.</p> <p>5 And if we first focus on physical, my</p> <p>6 understanding is that you continue to have</p> <p>7 discomfort from temperature extremes --</p> <p>8 A. Yes.</p> <p>9 Q. -- with your hands. You can't touch</p> <p>10 things that are hot -- I saw in interrogatories --</p> <p>11 or cold, right?</p> <p>12 A. Yes.</p> <p>13 Q. So that's with your hands.</p> <p>14 A. Like if I grab a hot coffee without a</p> <p>15 sleeve or an insulated cup, I drop it right away.</p> <p>16 Q. Because you're more sensitive than it</p> <p>17 used to be?</p> <p>18 A. Yes.</p> <p>19 Q. Like --</p> <p>20 A. Sorry. In the restaurant, there's frozen</p> <p>21 trays. So I do all my fries fresh, so I put them</p> <p>22 in a freezer. I freeze the fries. And then when I</p> <p>23 take them out, they're on frozen metal trays. The</p> <p>24 average person can hold it for anywhere from five</p> <p>25 to ten seconds. I can't hold it for more than two.</p>

<p style="text-align: right;">Page 194</p> <p>1 Q. So if we talk about physical problems 2 that you're still having today from this accident, 3 it would be extreme temperatures are really hard on 4 your hands? 5 A. Yes. 6 Q. Any other physical problems? 7 A. I can't go in the sun. It bothers me in 8 the sun. I always wear a long-sleeved shirt. 9 Q. You have to be careful about sunburn? 10 A. Yes. 11 Q. Anything else on a physical basis? 12 A. No. 13 Q. You mentioned earlier that sometimes you 14 smoke marijuana to alleviate headaches. 15 Are you claiming headaches from this 16 accident? 17 A. I have had a headache every day since 18 this accident. 19 Q. Every day? 20 A. Yes. 21 Q. Has any doctor told you that your 22 headaches are due to this accident? 23 A. No. 24 Q. Did you ever have headaches before the 25 accident?</p>	<p style="text-align: right;">Page 196</p> <p>1 Q. It's four to five every day? 2 A. Yes. 3 Q. Does it last all day? 4 A. Until I smoke, yes. 5 Q. Smoking alleviates it? 6 A. Yes. 7 Q. For a while? 8 A. Yes. 9 Q. Have you talked to any medical 10 professional about your headaches? 11 A. That was one reason I was going to the 12 psychologist, and then I am -- and I have to go 13 back to the neurologist, which I'm going to make an 14 appointment after this whole thing. 15 Q. "This whole thing" being the deposition? 16 A. No. No. The Coronavirus. 17 Q. Ah. You want to see the neurologist 18 again for headaches? 19 A. Yes. 20 Q. Anything else? 21 A. No, sir. 22 Q. Remind me the name of the neurologist? 23 A. Dr. Evangelista. Edgar Evangelista. 24 Q. What about the pain meds you were 25 prescribed, ibuprofen and Tylenol? Do they help</p>
<p style="text-align: right;">Page 195</p> <p>1 A. Yes, due to the epilepsy, but it was -- 2 it wasn't as -- I mean, I have them every single 3 day right now. Like I've had -- since the 4 accident, I've had a headache every single day. 5 Q. Do you have a headache now? 6 A. I've a headache all day. I haven't 7 smoked anything all day and I've had a headache all 8 day. 9 Q. Have I given you a headache? 10 A. No. 11 Q. Do you want to take a break? 12 A. No. 13 Q. I'm serious. I mean, if you have a 14 headache and you want to go and smoke or do 15 something, I'm fine with that. 16 A. No. I'm good. Thank you. 17 Q. What's the severity of your headache? 18 A. I mean, it's the same as it was -- it's 19 same right now as it was this morning. 20 Q. On a scale of zero 21 to ten, ten is the worst, unbearable, and zero is 22 zero? 23 A. Like a four or five. 24 Q. Is that what the -- 25 A. That's a constant, every day.</p>	<p style="text-align: right;">Page 197</p> <p>1 with the headache? 2 A. Sometimes. It just depends. Regular 3 Tylenol does not help. 4 Q. Ibuprofen helps? 5 A. It depends. Over 800. 6 Q. Sometimes it helps? 7 A. Yes. 8 Q. Have you tried anything else besides 9 marijuana for your headaches? 10 A. No, sir. 11 Q. When we talk about marijuana for your 12 headaches, are you talking about the medicinal 13 prescription or heavier smoking? 14 A. No. I'm talking about medical marijuana. 15 I mean, yeah. 16 Q. The same prescription that you take for 17 your epilepsy? 18 A. Yes. 19 Q. Were you taking that already for your 20 epilepsy on a daily basis? 21 A. The tincture I've been taking. The 22 smoking of it takes away the pain of the headache. 23 Q. When I refer to "medical marijuana," I 24 mean your prescription for epilepsy. So anything 25 beyond that is not prescribed; it's just something</p>

<p style="text-align: right;">Page 198</p> <p>1 that you found helps on your own?</p> <p>2 A. Right.</p> <p>3 Q. And that's actually smoking marijuana?</p> <p>4 A. Yes.</p> <p>5 Q. Besides the headache and the hands,</p> <p>6 anything else?</p> <p>7 A. I get -- but this is through the hands.</p> <p>8 I get tingling and -- tingling and -- there's</p> <p>9 something else. Just tingling and pain, to be</p> <p>10 honest with you.</p> <p>11 Oh, numbness. That's what it was.</p> <p>12 Numbness in my hands and my arms all the time.</p> <p>13 This arm, this left arm, I have numbness in it all</p> <p>14 the time. I always think I'm going to have a heart</p> <p>15 attack.</p> <p>16 Q. Have you talked to any healthcare</p> <p>17 professional about that?</p> <p>18 A. Yes.</p> <p>19 Q. Who?</p> <p>20 A. I've spoken to a doctor who's a family</p> <p>21 friend and my doctor, Dr. Reddy, and he said that a</p> <p>22 lot of it is just my sensory -- because of the</p> <p>23 burn, the sensory is coming back. So that's what</p> <p>24 he said. Because the numbness is like recovery --</p> <p>25 it's like something happens with your arms or your</p>	<p style="text-align: right;">Page 200</p> <p>1 I mean, I used to be able to pick up a</p> <p>2 steak from a burning grill and not have any</p> <p>3 problems. If I did that now, I would -- I mean, it</p> <p>4 would be a lot of pain.</p> <p>5 Q. With your bare hands, you could pick up a</p> <p>6 burning steak?</p> <p>7 A. I mean, I could touch anything. Before</p> <p>8 this accident, I could touch grills. I used to</p> <p>9 work, I told you, at Disney World. I would grab a</p> <p>10 steak off the grill, put it on a plate, and like --</p> <p>11 I mean, I had no feelings in my hands because of --</p> <p>12 when you deal with flames and fires all the time</p> <p>13 and hot stuff, you can just grab stuff. And I</p> <p>14 would grab hot pans. I would grab -- I mean, I'm</p> <p>15 telling you, it was crazy.</p> <p>16 And then after this accident, I can't</p> <p>17 grab anything.</p> <p>18 Q. So before this accident, did you ever</p> <p>19 burn your hands while you were working?</p> <p>20 A. No.</p> <p>21 Q. Never saw a doctor for burns?</p> <p>22 A. No. And that's why it's so frustrating.</p> <p>23 Q. Is this something unique to you or common</p> <p>24 among chefs that they can reach in and pick up --</p> <p>25 A. It's common among chefs.</p>
<p style="text-align: right;">Page 199</p> <p>1 hands or something when your sensories are coming</p> <p>2 back.</p> <p>3 Q. Have we now covered all the physical</p> <p>4 conditions that you claim today from this accident?</p> <p>5 A. Yes.</p> <p>6 Q. Briefly, just to make sure I understand</p> <p>7 on the psychology side, what you've told me is that</p> <p>8 you've had -- you can't work as hard, you're</p> <p>9 frustrated and not as happy about that, and that</p> <p>10 you seclude yourself from other people; is that</p> <p>11 accurate?</p> <p>12 A. Yes.</p> <p>13 Q. Anything more on the psychological</p> <p>14 issues?</p> <p>15 A. I mean, just that like -- you know. I</p> <p>16 mean, the biggest thing is I don't work -- I mean,</p> <p>17 I'm repeating myself, but I don't work as much. I</p> <p>18 cut my hours down a lot, and -- yeah, I mean,</p> <p>19 that's really mostly it.</p> <p>20 Q. If you could work more, do you think that</p> <p>21 would help?</p> <p>22 A. I mean, I think if I can work as I was</p> <p>23 working in the kitchen before this accident, yes,</p> <p>24 but I'm not able to work as much and as hard and</p> <p>25 as -- you know.</p>	<p style="text-align: right;">Page 201</p> <p>1 Q. -- or grab a burning steak on a grill and</p> <p>2 flip it over like Superman?</p> <p>3 A. A lot of chefs can do it, yeah, a lot</p> <p>4 of -- you grow -- your sensories grow to being able</p> <p>5 to have really, really hot, and you don't -- you</p> <p>6 know, you can do anything with it. I mean, I can</p> <p>7 grab a hot pan from an oven and had no problems, no</p> <p>8 issues.</p> <p>9 Now I get blisters all the time,</p> <p>10 flareups. I mean, if I touch something -- like at</p> <p>11 my client's house right now, I touched a pan the</p> <p>12 other day, and like it was out of the oven, it was</p> <p>13 there for probably 10, 15 minutes, and I killed my</p> <p>14 hand. I dropped the pan.</p> <p>15 Q. So just one last thing on this so I'm</p> <p>16 clear. You're testifying that although you</p> <p>17 could -- with your bare hands before this accident,</p> <p>18 working as chef in the kitchen -- grab a hot steak</p> <p>19 or something else that's on a grill, that you never</p> <p>20 burned yourself, you never developed any kind of</p> <p>21 injury from doing that before this accident?</p> <p>22 A. No, sir.</p> <p>23 (Exhibit Number 9 was marked.)</p> <p>24 BY MR. McMULLEN:</p> <p>25 Q. Josh, I've handed you Exhibit 9.</p>

<p style="text-align: right;">Page 202</p> <p>1 Have you seen this before?</p> <p>2 A. No.</p> <p>3 Q. Well, I won't ask you questions that I</p> <p>4 wouldn't expect you to know.</p> <p>5 This is something that I'm sure your</p> <p>6 lawyer put together as required by the law to give</p> <p>7 us an idea of the -- what's called damages, the</p> <p>8 money value for various expenses and other things</p> <p>9 that you're claiming in the lawsuit. And it helps</p> <p>10 me as a guide to talk about a few of those things.</p> <p>11 The next thing that I wanted to ask you</p> <p>12 about is you're claiming scarring from this</p> <p>13 accident. Do you see that toward the bottom?</p> <p>14 A. Yes.</p> <p>15 Q. Permanent scarring?</p> <p>16 Do you have permanent scarring from this</p> <p>17 accident?</p> <p>18 A. Yes.</p> <p>19 Q. And where are those scars?</p> <p>20 A. My abdomen, my hands, my arm. I mean,</p> <p>21 all this.</p> <p>22 MR. McMULLEN: Before you do that, let's</p> <p>23 ask your lawyer.</p> <p>24 Are you comfortable with him showing his</p> <p>25 scars?</p>	<p style="text-align: right;">Page 204</p> <p>1 I need to ask you about the scarring, and if your</p> <p>2 lawyer is comfortable, and with the camera off, it</p> <p>3 sounds like we can look at the scars on your arms.</p> <p>4 Is that appropriate?</p> <p>5 MR. PFAU: That would be fine.</p> <p>6 BY MR. McMULLEN:</p> <p>7 Q. Okay. Before you show us your arms, I</p> <p>8 want to just ask you about the scarring.</p> <p>9 What doctor has told you that you have</p> <p>10 permanent scars? Or has any doctor told you that?</p> <p>11 A. I mean, all the doctors have said that</p> <p>12 the scars will be there forever. I mean, all the</p> <p>13 doctors that I've been to have said that the</p> <p>14 scarring that I have right now is permanent</p> <p>15 scarring.</p> <p>16 Q. Who's your primary treating doctor right</p> <p>17 now?</p> <p>18 A. Dr. Reddy.</p> <p>19 Q. R-e-d-d-y?</p> <p>20 A. Yep.</p> <p>21 Q. Has Dr. Reddy in particular told you that</p> <p>22 you have permanent scarring?</p> <p>23 A. No. I haven't -- I went to him once</p> <p>24 about this, I think. I mean, that was told to me</p> <p>25 by the Burn Unit, that it would be permanent</p>
<p style="text-align: right;">Page 203</p> <p>1 MR. PFAU: No, not on the camera. We can</p> <p>2 discuss it, though.</p> <p>3 MR. GOLDSTEIN: Can we see them off the</p> <p>4 camera?</p> <p>5 MR. PFAU: No. That would require a</p> <p>6 medical examination. He would have to take off his</p> <p>7 shirt. That wouldn't be appropriate.</p> <p>8 MS. WINSPEAR: He's already lifted his</p> <p>9 arm.</p> <p>10 MR. McMULLEN: Could we look at his arms</p> <p>11 and not the abdomen? Would that be okay?</p> <p>12 MR. PFAU: As long as the camera's not</p> <p>13 on, yeah.</p> <p>14 MR. McMULLEN: Okay.</p> <p>15 MR. PFAU: The only issue is that the</p> <p>16 camera doesn't capture it appropriately, and I</p> <p>17 don't want that to be the record.</p> <p>18 MR. GOLDSTEIN: We understand.</p> <p>19 MR. McMULLEN: I see. At some point, my</p> <p>20 client needs to know what your scars look like.</p> <p>21 And maybe the best way to do that is your lawyer</p> <p>22 could refer you to a professional photographer and</p> <p>23 get images that the both of you feel are fair and</p> <p>24 accurate.</p> <p>25 But for purposes of the deposition today,</p>	<p style="text-align: right;">Page 205</p> <p>1 scarring.</p> <p>2 Q. Who at the Burn Unit? Do you remember</p> <p>3 the doctor?</p> <p>4 A. I don't remember the doctor exactly, but</p> <p>5 it was in the -- because I asked him, I said, "Is</p> <p>6 the scars going to be there forever?" And they</p> <p>7 said yes.</p> <p>8 And I have a tattoo on my whole arm and I</p> <p>9 spent a lot of money on it, and the whole -- when I</p> <p>10 got burned, the whole thing changed color. It went</p> <p>11 from a blue tattoo to a black tattoo.</p> <p>12 Q. The doctor at the Burn Unit who said the</p> <p>13 scarring is permanent, what scarring was he</p> <p>14 referring to or she? What scars?</p> <p>15 A. The abdomen and the arm.</p> <p>16 Q. Left arm?</p> <p>17 A. Both arms.</p> <p>18 Q. Both arms.</p> <p>19 A. You can't really see it. I mean, I could</p> <p>20 show you parts of this arm that will -- I mean,</p> <p>21 explains the burn that I told you, like the tattoo,</p> <p>22 but this one you can see it.</p> <p>23 Q. There's no tattoo on the right arm?</p> <p>24 A. No.</p> <p>25 Q. The scars are on both arms and the</p>

<p style="text-align: right;">Page 206</p> <p>1 abdomen?</p> <p>2 A. Yes, sir.</p> <p>3 Q. So you're saying all of your scars you</p> <p>4 were told by the Burn Unit doctor are permanent?</p> <p>5 A. Yes, sir.</p> <p>6 Q. Is there anything you can do for the</p> <p>7 scarring? Is there any kind of treatment such</p> <p>8 as --</p> <p>9 A. Not that I was told. I'm sorry.</p> <p>10 Q. Can tattoos be done to conceal the scars?</p> <p>11 A. What do you mean, put tattoos on this</p> <p>12 arm?</p> <p>13 Q. Right.</p> <p>14 A. Is that what you're saying?</p> <p>15 Q. Do you have a regular tattoo artist?</p> <p>16 A. I do.</p> <p>17 Q. And who is that?</p> <p>18 A. A girl, Serene. I don't know her last</p> <p>19 name.</p> <p>20 Q. Sharene?</p> <p>21 A. Serene.</p> <p>22 Q. Serene. Here in Vegas?</p> <p>23 A. Yes.</p> <p>24 Q. Where is she located?</p> <p>25 A. She was at Stay True Tattoo on Jones and</p>	<p style="text-align: right;">Page 208</p> <p>1 Q. What about plastic surgery? Have you</p> <p>2 asked about that?</p> <p>3 A. No, I haven't.</p> <p>4 Q. Does the scarring bother you?</p> <p>5 A. From physical appearance, I mean, I don't</p> <p>6 take off my shirt at a pool, you know. I haven't</p> <p>7 taken off my shirt in public, you could say, since</p> <p>8 this accident.</p> <p>9 Q. How about on your arms? Are you afraid</p> <p>10 to show your arms?</p> <p>11 A. No. I just don't take off my shirt. I</p> <p>12 mean, I don't even -- I wear long-sleeved shirts a</p> <p>13 lot. It's not like I'm afraid to show it, but...</p> <p>14 Q. I probably asked it the wrong way. I</p> <p>15 didn't mean any disrespect.</p> <p>16 You said that you don't want to take your</p> <p>17 shirt off, I think because you didn't want to show</p> <p>18 the scarring on your abdomen?</p> <p>19 A. Yes.</p> <p>20 Q. I'm now asking if the same is true with</p> <p>21 your arms, or is the scarring less severe on your</p> <p>22 arms that you're okay showing your arms?</p> <p>23 A. I'm okay showing it, but it is there.</p> <p>24 You can see it.</p> <p>25 Q. So is the scarring worst on the abdomen?</p>
<p style="text-align: right;">Page 207</p> <p>1 Spring Mountain, but I don't know -- I don't think</p> <p>2 she's there anymore.</p> <p>3 Q. Stay True Tattoo?</p> <p>4 A. Yeah.</p> <p>5 Q. Did you talk to her about your scars and</p> <p>6 whether tattoos could help?</p> <p>7 A. No.</p> <p>8 Q. Do you know if that's a possibility?</p> <p>9 A. I don't. I was going to get this arm</p> <p>10 done because I had a cousin that passed away and I</p> <p>11 was going to get this arm done, and the doctors</p> <p>12 have told me not to do anything to this arm because</p> <p>13 it will be so painful.</p> <p>14 Q. The doctors who have been treating you</p> <p>15 told you not to --</p> <p>16 A. Burn Unit. Like when I was at the</p> <p>17 Burn Unit, I was telling them, I was going over</p> <p>18 that. I was going to get a tattoo for my cousin,</p> <p>19 and they said, "Don't touch that arm."</p> <p>20 Q. The doctors at the Burn Unit have told</p> <p>21 you that tattoos are not an acceptable or good way</p> <p>22 to treat the scarring because it would be too</p> <p>23 painful?</p> <p>24 A. Yeah. It would be painful if I was</p> <p>25 getting any other work done.</p>	<p style="text-align: right;">Page 209</p> <p>1 A. Yes.</p> <p>2 Q. At this point you don't know -- because</p> <p>3 you haven't asked any healthcare professional -- if</p> <p>4 something could be done such as plastic surgery for</p> <p>5 the scarring; is that true?</p> <p>6 A. Yes.</p> <p>7 Q. Do you plan to have that discussion or</p> <p>8 not?</p> <p>9 A. It's never came up, no.</p> <p>10 Q. Well, have you ever brought it up?</p> <p>11 A. Have I brought it up? No.</p> <p>12 Q. Do you plan to bring it up?</p> <p>13 A. I mean, as I say, if I'm going to start</p> <p>14 working as a pool boy at a nightclub or a dayclub,</p> <p>15 then, yes, I would -- if I have to do a --</p> <p>16 something that reveals my stomach, then, you</p> <p>17 know -- I don't do anything that has to reveal my</p> <p>18 stomach.</p> <p>19 Like I told you, I don't take off my</p> <p>20 shirt in public. I don't want to have a hundred</p> <p>21 questions. If I took my shirt off, people would</p> <p>22 ask questions, what happened to your side, what</p> <p>23 happened to this, what happened to that, and I</p> <p>24 don't want to answer.</p> <p>25 Q. Is it fair to say, Josh, that the</p>

<p style="text-align: right;">Page 210</p> <p>1 scarring doesn't bother you enough that you plan to 2 ask a plastic surgeon or anybody else if something 3 could be done about them? You're just living with 4 it? 5 A. Yeah. I'm living with it because I have 6 to. 7 Q. Well, does it bother you enough that you 8 plan to seek some kind of medical care to alleviate 9 the scars? 10 A. I mean, from my talks with doctors, 11 they've told me that it's -- there's going to be no 12 way to alleviate it. If I'm going -- if you're 13 asking me if I'm going to spend a crazy amount of 14 money to go to a plastic surgeon to fix my -- to 15 fix like my abdomen because, you know, I don't take 16 off my shirt? Not at this time. 17 Q. How much would it cost? 18 A. I don't know. I would have to go to a 19 doctor. 20 Q. Have you asked about that? 21 A. No. To this date, I haven't. 22 Q. Okay. Let's turn the camera off, please. 23 And if -- only if you're comfortable just to give 24 us an idea -- 25 A. It's up to you.</p>	<p style="text-align: right;">Page 212</p> <p>1 Q. How would you describe it? 2 A. I guess so. I mean, it's more scarring. 3 I mean, this is a scar. And then, like I told you, 4 this whole tattoo was blue, like that, and it's 5 black. This whole thing is black. And that was 6 all from the burn. 7 MR. GOLDSTEIN: Can we identify for the 8 record, since we don't have a video? He's pointing 9 to his left hand or left arm and -- are you talking 10 about the shaded areas was all blue? 11 THE WITNESS: Yeah. It was all blue. 12 MR. GOLDSTEIN: And now it's all black? 13 THE WITNESS: Yes. 14 MR. GOLDSTEIN: And that -- for 15 reference, your tattoo goes from about halfway up 16 your forearm to all the way up -- does it end at 17 your shoulder? 18 THE WITNESS: Yeah, it ends at my 19 shoulder. But you can't see -- I mean, even the 20 doctor said you can't see anything that's under it 21 because of the tattoo. But this whole thing was 22 discolored. And if I went in to get it recolored, 23 it would be -- it's a pretty good chunk of change. 24 BY MR. McMULLEN: 25 Q. So it's changed color? Where the blue</p>
<p style="text-align: right;">Page 211</p> <p>1 Q. -- of the scarring on your arms? 2 MR. PFAU: You can show him your arms. 3 MR. McMULLEN: We're still on the record, 4 but no camera. 5 THE VIDEOGRAPHER: The time is 3:10 and 6 we're going off the camera record. 7 THE WITNESS: This all the way down 8 (indicating). Do you see that? I mean, you can 9 see all this. 10 BY MR. McMULLEN: 11 Q. Is that -- and I'm not a doctor, so -- 12 and you're not either, but it looks to me like a 13 slight pigmentation change. Is that what you're 14 seeing? 15 A. Yes. 16 Q. It's just slightly darker? 17 A. Yes. 18 Q. Is that what you refer to when you say 19 "scarring"? 20 A. Yeah. I mean, this was -- you know, it 21 was all the same color and now it's a different 22 color. I mean, my abdomen's the worst. 23 Q. Is the abdomen similar; it's a 24 pigmentation issue, darker area? 25 A. I mean...</p>	<p style="text-align: right;">Page 213</p> <p>1 was, is now darker-colored? 2 A. It's all black. 3 Q. Point to where you're seeing all black. 4 A. All this. All this was blue. All this 5 was blue. All this was -- this whole thing was 6 like dark green. It's all like light green. 7 I mean, you can see the whole thing is 8 totally different color from here to here. 9 Q. Thank you. 10 There's no scarring to your hands. Is 11 that true? 12 A. I mean, very little in the top -- 13 Q. In your mind, do you have any significant 14 scarring to your hands? 15 A. Just the top, no. That's it, just the 16 pigmentation on the top of my fingers. I mean, the 17 hardest thing about the hands is the sensitivity. 18 That's the number 1 issue. 19 Q. No scarring to your face, correct? 20 A. No. 21 Q. So it is a correct statement? 22 A. Yes. It's a correct statement. 23 MR. GOLDSTEIN: Matt, can we see his 24 abdomen at all? 25 MR. PFAU: No.</p>

<p style="text-align: right;">Page 214</p> <p>1 MR. McMULLEN: We can go back on the 2 camera now.</p> <p>3 THE VIDEOGRAPHER: We're back on the 4 camera record. The time is approximately 3:14 p.m. 5 BY MR. McMULLEN:</p> <p>6 Q. Josh, we're back on the record. We went 7 off briefly to look at scarring on your arms, and I 8 appreciate the opportunity.</p> <p>9 With regard to any lasting record of the 10 scarring, I think your lawyer has agreed that we'll 11 do that through photographs. In addition, we'll 12 see the scarring to your abdomen.</p> <p>13 MR. McMULLEN: Is that acceptable? 14 MR. PFAU: That's fine.</p> <p>15 BY MR. McMULLEN:</p> <p>16 Q. So turn back to Exhibit 9, if you would. 17 You have that in front of you?</p> <p>18 A. Yes, sir.</p> <p>19 Q. The amount of damages claimed for 20 permanent scarring, do you see the figure there?</p> <p>21 A. Yes, sir.</p> <p>22 Q. \$789,452.19. 23 Did you play any role in the computation 24 of that number?</p> <p>25 A. No, I haven't.</p>	<p style="text-align: right;">Page 216</p> <p>1 grabbing hot and cold. I mean, that's a big thing 2 when you're a chef.</p> <p>3 Q. I know. You've given me all that, I 4 think. If you want to add to it, it's fine, but I 5 think we've covered all your current conditions, 6 true?</p> <p>7 A. Yes.</p> <p>8 Q. So other than cooking, which I understand 9 you can't do as much or as long because of the heat 10 sensitivity, and making sure you don't stay out in 11 the sun too long, again, because of the heat 12 sensitivity, is there anything that you can't do 13 now that you did before the accident or you can't 14 do as well, except for those things?</p> <p>15 A. No. I mean, just the stuff that I told 16 you.</p> <p>17 Q. If I understand correctly, there's no 18 healthcare provider that's told you or recommended 19 that you should have some kind of future treatment 20 as a result of this accident; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. Other than taking marijuana to help with 23 the headaches, is there anything you're doing on 24 your own to address your issues? Do you still take 25 ibuprofen, Tylenol, or no?</p>
<p style="text-align: right;">Page 215</p> <p>1 Q. Do you know what the basis is for that 2 number?</p> <p>3 A. No.</p> <p>4 Q. All right. If you'll turn to 5 Mr. Gonzales' interrogatories, Number 10. They 6 might be in front of you there someplace.</p> <p>7 This interrogatory, do you have it before 8 you? I probably put a blue tab on it. Number 10?</p> <p>9 A. The Question Number 10?</p> <p>10 Q. Correct.</p> <p>11 A. Yes.</p> <p>12 Q. So this asked you what injuries or 13 conditions from the accident that you are no longer 14 experiencing. It looks like you answered what you 15 are still experiencing, which we've covered.</p> <p>16 Are there any injuries or conditions that 17 have improved or gone away since the accident?</p> <p>18 A. No. I mean, just the --</p> <p>19 Q. You did say that the sensitivity or the 20 fragile skin situation has improved. You don't 21 need the ointment anymore. So that's gotten 22 better?</p> <p>23 A. Yes. I mean, yes. Some of it has gotten 24 better. But, I mean, the big -- one of the biggest 25 issues is the sensitivity in the hands, you know,</p>	<p style="text-align: right;">Page 217</p> <p>1 A. When I have the headaches, yes, I try to. 2 And sometimes if it doesn't work, then I result to, 3 you know, marijuana. It depends on how -- how bad 4 it is.</p> <p>5 Q. So ibuprofen, Tylenol, and marijuana 6 you'll take as needed for your headaches, correct?</p> <p>7 A. Yes, sir.</p> <p>8 Q. Any other medications or drugs that 9 you're now still doing because of this accident?</p> <p>10 A. No.</p> <p>11 Q. Do you think you need any additional 12 drugs of any kind because of this accident?</p> <p>13 A. No.</p> <p>14 Like I stated before, I'm very, very, 15 very big against narcotics in the way of like, you 16 know, pills and painkillers and stuff like that. 17 You know, because of the kidney stones before, I 18 was given other painkillers that I've had bad 19 problems with, so I try not to take any of them.</p> <p>20 Q. You've had no professional care or 21 treatment of any kind for a health issue in the 22 last five years before the accident other than the 23 epilepsy; is that right?</p> <p>24 A. Right.</p> <p>25 Q. You're not taking any prescription</p>

<p style="text-align: right;">Page 218</p> <p>1 medicine now other than the marijuana medical 2 prescription?</p> <p>3 A. Correct.</p> <p>4 MR. McMULLEN: Let's go off the record. 5 THE VIDEOGRAPHER: The time is 6 approximately 3:20 p.m. We're off the record. 7 (Recess had.) 8 THE VIDEOGRAPHER: We're back on the 9 record. The time is approximately 3:28 p.m. 10 (Exhibit Number 10 was marked.) 11 BY MR. McMULLEN: 12 Q. Josh, there was one, I think, glitch here 13 on Exhibit 9, the computation of damages, but I'm 14 not sure, and I think you might be able to clear it 15 up. 16 I've marked as Exhibit 10 a statement 17 that's GREEN 190. That's the Bates number at the 18 bottom right, GREEN 190. It's Gubler Family 19 Dental. It's a statement dated August 26 of '18. 20 On the computation of damages, Exhibit 9, 21 this is listed for \$1,626.94, and that's the amount 22 of the statement. But I notice the patient name is 23 Sheila. 24 Is that your mother? 25 A. Yes.</p>	<p style="text-align: right;">Page 220</p> <p>1 A. I haven't seen this, no. 2 Q. So in response to Interrogatory 3 Number 14, you have asserted that because of this 4 explosion, you were unable to open Fries N' Pies on 5 time, which as I understand it, you say it should 6 have opened in early July instead of August 1. 7 A. Yes. 8 Q. That's one of your claims in this case? 9 A. Yes. 10 Q. And you claim that the business lost 11 \$50,000 in lost revenue because it opened a month 12 later, right? 13 A. Yes, sir. 14 Q. So I want to talk about that. First 15 we'll talk about the business. 16 Do you co-own the business with 17 Mr. Sadie? 18 A. Yes, I do. 19 Q. I can show you the records, but only 20 Mr. Sadie's name is listed on the leasing 21 consultant retainer, hired some lawyers to look at 22 the lease, and the guarantees for leases on 23 building and equipment, only his name is on it, not 24 yours, and also a contract for the renovation work. 25 Is there a reason why your name is not on</p>
<p style="text-align: right;">Page 219</p> <p>1 Q. This is not something that you incurred 2 as a result of this accident? 3 A. No, but I did go to the dentist, and I 4 think this is me. I'm pretty sure this is me. 5 Q. Why is her name on there? 6 A. I don't know, but that's -- it might be a 7 glitch with them because I did go there, and my 8 mom -- my parents go there, so they might have just 9 put it under the patient name. 10 Q. I'm not aware that you suffered any 11 dental problems because of this accident. 12 Are you claiming that? 13 A. No. 14 Q. This is something unrelated? 15 A. Yeah. 16 Q. So it's not part of your damages you're 17 claiming in this case; is that correct? 18 A. Yes. 19 MR. McMULLEN: All right. Thanks. 20 (Exhibit Number 11 was marked.) 21 BY MR. McMULLEN: 22 Q. Number 11 we have had marked, I will 23 share with you is from the Nevada Secretary of 24 State, the official registration for Fries N' Pies. 25 Have you seen this before?</p>	<p style="text-align: right;">Page 221</p> <p>1 those documents? 2 A. Well, we have an operation agreement, 3 which I can provide. I am a 45 percent -- I am a 4 45 percent owner based on operations. And I own 5 45 percent of the business and -- 6 Q. That's in the operation agreement? 7 A. Yes. When we went over this, we 8 discussed it, and he said that he was going to put 9 the -- so how this all happened, how Fries N' Pies 10 came about, was he has a little office right next 11 to Fries N' Pies. The place was a hot dog place 12 before, so he knows the owner of the property. 13 So he said to the owner, hey, do you have 14 a -- or is someone else coming into this property? 15 Because it was closed. The hot dog place closed, 16 and then he said it was open. 17 So he said to the landlord, he said, 18 "I've got a concept." It was a healthy concept 19 that I wanted to put in there. The guy said, "No. 20 Let's do pizza." So he came to me and said, "Let's 21 come up with a pizza concept." We came up with a 22 pizza concept together, and that's what happened. 23 Adam is the one who put up all the money, 24 so that's why his name is under this. I didn't put 25 up any money for it, but my whole obligation was to</p>

<p style="text-align: right;">Page 222</p> <p>1 operate and provide my experience and my sweat 2 equity into the business, which I did. 3 Q. So if you look at Exhibit 11, it talks 4 about the company, Fries N' Pies Las Vegas, LLC, 5 was formed on January 19, 2018, right? 6 A. Yes, sir. 7 Q. And on the second page it lists two 8 managing members and only two, Mr. Sadie and 9 someone called Sherman Yu? 10 A. Yes. 11 Q. Who is Sherman Yu? 12 A. Sherman is the other 10 percent of the 13 business. He put 50,000 into the business. So the 14 reason that they're both managing members is 15 because they're the ones that put the money up. 16 Q. Sherman has 10 percent interest? 17 A. Yes, sir. 18 Q. And Sadie has 45 percent? 19 A. Yes. 20 Q. Why is your name not on here? 21 A. My name's not on there because when we 22 discussed it, I was -- I'm a partner with Adam and 23 we did an operating agreement, and that was -- you 24 know, that was what we discussed. 25 Q. Could you please produce the operating</p>	<p style="text-align: right;">Page 224</p> <p>1 Q. What was that? 2 A. It was about 60 a year. 3 Q. \$60,000 a year? 4 A. Yes. And then after -- I think it was 5 like the first six months, after the first six 6 months, Adam realized that it was hurting the 7 business more than it was helping. And then I went 8 to -- he cut it down. He cut it down. And then 9 maybe four or five months ago, I stopped getting 10 paid. 11 Q. I need to go back and ask. You said, 12 "After the first six months, Adam realized that it 13 was hurting the business." 14 By that, do you mean your salary? 15 A. Yes. 16 Q. And then four or five months later, you 17 stopped getting paid altogether? 18 A. Four to five months ago, yeah. Yeah, I 19 stopped getting paid. 20 Q. So -- 21 A. I was making \$14 an hour as a line cook, 22 and then -- because he said -- you know, I was 23 like, "I've got to get paid." 24 And then starting maybe January or the 25 end -- December or January, I stopped getting paid</p>
<p style="text-align: right;">Page 223</p> <p>1 agreement -- 2 A. Yes, sir. 3 Q. -- to your counsel? 4 A. Yes. 5 Q. Mr. Sadie secured the funding for the 6 restaurant business and all of its expenses? 7 A. Yes, sir. 8 Q. How did he do that? 9 A. I mean, he has a very good -- he has a 10 job that empowers him to do that, but he works at 11 Hakkasan Group. And he had someone who was 12 operating his business, and so it was me, so he 13 didn't have to -- for the first couple -- for the 14 first three to six months he was there, and then he 15 let me run it myself. 16 Q. You personally didn't sign any loan 17 guarantees or obligations? 18 A. No. And that's part of my -- that's part 19 of my thing with eight other restaurants that I've 20 done. 21 Q. Under the operating agreement, once the 22 restaurant was up and running, what were the terms 23 of your compensation? Were you paid on an hourly 24 basis? 25 A. At the beginning, I was paid a salary.</p>	<p style="text-align: right;">Page 225</p> <p>1 altogether. 2 Q. Zero compensation? 3 A. Yes, because of my sweat equity. 4 Q. I'm not sure we're communicating. When 5 you say -- and that's my fault. Let me make sure 6 I'm being clear. 7 I'm asking for any compensation at all 8 from this business from the time it started, and 9 you testified you had a salary which started 10 \$60,000 a year for about \$5,000 a month; is that 11 correct? 12 A. Yes. 13 Q. You had no other return or income from 14 this operation? 15 A. No. 16 Q. Is that a true statement? 17 A. Yes, that's a true statement. 18 Q. Okay. So help me understand. If it's 19 true for the sake of discussion that this 20 restaurant opened a month late because of this 21 accident, then you would have lost one month's 22 salary or \$5,000, correct? 23 A. No. Because the business itself was 24 under -- when I opened this business, it was me, 25 Adam, and Sherman. We opened the business as --</p>

<p style="text-align: right;">Page 226</p> <p>1 you know, with no money, you know, like -- we went 2 into the business -- the first month, in August, we 3 did over \$60,000, which I can show you.</p> <p>4 Q. Gross or net?</p> <p>5 A. Gross.</p> <p>6 And if I would have opened in July, I 7 would have made that same money as the 8 restaurant -- as we made -- what we made in August 9 is the same amount we were going to technically 10 make in July.</p> <p>11 Q. Let me back up. The gross amount is not 12 the amount of profit. That's the gross amount. 13 What was the net that was made the first month of 14 operation?</p> <p>15 A. I don't have the correct -- I don't know 16 the correct number.</p> <p>17 Q. But you'd agree with me that the gross 18 amount doesn't take into account expenses. You 19 deduct expenses from the gross amount to see if 20 there is any profit, true?</p> <p>21 A. Yes.</p> <p>22 Q. Was there any profit the first month?</p> <p>23 A. At any restaurant, if you look at the 24 money we put in and -- you know, and being -- was 25 it profitable based on the amount of sales and what</p>	<p style="text-align: right;">Page 228</p> <p>1 trajectory plan, then we did make a profit the 2 first month.</p> <p>3 Q. Well, if we get away from trajectory and 4 just look at what happened that month, there was no 5 profit?</p> <p>6 A. No, because we're a brand-new business. 7 No restaurant is going to make profit the first 8 month.</p> <p>9 Q. So that's to be expected?</p> <p>10 A. Yes.</p> <p>11 Q. So if you're operating a month late, how 12 would you have any different income than what you 13 would have had otherwise?</p> <p>14 A. Well, because if I opened in July, I'm 15 just missing a month. Do you see what I'm saying? 16 I'm missing a month. So in July, if I would have 17 opened in July, I would have made 68,000. It would 18 have helped me to the point where I am today.</p> <p>19 Q. I don't want to argue with you, but I 20 thought you testified that no restaurant makes a 21 profit the first month, true?</p> <p>22 A. True.</p> <p>23 Q. And we're talking about the first month 24 of operation here that you're saying was delayed, 25 true?</p>
<p style="text-align: right;">Page 227</p> <p>1 we were doing and the whole -- the restaurant 2 itself? Yes, there was technically a profit. 3 But --</p> <p>4 Q. What was the profit? What was the 5 number?</p> <p>6 A. I don't have the -- I don't know the 7 exact number, but --</p> <p>8 Q. Let me just interrupt for a second. 9 You're saying that the amount of money 10 that came in exceeded expenses?</p> <p>11 A. Yes.</p> <p>12 Q. But you don't know what the number was?</p> <p>13 A. The number that came in was like, you 14 know, 68,000 or something, so minus expenses. I 15 don't know exactly what the number is.</p> <p>16 Q. Has anyone calculated that?</p> <p>17 A. I mean, Adam has numbers. We have 18 numbers.</p> <p>19 Q. Do you know for certain that there was a 20 profit the first month?</p> <p>21 A. Well, no restaurant makes a profit the 22 first month. But if you -- if you put the 23 trajectory on a monthly -- like what we should have 24 made for the first month, and what we keep making, 25 then the profit -- then if you looked at it on a</p>	<p style="text-align: right;">Page 229</p> <p>1 A. True.</p> <p>2 Q. So here's another confusing thing. You 3 were not obligated to put any of your own money 4 into this business, correct?</p> <p>5 A. Sweat equity, but yes, correct.</p> <p>6 Q. And you were not entitled by the 7 operating agreement to get any compensation from 8 this business other than your salary, true?</p> <p>9 A. No. I have 45 percent of the business. 10 So compensation -- if we sold the business today 11 and it's worth \$2 million, I get 45 percent of 12 that.</p> <p>13 Q. I'm having trouble understanding if you 14 don't expect any profit the first month of 15 operation, regardless of what your percentage 16 ownership was in the business, how you lost 17 anything by starting a month late.</p> <p>18 Can you explain?</p> <p>19 A. Yeah. Because you -- if I open my 20 business on January 1st, I would have made, say, 21 \$60,000 and I would have had a start on my 22 business. Because of it, because of me getting 23 burned, I didn't start until August. So in that 24 year I had less -- one month less of revenue which 25 I should have had.</p>

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1 Q. You're not entitled to any revenue until
2 the profit is made, correct?

3 A. Correct.

4 Q. Because there's no money --

5 A. But that extra month would have helped
6 my -- would have helped everything for the
7 remainder of the year.

8 Q. But we're talking about just the first
9 month here, right?

10 A. Yes. But I'm saying because I didn't
11 open, it messed up my numbers.

12 Q. So the second month of operation, which
13 under your theory should have been -- sorry.

14 The first month of operation, which you
15 believe should have been the second month if you'd
16 started on time, was there a profit that month?

17 We're talking about July -- or August. Sorry.

18 In August of '18, was there a profit?

19 A. The amount -- there is a profit. If you
20 look at our expenses and you look at what we made,
21 yes, there's a profit.

22 Q. How much was that?

23 A. I don't -- I don't have the exact number,
24 but if you look at our -- what our costs are and
25 what our profit was for those months, we did make a

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1 profit. So if my thing is -- you know, if my bills
2 are 36,000 and I made 68,000, then the rest for
3 that month is profit.

4 Q. Right, but I need real numbers. Because
5 you're claiming in papers filed in court --

6 A. Yes.

7 Q. -- that you lost \$50,000.

8 A. As a business.

9 Q. Well, you only have 45 percent of that,
10 correct?

11 A. Okay.

12 Q. So are you claiming 45 percent of the
13 50,000?

14 A. I'm claiming that because we started a
15 month late, that -- that we didn't bring in that
16 money.

17 Q. In your lawsuit are you claiming
18 45 percent of the alleged \$50,000 in lost revenue
19 for the first month of operation -- or what would
20 have been the first month of operation? Is that
21 your claim?

22 A. Well, I'm claiming the business because
23 I -- yes, I have 45 percent of it, but I'm claiming
24 it as a -- you know, as my business, as, I mean,
25 anyone else would.

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1 Q. I believe in this lawsuit you're bringing
2 claims personally, not on behalf of Fries N' Pies.
3 Is that mistaken?

4 That's how the pleadings look.

5 Fries N' Pies is not a party to this case.

6 A. No, it's not.

7 Q. So --

8 A. But I also am -- I own a percentage of
9 Fries N' Pies. So because I started late, I had my
10 business partner be affected, which I'm affected;
11 we're both affected because I started a month late.

12 Q. You may be affected, but the way the
13 lawsuit is brought is on your behalf. Mr. Sadie is
14 not a party. Fries N' Pies is not a party.

15 So are you claiming that you, Josh Green,
16 have been damaged to the extent of your business
17 interest in Fries N' Pies, 45 percent? Is that
18 correct?

19 Because there's no claim for the
20 business. You understand that?

21 A. Yes.

22 Q. In this case, no one has brought a claim
23 for Fries N' Pies.

24 A. I understand that, but what I'm trying to
25 tell you is because I couldn't open in August -- I

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1 mean, in July, and I was pushed back a month,
2 that's what I'm explaining.

3 Q. I appreciate the explanation. I'm not
4 arguing with you. I'm asking about in this lawsuit
5 brought by Josh Green, are you claiming your
6 personal interest in the alleged lost revenue is
7 what you're owed, the 45 percent of allegedly
8 \$50,000 that would have been made if you opened on
9 time? Is that your claim? Or are you claiming
10 \$50,000 for Josh Green?

11 A. I was claiming 50,000 because that --
12 technically it was my -- if I would have started --
13 because I'm the chef and I was the guy who -- the
14 operator and everything else, I -- the way that,
15 you know, we -- it's written is that I am --
16 because the business wasn't -- didn't do business
17 in July, that affected me -- you know, my business
18 as a whole.

19 So I am saying that if I was able to
20 operate it, then we would have made \$60,000 and the
21 business would have made \$60,000 that month.

22 Q. Josh, to calculate or determine if an
23 actual loss occurred for a given month, you would
24 need to calculate if there was a profit for that
25 month, correct?

<p style="text-align: right;">Page 234</p> <p>1 A. Yes.</p> <p>2 Q. Have you done any calculations? Can you</p> <p>3 share with me any numbers as to whether there was a</p> <p>4 profit during the first or second month of</p> <p>5 operation and how much that was? Do you know?</p> <p>6 A. I don't know off the top of my head, no.</p> <p>7 Q. Do you know what the gross receipts were</p> <p>8 the first month of operation?</p> <p>9 A. No, I don't.</p> <p>10 Q. Or the second month?</p> <p>11 A. No.</p> <p>12 Q. Do you know what the expenses were the</p> <p>13 first month of operation or the second month?</p> <p>14 A. No.</p> <p>15 Q. And you would agree with me, you would</p> <p>16 need to know those numbers to figure out if there</p> <p>17 even was a profit the first couple months, true?</p> <p>18 A. True.</p> <p>19 Q. Has anyone done those calculations, to</p> <p>20 your knowledge?</p> <p>21 A. Yes.</p> <p>22 Q. Who?</p> <p>23 A. Adam.</p> <p>24 Q. Have you seen those numbers?</p> <p>25 A. I have seen numbers, but I didn't -- you</p>	<p style="text-align: right;">Page 236</p> <p>1 you, but there are other people.</p> <p>2 Did Mr. Sadie make any effort to find</p> <p>3 someone who could step in on a temporary basis who</p> <p>4 had those skills to open on time?</p> <p>5 A. No. I mean, as I know it, you know, he</p> <p>6 didn't want to do it with anyone else except me.</p> <p>7 Q. That was a personal choice he made?</p> <p>8 A. No. That was a business decision.</p> <p>9 Because we -- as a business, when you open a</p> <p>10 restaurant, it's -- you know, when you first open,</p> <p>11 it's all about the way you do things, the way</p> <p>12 you -- your mise en place, the way you do</p> <p>13 everything inside the restaurant. So for me to do</p> <p>14 that -- for someone else to come in and start that</p> <p>15 is extremely difficult.</p> <p>16 Q. Mr. Sadie made a decision that he would</p> <p>17 prefer to open a month later than to hire someone</p> <p>18 else to come in to help him open on time. Is that</p> <p>19 true?</p> <p>20 A. Yes.</p> <p>21 Q. And so it might have been possible, but</p> <p>22 he decided to wait until you were back?</p> <p>23 A. Yes. Yes.</p> <p>24 Q. Is it your position that everything was</p> <p>25 in place for Fries N' Pies to open in early July if</p>
<p style="text-align: right;">Page 235</p> <p>1 know, as of today, I can't tell you what they are,</p> <p>2 no.</p> <p>3 Q. What exactly about this accident</p> <p>4 prevented the restaurant from opening in early</p> <p>5 July?</p> <p>6 A. Me. I wasn't able to operate it. I</p> <p>7 wasn't able to run it. I wasn't able to do</p> <p>8 anything that I started doing in August.</p> <p>9 Q. Are you saying it was impossible for</p> <p>10 Mr. Sadie to bring in someone on a temporary basis</p> <p>11 to get it running on time?</p> <p>12 A. Yes.</p> <p>13 Q. Why was that impossible?</p> <p>14 A. I mean, that is why I have 45 percent of</p> <p>15 the business, from my knowledge of what I do in</p> <p>16 restaurants and what I've started before and</p> <p>17 everything that I've done. He has taken me for my</p> <p>18 experience of what I do in restaurants, and that's</p> <p>19 why he chose for me to be his business partner.</p> <p>20 Q. I'm not arguing that you are a very</p> <p>21 valuable and important business partner because of</p> <p>22 your skills. I'm not disputing that. My</p> <p>23 question's different.</p> <p>24 Certainly there are other creative chefs</p> <p>25 in Las Vegas. I'm not saying they're as good as</p>	<p style="text-align: right;">Page 237</p> <p>1 this accident had not occurred?</p> <p>2 A. Yes.</p> <p>3 Q. And what are those things?</p> <p>4 A. My employees -- my employees were hired.</p> <p>5 I mean, everything was ready to -- everything was</p> <p>6 ready.</p> <p>7 Q. Isn't it true that Fries N' Pies didn't</p> <p>8 even begin interviewing people to be employees</p> <p>9 until June 26?</p> <p>10 A. Yes.</p> <p>11 Q. And how long does it take to hire people,</p> <p>12 to get everybody you need to open a restaurant?</p> <p>13 A. Two days.</p> <p>14 Q. Two days?</p> <p>15 A. Yes. I mean, if I -- if I hire a person</p> <p>16 on the 26th, I can have them working with me in</p> <p>17 three or four days. I mean, I can have them</p> <p>18 working with me as soon as they give me their</p> <p>19 cards. And then I train them. And that was the</p> <p>20 whole process, was I was training them. I was</p> <p>21 going to be with them side by side and make sure</p> <p>22 that everything is going out correctly.</p> <p>23 Q. What date exactly would Fries N' Pies</p> <p>24 have opened if the accident had not occurred, in</p> <p>25 your opinion?</p>

<p style="text-align: right;">Page 238</p> <p>1 A. First week of July.</p> <p>2 Q. Well, that's a range of seven days.</p> <p>3 Anytime during the first week, is what you're</p> <p>4 saying?</p> <p>5 A. I'm saying the first five days of July.</p> <p>6 Q. How do you arrive at that range?</p> <p>7 A. Just because we -- like I said, all our</p> <p>8 stuff was in line and we were ready to do it. So</p> <p>9 that's why I'm saying those days.</p> <p>10 Q. Did Fries N' Pies have a business plan</p> <p>11 drafted when you formed the business with some kind</p> <p>12 of checklist or itemization for all the necessary</p> <p>13 tasks and a timeline for completing those to open</p> <p>14 by early July?</p> <p>15 A. Adam and I have some paperwork. He might</p> <p>16 have that. But we had a list of, you know, stuff</p> <p>17 that we -- we had a list of stuff that was already</p> <p>18 done by July, yes. I mean, everything was ready to</p> <p>19 open.</p> <p>20 Q. Everything on that list was done by July?</p> <p>21 A. Yes. Maybe a couple little missing</p> <p>22 things, but nothing that was not going to make me</p> <p>23 not open the business.</p> <p>24 Q. What were those things?</p> <p>25 A. Some food orders and stuff like that.</p>	<p style="text-align: right;">Page 240</p> <p>1 done, this is done on time, then we're ready to</p> <p>2 open the first week of July. Is there that kind of</p> <p>3 plan in writing?</p> <p>4 A. I don't know. I'm not sure.</p> <p>5 Q. How do you know for certain that you</p> <p>6 would be ready the first week in July if you don't</p> <p>7 have that organized?</p> <p>8 A. Because, like I've said before, my</p> <p>9 experiences with restaurants. It's -- you know. I</p> <p>10 know when I'm ready to open and we were ready. I</p> <p>11 mean, everything was -- everything was functioning.</p> <p>12 Everything was ready to go.</p> <p>13 Q. Well, let's talk about just a few of the</p> <p>14 details here, just to work through it.</p> <p>15 (Exhibit Number 12 was marked.)</p> <p>16 BY MR. McMULLEN:</p> <p>17 Q. Josh, I am not at all an expert on the</p> <p>18 restaurant business, so I appreciate your patience</p> <p>19 in explaining to me. And I've just picked out a</p> <p>20 few things that might help me understand.</p> <p>21 We marked Exhibit 12, something from the</p> <p>22 State of Nevada. It's a Southern Nevada Health</p> <p>23 District permit evaluation.</p> <p>24 Have you seen this before?</p> <p>25 A. Yes. Yes, sir.</p>
<p style="text-align: right;">Page 239</p> <p>1 You know, like making sure -- you know, because my</p> <p>2 initial order was from U.S. Foods from a person</p> <p>3 that I already know, so it was super easy to plug</p> <p>4 in everything that I've had from my past</p> <p>5 experiences.</p> <p>6 Q. Am I correct that there was a business</p> <p>7 plan for Fries N' Pies, something in writing?</p> <p>8 A. There might be.</p> <p>9 Q. That's a maybe?</p> <p>10 A. There might be, yes. I don't know.</p> <p>11 Q. But you're certain that there was some</p> <p>12 kind of itemized list of here's what we've got to</p> <p>13 get done to open?</p> <p>14 A. I mean, Adam is very organized, and yes,</p> <p>15 we have paperwork of stuff that -- I don't know if</p> <p>16 it's an itemized list, but we do -- he has</p> <p>17 paperwork on everything.</p> <p>18 Q. Well, what I'll do through your lawyer is</p> <p>19 ask for the business plan and any itemized list</p> <p>20 that may exist, just to give you a heads up that</p> <p>21 I'll need to see that.</p> <p>22 A. Okay.</p> <p>23 Q. Is there paperwork, then, that says we're</p> <p>24 going to be ready to go in the first week of July,</p> <p>25 something that specifies when this is done, this is</p>	<p style="text-align: right;">Page 241</p> <p>1 Q. And what is it?</p> <p>2 A. It's from the health department saying</p> <p>3 that -- what's wrong and what's right of -- what</p> <p>4 you need to operate.</p> <p>5 Q. So this is dated June 4, and it appears</p> <p>6 that as long as you met certain conditions -- I</p> <p>7 mean, they always find something, right? If you</p> <p>8 look on FG703, there's quite a list of things. It</p> <p>9 says "Observations & Corrective Actions."</p> <p>10 It's signed by Mr. Sadie on the last</p> <p>11 page, right?</p> <p>12 A. Yes, sir.</p> <p>13 Q. Are you familiar with this agency and how</p> <p>14 they work, the regulations that have to be</p> <p>15 followed --</p> <p>16 A. Yes.</p> <p>17 Q. -- before you can open up?</p> <p>18 A. Yes.</p> <p>19 Q. So it's my understanding under Nevada</p> <p>20 statute that the renovation plans for the space</p> <p>21 have to be approved before the work can begin,</p> <p>22 right?</p> <p>23 A. Yes.</p> <p>24 Q. And it appears that happened on June 4;</p> <p>25 is that right?</p>

<p style="text-align: right;">Page 242</p> <p>1 A. Yes.</p> <p>2 Q. And then is it true there has to be a</p> <p>3 second or final inspection before you can get a</p> <p>4 certificate of occupancy?</p> <p>5 A. I believe that, yes, they tell you what</p> <p>6 it is and then they come back and check you out</p> <p>7 after.</p> <p>8 Q. And is it typically required that you</p> <p>9 have 21 days before the second inspection; do you</p> <p>10 know?</p> <p>11 A. Yes, I believe so.</p> <p>12 Q. So would that not mean that all of these</p> <p>13 items on FG703 -- I didn't count them. It looks</p> <p>14 like there is a dozen more -- that all of that</p> <p>15 would have to be corrected and then, if you got</p> <p>16 your inspection 21 days later and everything was</p> <p>17 corrected, that takes you to June 25, right?</p> <p>18 A. Yes, sir.</p> <p>19 Q. So tell me if I'm wrong. You'd have to</p> <p>20 get the next inspection arranged and have all these</p> <p>21 things corrected by the end of June for you to open</p> <p>22 in early July?</p> <p>23 A. Which is feasible.</p> <p>24 Q. Have you looked at all these corrective</p> <p>25 actions?</p>	<p style="text-align: right;">Page 244</p> <p>1 he comes in and he did the walls for us in a day.</p> <p>2 Nothing on this list takes a long -- more than a</p> <p>3 week to do.</p> <p>4 Q. Is it your testimony that all the items</p> <p>5 on this list were completed by the end of June? Do</p> <p>6 you know?</p> <p>7 A. I could tell you it most likely was.</p> <p>8 Q. How do you know that?</p> <p>9 A. I mean, I have told you numerous amounts</p> <p>10 of times that I was ready to open in July. And</p> <p>11 from my experience in the past of operating and</p> <p>12 opening restaurants, eight of them, that I had</p> <p>13 enough -- enough knowledge that I could have opened</p> <p>14 in July.</p> <p>15 Q. When did Fries N' Pies obtain a</p> <p>16 certificate of occupancy? Or did it?</p> <p>17 A. I don't know exactly when.</p> <p>18 Q. Did it obtain a certificate of occupancy</p> <p>19 before the end of June?</p> <p>20 A. I believe so.</p> <p>21 Q. Do you know?</p> <p>22 A. I don't know exactly, but I believe so.</p> <p>23 As I told you before, I was ready to open July --</p> <p>24 in the first week of July.</p> <p>25 Q. And I'm not arguing with you, Josh, but</p>
<p style="text-align: right;">Page 243</p> <p>1 A. I mean, I was here. I did this. So...</p> <p>2 I mean, a lot of these are pretty quick.</p> <p>3 Q. Looks like you needed a fire-suppression</p> <p>4 system?</p> <p>5 A. Yeah. That happened that second week. I</p> <p>6 got that right away.</p> <p>7 Q. Looks like you needed to submit</p> <p>8 specifications that you were meeting the</p> <p>9 Sanitation-Certified something or other?</p> <p>10 A. Yes, and we did that.</p> <p>11 Q. You needed a plan for a three-compartment</p> <p>12 sink. Is that a new sink?</p> <p>13 A. It was a new sink, but we had -- the one</p> <p>14 that we had was sufficient enough, so they didn't</p> <p>15 make us do it.</p> <p>16 Q. What's item 88, "Quarry tile, aluminum in</p> <p>17 walk-in"?</p> <p>18 A. Quarry tile is the tile on the floor in</p> <p>19 the thing -- in the kitchen, and the aluminum --</p> <p>20 there's aluminum inside the walk-in that keeps it</p> <p>21 insulated. That had to be fixed.</p> <p>22 Q. The kitchen needed washable ceiling tiles</p> <p>23 and stainless steel walls.</p> <p>24 How do you get that done?</p> <p>25 A. That was easy. You get a stainless guy,</p>	<p style="text-align: right;">Page 245</p> <p>1 we both know a certificate of occupancy is required</p> <p>2 before you can open, true?</p> <p>3 A. Yes.</p> <p>4 Q. So I'm asking, do you know if there was a</p> <p>5 certificate of occupancy issued before the end of</p> <p>6 June?</p> <p>7 A. I believe there was.</p> <p>8 Q. Why do you believe that?</p> <p>9 A. Because we were ready to open.</p> <p>10 Q. How were you ready to open unless you</p> <p>11 know you have a certificate of occupancy?</p> <p>12 A. Because all this stuff was done. So if</p> <p>13 you're ready to open, all you have to do is call</p> <p>14 the health department and they give you a</p> <p>15 certificate and you're ready to rock and roll.</p> <p>16 Q. When did you get the certificate?</p> <p>17 A. I'm not going to give you an exact date</p> <p>18 because I don't know that exact date, but I do know</p> <p>19 that it was -- that I could have gotten it right</p> <p>20 after -- when I was done with all this stuff.</p> <p>21 Q. Let me ask it this way. Can you testify</p> <p>22 under oath that you obtained a certificate of</p> <p>23 occupancy that was dated before the end of</p> <p>24 June 2018? Do you know that for sure?</p> <p>25 A. I don't know that for sure, no.</p>

<p style="text-align: right;">Page 246</p> <p>1 Q. Who would know that?</p> <p>2 A. Adam and my records.</p> <p>3 Q. Was the inspection process -- and there's</p> <p>4 more than one inspection, right? You also have to</p> <p>5 have the health department come in?</p> <p>6 A. That's this.</p> <p>7 Q. Was that completed and the food stocked</p> <p>8 by the end of June?</p> <p>9 A. It could have been, but it wasn't because</p> <p>10 I was hurt.</p> <p>11 Q. Could someone else not have arranged to</p> <p>12 make sure the food was stocked?</p> <p>13 A. No. Because the way that I needed to</p> <p>14 organize the kitchen and put everything in place</p> <p>15 and be there and watch them and show them, I needed</p> <p>16 to be there.</p> <p>17 Q. And this gets back to Mr. Sadie's</p> <p>18 decision that rather than hire someone else to take</p> <p>19 your place, he chose to wait until you came back?</p> <p>20 A. Yes.</p> <p>21 Q. How about the other equipment that was</p> <p>22 necessary to operate the business in the kitchen,</p> <p>23 other fixtures; was everything scheduled to be in</p> <p>24 place by July 1, before your accident?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 248</p> <p>1 Q. When did the work begin on the renovation</p> <p>2 of the space that was intended for Fries N' Pies?</p> <p>3 Do you know?</p> <p>4 A. The first -- I think it started in April.</p> <p>5 Q. And am I correct that the last two pages</p> <p>6 of Exhibit 13 -- this is actually an itemization of</p> <p>7 all the work that this construction company,</p> <p>8 Match Point, was hired to do?</p> <p>9 A. Yes, sir.</p> <p>10 Q. And how much of these things or how</p> <p>11 many -- let's see, we've got -- I won't name them</p> <p>12 all, but there's mechanical, plumbing, electrical.</p> <p>13 There's drywall, countertops, floor tile. I mean,</p> <p>14 there's quite a list here, right? Even roofing.</p> <p>15 Floor tile for the bathroom.</p> <p>16 There's roughly 30 different categories</p> <p>17 of construction that they were hired to do for</p> <p>18 almost \$90,000, correct?</p> <p>19 A. (Witness nodded head.)</p> <p>20 Q. Is that yes?</p> <p>21 A. Yes, sir.</p> <p>22 Q. And how much of that was completed by</p> <p>23 June 18 of 2018?</p> <p>24 A. I believe most of this.</p> <p>25 Q. Was anything left?</p>
<p style="text-align: right;">Page 247</p> <p>1 Q. So why didn't that happen?</p> <p>2 A. Why didn't what happen?</p> <p>3 Q. Why weren't all the fixtures and</p> <p>4 equipment in place by the end of June?</p> <p>5 A. It was.</p> <p>6 Q. So that's -- those things didn't prevent</p> <p>7 you from opening on July 1. That's what you're</p> <p>8 saying?</p> <p>9 A. Right.</p> <p>10 Q. What prevented it was you weren't there</p> <p>11 to manage?</p> <p>12 A. I wasn't there to open the restaurant.</p> <p>13 (Exhibit Number 13 was marked.)</p> <p>14 BY MR. McMULLEN:</p> <p>15 Q. This is Exhibit 13 in front of you?</p> <p>16 A. Yep.</p> <p>17 Q. This is the construction agreement that</p> <p>18 was entered into by Mr. Sadie; is that correct?</p> <p>19 A. Yes, sir.</p> <p>20 Q. For the record, it's FG682 to 770.</p> <p>21 And at the back end there, it's got you</p> <p>22 down as operating manager and Sadie as operating</p> <p>23 owner, and he's the one who signed it for the</p> <p>24 company, right?</p> <p>25 A. Yep.</p>	<p style="text-align: right;">Page 249</p> <p>1 A. I can't -- I don't know exactly, but I --</p> <p>2 I know most of this was done.</p> <p>3 Q. What wasn't done?</p> <p>4 A. I'm not sure.</p> <p>5 Q. You'd agree with me that anything that</p> <p>6 wasn't done would have to be completed, and then it</p> <p>7 has to be inspected before you can open?</p> <p>8 A. Yes. But this inspection right here</p> <p>9 wouldn't have happened if this wasn't done.</p> <p>10 Q. Well, there's two inspections, though,</p> <p>11 right? There is a final inspection?</p> <p>12 A. Right.</p> <p>13 Q. And everything here, the last two pages</p> <p>14 of Exhibit 13, would have to pass inspection?</p> <p>15 A. Yes. But your final inspection is due to</p> <p>16 this, and then he comes out, he fills this out, and</p> <p>17 then they come back, you know, and then they'll</p> <p>18 give you an A or a letter grade, I mean.</p> <p>19 Q. When you say "this," you're talking about</p> <p>20 Exhibit 12, the inspection form?</p> <p>21 A. Yes.</p> <p>22 Q. I'm just asking, as you sit here today,</p> <p>23 can you testify under oath that all of the items</p> <p>24 listed in the last two pages of this construction</p> <p>25 itemization sheet, Exhibit 13, were they all in</p>

<p style="text-align: right;">Page 250</p> <p>1 place that they would have been done to open by 2 early July?</p> <p>3 A. I believe so, yes.</p> <p>4 Q. You don't have any paperwork or anything 5 to tell you for sure, or you know for sure?</p> <p>6 A. I mean, like I said, from my 7 recollection, you know, it's happened on 8 July 20th -- I mean June 20th. So me -- me 9 being ready to open -- if I wasn't burnt, then I 10 would have been able to open by July 1st or the 11 first week of July.</p> <p>12 Q. What happened on June 20?</p> <p>13 A. That's when I got burned.</p> <p>14 Q. Oh, I'm sorry. It was actually June 18, 15 but that's what you were referring to?</p> <p>16 A. Yeah.</p> <p>17 Q. I see.</p> <p>18 Are there records somewhere that 19 Fries N' Pies keeps that would tell us when these 20 things were completed?</p> <p>21 A. I'm not sure. I would have to look.</p> <p>22 Q. Would Mr. Sadie be the person to ask?</p> <p>23 A. Yes.</p> <p>24 Q. What permits and licenses were necessary 25 before you could open?</p>	<p style="text-align: right;">Page 252</p> <p>1 Q. Under the business plan or just your own 2 experience, how much of the revenue for 3 Fries N' Pies would be derived from alcohol sales?</p> <p>4 A. It's not that much because it's a pizza 5 place, you know. It's not like -- maybe someone 6 gets a beer here and there. Right now, it's about 7 10 percent of my sales.</p> <p>8 Q. When did you get the liquor license?</p> <p>9 A. The exact date, I don't know.</p> <p>10 Q. When did Fries N' Pies apply for it?</p> <p>11 A. He applied -- it took him a while, but I 12 think he applied first I think March, April, 13 something like that, and then we got approved, I 14 think, at the beginning of July or August, 15 something like that. But I know that there was 16 a -- there was an issue and then, you know, he 17 fixed it.</p> <p>18 Q. What was the issue?</p> <p>19 A. I don't know exactly. Adam -- Adam did 20 deal with the liquor license. I just remember that 21 there was a --</p> <p>22 Q. There was some issue that delayed getting 23 the license?</p> <p>24 A. Yes.</p> <p>25 Q. Probably or possibly not until August?</p>
<p style="text-align: right;">Page 251</p> <p>1 A. I mean, you need the liquor license. You 2 need the health department, fire. The hood 3 inspection, which is also the fire. That's 4 really -- I think that's it. Maybe one other. Oh, 5 you need a what's-it-called inspection. A 6 building -- building inspector.</p> <p>7 Q. The liquor license is important, right? 8 Even though I don't know much, I know that liquor 9 sales accounts for a huge part of the margin for 10 the restaurant business?</p> <p>11 A. Yes, sir.</p> <p>12 Q. So that was critical before you opened to 13 get the liquor license in place?</p> <p>14 A. No, it's not super critical. You can 15 open a restaurant without a liquor license. But if 16 you want to have liquor and you want to serve 17 liquor, then, yes, you need to have the liquor 18 license.</p> <p>19 Q. If you want to have decent income?</p> <p>20 A. Well, I mean, SkinnyFATS I opened with no 21 liquor license. We did that for a year and a half 22 with no liquor license. So all these other 23 restaurants, I've started with no liquor licenses. 24 Some of them have liquor licenses now and some of 25 them don't.</p>	<p style="text-align: right;">Page 253</p> <p>1 A. I think so, but I believe -- I don't know 2 exactly, but I do know that when I did talk to Adam 3 about opening, we were ready to open, obviously, 4 because the last week I was in this situation, the 5 last week and a half of June in this situation, you 6 know, I couldn't get everything else done.</p> <p>7 Q. Was he turning to you to get the liquor 8 license done?</p> <p>9 A. No. That was him.</p> <p>10 Q. So the fact that you had this accident 11 didn't have anything to do with the delay in 12 getting the liquor license?</p> <p>13 A. No, not the liquor license.</p> <p>14 Q. How about the fire department permit, 15 when you get that?</p> <p>16 A. When did I get it? I don't know exactly, 17 but I do know that we could have -- like I have 18 said numerous amounts of times, that if I needed to 19 get it done before July, we would have had it done.</p> <p>20 Q. Well, the liquor license apparently is an 21 exception to that.</p> <p>22 A. Yes.</p> <p>23 Q. Is the fire department license an 24 exception?</p> <p>25 A. No.</p>

<p style="text-align: right;">Page 254</p> <p>1 Q. What about the building permit?</p> <p>2 A. No.</p> <p>3 Q. Health department?</p> <p>4 A. I mean, health department is -- you saw.</p> <p>5 Q. Don't you need a tax permit also?</p> <p>6 A. An EIN number, yes.</p> <p>7 MR. McMULLEN: All right. Let's mark</p> <p>8 this, please.</p> <p>9 (Exhibit Number 14 was marked.)</p> <p>10 MR. McMULLEN: Let's go off the record.</p> <p>11 THE VIDEOGRAPHER: The time is 4:11 p.m.</p> <p>12 We are off the record.</p> <p>13 (Discussion off the record.)</p> <p>14 THE VIDEOGRAPHER: We're back on the</p> <p>15 record. The time is approximately 4:12 p.m.</p> <p>16 BY MR. McMULLEN:</p> <p>17 Q. Josh, how are you holding up?</p> <p>18 A. Good.</p> <p>19 Q. Thank you. If you need a break, let me</p> <p>20 know. I'm trying to push through here so we can</p> <p>21 finish soon.</p> <p>22 I've handed you -- or the court reporter</p> <p>23 has handed you Exhibit 14.</p> <p>24 Do you recognize that?</p> <p>25 A. Yes, sir.</p>	<p style="text-align: right;">Page 256</p> <p>1 A. No.</p> <p>2 Q. And as it turned out -- well, you can't</p> <p>3 operate until you have a tax permit, right?</p> <p>4 A. Correct.</p> <p>5 Q. And based on the timing of the</p> <p>6 application, it says your business start date is</p> <p>7 July 30, 2018.</p> <p>8 So you could not operate under the law</p> <p>9 any sooner than July 30 because you didn't have a</p> <p>10 tax permit, right?</p> <p>11 A. As of what this says, yes.</p> <p>12 Q. How about hiring employees? How many</p> <p>13 employees were necessary to open a restaurant?</p> <p>14 A. I mean, when we first hired -- we've</p> <p>15 hired a lot of people.</p> <p>16 Q. My question is pretty specific and I --</p> <p>17 A. How many people to operate the</p> <p>18 restaurant?</p> <p>19 Q. Right. For opening day, if you will, how</p> <p>20 many employees were required?</p> <p>21 A. About six.</p> <p>22 Q. And I believe -- tell me if I'm wrong --</p> <p>23 you didn't start interviewing until June 26; is</p> <p>24 that right?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 255</p> <p>1 Q. State of Nevada -- Nevada, right?</p> <p>2 A. Yes.</p> <p>3 Q. Nevada Sales Tax Permit.</p> <p>4 This is for Fries N' Pies, correct?</p> <p>5 A. Yes.</p> <p>6 Q. Who applied?</p> <p>7 A. Adam.</p> <p>8 Q. When did he apply?</p> <p>9 A. I'm not sure of the exact date. But I</p> <p>10 did talk to him about this, and I do know that when</p> <p>11 we -- that he filed -- he sent this in late because</p> <p>12 of the situation. That's what I believe.</p> <p>13 Q. What situation?</p> <p>14 A. Because of my situation.</p> <p>15 Q. What --</p> <p>16 A. The burn.</p> <p>17 Q. What prevent Adam, who was not injured,</p> <p>18 from timely applying for a tax permit?</p> <p>19 A. Because I believe that -- I think -- I</p> <p>20 think because of this -- there was something with</p> <p>21 this. I'm telling you.</p> <p>22 Q. Well, Adam knew how to do it, right?</p> <p>23 A. Yes.</p> <p>24 Q. And Adam did not need your assistance in</p> <p>25 doing this, did he?</p>	<p style="text-align: right;">Page 257</p> <p>1 Q. And is it your testimony that you hired</p> <p>2 six people within a couple days?</p> <p>3 A. Yes.</p> <p>4 Q. Did Mr. Sadie do that?</p> <p>5 A. Yes. And -- that was me and -- me and</p> <p>6 him.</p> <p>7 Q. Well, you were in the hospital.</p> <p>8 A. After I would go -- I went there a couple</p> <p>9 days to check the people because, with my sleeves</p> <p>10 on, my parents would take me.</p> <p>11 Q. I see. So how long to train the</p> <p>12 employees to do their various jobs?</p> <p>13 A. I mean, usually it takes about a week,</p> <p>14 but on-the-job training. You don't have to -- you</p> <p>15 know, there's no special training and you don't</p> <p>16 have to do it ahead of time. Just on the job.</p> <p>17 Q. The employees -- the interviewing process</p> <p>18 could have started, obviously, in early June.</p> <p>19 There was nothing to prevent that from happening,</p> <p>20 right?</p> <p>21 A. Nope.</p> <p>22 Q. So why didn't the interviewing begin</p> <p>23 earlier so you could plan ahead and have the people</p> <p>24 hired and have the training done to open by July 1?</p> <p>25 A. Well, because we were -- I mean, our goal</p>

<p style="text-align: right;">Page 258</p> <p>1 was to open by July -- you know, the first week of 2 July, and we were doing -- the reason we hired them 3 a little later is because we didn't have to -- you 4 know, we didn't have to really waste any time. It 5 was just hire them, put them on the line, and let's 6 start rocking and rolling and open the restaurant. 7 Q. So if it takes a couple days to hire, 8 that takes you to at least June 28, and then a week 9 to train on the job? 10 A. On the job. 11 So while people are coming in, while you 12 have your -- you know, you have a couple of days 13 where you do a friends and family, you do a 14 couple -- you know, you do a trial -- a trial 15 experiment, you call it, or whatever, and you have 16 them train and that's it. And then you train them. 17 (Exhibit Number 15 was marked.) 18 BY MR. McMULLEN: 19 Q. Josh, I've handed you -- the court 20 reporter has handed you something called Campus 21 Cash? 22 A. Yes. 23 Q. Which I understand -- tell me if I'm 24 wrong -- that this was a program where UNLV 25 students could pay with -- have a different payment</p>	<p style="text-align: right;">Page 260</p> <p>1 have to. 2 Q. So this is dated -- apparently it's 3 the -- well, you tell me. I think it appears to be 4 an application to start the program. It's called a 5 merchant services agreement. It looks like 6 Mr. Sadie filled this out, including federal tax 7 ID, bank account, and so forth. 8 This is what is submitted to start 9 Fries N' Pies on that program? 10 A. Mm-hmm. 11 Q. Is that yes? 12 A. Yes, sir. 13 Q. It looks like he signed it on July 5 of 14 2018, true? 15 A. Yes, sir. 16 Q. There's no reason he couldn't have done 17 that sooner, is there? 18 A. No. But like I just told you, we don't 19 have to have this, and we were deciding if we 20 wanted to have it or not because some -- you know, 21 some businesses around there have it, some people 22 don't. So you don't have to. It's not a -- it's 23 not like something you have to have or you can't 24 open the restaurant. 25 Q. What percentage of revenue did you</p>
<p style="text-align: right;">Page 259</p> <p>1 method to help them facilitate coming into the 2 restaurant; is that right? 3 A. Yes, sir. 4 Q. Is this something that a lot of 5 restaurants use that are near the campus? 6 A. Yes, sir. 7 Q. You're familiar with this? 8 A. Yes. 9 Q. Is this something that was part of the 10 business plan to facilitate revenue? 11 A. It was to facilitate revenue, but it 12 wasn't on a timely basis or anything. Like we 13 don't have to open with this. 14 Q. Why wouldn't you want it in place for 15 opening? 16 A. Oh, I mean, you would, but you don't have 17 to. That's all I'm saying. You don't have to. 18 It's not like you have to have a POS system -- you 19 have to have a POS system, you have to have Toast, 20 you have to have all these things to do it, but 21 this is something you don't have to have when you 22 first open. You can add it after. 23 Q. It's not required, but something you'd 24 want to do to maximize revenue? 25 A. Yeah, maximize revenue, but you don't</p>	<p style="text-align: right;">Page 261</p> <p>1 anticipate might be provided by UNLV students, 2 particularly if you help them with this program? 3 A. Maybe -- our max thought was 20 percent. 4 I don't even get -- maybe I get 5 percent. So at 5 the end of day -- and we were in decisions of this, 6 of if we should do it or if we should not do it. 7 Q. So just to summarize, there's a lot of 8 business decisions that are made, some of which are 9 necessary before you can open, and others which are 10 made to help the business maximize revenue, right? 11 A. Yes, sir. 12 Q. And that's what this Exhibit 15 would be, 13 to help maximize revenue? 14 A. Yes. 15 Q. Which is why you're in business? 16 A. Yes. 17 Q. And the longer you put that off, the less 18 revenue you're going to have from that particular 19 effort? 20 A. Yes. 21 Q. So to some extent, even if you had opened 22 on time, the timing of this application would 23 affect your revenue? 24 A. I mean, it would affect a little revenue, 25 but the other thing is you don't have any -- during</p>

<p style="text-align: right;">Page 262</p> <p>1 this time you don't have any students at UNLV. The</p> <p>2 students come in September. So that was another</p> <p>3 reason why we didn't have to do this right away.</p> <p>4 This was not an important thing that had to be done</p> <p>5 before we opened.</p> <p>6 Q. UNLV doesn't have classes during the</p> <p>7 summer?</p> <p>8 A. They have very little and it's lot of</p> <p>9 commuter traffic and lot of commuters, kids going</p> <p>10 to school. It's not -- you know, I don't even</p> <p>11 think the dorms are open during the summer.</p> <p>12 Q. Do you know for a fact how much</p> <p>13 difference it would make to have this in place</p> <p>14 versus not?</p> <p>15 A. Minimal.</p> <p>16 Q. But do you know what the numbers are?</p> <p>17 A. No. But, I mean, like I said before and</p> <p>18 like I just said, is that you only have -- you</p> <p>19 don't have a wide variety of students during the</p> <p>20 summer. So this paper during the summer would have</p> <p>21 nothing to do with -- technically, it would have</p> <p>22 nothing to do with our business. It started in</p> <p>23 September, and we were just getting it in place so</p> <p>24 people would be able to come to us if they have a</p> <p>25 UNLV card.</p>	<p style="text-align: right;">Page 264</p> <p>1 A. I mean, you have -- you have initial</p> <p>2 cleaning, where, you know, you clean the whole</p> <p>3 restaurant before you open.</p> <p>4 A lot of costs like -- like initial fees</p> <p>5 of like all your accounts, like, you know, your</p> <p>6 towels, your -- there's some of them you have to</p> <p>7 pay a deposit, you know. Your --</p> <p>8 Q. Deposits on accounts?</p> <p>9 A. Yeah.</p> <p>10 Maintenance, you know, in case anything</p> <p>11 is breaking or you need to fix during the time</p> <p>12 that, you know, your --</p> <p>13 Q. Your startup maintenance costs are</p> <p>14 heavier?</p> <p>15 A. Yes. I mean, that's -- being able to pay</p> <p>16 your employees, you know, it's -- you're not -- you</p> <p>17 know, the first couple weeks are a little rough</p> <p>18 usually.</p> <p>19 But like for our situation, we opened</p> <p>20 like bat out of hells because Adam is in the</p> <p>21 nightlife business and I have a big following, so</p> <p>22 we opened and we did, you know, more than any</p> <p>23 average restaurant would do in the first month.</p> <p>24 Q. So the initial labor cost is heavier?</p> <p>25 A. Yes.</p>
<p style="text-align: right;">Page 263</p> <p>1 Q. When you open a new restaurant, do you</p> <p>2 have startup expenses the first month or two that</p> <p>3 you don't have after that?</p> <p>4 A. Yeah. I mean, your opening food order.</p> <p>5 You know, there is lot of things that are --</p> <p>6 Q. Give me a list, if you would. What are</p> <p>7 the startup expenses that are incurred the first</p> <p>8 month or two that you don't have later for opening</p> <p>9 a new restaurant?</p> <p>10 A. I mean, your opening food costs, your</p> <p>11 opening inventory. Your --</p> <p>12 Q. What's the difference between -- when you</p> <p>13 say "inventory" --</p> <p>14 A. Well, inventory is everything that you</p> <p>15 have to open the store.</p> <p>16 Q. I see.</p> <p>17 A. So beer, wine, toilet paper, tissue</p> <p>18 paper.</p> <p>19 Q. Everything besides food?</p> <p>20 A. Yes.</p> <p>21 Q. Got it.</p> <p>22 A. Even food.</p> <p>23 Q. All right. What other opening costs</p> <p>24 would you have that are significant that go away</p> <p>25 over time?</p>	<p style="text-align: right;">Page 265</p> <p>1 Q. Do you know, were there still bills owed</p> <p>2 on the renovation work required?</p> <p>3 A. Yes.</p> <p>4 Q. How long did it take to pay that off?</p> <p>5 A. Probably -- I don't know exact time.</p> <p>6 Six months.</p> <p>7 Q. Any other categories that come to mind</p> <p>8 where the startup costs would be heavier for your</p> <p>9 expenses the first few months of operation?</p> <p>10 A. Not that I can think of.</p> <p>11 Q. For any of those categories you just</p> <p>12 named, opening food costs, inventory, cleaning,</p> <p>13 deposits on accounts, maintenance, initial labor</p> <p>14 cost, renovation work, do you know what those</p> <p>15 numbers are for the first few months? Do you have</p> <p>16 any records that would tell us?</p> <p>17 A. No.</p> <p>18 Q. How about utilities? Do you know what</p> <p>19 that was?</p> <p>20 A. How high the utilities were?</p> <p>21 Q. Right.</p> <p>22 A. I don't. I mean, I know they were higher</p> <p>23 because we did have a -- or actually, no, they</p> <p>24 were -- we had an air-conditioning problem at the</p> <p>25 beginning, and it was -- it was a big issue with</p>

<p style="text-align: right;">Page 266</p> <p>1 air conditioning.</p> <p>2 Q. I can imagine. July in Las Vegas.</p> <p>3 A. It was crazy.</p> <p>4 Q. So that was a heavy cost during the first</p> <p>5 few months --</p> <p>6 A. Yeah. It was nuts.</p> <p>7 Q. -- to get that fixed?</p> <p>8 A. Mm-hmm.</p> <p>9 Q. Credit card fees you have to pay the</p> <p>10 credit card company?</p> <p>11 A. Yeah. But -- yeah, credit card fees.</p> <p>12 Q. So has anyone sat down and itemized all</p> <p>13 these expenses and how much they were the first</p> <p>14 month or two? Do you know?</p> <p>15 A. I'm pretty sure Adam does. Like I said</p> <p>16 to you, he's pretty organized and he has a lot of</p> <p>17 this stuff down. So I just have to ask him.</p> <p>18 Q. But you don't, as you sit here today --</p> <p>19 we've been over this -- you don't have those</p> <p>20 numbers?</p> <p>21 A. No.</p> <p>22 Q. You haven't done any calculations?</p> <p>23 A. No.</p> <p>24 Q. So as you sit here today, you're not able</p> <p>25 to tell me any basis for this \$50,000 lost revenue?</p>	<p style="text-align: right;">Page 268</p> <p>1 accident, and you said that you don't currently</p> <p>2 know of any future care required.</p> <p>3 Is that still true?</p> <p>4 A. Yeah, besides the -- besides the</p> <p>5 psychological.</p> <p>6 Q. Which we don't know the answer on that</p> <p>7 yet; you're waiting?</p> <p>8 A. Correct.</p> <p>9 Q. So as you sit here today, no medical</p> <p>10 professional has recommended any future care as a</p> <p>11 result of this accident; is that true?</p> <p>12 A. Correct.</p> <p>13 Q. You listed a number of people in response</p> <p>14 to interrogatories who you say have knowledge about</p> <p>15 your condition from this accident. Of course your</p> <p>16 parents, Mr. Sadie, Lauren Unger. You also listed</p> <p>17 Mr. Gonzales and his wife.</p> <p>18 Do you keep in contact with them since</p> <p>19 this accident?</p> <p>20 A. Yeah. I've talked to him.</p> <p>21 Q. Have you been over to his house?</p> <p>22 A. Yes. We don't talk anything about this</p> <p>23 case or nothing that comes up with it.</p> <p>24 Q. Do you talk to him about how you're</p> <p>25 doing?</p>
<p style="text-align: right;">Page 267</p> <p>1 A. I could tell you based on the revenue</p> <p>2 that I did in August. That's what I could tell</p> <p>3 you, is how much I did in revenue in August. And</p> <p>4 based on that, that's what I'm telling you I</p> <p>5 missed.</p> <p>6 Q. Well, we went through that before and you</p> <p>7 told me you would need to know the profit and you</p> <p>8 don't know what the expenses were in August,</p> <p>9 correct?</p> <p>10 A. Correct.</p> <p>11 Q. So you don't know what the profit was in</p> <p>12 August?</p> <p>13 A. Correct.</p> <p>14 Q. So is there anyone that can furnish me</p> <p>15 with the numbers to support \$50,000 or whatever the</p> <p>16 number might be that you're claiming?</p> <p>17 Would that be Mr. Sadie?</p> <p>18 A. Yes.</p> <p>19 Q. Do you know for a fact that he has all</p> <p>20 that information?</p> <p>21 A. I don't. I would have to ask him.</p> <p>22 Q. In interrogatories -- sorry to jump back</p> <p>23 for a second -- on medical, we asked you if you</p> <p>24 were aware or are you claiming that any future</p> <p>25 medical care will be needed as a result of this</p>	<p style="text-align: right;">Page 269</p> <p>1 A. In relative. Not based on what happened,</p> <p>2 no.</p> <p>3 Q. Dave Goodman in La Jolla?</p> <p>4 A. Yes?</p> <p>5 Q. How do you know him?</p> <p>6 A. Best friend.</p> <p>7 Q. For how long?</p> <p>8 A. Since I'm twenty years old. Eighteen</p> <p>9 years.</p> <p>10 Q. How often do you see him?</p> <p>11 A. I don't see him that much. I talk to him</p> <p>12 most likely every day.</p> <p>13 Q. On the phone?</p> <p>14 A. Yes.</p> <p>15 Q. Daily?</p> <p>16 A. Yes.</p> <p>17 Q. Would he have knowledge about how you're</p> <p>18 doing based on those phone calls?</p> <p>19 A. Yes.</p> <p>20 Q. How about Andrea Schuman?</p> <p>21 A. My aunt.</p> <p>22 Q. She's in New York?</p> <p>23 A. Yes.</p> <p>24 Q. How often do you talk to her?</p> <p>25 A. Once or -- once a week, once every other</p>

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1 week.

2 Q. So based on those phone calls, she'd have

3 some knowledge how you're doing?

4 A. Yes.

5 Q. So I just want to go through as quickly

6 as I can some text messages that I think shed light

7 on how you're doing and a few other issues, and the

8 easiest way to get through it is just in a packet,

9 so let's mark this.

10 (Exhibit Number 16 was marked.)

11 MR. GOLDSTEIN: Can we take a quick

12 five-minute break?

13 MR. McMULLEN: Sure. He wants a break,

14 so we'll take five minutes.

15 THE VIDEOGRAPHER: The time is

16 approximately 4:30 p.m. We're off the record.

17 (Recess had.)

18 THE VIDEOGRAPHER: We are back on the

19 record. The time is 4:43 p.m.

20 MR. McMULLEN: This is just to make a

21 record that we've decided because the witness has

22 got to leave for his work -- we're not entirely

23 sure, but there may only be an hour left under the

24 seven-hour rule. There's three other parties who

25 haven't had a chance to ask questions.

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1 So we have decided to stop for the day.

2 I've got more to do, but I'll try and cut it back.

3 And the other parties may need to ask the Court for

4 more time; I don't know. But we're going to recess

5 the deposition for now with the idea that we will

6 come back later at mutually agreeable time.

7 Is that agreeable?

8 MR. AVAKIAN: Yes.

9 MR. PFAU: Yes.

10 MS. WINSPEAR: Yes. Thank you.

11 MR. McMULLEN: Thank you.

12 THE VIDEOGRAPHER: This concludes today's

13 portion of Joshua Green's deposition. The time is

14 approximately 4:44 p.m. We're off the record.

15 (Whereupon, the deposition was adjourned

16 at 4:44 p.m. this date.)

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1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)

3) SS:

4 COUNTY OF CLARK)

5

6 I, Monice K. Campbell, a duly

7 commissioned and licensed court reporter, Clark

8 County, State of Nevada, do hereby certify: That I

9 reported the taking of the deposition of the

10 witness, JOSHUA GREEN, commencing on Monday,

11 MAY 18, 2020, at 9:36 a.m.;

12

13 That prior to being examined, the witness

14 was, by me, duly sworn to testify to the truth.

15 That I thereafter transcribed my said shorthand

16 notes into typewriting and that the typewritten

17 transcript of said deposition is a complete, true,

18 and accurate transcription of said shorthand notes.

19

20 I further certify that I am not a relative or

21 employee of an attorney or counsel or any of the

22 parties, nor a relative or employee of an attorney or

23 counsel involved in said action, nor a person

24 financially interested in the action; that a request

25 has not been made to review the transcript.


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1 IN WITNESS THEREOF, I have hereunto set my hand

2 in my office in the County of Clark, State of Nevada,

3 this 28th day of May, 2020.

4

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7 Monice K. Campbell, CCR No. 312

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EXHIBIT “6”

In the Matter Of:
A-19-795381-C
GREEN
vs
FERRELLGAS, INC. et al.

Videotaped Deposition Of:
JOSHUA GREEN, VOLUME II
June 29, 2020



702-805-4800
scheduling@envision.legal

DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA GREEN, an)
individual,)
)
Plaintiff,) Case No.: A-19-795381-C
) Dept. No.: C
vs.)
)
FERRELLGAS, INC., a foreign)
corporation; MARIO S.)
GONZALEZ, an individual;)
CARL J. KLEISNER, an)
individual; DOES I through)
XXX, inclusive, and ROES)
BUSINESS ENTITIES I through)
XXX, inclusive,)
)
Defendants.)
)
)
AND ALL RELATED ACTIONS.)
)

VOLUME II

VIDEOTAPED DEPOSITION OF JOSHUA GREEN

LAS VEGAS, NEVADA

MONDAY, JUNE 29, 2020

Reported by: Monice K. Campbell, NV CCR No. 312

Job No.: 4472

<p>Page 275</p> <p>1 VIDEOTAPED DEPOSITION OF JOSHUA GREEN, held at 2 Envision Legal Solutions, located at 700 South 3rd 3 Street, Las Vegas, Nevada, on Monday, June 29, 2020, 4 at 8:38 a.m., before Monice K. Campbell, Certified 5 Court Reporter, in and for the State of Nevada. 6 7 APPEARANCES: 8 For the Plaintiff, Joshua Green: 9 MATT PFAU LAW GROUP 10 BY: MATTHEW G. PFAU, ESQ. 11 3041 West Horizon Ridge Pkwy, Suite 135 12 Henderson, Nevada 89052 13 702.605.5500 14 matt@mattpfaulaw.com 15 16 For the Defendant Mario S. Gonzalez: 17 PYATT SILVESTRI 18 BY: STEVEN M. GOLDSTEIN, ESQ. 19 701 Bridger Avenue, Suite 600 20 Las Vegas, Nevada 89101 21 702.477.0088 22 sgoldstein@pyattsilvestri.com 23 24 For the Defendant Carl J. Kleisner: 25 DENNETT WINSPEAR, LLP BY: GINA GILBERT WINSPEAR, ESQ. 3301 North Buffalo Drive, Suite 195 Las Vegas, Nevada 89129 702.839.1100 gwinspear@dennettwinspear.com</p>	<p>Page 277</p> <p>1 I N D E X 2 JOSHUA GREEN PAGE 3 Examination By Mr. McMullen 279 4 Examination By Ms. Winspear 317 5 Examination By Mr. Goldstein 322 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25</p>
<p>Page 276</p> <p>1 APPEARANCES: 2 For the Defendant Home Depot U.S.A., Inc.: 3 LEWIS BRISBOIS 4 BY: MICAH MTATABIKWA-WALKER, ESQ. 5 6385 South Rainbow Boulevard, Suite 600 6 Las Vegas, Nevada 89118 7 702.693.4308 8 micah.walker@lewisbrisbois.com 9 10 For the Defendant Ferrellgas, Inc.: 11 BAKER, STERCHI, COWDEN & RICE, LLC 12 BY: MICHAEL C. McMULLEN, ESQ. 13 2500 Pershing Road, Suite 500 14 Kansas City, Missouri 64108 15 816.474.2121 16 mmcmullen@bscr-law.com 17 18 Also Present: 19 JORDAN LEADS, VIDEOGRAPHER 20 21 22 23 24 25</p>	<p>Page 278</p> <p>1 * * * * * 2 LAS VEGAS, NEVADA; MONDAY, JUNE 29, 2020 3 8:38 A.M. 4 * * * * * 5 THE VIDEOGRAPHER: This begins the 6 video-recorded deposition of Josh Green, Volume II, 7 in the matter entitled Green v. Ferrellgas, 8 Incorporated, et al., Case Number A-19-795381-C. 9 We're at 700 South 3rd Street, Las Vegas, 10 Nevada. Today's date is Monday, June 29th of 11 2020, and the time is approximately 8:38 a.m. 12 I am the videographer, Jordan Leads. The 13 court reporter is Monice Campbell with Envision. 14 Will counsel please identify yourselves 15 and then the reporter will administer the oath. 16 MR. McMULLEN: Mike McMullen for 17 Defendant Ferrellgas. 18 MS. WINSPEAR: Gina Winspear for 19 Defendant Carl Kleisner. 20 MR. WALKER: Mike Walker for third-party 21 Defendant Home Depot. 22 MR. GOLDSTEIN: Steve Goldstein for 23 Defendant Mario Gonzalez. 24 MR. PFAU: Matt Pfau for Plaintiff, 25 Josh Green.</p>

<p style="text-align: right;">Page 279</p> <p>1 Whereupon,</p> <p>2 JOSHUA GREEN,</p> <p>3 having been sworn to testify to the truth, the whole</p> <p>4 truth, and nothing but the truth, was examined and</p> <p>5 testified under oath as follows:</p> <p>6</p> <p>7 EXAMINATION</p> <p>8 BY MR. McMULLEN:</p> <p>9 Q. Good morning.</p> <p>10 A. Good morning.</p> <p>11 Q. How are you, Josh?</p> <p>12 A. Good.</p> <p>13 Q. How are you feeling today?</p> <p>14 A. Good. Itchy hands, but good.</p> <p>15 Q. Do you feel like you can complete your</p> <p>16 deposition today? And by that I mean, is there</p> <p>17 anything that might interfere with your ability to</p> <p>18 do so?</p> <p>19 A. No.</p> <p>20 Q. So you do feel like you can continue?</p> <p>21 A. Yes. I can continue.</p> <p>22 Q. All right. Thanks.</p> <p>23 I just have a few things and then I'm</p> <p>24 going to pass the witness to other counsel.</p> <p>25 Last time we talked about your work</p>	<p style="text-align: right;">Page 281</p> <p>1 to any learning disability problems?</p> <p>2 A. No.</p> <p>3 Q. You testified that the first six months</p> <p>4 after the accident that your mother helped with you</p> <p>5 with daily activities such as eating, bathing, and</p> <p>6 driving while your hands and arms were healing; is</p> <p>7 that true?</p> <p>8 A. Yes.</p> <p>9 Q. You testified by October '18 -- sorry, by</p> <p>10 October of 2018, that by then you were able to</p> <p>11 return to work full time as a chef cooking in the</p> <p>12 kitchen; is that right?</p> <p>13 A. Yes.</p> <p>14 Q. And did that include using gas grills in</p> <p>15 the kitchen?</p> <p>16 A. I haven't used a gas grill or a propane</p> <p>17 grill since the accident.</p> <p>18 Q. You've not used any gas grill at all</p> <p>19 since the time of the accident?</p> <p>20 A. No.</p> <p>21 Q. And that gets into psychological issues</p> <p>22 where you are fearful of using a gas grill; is that</p> <p>23 right?</p> <p>24 A. Yes. It happened once. It can happen</p> <p>25 again.</p>
<p style="text-align: right;">Page 280</p> <p>1 issues, and you testified that long before this</p> <p>2 grill accident, you had epileptic seizures. I</p> <p>3 think you said those began when you were working at</p> <p>4 SkinnyFATS; is that right?</p> <p>5 A. It began before that, but yes.</p> <p>6 Q. And you testified at least initially that</p> <p>7 the seizures reduced your work hours, correct?</p> <p>8 A. Yes.</p> <p>9 Q. And then if I understand, once you</p> <p>10 treated those seizures with medical marijuana, it</p> <p>11 has been several years since you've had any</p> <p>12 seizures; is that true?</p> <p>13 A. Yes.</p> <p>14 Q. So am I correct that you no longer have</p> <p>15 any reduction in your work hours due to seizures?</p> <p>16 A. Yes.</p> <p>17 Q. You also testified about at a very young</p> <p>18 age, at least at that time, a learning disability;</p> <p>19 is that right?</p> <p>20 A. Yes.</p> <p>21 Q. Are there any current continuing issues</p> <p>22 that you relate to that learning disability that</p> <p>23 interfere with your work?</p> <p>24 A. No.</p> <p>25 Q. So there's no reduction in work hours due</p>	<p style="text-align: right;">Page 282</p> <p>1 Q. Other than the psychological issue which</p> <p>2 I'll get into in a moment, according to your prior</p> <p>3 testimony, the only remaining problem that you're</p> <p>4 facing that you relate to the accident is</p> <p>5 temperature extremes on your hands; is that true?</p> <p>6 A. Yes.</p> <p>7 Q. So let's talk about the psychological</p> <p>8 issue briefly.</p> <p>9 You testified last time that -- that was</p> <p>10 May 18, I believe, that the Friday before we</p> <p>11 started your deposition, which would be May 15,</p> <p>12 that you saw a -- is it psychologist or</p> <p>13 psychiatrist?</p> <p>14 A. Psychologist.</p> <p>15 Q. Is that Michael Elliott?</p> <p>16 A. Yes.</p> <p>17 Q. You saw psychologist Michael Elliott for</p> <p>18 an evaluation on May 15?</p> <p>19 A. Yes.</p> <p>20 Q. Have you heard from him on the results of</p> <p>21 his evaluation?</p> <p>22 A. Yes. I have another appointment with him</p> <p>23 on July 1st.</p> <p>24 Q. Can you tell us what results he reported</p> <p>25 to you from his evaluation?</p>

<p style="text-align: right;">Page 283</p> <p>1 A. We didn't really go into too much of it. 2 They said we were going to go over stuff on the 3 1st. Just told me that I had -- from his findings, 4 that I -- that I have PTSD on the situation, and 5 that, you know, me working on grills or anything 6 that has to do with potential fire, it definitely 7 has a play on it. 8 And, I mean, his whole thing is that he 9 definitely thinks that there's trauma due to the 10 incident. 11 Q. Did he specifically diagnose you with 12 PTSD as a result of this grill accident? 13 A. I mean, he told me that he feels that it 14 can and then that's why they're doing more tests 15 and they're doing more -- that's why we're having 16 more meetings and more sessions. 17 Q. So if I understand, is his evaluation 18 continuing or has he completed his -- 19 A. No. It's continuing. 20 Q. So at this point he said it's a 21 possibility that you have PTSD from this accident 22 but that more evaluation is needed; is that true? 23 A. Yes, and going more into a detailed 24 psychological session, and that's what we're going 25 on July 1st.</p>	<p style="text-align: right;">Page 285</p> <p>1 A. No. 2 Q. Do you know what future tests he has in 3 mind? 4 A. No. 5 Q. But some kind of testing you understand 6 is slated for the next visit? 7 A. Yes. 8 Q. And that's on July 1? 9 A. Yes. 10 Q. Did you get any paperwork from him, any 11 kind of report or test results from when you saw 12 him on May 15? 13 A. I believe everything was given to my 14 lawyer. 15 Q. Okay. Have you seen it? 16 A. No. 17 Q. Forgive me if I covered this before. 18 Had you ever been diagnosed with PTSD 19 before this accident? 20 A. No. 21 Q. Have you ever had any traumatic event 22 before this accident that required any kind of 23 professional care? 24 A. No. I mean, I had a bad car accident, 25 but I never had -- you know, I never had anything</p>
<p style="text-align: right;">Page 284</p> <p>1 Q. Did you do any testing on May 15 with 2 Michael Elliott? 3 A. Yes. 4 Q. What kind of testing? 5 A. I went in front of a computer and 6 answered a bunch of questions. 7 Q. Do you happen to know the name of that 8 test, what it's called? 9 A. No. I think it was like a Pearson's test 10 or some straightforward test. 11 Q. Do you recall how many questions were 12 involved? 13 A. Like 200. I don't even -- it was a lot. 14 Q. How long did it take? 15 A. Like two and a half hours, two hours. 16 Q. Was it a multiple choice or an essay 17 type? 18 A. Multiple choice. 19 Q. So you're given a question and then you 20 have, what, three or four possible answers and you 21 pick one of those? 22 A. Yes. 23 Q. Do you recall any other type of testing 24 that you took on May 15 when you saw Michael 25 Elliott for psychological evaluation?</p>	<p style="text-align: right;">Page 286</p> <p>1 from it. 2 Q. You were seeing Lauren Unger, a shaman in 3 Miami? 4 A. Mm-hmm. 5 Q. And what specifically were you seeing her 6 for? 7 A. I was seeing her for -- I've had a lot of 8 businesses and I was, you know, taken advantage of 9 in a couple ways. And I saw her because I was 10 super negative in my life and saw a lot of things 11 going in a negative spiral. So I went to her to 12 fix -- to fix things and going into a better 13 direction, positive and -- you know, kind of fix my 14 life in different ways. 15 Q. And that had to do in part, I think, from 16 what you testified before, with what happened with 17 Green Gourmet and SkinnyFATS? 18 A. Yes. 19 Q. That was a negative impact? 20 A. Yes. 21 Q. Psychologically? 22 A. Yes. I mean, everything. 23 Q. Right. 24 Do you feel that you had recovered from 25 that negative psychological impact, what happened</p>

<p style="text-align: right;">Page 287</p> <p>1 with those businesses, before this accident 2 happened? 3 A. Yes. Because I -- I mean, after going to 4 her, I felt that I was a different -- I was a 5 different person, and I just felt in a more 6 positive attitude towards things and not as 7 negative. 8 Q. By the way, I'm sure I'm mistaken, but 9 Lauren Unger is not now your wife? Is it a 10 different Lauren? 11 A. Yes. 12 Q. Lauren Unger is still in Miami somewhere? 13 A. Yes. I still talk to her. 14 Q. How often do you talk to her? 15 A. Whenever I need to, but usually like 16 once -- I touch base once every two weeks. 17 Q. What do you talk about generally? 18 A. Just what's going on, my well-being, how 19 I'm doing, how, you know, my path is going. 20 Q. Do you talk to Lauren Unger specifically 21 about your psychological issues from this accident? 22 A. I mean, we've had discussions about it, 23 yes. 24 Q. Is she someone that provides therapy for 25 you on that?</p>	<p style="text-align: right;">Page 289</p> <p>1 relevant. It is relevant. It's privileged because 2 it is a treating person, a person providing medical 3 treatment or psychological treatment. So for that 4 reason, it is subject to the patient privilege. 5 MR. McMULLEN: In Nevada is the privilege 6 not waived once the plaintiff puts the condition in 7 issue? That's been my experience. 8 MR. PFAU: No, it's not waived. It's not 9 waived as it relates to communications. 10 MR. McMULLEN: So if I had medical 11 records or some notes that she made when she 12 provides therapy to him, clearly those would be 13 discoverable and I could ask him about those. 14 MR. PFAU: Certainly. 15 MR. McMULLEN: And that's along the lines 16 what I'm asking now, whether she's provided him any 17 assistance or help, advice, with his psychological 18 issues. 19 MR. PFAU: Okay. That's fine. 20 BY MR. McMULLEN: 21 Q. Has Lauren Unger provided you with any 22 care, therapy-type care, in relation to this 23 accident? 24 A. Just like I said before, just normal -- 25 just conversations and we talk about -- we do talk</p>
<p style="text-align: right;">Page 288</p> <p>1 A. I mean, she gives me the advice from 2 her -- from her side, and, you know, it's not 3 really -- I wouldn't say "therapy," but it's more 4 of talks and conversations of making myself better. 5 Q. Is that the main reason you still have 6 contact with her, or are you mainly talking about 7 other things? 8 A. I mean, we talk about everything. I 9 mean, we have conversations about this accident, 10 about everything. 11 Q. You talk to her about your general 12 well-being? 13 A. Yes. 14 Q. Has she given you any advice regarding 15 your psychological issues from this accident? 16 MR. PFAU: I'm going to object to the 17 question as it calls for privileged communications. 18 He can answer as long as it's not related to 19 anything she may have said to him. 20 MR. McMULLEN: I'm not sure I understand 21 the nature of the privilege. He's put his 22 psychological condition at issue, so if he's 23 getting any kind of professional care, that's now 24 become relevant. 25 MR. PFAU: It's not that it's not</p>	<p style="text-align: right;">Page 290</p> <p>1 about the incident. We talk about what happened, 2 how I'm doing, and you know, the situation -- how 3 I'm handling it, how I'm going through it. And 4 that's really the basis of it. 5 Q. In the course of the care or therapy that 6 Lauren Unger has provided you, has she given you 7 any specific advice to help with your psychological 8 issues? 9 A. No. She just said to go to a more 10 detailed psychological treatment and that's why I 11 went to Michael Elliott. 12 Q. I see. 13 A. The conversations that we have are more 14 of a -- about my attitude, my ways of how I'm 15 dealing with all the situations that come into my 16 life, and how I'm making my life better. 17 Q. How is your attitude and outlook now? 18 How would you describe your psychological state? 19 A. I mean, everything -- it's been good, 20 but, I mean, a lot of -- like I said before, a lot 21 of this incident just made me -- hindered a lot of 22 things that I would have done before. 23 I was -- I never was ever in fear of 24 equipment. Now I have fear of equipment. I have 25 fear of grills. I mean, I -- you know, I do cook</p>

<p style="text-align: right;">Page 291</p> <p>1 on a normal basis, but it's always like -- I used 2 to work 16-, 17-hour days. I don't do that 3 anymore.</p> <p>4 I probably work -- I mean, right now I 5 work at a pizza place. It's called Fries N' Pies. 6 I work there four or five hours a day and that's 7 it. And then I go do a personal chef thing for a 8 couple hours. It's very minimal work in the 9 kitchen.</p> <p>10 When I used to work at SkinnyFATS, I 11 worked 16 hours a day. So it's a totally different 12 situation.</p> <p>13 Q. Are you saying you work fewer hours 14 because you're afraid of being in a cooking 15 environment?</p> <p>16 A. Yeah. That and -- I mean, I've got real 17 bad sensitivity on my hands. My hands have been 18 itching in the past two -- two months, month. I 19 mean, I get out of the shower and if it's cold 20 outside, like, I have to be extremely dry in the 21 shower, because if I go out and it's cold, my hands 22 get extremely sensitive.</p> <p>23 I have been having issues of itching on 24 my hands. Maybe that's the healing process or 25 whatever. But my hands are extremely tight. The</p>	<p style="text-align: right;">Page 293</p> <p>1 A. I mean, every doctor I have been to just 2 says put cream and kind of wait it out and see if 3 it's going to get better. They all tell me it's 4 going to get better and it's just a waiting 5 process.</p> <p>6 Q. Is it getting any better?</p> <p>7 A. I mean, like I didn't have itching issues 8 until, you know, the past two months. And that's 9 just -- maybe that -- like I said, maybe that's the 10 healing process or maybe it's just a sensitivity 11 issue, but that's...</p> <p>12 Q. Have you talked to any medical person 13 about these issues?</p> <p>14 A. I did go to a skin, and they tell me the 15 same -- you know, they tell me the same things, put 16 lotion, keep an eye on it, make sure, you know, if 17 you have any other issues, come back and see us.</p> <p>18 And that's really it.</p> <p>19 Q. Was this a dermatologist in Henderson you 20 told me about last time?</p> <p>21 A. It was that one and then there was 22 another one.</p> <p>23 Q. When was the last time you talked to any 24 professional about this?</p> <p>25 A. I don't really have exact memory, but I</p>
<p style="text-align: right;">Page 292</p> <p>1 skin is extremely tight. I get cuts all the time. 2 You can see blisters from cuts. I mean, it's 3 blisters.</p> <p>4 I mean, it's crazy. And it's on a 5 continuous basis.</p> <p>6 MR. McMULLEN: Would you be okay if he 7 holds his hands up for the video so we can see his 8 hands?</p> <p>9 MR. PFAU: Sure.</p> <p>10 BY MR. McMULLEN:</p> <p>11 Q. Show us, if you would, where the blisters 12 and the itching occur.</p> <p>13 A. Blister here, blister here (indicating).</p> <p>14 Q. Go like this so they can see.</p> <p>15 Thank you.</p> <p>16 A. Blister here. Scar here. Or like my 17 palms get scraped very easily. I got a blister 18 here. And it's just a continual basis of...</p> <p>19 Q. So specifically regarding your hands, I'm 20 understanding that you have itching, you have 21 blisters, and you have scrapes?</p> <p>22 A. Yeah, and sensitivity issues.</p> <p>23 Q. And sensitivity.</p> <p>24 What are you doing to treat those 25 problems, if anything?</p>	<p style="text-align: right;">Page 294</p> <p>1 could say March or April, in those months.</p> <p>2 Q. Who was that, if you remember?</p> <p>3 A. I don't. I don't remember the name. I 4 know where it was, but I don't remember the name.</p> <p>5 Q. And you got the advice about using 6 lotion?</p> <p>7 A. Yes.</p> <p>8 Q. Do you use lotion?</p> <p>9 A. Yes.</p> <p>10 Q. What kind of lotion is it?</p> <p>11 A. It's a -- a derma -- a derma -- I don't 12 know exactly what it's called.</p> <p>13 Q. Is it over the counter or prescription?</p> <p>14 A. Prescription.</p> <p>15 Q. Who prescribed it?</p> <p>16 A. Every dermatologist that I went to 17 prescribed the same thing, and it's \$75 bottle of 18 cream that --</p> <p>19 Q. Does it help?</p> <p>20 A. No.</p> <p>21 Q. Have you told your health care people 22 this lotion isn't helping?</p> <p>23 A. Yes.</p> <p>24 Q. Do they have any advice?</p> <p>25 A. Same thing when I went to the person I</p>

<p style="text-align: right;">Page 295</p> <p>1 said, I use this already, and they said just keep 2 using it. That's really it. 3 And then they say that it's going to -- 4 you know, the sensitivity issues should go away and 5 it hasn't. And to be honest with you, I don't 6 think it will because it just gets worse. Me 7 grabbing something from the freezer, me grabbing a 8 hot cup of coffee -- you know, like I said last 9 time, if I grab a hot cup of coffee without a 10 jacket on it, you know, it burns. 11 Q. So I appreciate your patience with my 12 detailed questions. I'm trying to get a very 13 thorough understanding of the issues you still have 14 from this accident. 15 I understand physically, with regard to 16 your hands, you told me about sensitivity to 17 temperature, itching, blisters, scrapes, and then 18 you've told me psychologically you have a fear of 19 using grills. 20 A. Mm-hmm. 21 Q. Is there anything else that's continuing 22 from this accident that you claim today? 23 A. I mean, I have headaches on a continual 24 basis. I mean, that is -- I believe it's from the 25 blow and like it just -- it's never stopped since</p>	<p style="text-align: right;">Page 297</p> <p>1 I think you told me before -- 2 A. Yeah, Tylenol, like I said, and CBD and 3 marijuana. 4 Q. Anything else? 5 A. No, not right now. 6 Q. Have you spoken to any healthcare 7 professional and said, Hey, I need to do something 8 more, or are those things working? 9 A. They work. I mean, it hasn't got to a 10 point where it's not working, so I just keep on -- 11 on that system. 12 Q. A little bit more about the PTSD. The 13 symptoms of your PTSD you've told me are fear of 14 using grills, fear of other equipment. 15 What other equipment besides grills are 16 you fearful of using because you relate that to 17 this accident? 18 A. Any -- you know, like I told you last 19 time, I do catering. So with catering, you hook up 20 ovens. You hook up different things that have 21 propane. So I don't really use -- I haven't used 22 any propane since this accident and I don't think I 23 ever will. 24 I mean, that's the thing of it. The 25 propane, the explosion was so traumatic to the</p>
<p style="text-align: right;">Page 296</p> <p>1 that accident. I've always had continuous 2 headaches. That's one of the reasons why I smoke 3 weed, is because of that. 4 And the headaches get so painful, 5 sometimes I -- you know, if you do look at my 6 medical record, I had a problem with headaches and 7 then it kind of got resolved, and then after this 8 accident I've had massive headaches all the time. 9 Q. I asked you last time -- and maybe I 10 misunderstood or maybe the answer has changed -- if 11 any healthcare professional has told you that your 12 headaches today are likely the result of this 13 accident. And I thought you said no one has, but 14 is that mistaken? 15 A. No. Like I said, I said that I get 16 headaches and I believe that it's from that. I 17 haven't been to a -- I mean, I went to, you know, 18 the specific individuals that I went to, but no one 19 has said exactly from the accident. 20 But I -- you know, like I said before, I 21 went through treatment for the headaches, 22 everything was good, and then after this accident 23 had numerous amounts of more headaches. 24 Q. Are you getting any treatment today for 25 your headaches other than over-the-counter Tylenol</p>	<p style="text-align: right;">Page 298</p> <p>1 point where it's like, you know, it blew me back 2 and I -- you know, if I didn't jump in the 3 sprinkler, I might have had a lot more, you know, 4 damages. But because of my, you know, ability of 5 reacting, I put myself in water, you know, in a 6 sprinkler, and put out the fire. 7 And then as soon as I -- as soon as the 8 fire went out, I looked at my hands and I said "I'm 9 never going to be able to cook again." So -- 10 Q. Do you have any PTSD symptoms, in your 11 opinion, other than what you've told me? Are you 12 fearful of using propane? 13 A. Yep. I mean, I'm fearful of using 14 propane. I'm fearful of using grills. I'm afraid 15 of fire. I mean, I went to O, a show at the 16 Bellagio, with my boss, and I was sitting there and 17 there was a guy on fire and I was like, "Oh, look. 18 It's me." You know, anything that I see that has 19 to do with a guy on fire or, you know, any of that, 20 it brings back the memories. 21 And that's the biggest thing, is that 22 it's always -- I'm always being -- you know, I'm 23 always remembering the situation because it was so 24 dramatic and the fact where I was in the hospital a 25 while. I was in a lot of treatment with them</p>

<p style="text-align: right;">Page 299</p> <p>1 ripping off my bandages and just like the whole 2 process was extremely emotional and devastating to 3 everything that I've done after the accident. 4 Q. So if you see fire, that brings back 5 these bad memories? 6 A. Yes. 7 Q. Anything else regarding PTSD? 8 A. I mean, the biggest thing is that, like I 9 said before -- and I don't really -- you know, if 10 this does pertain to PTSD, it's just the fact where 11 before I was able to do a lot more things in the 12 kitchen, a lot more things at work, a lot more 13 things in my life, and now it's hindered a lot of 14 things, to make me think about doing things either 15 differently or things that I, you know, react. 16 I react kind of just -- I think about 17 things before I do it, where before I would just, 18 oh, turn on a grill and I wouldn't even think about 19 it, or I would -- you know. So a lot of that stuff 20 has to do with the posttraumatic syndrome of having 21 to deal with -- you know, of what happened. 22 Q. So you told me before that you're less 23 social, you're more withdrawn? 24 A. Yeah. 25 Q. With regard to working in the kitchen,</p>	<p style="text-align: right;">Page 301</p> <p>1 A. I mean, I think we've covered most of it. 2 I just, you know -- yeah. 3 Q. All right. So I wanted to ask you 4 briefly about Green's Gourmet and SkinnyFATS. You 5 testified before that Green's Gourmet -- which, by 6 the way, is that greens like we eat greens or is 7 that you, Green? 8 A. Me. 9 Q. So it's Josh Green's Gourmet? 10 A. Yes. 11 Q. That was a personal chef catering 12 business that you with started with someone named 13 Demetri and an investor, correct? 14 A. Yes. 15 Q. What's Demetri's last name? 16 A. Townsend. 17 Q. I'm sorry? 18 A. Townsend. T-o-w-n-s-e-n-d, I believe. 19 Q. And who was the investor? 20 A. Tony Clark. 21 Q. Is Green's Gourmet still in business? 22 A. No. 23 Q. Where is Demetri Townsend today, if you 24 know? 25 A. I don't know.</p>
<p style="text-align: right;">Page 300</p> <p>1 you do still cook in the kitchen, true? 2 A. Yes, but very little. 3 Q. So what equipment do you use now that you 4 didn't use before? 5 A. I mean, I use a flat top grill, which is 6 a controlled gas grill, you know, that -- you know, 7 yes, anything can happen, but it's pretty 8 controlled. So, you know, if there's -- if there's 9 a gas problem, I'm going to smell it or I'm going 10 to know about it before it goes into the grill. 11 And then I use fryers on a daily basis. 12 Q. So the gas equipment that you use would 13 be a flat top or a fryer, but am I correct that 14 it's not propane that you're using? 15 A. No. 16 Q. It's natural gas? 17 A. Yes. I will never use propane again. I 18 mean, that's just -- and that's, you know, part of 19 the PTSD. That's part of a lot of, you know, the 20 thinking process of using propane after this 21 incident -- accident. 22 Q. Anything else you can think of that you 23 can't do or you don't do like you did before or 24 other symptoms you relate to PTSD, or have we 25 covered it?</p>	<p style="text-align: right;">Page 302</p> <p>1 Q. The last time you knew where he was, 2 where was he? 3 A. Las Vegas. But I haven't talked to him 4 since. 5 Q. How about Tony Clark? 6 A. No. 7 Q. You did testify -- the words you used 8 were that they sideswiped you, that they, quote, 9 "pushed you out of the company." 10 What happened? 11 A. I went to work for a big fighter in Miami 12 and LA, and while I was doing that, they were doing 13 things behind my back in the business. 14 And when I came back, we were -- we were 15 having a talk, and they said that because I was 16 doing personal chef stuff and other things, that 17 they didn't think I was, you know, putting all 18 the -- and I started the business. So they were -- 19 I wasn't putting as much effort or they were 20 running the business while I was doing this other 21 stuff. And it just led to problems. 22 And then they tried to start the aviation 23 company without me and they went -- and they were 24 done in three months. 25 Q. Were you an investor yourself? Did you</p>

<p style="text-align: right;">Page 303</p> <p>1 have an ownership interest in Green's Gourmet?</p> <p>2 A. I was the owner. I was the sole owner.</p> <p>3 I've, you know, dealt with a lot of issues behind</p> <p>4 it. I was very young and I learned a lot of</p> <p>5 lessons from it. That's really what it comes down</p> <p>6 to.</p> <p>7 Q. So legally, if you were the sole owner of</p> <p>8 Green's Gourmet, how were they able to push you</p> <p>9 out?</p> <p>10 A. Because -- so -- I mean, I was the owner</p> <p>11 and I gave Demetri -- I gave him ownership. And</p> <p>12 then when I brought in the other investor, he</p> <p>13 brought in the accountants, he brought in</p> <p>14 everything, brought in the business aspects of it,</p> <p>15 and they used that talent to -- you know, in his</p> <p>16 business ways, to take control and force me out. I</p> <p>17 mean, that's really what it comes down to.</p> <p>18 Q. Was there a lawsuit over this?</p> <p>19 A. No.</p> <p>20 Q. Did they threaten to sue you?</p> <p>21 A. No. I mean, not to sue me, no.</p> <p>22 Q. Did you think about hiring a lawyer</p> <p>23 and --</p> <p>24 A. I didn't have the money to fight it.</p> <p>25 That's the same reason why SkinnyFATS -- I didn't</p>	<p style="text-align: right;">Page 305</p> <p>1 Q. And that was back in 2013 or 2014?</p> <p>2 A. 2013.</p> <p>3 Q. So you testified before that you had a</p> <p>4 falling out with Mr. Slobusky, that you had</p> <p>5 disagreements and you parted ways.</p> <p>6 What was the disagreement --</p> <p>7 A. I had a seizure, actually. I had a</p> <p>8 seizure on the line and I was in the hospital for a</p> <p>9 month after that. The doctor told him that I could</p> <p>10 not work on the line due to that.</p> <p>11 He said that I didn't -- I wasn't</p> <p>12 following my contractual obligations. And that's</p> <p>13 where he said he doesn't need me anymore, and if I</p> <p>14 wanted to take it up with anybody, that I could</p> <p>15 take it up with a lawyer.</p> <p>16 I spoke to a lawyer and, you know, we had</p> <p>17 a conversation, and he said that I could do it, but</p> <p>18 it's going to -- you know, it's the same thing I</p> <p>19 just told you. He would have eaten me alive.</p> <p>20 Q. Did you have an ownership interest in</p> <p>21 SkinnyFATS?</p> <p>22 A. That's part of the issue. I was supposed</p> <p>23 to. I was supposed to have 25 percent. I was</p> <p>24 supposed -- and then I had a contract for</p> <p>25 10 percent, signed it, and he never gave it to the</p>
<p style="text-align: right;">Page 304</p> <p>1 have money to fight it. I mean, that guy from</p> <p>2 SkinnyFATS would have eaten me alive because he</p> <p>3 would have spent as much money as possible. And</p> <p>4 that's exactly what happened.</p> <p>5 Q. So when we talk about SkinnyFATS, is that</p> <p>6 Reed Slobusky?</p> <p>7 A. Yep.</p> <p>8 Q. You said he was your best friend at one</p> <p>9 time?</p> <p>10 A. He was.</p> <p>11 Q. And he was your financing partner for</p> <p>12 SkinnyFATS?</p> <p>13 A. He was.</p> <p>14 Q. SkinnyFATS is still in operation?</p> <p>15 A. Yes.</p> <p>16 Q. Do they have more than one location?</p> <p>17 A. Yep.</p> <p>18 Q. Where do those --</p> <p>19 A. Eight locations.</p> <p>20 Q. Where was the original location?</p> <p>21 A. Dean Martin.</p> <p>22 Q. Is that Dean Martin Drive or Avenue?</p> <p>23 A. Dean Martin Drive, I believe.</p> <p>24 Q. Here in Las Vegas?</p> <p>25 A. Yep.</p>	<p style="text-align: right;">Page 306</p> <p>1 lawyer.</p> <p>2 And that's the whole thing. He was</p> <p>3 supposed to be my business advocate. He was</p> <p>4 supposed to be my confidant. And he got greedy and</p> <p>5 started doing things to get me out of it.</p> <p>6 Q. So originally you were supposed to have</p> <p>7 25 percent, but somehow that got negotiated down to</p> <p>8 a contract for 10 percent?</p> <p>9 A. Well, it was -- it was 10 percent and</p> <p>10 then it was, you know, after a certain time it</p> <p>11 would evolve into more, and --</p> <p>12 Q. So like Green's Gourmet, you felt like</p> <p>13 you had been wronged but you didn't have the</p> <p>14 legal -- you didn't have the resources to fight it?</p> <p>15 A. Yep.</p> <p>16 Q. Did you talk to any lawyer about this?</p> <p>17 A. I mean, I spoke to friends that are</p> <p>18 lawyers, but, you know, just to get advice.</p> <p>19 Q. Did you talk to a lawyer about taking</p> <p>20 this on on a contingency so the expenses would be</p> <p>21 fronted by them and you can go forward?</p> <p>22 A. I mean, nobody that I talked or nobody</p> <p>23 that I -- you know, was willing to do it.</p> <p>24 Q. So you did talk to some lawyers, but they</p> <p>25 weren't willing to take it?</p>

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<p>1 A. Yeah.</p> <p>2 Q. So today --</p> <p>3 A. Because he had the paperwork.</p> <p>4 Q. I'm sorry?</p> <p>5 A. Because he had the paperwork. He knew</p> <p>6 what he was doing.</p> <p>7 Q. "He" being Slobusky?</p> <p>8 A. Yes.</p> <p>9 Q. So today you're working at Fries N' Pies?</p> <p>10 A. Yes.</p> <p>11 Q. And as a personal chef for someone?</p> <p>12 A. Yes.</p> <p>13 Q. What are your hours at Fries N' Pies?</p> <p>14 A. 10:00 to 3:00.</p> <p>15 Q. And I know you told me this.</p> <p>16 Is there more than one location?</p> <p>17 A. No.</p> <p>18 Q. Where is Fries N' Pies located?</p> <p>19 A. 4503 Paradise Road.</p> <p>20 Q. Some of your time when you're working</p> <p>21 there from 10:00 to 3:00 is cooking?</p> <p>22 A. Yes.</p> <p>23 Q. Is that primarily what you do?</p> <p>24 A. I mean, I'm a manager. I'm an operating</p> <p>25 manager. So I operate the store and make sure the</p>	<p>1 A. Scott Sibley.</p> <p>2 Q. Who is he?</p> <p>3 A. He's a prominent man in Las Vegas. I</p> <p>4 mean, he has a bunch of businesses. And he got my</p> <p>5 name through someone that -- he was trying to lose</p> <p>6 weight, and he said, "I need the best personal chef</p> <p>7 in town," and somebody that I know referred him.</p> <p>8 And that's how it happened.</p> <p>9 Q. How long have you been doing that?</p> <p>10 A. About five months.</p> <p>11 Q. What kind of hours do you work as a</p> <p>12 personal chef for Mr. Sibley?</p> <p>13 A. About 4:00 to 8:00 every day.</p> <p>14 Q. Seven days a week?</p> <p>15 A. Yes.</p> <p>16 Q. Sounds like you're cooking all of his</p> <p>17 evening meals, anyway.</p> <p>18 A. Yep. I do his dinner.</p> <p>19 Q. Do you do other meals too?</p> <p>20 A. I leave a lunch for him in like a</p> <p>21 container.</p> <p>22 Q. I know you're skilled at cooking a wide</p> <p>23 variety of things, but give me an idea. What do</p> <p>24 you cook for him?</p> <p>25 A. I mean, everything. I mean, it's -- it</p>
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<p>1 store's opened and following the proper code of</p> <p>2 setting up the restaurant.</p> <p>3 Q. And you cook as well?</p> <p>4 A. Yes.</p> <p>5 Q. How much time do you spend cooking at</p> <p>6 Fries N' Pies?</p> <p>7 A. I mean, actual cooking, probably two to</p> <p>8 three -- two hours a day, two to three hours a day.</p> <p>9 Q. What do you cook?</p> <p>10 A. I just cook on a flat top and make french</p> <p>11 fries.</p> <p>12 Q. Well, that's what it is, right, it's</p> <p>13 pizza and french fries?</p> <p>14 A. Yeah.</p> <p>15 Q. How is that business going?</p> <p>16 A. It's good. I mean, it's getting better</p> <p>17 now. We cut the menu down, so...</p> <p>18 Q. How many employees do you have?</p> <p>19 A. Seven.</p> <p>20 Q. Full time?</p> <p>21 A. Yes.</p> <p>22 Q. Making a profit?</p> <p>23 A. Starting to, yes.</p> <p>24 Q. Your other job is a personal chef to</p> <p>25 someone, and I forgot who someone is.</p>	<p>1 can be tacos to pasta to -- I mean, anything and</p> <p>2 everything.</p> <p>3 Q. Do you use any gas-fueled equipment to</p> <p>4 cook for Mr. Sibley?</p> <p>5 A. I use -- I mean, I use a stove and an</p> <p>6 oven, and that's really it.</p> <p>7 Q. Those are indoor appliances?</p> <p>8 A. Yep. I mean, we have -- he's asked me to</p> <p>9 grill a bunch of times and I tell him no and I tell</p> <p>10 him I can't. And then about three months ago, he</p> <p>11 asked me to grill and there was another person</p> <p>12 there, one of his friends, who said that he would</p> <p>13 grill instead, so I didn't have to.</p> <p>14 Q. What kind of income are you making</p> <p>15 working for Mr. Sibley?</p> <p>16 A. I make \$4,000 a month. And that's what</p> <p>17 keeps me afloat. So that's why I had to take that</p> <p>18 job. Because I do not get paid at Fries N' Pies</p> <p>19 because I own 45 percent of it.</p> <p>20 Q. That's a long-term business venture?</p> <p>21 A. Yes.</p> <p>22 Q. Who owns the rest of Fries N' Pies today?</p> <p>23 A. Adam Sadie.</p> <p>24 Q. The two of you are the owners; no one</p> <p>25 else?</p>

<p style="text-align: right;">Page 311</p> <p>1 A. Yes -- oh, no. There is one 10 percent 2 investor, one of -- a friend of his. 3 Q. Who is that? 4 A. Sherman -- I forget his last name. Yu, 5 actually, Y-u. Sherman Yu. 6 Q. As manager of Fries N' Pies, which I 7 understand has been in operation since July of 8 2018? 9 A. Yes. 10 Q. Continuously? 11 A. Yes. Besides the past -- we closed in 12 March and reopened two weeks ago. 13 Q. Because of COVID-19? 14 A. Yes. 15 Q. But now you're back open? 16 A. Yes. 17 Q. Including dine-in? 18 A. Yes. 19 Q. As manager of Fries N' Pies, do you have 20 a projection or expectation as to how that business 21 may grow or how it will work out in the future? 22 A. I mean -- maybe I don't understand your 23 question. 24 Q. Sure. 25 Do you have a business plan for Fries N'</p>	<p style="text-align: right;">Page 313</p> <p>1 A. Yes. 2 Q. Do you have a timetable for that? 3 A. In the next year or two, open another 4 store, and then keep growing it after that. 5 Q. Open another store in Las Vegas? 6 A. Yes. 7 Q. How many stores ultimately do you think 8 you might open with Fries N' Pies? 9 A. I mean, the goal is 100-plus. 10 Q. One hundred plus? 11 A. Yes. 12 Q. Do you have any expectation as to how 13 long that will take? 14 A. I mean, I think I could start selling 15 franchises in the next two to three years, and 16 history will be then. 17 Q. Perhaps outside Las Vegas or no? 18 A. Yeah. I mean, that's my goal. My goal 19 is to get it nationwide. Because it is easy to 20 duplicate. No need to -- I don't need a big 21 storefront. I don't need a big area. So it's 22 pretty easy to plug and play. 23 Q. Do you have some idea what the gross 24 sales or income currently is for Fries N' Pies? 25 A. The first year we were open, we made</p>
<p style="text-align: right;">Page 312</p> <p>1 Pies? 2 A. I mean, we -- I mean, we developed it 3 based on -- I was actually going to put in a 4 healthy concept. The guy wanted a pizza concept; 5 then Adam and I developed it. 6 Q. Can you do healthy pizza? 7 A. We do. It's cauliflower crust and 8 broccoli crust. 9 Q. So that concept does survive in some way? 10 A. Yes. 11 Q. I'm not -- do you have a written business 12 plan? 13 A. For Fries N' Pies, no. 14 Q. Do you have a business plan in your head, 15 as it were, as to what you want to -- 16 A. Actually, Adam might have one. He might 17 have something then. 18 Well, our whole goal of it is to -- I 19 mean, the reason I opened it was because I had the 20 experience -- our whole reason of opening it was to 21 franchise it. So that's where I'm going with it. 22 I'm trying to take it to the next level and 23 franchise it. 24 Q. So that's the main goal of the business 25 plan, is to grow and have other locations?</p>	<p style="text-align: right;">Page 314</p> <p>1 \$760,000. 2 Q. When you say you "made," is that net or 3 gross? 4 A. That was gross. 5 Q. Total? 6 A. Yes. 7 Q. 760,000? 8 A. Yes. 9 Q. And that was July of '18 to July of '19? 10 A. Yes. 11 Q. How about July 19 to the present; do you 12 know? 13 A. Right now I don't, but, I mean, you know, 14 due to COVID -- you know, now we -- to make a 15 profit, we need to make \$100 an hour and we're 16 doing that, so... 17 Q. So you're in the black? 18 A. Yeah, now we are. 19 Q. Even with COVID? 20 A. Well, I mean, we're starting to, yes. 21 Q. Okay. Have you worked out or do you have 22 some idea of what your financial benefit would be 23 as you grow? With each franchise location that 24 opens, how does that impact you personally, 25 financially? Do you have an idea?</p>

<p style="text-align: right;">Page 315</p> <p>1 A. I mean, once we start, you know, making</p> <p>2 profit, you know, we break it up into 45 percent</p> <p>3 Adam, 45 percent me, 10 percent to the other guy.</p> <p>4 And then the same with the franchise --</p> <p>5 the building of the franchise would be the same</p> <p>6 way.</p> <p>7 Q. For each franchise location, the same</p> <p>8 percentages?</p> <p>9 A. Yes.</p> <p>10 Q. Mr. Green, you've been very courteous and</p> <p>11 patient. Thank you.</p> <p>12 Is there anything about your testimony as</p> <p>13 we sit here that you think you need to change or</p> <p>14 add?</p> <p>15 A. No. I mean, I just -- I just want you to</p> <p>16 know that, you know, after the -- after the fire,</p> <p>17 you know, like I said, you know, like I've been</p> <p>18 stating, it's changed my life in many ways.</p> <p>19 And now I'm just handling it in the fact</p> <p>20 with -- like I was never a practicing Jew before,</p> <p>21 and now, because of the accident, like I said, like</p> <p>22 I stated last time, the rabbi came and sat with me</p> <p>23 for two hours and opened my world to religion.</p> <p>24 And, you know, now I talk to a rabbi every single</p> <p>25 day.</p>	<p style="text-align: right;">Page 317</p> <p>1 And that's how I've done this whole</p> <p>2 incident. I haven't really communicated with a lot</p> <p>3 of different people about it, but I speak to a</p> <p>4 certain group of people, you know.</p> <p>5 Q. Do you feel that your businesses are</p> <p>6 going well?</p> <p>7 A. Yeah.</p> <p>8 Q. You got married middle of May?</p> <p>9 A. Yeah.</p> <p>10 Q. Are you happily married?</p> <p>11 A. I am.</p> <p>12 MR. McMULLEN: Those are all my</p> <p>13 questions. Thank you.</p> <p>14</p> <p>15 EXAMINATION</p> <p>16 BY MS. WINSPEAR:</p> <p>17 Q. I think I'm probably next in order. My</p> <p>18 name is Gina Winspear and I represent Defendant</p> <p>19 Carl Kleisner.</p> <p>20 Have you ever met Mr. Kleisner?</p> <p>21 A. I haven't.</p> <p>22 Q. Did you have any knowledge of</p> <p>23 Mr. Kleisner or had you ever heard his name prior</p> <p>24 to the incident back in June of 2018?</p> <p>25 A. No.</p>
<p style="text-align: right;">Page 316</p> <p>1 So, you know, there's a lot of things</p> <p>2 that have changed, you know, like I said, with my</p> <p>3 thinking, my way of life, because of the accident.</p> <p>4 That's really what it comes down to.</p> <p>5 Q. When you talk to the rabbi, are you</p> <p>6 talking specifically about this accident or about</p> <p>7 your path forward?</p> <p>8 A. We talk about everything. Everything.</p> <p>9 Q. It's been a positive thing?</p> <p>10 A. Yeah. I mean, you know, it's helped me</p> <p>11 get through -- I mean, the biggest thing with this</p> <p>12 is having -- is being able to turn to people and</p> <p>13 having people that, you know, understand.</p> <p>14 You know, I speak to a very, very small</p> <p>15 group of this incident. I don't talk to my friends</p> <p>16 about it. I don't talk to anyone about it. I talk</p> <p>17 to my parents. I talk to my rabbi. I talk to</p> <p>18 Lauren. I talk to my wife. And that's it.</p> <p>19 It's very -- I don't talk to -- you know,</p> <p>20 Mario is good friend of mine. I don't talk to him</p> <p>21 about this incident at all. We don't have a</p> <p>22 conversation about it because I know he's emotional</p> <p>23 about the situation, and I don't -- you know, me</p> <p>24 and him have a friendship, and I don't want to ruin</p> <p>25 the friendship, so I separate it.</p>	<p style="text-align: right;">Page 318</p> <p>1 Q. Since the incident in June of 2018, have</p> <p>2 you had any conversations with Mario Gonzalez about</p> <p>3 Mr. Kleisner?</p> <p>4 A. No.</p> <p>5 Q. Have you obtained a disability rating</p> <p>6 from any governmental body or disability insurer?</p> <p>7 A. No.</p> <p>8 Q. Have you applied for any disability</p> <p>9 insurance since this incident in June of 2018?</p> <p>10 A. I haven't.</p> <p>11 Q. Prior to the incident in June of 2018,</p> <p>12 did you have any knowledge that Mario was having</p> <p>13 electrical problems with his koi pond?</p> <p>14 A. No.</p> <p>15 Q. In your lawsuit you allege that</p> <p>16 Carl Kleisner owed a duty to Mario Gonzalez and all</p> <p>17 of his guests to ensure that all electrical lines</p> <p>18 to the home were in working order.</p> <p>19 Were you aware that's one of your</p> <p>20 allegations in this lawsuit?</p> <p>21 A. Yes.</p> <p>22 Q. What information or knowledge do you have</p> <p>23 that the electrical lines in the home were not in</p> <p>24 working order?</p> <p>25 A. I mean, I believe they were. That's the</p>

<p style="text-align: right;">Page 319</p> <p>1 whole thing.</p> <p>2 Q. You believe they were or they were not?</p> <p>3 A. I didn't know anything about the</p> <p>4 electrical problems.</p> <p>5 Q. So as you sit here today, is that still</p> <p>6 your position, you don't know one way or another</p> <p>7 about any electrical problems?</p> <p>8 MR. GOLDSTEIN: I want to raise an</p> <p>9 objection. Vague.</p> <p>10 Go ahead.</p> <p>11 BY MS. WINSPEAR:</p> <p>12 Q. Do you understand my question? Let me</p> <p>13 restate it so I make sure our record is really</p> <p>14 clear.</p> <p>15 A. Yeah.</p> <p>16 Q. In your lawsuit you allege that</p> <p>17 Carl Kleisner owed a duty to Mario Gonzalez and all</p> <p>18 his guests on Mario's premises to ensure that all</p> <p>19 electrical lines to the home were in working order.</p> <p>20 As you sit here today, do you have any</p> <p>21 knowledge or information that the electrical lines</p> <p>22 were not in working order?</p> <p>23 MR. PFAU: Objection that this calls for</p> <p>24 an expert opinion and calls for a legal conclusion.</p> <p>25 / / /</p>	<p style="text-align: right;">Page 321</p> <p>1 his backyard?</p> <p>2 A. I don't know.</p> <p>3 Q. You don't personally have any of that</p> <p>4 information, fair?</p> <p>5 A. Yep.</p> <p>6 Q. Do you personally have any information</p> <p>7 that Carl Kleisner maintained or repaired any</p> <p>8 electrical lines inside Mario Gonzalez's home or in</p> <p>9 his backyard in the barbecue area?</p> <p>10 A. No, I don't.</p> <p>11 Q. And I believe -- and I just want to</p> <p>12 clarify from your earlier testimony. What I wrote</p> <p>13 down that you said weeks ago when we were in your</p> <p>14 original deposition is that you didn't know</p> <p>15 anything about an electrician until after the</p> <p>16 incident.</p> <p>17 Is that a fair statement?</p> <p>18 A. Yes.</p> <p>19 Q. You now know the name of an electrician</p> <p>20 to be Carl Kleisner, but that's -- is that from</p> <p>21 information Mario provided to you or information</p> <p>22 you learned in the course of this lawsuit?</p> <p>23 A. I mean, both. But I just heard the name</p> <p>24 from Mario, but that was -- that was it.</p> <p>25 Q. Okay. You didn't -- other than hearing a</p>
<p style="text-align: right;">Page 320</p> <p>1 BY MS. WINSPEAR:</p> <p>2 Q. You can still answer.</p> <p>3 A. So do I know -- maybe say it again.</p> <p>4 Q. Do you have any knowledge or information</p> <p>5 that the electrical lines at Mario Gonzalez's home</p> <p>6 were not in working order?</p> <p>7 A. No.</p> <p>8 MR. PFAU: Same objections.</p> <p>9 THE WITNESS: I thought they were.</p> <p>10 BY MS. WINSPEAR:</p> <p>11 Q. So nothing has been communicated to you</p> <p>12 by Mario indicating that the electrical lines were</p> <p>13 not in working order.</p> <p>14 Is that a fair statement?</p> <p>15 A. Yes.</p> <p>16 Q. And you never independently did any</p> <p>17 inspection or investigation of the electrical lines</p> <p>18 at Mario's home either inside or in the barbecue</p> <p>19 area. Is that also a fair statement?</p> <p>20 A. Yes.</p> <p>21 Q. In your -- well, let me ask this</p> <p>22 question.</p> <p>23 Do you have any -- do you personally have</p> <p>24 any knowledge or information that Carl Kleisner</p> <p>25 installed electrical lines in Mario's home or in</p>	<p style="text-align: right;">Page 322</p> <p>1 name, what other information did Mario give you</p> <p>2 about Carl Kleisner?</p> <p>3 A. Nothing.</p> <p>4 MS. WINSPEAR: Okay. That's all the</p> <p>5 questions that I have. Thank you very much.</p> <p>6 MR. WALKER: I have no questions.</p> <p>7 MR. GOLDSTEIN: I'm Steve Goldstein. I</p> <p>8 represent Mario. I won't have too many questions</p> <p>9 because everything's been thorough thus far. I</p> <p>10 just have a few follow-up questions.</p> <p>11</p> <p>12 EXAMINATION</p> <p>13 BY MR. GOLDSTEIN:</p> <p>14 Q. The cream that you use -- I don't know.</p> <p>15 Do you still use it today?</p> <p>16 MR. PFAU: Asked and answered.</p> <p>17 BY MR. GOLDSTEIN:</p> <p>18 Q. Forgive me. I'm just laying a foundation</p> <p>19 here.</p> <p>20 A. Yes. I have a cream and I do use it.</p> <p>21 Q. How long does it take you to go through a</p> <p>22 bottle of cream or a tube of cream?</p> <p>23 A. I mean, I've had the same bottle for a</p> <p>24 while. So --</p> <p>25 Q. A month, two months?</p>

<p style="text-align: right;">Page 323</p> <p>1 A. Couple months.</p> <p>2 Q. Okay. Do you apply it every day?</p> <p>3 A. I apply it when needed or when I -- but,</p> <p>4 I mean, I have a lotion that I use every day, yes.</p> <p>5 Q. Okay. Is the lotion over the counter?</p> <p>6 A. Yes.</p> <p>7 Q. What kind of lotion is it?</p> <p>8 A. I mean, it's non-medicated.</p> <p>9 Q. Brand?</p> <p>10 A. Yes. It's like Aveeno. But I also use</p> <p>11 the other lotion that I was given by the doctors.</p> <p>12 Q. And I don't believe you remember that</p> <p>13 name?</p> <p>14 A. No, I don't.</p> <p>15 Q. Let me ask you about your relationship</p> <p>16 with Mario a little bit.</p> <p>17 A. Yes.</p> <p>18 Q. And forgive me if we go over a little bit</p> <p>19 of what was discussed last time.</p> <p>20 You -- how long have you known Mario?</p> <p>21 A. I know Mario probably for five years.</p> <p>22 Q. Okay. Before this incident, have you</p> <p>23 ever been a business partner with him at all?</p> <p>24 A. No.</p> <p>25 Q. At the time of this incident, were you</p>	<p style="text-align: right;">Page 325</p> <p>1 A. I mean, he is one of my best friends at</p> <p>2 this time.</p> <p>3 Q. Okay.</p> <p>4 A. And that's why we don't talk about this</p> <p>5 case. We don't communicate about it. We don't say</p> <p>6 nothing.</p> <p>7 Q. When was the last time you communicated</p> <p>8 about this case?</p> <p>9 A. We don't -- I mean, honestly, we don't</p> <p>10 have a -- we don't.</p> <p>11 Q. Well, I imagine during your healing</p> <p>12 period you guys talked about things, right?</p> <p>13 A. Yeah. But I don't -- I don't have an</p> <p>14 exact date.</p> <p>15 Q. I'm not asking for an exact date. But</p> <p>16 was the last time you talked to him about this</p> <p>17 incident before you filed a lawsuit against him?</p> <p>18 A. Yeah. I mean --</p> <p>19 Q. Have you been over to his house since the</p> <p>20 last time -- since you filed a lawsuit against him?</p> <p>21 A. Yes.</p> <p>22 Q. Approximately how many times have you</p> <p>23 been over?</p> <p>24 A. I mean, I honestly can't tell you. I</p> <p>25 don't know. Four or five, six. I don't know. We</p>
<p style="text-align: right;">Page 324</p> <p>1 all discussing business options and things to make</p> <p>2 money together?</p> <p>3 A. I mean, we always talk about business,</p> <p>4 but nothing to the fact -- no, we weren't doing</p> <p>5 anything.</p> <p>6 Q. There wasn't a gummy bear CBD --</p> <p>7 A. Oh, we were talking about that, but that</p> <p>8 wasn't -- he was just trying to see if he could buy</p> <p>9 a product for me because I have a white label</p> <p>10 company for my edibles.</p> <p>11 Q. What does that mean?</p> <p>12 A. I have an edible company that I'm a</p> <p>13 partner with in San Diego that I try to get</p> <p>14 contacts for, and because he's in the CBD business,</p> <p>15 I told him about that I had this connection and we</p> <p>16 were talking about it, but nothing came from it.</p> <p>17 Q. Would you classify your friendship with</p> <p>18 Mario to be good?</p> <p>19 A. Yeah, very good.</p> <p>20 Q. Today even?</p> <p>21 A. Yes.</p> <p>22 Q. I know you mentioned one other fellow</p> <p>23 that you worked with that started SkinnyFATS as</p> <p>24 your best friend. Where does Mario rate in the</p> <p>25 whole pantheon of friends that you have?</p>	<p style="text-align: right;">Page 326</p> <p>1 hang out. I mean, like I said, he's one of my best</p> <p>2 friends. This didn't hinder anything because we</p> <p>3 don't talk about it.</p> <p>4 Q. But you do realize you are suing him,</p> <p>5 right?</p> <p>6 A. Yes. But, I mean, my whole thing was --</p> <p>7 yes, I'm suing him, but, you know, the insurance</p> <p>8 company, and at the end of the day, you know, my</p> <p>9 friendship -- that's the whole reason we don't --</p> <p>10 we don't talk about it. You know, we don't have a</p> <p>11 conversation about it because we don't -- you know,</p> <p>12 it keeps our friendship the way it should be.</p> <p>13 Q. Do you know why you're suing him?</p> <p>14 A. I mean, yeah, because he was negligent</p> <p>15 and he had the -- you know, it was his grill. It</p> <p>16 was his place. And, you know, if that incident</p> <p>17 didn't happen, then my life would be different</p> <p>18 right now.</p> <p>19 Q. So if I understand you correctly, the</p> <p>20 reason why you're suing him is because he owned the</p> <p>21 grill and he had the house?</p> <p>22 A. Yeah. I -- because I was at his house</p> <p>23 working on something that should have been handled</p> <p>24 and fixed and -- you know.</p> <p>25 Q. But he was -- if I understand correctly,</p>

<p style="text-align: right;">Page 327</p> <p>1 he was told by Ferrellgas that the grill was 2 inspected and fixed and everything was fine? 3 A. And that's how he told me, and then 4 that's why we used it. And look what happened. 5 Q. Okay. So with that being said, then, you 6 still think that he's negligent when Ferrellgas is 7 the one that told him? 8 A. I think everyone in the situation is 9 negligent to the fact where -- they all had a place 10 in this incident, and if everyone handled it to the 11 way that they should have, it wouldn't have 12 happened. 13 Q. Okay. Do you believe it is reasonable 14 for Mario to trust what the representative for 15 Ferrellgas told him? 16 A. Yes. 17 And that's the thing. When I asked Mario 18 if it was fixed, he said that he had the okay from 19 Ferrellgas and obviously it wasn't. 20 Q. The grill, you mean? 21 A. Yes. What did I say? 22 Q. Well -- 23 A. Yeah, the grill. 24 Q. I just wanted to clarify what the okay 25 was that was okay.</p>	<p style="text-align: right;">Page 329</p> <p>1 Q. And that was to go for your health 2 expenses? 3 A. Yes, which is not even one percent of it. 4 Q. Understood. Understood. It was a drop 5 in the bucket, let's say. 6 A. Mm-hmm. 7 Q. But what did you think of that -- him 8 setting up that GoFundMe page for you? 9 A. I mean, it was very -- it was nice and 10 generous and... 11 Q. All right. You had mentioned that -- 12 Mario gets -- you hadn't talked to him because he 13 gets emotional. 14 What do you mean by that? 15 A. I mean, just in the situation -- I mean, 16 when you talk about this incident -- and this is 17 like a long, long time ago. When you talk about 18 the incident, he just gets -- he gets choked up. 19 So I leave it alone. 20 Q. So he gets choked up in a way that is 21 sorrowful or somber? 22 A. Yeah. I mean, I think that -- you know, 23 he's -- 24 Q. He's not angry about it is what I'm 25 trying --</p>
<p style="text-align: right;">Page 328</p> <p>1 A. The grill was okay to use. 2 Q. That's what was told to Mario? 3 A. Yes. 4 Q. We all know that you used the grill 5 before. 6 A. Yes. I've used numerous grills before. 7 I never had an issue. 8 Q. And you've used that particular grill 9 before without any issue? 10 A. Yes. 11 Q. After the incident, and I'm talking 12 directly after the incident, when you were taken to 13 the hospital, Mario took you, right? 14 A. Yes. 15 Q. Do you know that Mario set up a GoFundMe 16 page for you? 17 A. I do. 18 Q. And do you remember how much money Mario 19 raised for you? 20 A. I don't remember exactly. I think it was 21 like anywhere from \$1,700 to \$2,300, something in 22 that range. 23 Q. And he gave you all that money; is that 24 right? 25 A. Yeah.</p>	<p style="text-align: right;">Page 330</p> <p>1 A. No, I don't think he's angry. I just 2 think he's frustrated that it happened. He trusted 3 someone -- you know, he trusted someone from a gas 4 company and now we're dealing with this issue. 5 Q. Understood. 6 Has any doctor told you that you can't 7 work to your full potential? 8 A. I mean, directly, no, but indirectly, 9 yes. 10 Q. What do you mean? 11 A. I mean, every doctor that I've spoken to 12 that I've had a conversation about my work, they 13 tell me to not work as much and they tell me to 14 limit what I do in certain areas, you know. 15 And like I said before, I used to work 16 16-, 17-hour days. There would be no way I could 17 do that right now. 18 Q. But formally, there has been nothing on 19 paper or anything saying you can't do what it is 20 you do, which is be a chef? 21 A. I mean, you could take that two different 22 ways: Me being a chef and being able to use every 23 piece of equipment that I'm able to use? I am not 24 able to use everything, so yes, it hinders me. 25 And the ability of grabbing hot stuff. I</p>

<p style="text-align: right;">Page 331</p> <p>1 mean, like before, I used to grab -- I mean, I used 2 to work at a restaurant which had a thousand 3 covers. I used to grab steaks off the grill, like, 4 with my hands. And now I can't even touch 5 something hot.</p> <p>6 Q. I think that is, you know, an incredible 7 feat. I just want to put that on the record. He 8 could take something hot before and flip it?</p> <p>9 A. I mean, yeah. As a chef, and every chef 10 will tell you, that when you build -- you build 11 your tolerance.</p> <p>12 Q. Right.</p> <p>13 In your business, in your line of work, 14 do you ever use oven mitts?</p> <p>15 A. I use towels, which is like an oven mitt.</p> <p>16 Q. Kind of like that, yeah.</p> <p>17 Now --</p> <p>18 A. But now, anything that I grab -- like 19 before, I used to grab stuff with either a damp 20 towel or whatever, just grab it. And now it's like 21 I have to make sure everything's dry, or like if I 22 grab something -- the other day I grabbed something 23 out of the oven that was sitting out for probably 24 25, 30 minutes, out of the oven, I grabbed the pan 25 and I dropped it right away because it was hotter</p>	<p style="text-align: right;">Page 333</p> <p>1 Q. Did you see any kind of certifications 2 hanging on the wall in her -- in her house at all?</p> <p>3 A. I mean, no, but I, you know, I know she 4 went through a lot of training and, you know, I 5 definitely -- before it wasn't just the blind 6 thing. Like I knew that she's worked with people 7 and helped people.</p> <p>8 Q. Does she have an office or does she work 9 out of her house?</p> <p>10 A. She works out of her house.</p> <p>11 Q. Does she see other -- does she have other 12 clients that you know of?</p> <p>13 A. Yes.</p> <p>14 Q. I just want to follow up on your itchy 15 hands.</p> <p>16 You said that they have been itchy for 17 approximately about two months?</p> <p>18 A. Yep.</p> <p>19 Q. Does that mean they were not itchy before 20 this incident?</p> <p>21 A. They were. Not to the point where I got 22 to scratch them every couple hours or whatever. 23 They just itch more than frequently, more than they 24 did.</p> <p>25 Q. Do you have any allergies?</p>
<p style="text-align: right;">Page 332</p> <p>1 than I can handle.</p> <p>2 Q. You work for this Scott Sibley person. 3 How long have you worked for him now?</p> <p>4 A. Five months.</p> <p>5 Q. Five months.</p> <p>6 And did you know him before?</p> <p>7 A. Before the incident?</p> <p>8 Q. No. Before working for him.</p> <p>9 A. No.</p> <p>10 Q. And you work about four hours a day for 11 him?</p> <p>12 A. Yep.</p> <p>13 Q. Do you have any assistants help you?</p> <p>14 A. No.</p> <p>15 Q. Now, Lauren Unger, do you know if she has 16 any kind of certifications, professional 17 certifications?</p> <p>18 A. I believe so, yeah.</p> <p>19 Q. Have you seen them or -- do you know?</p> <p>20 A. No. I believe so. I said -- that's all. 21 She's -- from my understanding, she's a certified 22 healer and shaman, whatever you want to call it.</p> <p>23 Q. All right. You have lived with her for a 24 little bit of time, right?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 334</p> <p>1 A. I do.</p> <p>2 Q. What?</p> <p>3 A. Demerol, codeine, and shellfish.</p> <p>4 Q. Have you had in the last two months any 5 of those?</p> <p>6 A. No.</p> <p>7 Q. Or before that?</p> <p>8 A. No.</p> <p>9 Q. All types of shellfish or just --</p> <p>10 A. Red shellfish, crab, lobster, shrimp.</p> <p>11 Q. All the good stuff.</p> <p>12 A. Yes.</p> <p>13 Q. That us nice Jewish boys should be 14 eating.</p> <p>15 So with the psychologist, 16 Michael Elliott, you've seen him one time, right?</p> <p>17 A. Yes.</p> <p>18 Q. How many minutes or hours did you spend 19 with him on that first visit?</p> <p>20 A. I mean, I just did a testing visit with 21 him. It was like two and a half hours.</p> <p>22 Q. And it was you filling out forms?</p> <p>23 A. Me going through questions and -- yeah.</p> <p>24 Q. Did he tell you the questions and you 25 provided answers or did you fill out --</p>

<p style="text-align: right;">Page 335</p> <p>1 A. No. I sat a computer and filled it out.</p> <p>2 Q. So he wasn't like providing you with any</p> <p>3 guidance at that time?</p> <p>4 A. Not yet, no. That's why we're having</p> <p>5 another meeting on the 1st.</p> <p>6 Q. I'm just going through my notes from the</p> <p>7 last time.</p> <p>8 A. And the biggest thing is I had no fear of</p> <p>9 using anything before. Like never had a fear of</p> <p>10 drills, equipment. And now, you know, I have a</p> <p>11 fear, a fear of a lot of different things.</p> <p>12 Q. In your mind, do you know if there's a</p> <p>13 difference between natural gas and propane?</p> <p>14 A. Yeah, there's a difference.</p> <p>15 Q. Because you mentioned earlier that you</p> <p>16 won't use propane, but the other grills at your</p> <p>17 work are natural gas.</p> <p>18 A. Yes. But they're not open flame -- I</p> <p>19 won't use an open flame grill at all, ever. Even</p> <p>20 if it's a gas grill, I won't use it. I'm afraid of</p> <p>21 flames. I'm afraid of the idea of fire.</p> <p>22 Like -- I mean, like I said to --</p> <p>23 Mr. McMullen, is it?</p> <p>24 MR. McMULLEN: Yes.</p> <p>25 THE WITNESS: Like I said to him, it</p>	<p style="text-align: right;">Page 337</p> <p>1 deal with grills.</p> <p>2 Q. Anything about grills you don't do?</p> <p>3 A. No. It's like an ex-girlfriend. Stay</p> <p>4 away from it.</p> <p>5 Q. So how often do you get blisters on your</p> <p>6 hand?</p> <p>7 A. I mean, not -- it can happen -- I mean,</p> <p>8 it happens on a continuous basis. I don't know</p> <p>9 exactly.</p> <p>10 Q. Well --</p> <p>11 A. I mean, I had this blister -- I had this</p> <p>12 blister the other day. I have -- you know, I have</p> <p>13 blisters that come and go all the time.</p> <p>14 Q. Is that because you're dealing with heat?</p> <p>15 A. Yeah. Heat. Yeah.</p> <p>16 Q. So it comes on when perhaps maybe you're</p> <p>17 taking a -- something you're cooking and you're</p> <p>18 flipping it?</p> <p>19 A. Well, I don't use my bare hands anymore.</p> <p>20 It's just anything. I mean, I can touch something</p> <p>21 that is like a little hot and it will create a</p> <p>22 blister.</p> <p>23 Q. Let me ask you about the PTSD you</p> <p>24 mentioned earlier. If you're not thinking about or</p> <p>25 not having something like an open flame that you</p>
<p style="text-align: right;">Page 336</p> <p>1 was -- I mean, I saw the show, and when I saw the</p> <p>2 show, when I see anything on fire, it brings me</p> <p>3 back to that day and it's -- you know, it's</p> <p>4 traumatic.</p> <p>5 BY MR. GOLDSTEIN:</p> <p>6 Q. So your grills at work aren't -- don't</p> <p>7 have open flame?</p> <p>8 A. No.</p> <p>9 Q. The grills at -- or the stove at</p> <p>10 Scott Sibley's, does it have open flame?</p> <p>11 A. It does, but it's -- you know, it's on --</p> <p>12 it's controlled by a burner, so the flame is</p> <p>13 controlled. It's not super high. And there's</p> <p>14 always something covering it. You know, I always</p> <p>15 have a pan covering it or...</p> <p>16 Q. And do you ever use charcoal or</p> <p>17 wood-pellet grills?</p> <p>18 A. No.</p> <p>19 Q. Why not?</p> <p>20 A. I won't use -- I will not use a grill</p> <p>21 ever since this accident. Like, I don't care what</p> <p>22 it is. My father uses charcoal grills. I went to</p> <p>23 his house. He -- and I stayed inside when he, you</p> <p>24 know, dealt with the grill.</p> <p>25 Like I don't go near grills. I don't</p>	<p style="text-align: right;">Page 338</p> <p>1 see or somebody on fire, do you think about, you</p> <p>2 know, the incident?</p> <p>3 A. I think about the incident all the time.</p> <p>4 Yeah. It changed my life, drastically, in</p> <p>5 everything that I do and everything that I -- I</p> <p>6 mean...</p> <p>7 Q. But up until May --</p> <p>8 A. I used to be a very active person and</p> <p>9 always outside and always doing things, and like</p> <p>10 this hindered me -- I mean, for the whole month</p> <p>11 that I was, you know -- or, I mean, from the time</p> <p>12 since the accident, in the first year I didn't go</p> <p>13 in the sun at all. You know, there's a lot of</p> <p>14 things that I didn't do because of the accident.</p> <p>15 Q. I believe Mario told us about you playing</p> <p>16 hockey.</p> <p>17 A. Playing hockey?</p> <p>18 Q. Yeah, or being a good ice skater, ice</p> <p>19 hockey?</p> <p>20 A. Okay. Yeah.</p> <p>21 Q. Can you tell us how long you have been --</p> <p>22 A. I played hockey for 22 years. I was</p> <p>23 supposed to -- I chose to go to a cooking school or</p> <p>24 UNLV rather than going to a school for hockey. I</p> <p>25 ended up playing at UNLV after four or five years,</p>

<p style="text-align: right;">Page 339</p> <p>1 when they started opening a team. But, I mean, I 2 have skated my whole life.</p> <p>3 Q. Okay.</p> <p>4 A. His son was skating, so I started 5 teaching him how to skate, but I never -- it was 6 always -- I never used a stick or, you know, used 7 anything. I would just skate with him.</p> <p>8 Q. With Mario's son?</p> <p>9 A. Yes.</p> <p>10 Q. Okay. But you used -- you played 11 hockey -- was this on a formal UNLV team --</p> <p>12 A. Yes.</p> <p>13 Q. -- when you were a student there?</p> <p>14 A. Yes. I actually haven't played -- I used 15 to play roller hockey all the time. I haven't 16 played hockey since this accident.</p> <p>17 Q. You said roller hockey?</p> <p>18 A. Yeah. I used to play on Sahara and 19 Maryland at a facility, and I haven't played since 20 this accident.</p> <p>21 Q. Has anybody said that you can't play or 22 is it just that you don't want to play?</p> <p>23 A. No. I just haven't.</p> <p>24 Q. And the ice skating, when did you tutor 25 Mario's son?</p>	<p style="text-align: right;">Page 341</p> <p>1 Q. Since our last meeting, have you seen any 2 medical professionals regarding this incident?</p> <p>3 A. No.</p> <p>4 Q. So just Michael Elliott?</p> <p>5 A. Mm-hmm.</p> <p>6 Q. And then you're waiting until July 1st 7 to have a follow-up visit?</p> <p>8 A. Yes. And that was because I had -- you 9 know, after talking to my rabbi and Lauren Unger 10 and specific people, I felt that it was time to get 11 some more doctor help.</p> <p>12 Q. And the rabbi you talked to, he's 13 associated with Chabad, right?</p> <p>14 A. Yes.</p> <p>15 Q. Which Chabad?</p> <p>16 A. The one on Arville.</p> <p>17 Q. What was his name again?</p> <p>18 A. Rabbi Motti Harlig. M-o-t-t-i, 19 H-a-r-l-i-g.</p> <p>20 Q. The grills at Fries N' Pies, there's no 21 open flame, right?</p> <p>22 A. No.</p> <p>23 Q. So it doesn't have the same look as like 24 Scott Sibley's that has, you know, a flame that 25 comes up from the stove?</p>
<p style="text-align: right;">Page 340</p> <p>1 A. I mean, in the past -- it was only a 2 couple -- it was only like four or five times.</p> <p>3 Q. Was it before the incident or after?</p> <p>4 A. I'm not sure exactly. I think it was a 5 little before, a little after. I'm not sure.</p> <p>6 Q. Have you been on the ice since tutoring 7 Mario's son?</p> <p>8 A. No.</p> <p>9 Q. Is it because you don't want to or you 10 just haven't had the opportunity?</p> <p>11 A. I just haven't.</p> <p>12 Q. Okay. When you get a blister, how long 13 does it take for them to heal?</p> <p>14 A. Four or five days.</p> <p>15 Q. Do you put anything on the blisters?</p> <p>16 A. Just cream.</p> <p>17 Q. Just cream.</p> <p>18 You don't put a Band-Aid on?</p> <p>19 A. No. I mean, unless it needs a Band-Aid, 20 if it's open.</p> <p>21 Q. Do they ever bleed?</p> <p>22 A. I mean, it depends. It depends on the 23 blister, you know. If you pick a blister sooner 24 than normal, then it's going to -- I don't usually 25 pick them either.</p>	<p style="text-align: right;">Page 342</p> <p>1 A. Well, it's a stove that I use at Scott's, 2 and this one is a flat top grill that it's under 3 the --</p> <p>4 Q. Understood.</p> <p>5 So there's a flame under the grill.</p> <p>6 A. Yeah. The grill's a metal or steel 7 plate, and then the heat rises and you cook on it.</p> <p>8 Q. The pizzas that you-all make there, is it 9 an oven that's --</p> <p>10 A. No flame. Gas.</p> <p>11 Q. It's a gas oven?</p> <p>12 A. Brick gas oven.</p> <p>13 Q. So there's no -- it's like not one that's 14 coal-fired?</p> <p>15 A. No.</p> <p>16 Q. I call those the new fancy -- new way of 17 doing things because they heat up to like 800 or so 18 degrees.</p> <p>19 A. Mm-hmm.</p> <p>20 Q. What does your pizza oven heat up to?</p> <p>21 A. We keep it at 550.</p> <p>22 Q. 550?</p> <p>23 A. Or 555.</p> <p>24 MR. GOLDSTEIN: All right. I don't have 25 any further questions for you.</p>


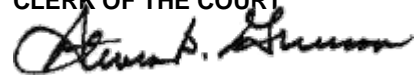
<p style="text-align: right;">Page 343</p> <p>1 Thank you very much.</p> <p>2 MR. PFAU: I don't have any questions.</p> <p>3 Are we all done?</p> <p>4 MR. McMULLEN: I think so.</p> <p>5 MR. PFAU: Okay.</p> <p>6 MR. McMULLEN: Do we have the usual</p> <p>7 stipulations? What do you want to do?</p> <p>8 MR. PFAU: To read and sign, you mean?</p> <p>9 MR. McMULLEN: Right.</p> <p>10 MR. PFAU: Yeah. We can waive the read</p> <p>11 and sign for Josh.</p> <p>12 MR. McMULLEN: Very good. Thank you.</p> <p>13 MR. PFAU: Thanks.</p> <p>14 THE VIDEOGRAPHER: This concludes today's</p> <p>15 deposition of Joshua Green. The time is</p> <p>16 approximately 9:54 a.m. We're off the record.</p> <p>17 (Whereupon, the deposition was concluded</p> <p>18 at 9:54 a.m. this date.)</p> <p>19 * * * * *</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 345</p> <p>1</p> <p>2 IN WITNESS THEREOF, I have hereunto set my hand</p> <p>3 in my office in the County of Clark, State of Nevada,</p> <p>4 this 12th day of July, 2020.</p> <p>5</p> <p>6 </p> <p>7</p> <p>8 Monice K. Campbell, CCR No. 312</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 344</p> <p>1 CERTIFICATE OF REPORTER</p> <p>2 STATE OF NEVADA)</p> <p>3) SS:</p> <p>4 COUNTY OF CLARK)</p> <p>5</p> <p>6 I, Monice K. Campbell, a duly</p> <p>7 commissioned and licensed court reporter, Clark</p> <p>8 County, State of Nevada, do hereby certify: That I</p> <p>9 reported the taking of the deposition of the</p> <p>10 witness, JOSHUA GREEN, commencing on MONDAY, JUNE</p> <p>11 29, 2020, at 8:38 a.m.;</p> <p>12</p> <p>13 That prior to being examined, the witness</p> <p>14 was, by me, duly sworn to testify to the truth.</p> <p>15 That I thereafter transcribed my said shorthand</p> <p>16 notes into typewriting and that the typewritten</p> <p>17 transcript of said deposition is a complete, true,</p> <p>18 and accurate transcription of said shorthand notes.</p> <p>19</p> <p>20 I further certify that I am not a relative or</p> <p>21 employee of an attorney or counsel or any of the</p> <p>22 parties, nor a relative or employee of an attorney or</p> <p>23 counsel involved in said action, nor a person</p> <p>24 financially interested in the action; that a request</p> <p>25 ([X] has not) been made to review the transcript.</p>	

EXHIBIT D



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DISTRICT COURT

CLARK COUNTY, NEVADA

JOSHUA GREEN;

Plaintiff,

vs.

FERRELLGAS, INC. et al.,

Defendants.

AND RELATED ACTIONS

CASE NO.: A-19-795381-C
DEPT NO.: XXXI

**DEFENDANTS' REPLY IN
SUPPORT OF MOTION TO
COMPEL RULE 35 EXAM**

Hearing Date: November 19, 2020

Hearing Time: 9:00 a.m.

1 COME NOW, Defendants Ferrellgas, Inc. (“Ferrellgas”), Mario Gonzalez
2 (“Gonzalez”), and Carl Kleisner (“Kleisner”), by and through counsel of record, and hereby
3 file this Reply in Support of Motion to Allow a Rule 35 examination.
4

5 This Reply is made and based upon all of the pleadings and papers on file herein,
6 the memorandum of points and authorities attached hereto, and any oral argument which
7 may be presented at the time this matter is set for hearing.

8 **MEMORANDUM OF POINTS AND AUTHORITIES**

9
10 **I. INTRODUCTION**

11 This litigation arises from the failure of a flexible gas hose that resulted in a flash fire
12 on June 18, 2018. Plaintiff Joshua Green (“Plaintiff” and/or “Green”) alleges he suffered
13 injuries while operating the barbecue (hereinafter the “Subject Grill”) when the flash fire
14 incident occurred.

15 Defendants seek an Order compelling Plaintiff to attend a Rule 35 mental examination
16 because the parties agree that Plaintiff has put his mental condition at issue in this litigation,
17 but the parties could not reach an agreement to stipulate to the scope of the mental examination.
18 Defendants and Plaintiff have not discussed parameters for a physical examination of Plaintiff
19 and the same is not currently before this Court.

20 Defendants have moved separately for an Order extending discovery dates, because
21 Plaintiff made a late disclosure of psychological treatment and a potential traumatic brain
22 injury as issues in this litigation. Defendants acted expediently upon the new type of treatment
23 and future care needs disclosed by Plaintiff, and Defendants chose the expert they believed
24 best suited to conduct a mental examination of Plaintiff in this action.
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1 **II. ARGUMENT**

2 **A. Whether Dr. Etcoff qualifies to opine regarding Plaintiff's conditions**
3 **should be determined by the District Court.**

4 Plaintiff's counsel acknowledges both that Plaintiff has put his mental condition at issue
5 in this matter and that Defendants should be allowed to have Plaintiff undergo a mental
6 examination. Simultaneously, Plaintiff's counsel seeks to deny Defendants' expert of choice
7 from evaluating Mr. Green. Plaintiff's counsel lacks the medical credentials to evaluate
8 whether Dr. Etcoff is qualified to opine as an expert on Plaintiff's mental conditions, and
9 improperly presents the issue of Dr. Etcoff's qualifications as part of his Opposition to the
10 instant motion.
11

12 On September 4, 2020 Plaintiff filed his tenth supplement to Rule 16.1 disclosures
13 identifying Dr. Michael Elliott, for the first time, despite treatment beginning in May of 2020,
14 as a treating physician for conditions related to this incident.¹ According to the disclosure, Dr.
15 Elliott evaluated Plaintiff for "severe headaches," "difficulty focusing and following
16 conversations/trains of thought," "several difficulties when using grills," "losing confidence in
17 himself," and "concern that he will not be able to continue his career" i.e. both psychological
18 and neuropsychological issues. *Id.* Furthermore, the disclosure identified Dr. Elliott's expected
19 testimony to include "Anxiety disorder due to known physiological condition;" "Generalized
20 anxiety disorder;" and "***Screening for a traumatic brain injury.***" *Id.* Finally, the disclosure
21 identified expected testimony regarding a comprehensive treatment plan for both psychological
22 and neuropsychological issues including, *inter alia*, (1) the need for psychotherapy; (2)
23 pharmacological intervention to alleviate emotional and attentional issues; (3)
24 Biofeedback/Heartmath program; (4) Eye Movement Desensitization & Reprocessing therapy;
25 (5) ***neuropsychological testing***; and (6) follow-up psychological evaluation.
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¹ See Plaintiff's tenth supplement to Rule 16.1 disclosures attached hereto as Exhibit A.

1 The medical records disclosed as part of Plaintiff's tenth supplemental disclosure allege,
2 "Mr. Green's symptoms and behaviors are consistent with patients that have suffered brain
3 trauma through a blast and that his injuries are indicators of a traumatic brain injury."²
4

5 Plaintiff's counsel had knowledge of the allegations of a potential brain injury as early
6 as May 15, 2020, but did not disclose the same to Defendants until September 4, 2020, just
7 under three months after Plaintiff was deposed on May 18, 2020. Had Plaintiff timely disclosed
8 the treatment provided by Dr. Elliott, Defendants and Plaintiff could have found a mutually
9 agreeable date for a mental examination before March of 2021.³ As the delay in scheduling the
10 examination was caused solely by Plaintiff's late disclosures, Defendants should not be denied
11 their expert of choice to evaluate Plaintiff's mental condition.

12 Plaintiff acknowledges that he has put his mental condition at issue such that the Court
13 should Order a Rule 35 mental examination. However, Plaintiff seeks to dictate not only the
14 terms for conducting a Rule 35 examination, but also who Defendants can retain to evaluate
15 Plaintiff's mental condition.

16 **B. NRCP 35 precludes an observer from attending a psychiatric, psychological,**
17 **or neuropsychological examination.**

18 Nevada Rules of Civil Procedure 35(a) provides in pertinent part:

19 (1) In General. The court where the action is pending may order
20 a party whose mental or physical condition – including blood
21 group – in controversy to submit to a physical or mental
22 examination by a suitably licensed or certified examiner. The
23 court has the same authority to order a party to produce for
24 examination a person who is in the party's custody or under the
25 party's legal control.

26 ...

27 (4) Observers at the Examination. The party against whom an
28 examination is sought may request as a condition of the
examination to have an observer present at the examination.
When making the request, **the party must identify the observer**
and state his or her relationship to the party being examined. The

² See Exhibit A at pg. 28.

³ Defendants had originally obtained dates in early November for an examination, but could not use those dates as a result of Plaintiff's refusal to stipulate to the examination.

1 observer may not be the party's attorney or anyone employed by
2 the party or the party's attorney.

3 (A) The party may have one observer present for the
4 examination **unless:**

5 (i) **the examination is a neuropsychological,**
6 **psychological, or psychiatric examination; or**

7 (ii) the court orders otherwise for good cause
8 shown.

9 (B) **The party may not have any observer present for**
10 **a neuropsychological, psychological, or psychiatric**
11 **examination,** unless the court order otherwise for good cause
12 shown.

13 (C) **An observer must not in any way interfere,**
14 **obstruct, or participate in the examination.**

15 Defendants have requested the Court Order plaintiff appear for an independent a
16 neuropsychological and psychiatric examination by Dr. Etcoff. NRCP 35 explicitly prohibits
17 an observer attending both neuropsychological and psychiatric examinations. Plaintiff's does
18 not present any factual or legal basis as to why he believes an observer should be present during
19 the examination of Plaintiff, and certainly does not present information sufficient for this Court
20 to find good cause merits ignoring Rule 35's prohibition of an observer at the examination.

21 There is not a conflict between NRCP 35's prohibition of an observer and NRS 52.380's
22 permissive allowance of an observer.

23 **C. NRS 52.380 is permissive and only allows for an observer who will not**
24 **disrupt the examination.**

25 Nevada Revised Statute 52.380 does not create an inherent right for a party to have an
26 observer present or create an audio recording of an examination. Rather, the language of NRS
27 52.380 is permissive in both allowing an observer to attend and allowing the observer to make
28 an audio or stenographic recording of the examination. NRS 52.380 permits the Court to allow
an observer but does not mandate the same. The permissive language of NRS 52.380(1) does
not divest this Court of its authority to follow NRCP 35 and enforce Rule 35's prohibition of
an observer attending a psychological, psychiatric, or neuropsychological examination. While

1 allowance of an observer, under NRS 52.380, is permissive, the prohibition of an observer's
2 interference or disruption of an examination is mandatory.

3 NRS 52.380 conditions allowing an observer on the premise that the observer will not
4 participate or disrupt the examination. Here, Defendants could not agree to allow an observer
5 to attend the examination because they were informed by Dr. Etkoff that a third-party observer
6 inherently disrupts the examination and its results by altering the behavior of the examinee.
7 Defendants provided this Court with scientific studies demonstrating that a third-party observer
8 inherently disrupts the examination.
9

10 NRS 52.380 sets forth procedures applicable to observers who may attend independent
11 medical examinations, but conditions the allowance of an observer on the premise that the
12 observer will not interfere with or disrupt the process. Here, Plaintiff does not dispute the
13 medical studies cited in Defendants' Motion demonstrating that an observer inherently disrupts
14 the psychological examination, which depends on unimpeded one-on-one communication
15 between the doctor and patient, or present any evidence to support his position.

16 Courts, including the District of Nevada, have regularly found that "[t]he introduction
17 of a third party changes the nature of the proceeding, much in the way that television 'coverage'
18 of events qualitatively changes what occurs in front of the camera." *Fretelucio v. Smith's Food*
19 *& Drug Ctrs.*, 2020 U.S. Dist. LEXIS 113217, *13 June 29, 2020 (D. Nev. 2020)(quoting
20 *Tirado v. Erosa*, 158 F.R.D. 294, 299 (S.D.N.Y. 1994). Courts are often reluctant to permit a
21 third party or recording device out of concern that the intrusion would (1) potentially invalidate
22 the examination results; (2) fail to provide a level playing field as plaintiff was not required to
23 tape record his examinations with his own health care providers; and (3) inject a greater degree
24 of the adversary process into an evaluation that is to be neutral. *Flack v. Nutribullet, LLC*, 333
25 F.R.D. 508, 517 (C.D. Cal. 2019)(internal citations and quote marks omitted). The *Fretelucio*
26 Court found that the introduction of a third party is necessarily distracting to the examiner and
27 the examinee, and clearly heightens an already adversarial process; the presence of third party
28

1 introduces a degree of artificiality to the examination that would be inconsistent with the
2 professional medical standard. *Freteluco* LEXIS 113217 at 14.

3
4 There is no dispute that an observer would disrupt the Rule 35 Independent Medical
5 Examination. As such, NRS 52.380 supports the court's denial of allowing Dr. Etcoff's
6 examination to be observed by a third party.

7 **D. Plaintiff's entire medical status, including past medical status, is at issue in**
8 **this litigation and the mechanics of the explosion are relevant to an**
9 **Independent Medical Examination.**

10 As detailed above, Plaintiff's disclosure identifies that Dr. Elliott's treatment and
11 expected testimony includes anxiety caused by Plaintiff's physiological condition, general
12 anxiety disorder, and a full neuropsychological evaluation. Plaintiff has put his whole physical
13 body at issue in this litigation by making allegations related to anxiety resulting from Plaintiff's
14 physical condition. Plaintiff's entire life, including pre-incident traumas and negative
15 experiences, are relevant to the "general anxiety disorder" diagnoses and treatment.
16 Additionally, Plaintiff's neurological conditions, both before and after the incident, are relevant
17 to the assessment of the neurological impact on Plaintiff caused by the incident.

18 By way of specific example of the need to question Plaintiff regarding his past medical
19 status and the events of his life, Dr. Elliott evaluated Plaintiff for issues relating to difficulties
20 in concentrating and remembering, but Plaintiff has also testified that he was diagnosed with a
21 learning disability at a very young age.⁴ This Court should not preclude Dr. Etcoff from
22 questioning Plaintiff regarding his past difficulties in concentrating or learning because that is
23 an issue specifically alleged to be a part of the litigation by Plaintiff. By way of further example,
24 Dr. Elliott evaluated Plaintiff's losing confidence in himself, but Plaintiff also testified that he
25 was seeing a Shaman, Lauren Unger, in the days before the incident for help dealing with
26

27
28

⁴ See Excerpts from Plaintiff's Deposition attached as Exhibit B at pgs. 279:23-281:2.

1 Plaintiff being “super negative” and with having been taken advantage of in several
2 Plaintiff’s businesses.⁵

3 The *Schlatter* Court held that where a litigant’s physical condition is in issue, a court
4 may order discovery of medical records containing information relevant to the injury
5 complained of or any pre-existing injury related thereto.⁶ Here, Plaintiff has put the entirety of
6 his past medical status; current medical treatment; and the events of his life, both before and
7 after the accident, at issue in this litigation and the Court should not limit questioning on
8 Plaintiff’s past medical treatment or life events.
9

10 Similarly, questions about the incident itself and who Plaintiff believes is responsible
11 for causing the incident are relevant to the both the Independent Medical Examination and the
12 issues of this case. Dr. Elliott’s assessment includes finding that Plaintiff’s “symptoms and
13 behaviors are consistent with patients that have suffered brain trauma through a blast injury.”⁷
14 Plaintiff’s medical provider seemingly evaluated the alleged impact of the force of the incident
15 on Plaintiff, despite the fact that he is not a “propane technician, an electrician, contractor, or
16 blast re-creation expert.” As Plaintiff’s medical provider found information of the facts of the
17 incident relevant to his evaluation, Plaintiff’s counsel cannot assert, in good faith, that
18 Defendants’ expert cannot ask for the same information. The Court should not preclude Dr.
19 Etcoff from questioning Plaintiff regarding the facts of the incident.
20

21 The Court should allow questions regarding the mechanics of the incident and who
22 Plaintiff believes bears responsibility for the incident. Whether Plaintiff blames himself for the
23 incident is relevant to the general anxiety alleged. The issue of admissibility of any such
24 information is a matter for the District Court Judge to resolve, but this Court should not limit
25 Dr. Etcoff’s examination regarding areas of assessment by Plaintiff’s treating physicians, as
26 those areas of inquiry are relevant to the issues of this litigation.
27

28 ⁵ *Id* at 286:2-290:16.

⁶ *Schlatter v. Eighth Judicial Dist. Court*, 561 P.2d 1342, 1343 (1977).

⁷ *See* Exhibit A at pg. 28.

1 **E. Plaintiff's request for sanctions is grossly untimely.**

2 Plaintiff seemingly seeks preemptive sanctions for conduct during an evaluation
3 that has not yet occurred. Defendants do not dispute that the Court has the power to compel
4 obedience to its orders, but that issue should be presented separately at the appropriate time
5 after the examination occurs, if necessary. Should Plaintiff believe sanctions are merited
6 after the Independent Medical Examination occurs, Plaintiff has the right to seek the same.
7 The issue is not presently before the Court, and whether Plaintiff's counsel can comment
8 on Dr. Etcoff's examination at trial is an issue better left to the trial judge for resolution.
9

10 **III. CONCLUSION**

11 The Parties agree that the Court should Order a Rule 35 examination. There is no
12 dispute that allowing an observer would disrupt and taint the results of an independent medical
13 examination.
14

15 Defendants respectfully request an Order allowing Dr. Etcoff to conduct a Rule 35
16 examination on March 2 and 3, 2021 to evaluate Plaintiff's mental condition.
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DATED this 12th day of November, 2020.

PYATT SILVESTRI

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1 **CERTIFICATE OF SERVICE**

2 On the 12th day of November, 2020, the undersigned, an employee of Baker Sterchi
3 Cowden & Rice, hereby served a true copy of **DEFENDANTS' REPLY IN SUPPORT OF**
4 **MOTION TO COMPEL RULE 35 EXAM** to the parties listed below via the EFP Program,
5 pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective
6 June 1, 2014, and or mailed:
7

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21 MARIO S. GONZALEZ

22 */s/ Gregorio V. Silva*
23 _____
24 An Employee of
25 Baker Sterchi Cowden & Rice LLP
26
27
28

Exhibit A



SUPPL

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Attorneys for Plaintiff,
Joshua Green

DISTRICT COURT
CLARK COUNTY, NEVADA

* * *

Joshua Green, an individual,

Plaintiff,

vs.

Ferrellgas, Inc., a foreign corporation;
Mario S. Gonzales, an individual; **Carl J. Kleisner**, an individual; Does I through XXX, inclusive and Roes Business Entities I through XXX, inclusive

Defendants.

Mario S. Gonzalez, an individual;

Cross-Claimant,

vs.

Ferrellgas, Inc., a foreign corporation;
Carl J. Kleisner, an individual; DOES 1 through 100 inclusive; and ROE Corporations 101 through 200;

Cross-Defendants.

Case No.: A-19-795381-C
Dept. No.: XXXI

**Joshua Green's Tenth
Supplemental Disclosures**

Mario S. Gonzalez, an individual;

Third-Party Plaintiff,

vs.

BBQ Guys Manufacturing, LLC dba Blaze Outdoor Products., a foreign corporation; **Home Depot USA, Inc.**, a foreign corporation; **KSUN Manufacturing**, a foreign corporation; Does 200 through 300 inclusive; and ROE Corporation 301 through 400;

Third-Party Defendants.

Ferrellgas, Inc., a foreign corporation;

Counter-Claimant,

vs.

Mario S. Gonzalez, an individual; DOES 1 through 100 inclusive; and ROE Corporations 101 through 200;

Counter-Defendants

Carl J. Kleisner, an individual;

Counter-Claimant,

vs.

Mario S. Gonzalez, an individual; DOES 1 through 100 inclusive; and ROE Corporations 101 through 200;

Counter-Defendants.

Plaintiff, Joshua Green, through his attorney of record, Matthew G. Pfau, Esq. of H & P LAW, hereby produces the following list of persons that are likely to have knowledge of the facts and circumstances of the instant action, and documents, data compilations, and tangible things that are in their and/or their counsel's possession, custody, or control pursuant to NRCP 16.1:

Supplemental/Amended information appears in bold.

Abandoned claims identified with ~~strike line~~.

**I.
Witnesses**

1. Joshua Green
c/o H & P LAW
8950 West Tropicana Avenue, Suite 1
Las Vegas, Nevada 89147
T: 702-598-4529; and
2609 Centaurus Street
Henderson, Nevada 89044
T: 702-271-1791

Joshua Green is the Plaintiff in this case. He is expected to testify about the grill that exploded while he was using it. Joshua will testify about his experience using grills. Joshua will also testify about how these injuries have negatively affected his life and his damages.

1 2. Proper 30(b)(6) Representative for Ferrellgas, Inc.
 2 c/o OLSON, CANNON, GORMLEY, ANGULO & STROBERSKI
 3 9950 West Cheyenne Avenue
 4 Las Vegas, Nevada 89129
 5 T: 702-384-4012

6 The Proper 30(b)(6) Representative for Ferrellgas, Inc. will testify about their
 7 policies and procedures for installing and inspecting gas lines. They will also testify
 8 about their knowledge of this case and employee training, hiring, and management.

9 3. Mario S. Gonzales
 10 c/o PYATT SILVESTRI
 11 700 Bridger Avenue, Suite 600
 12 Las Vegas, Nevada 89101
 13 T: 702-477-0088

14 Mario Gonzales is the owned the home where the grill exploded on Joshua. Mr.
 15 Gonzales is expected to offer his testimony about his perspective of the explosion
 16 and the safety measures he took to prevent it. As Josh's close friend, Mario will also
 17 testify about any noticeable changes to Josh before and after the explosion.

18 4. Carl J. Kleisner
 19 c/o DENNETT WINSPEAR, LLP
 20 3301 North Buffalo Drive, Suite 195
 21 Las Vegas, Nevada 89129
 22 T: 702-839-1100

23 Carl J. Kleisner is the electrician that repaired the electrical lines at Mr. Gonzales's
 24 home a few days before the explosion. Mr. Kleisner is expected to testify about his
 25 experience as an electrician. He will also testify about liability.

26 5. Elad Bicer, MD
 27 Spring Valley Hospital Medical Center
 28 5400 South Rainbow Boulevard
 Las Vegas, Nevada 89118
 T: 702-853-3000

Elad Bicer, MD evaluated Joshua for emergency medical treatment immediately
 following the explosion. Dr. Bicer is expected to testify about his observations that
 Joshua arrived with burn "onset prior to arrival" with symptoms of "pain and
 redness." Dr. Bicer's testimony will include the following diagnosis:

- ICD10-CM – Burn;

After review, Dr. Bicer determined Joshua required care in a burn intensive unit.

Dr. Bicer requested Joshua be transferred to University Medical Center.

Dr. Bicer's testimony will be consistent with GREEN 01-85.

6. Elizabeth Sodomini, MD
UNLV Medicine
2040 West Charleston Boulevard, 3rd Floor
Las Vegas, Nevada 89102
T: 702-895-4928

Elizabeth Sodomini, MD provided burn treatment to Joshua in the weeks following the explosion. Dr. Sodomini is expected to testify about the following diagnoses:

- T21.22XA – Burn of second degree of abdominal wall, initial encounter;
- T22.212A – Burn of second degree of left forearm, initial encounter;
- T22.211A – Burn of second degree of right forearm, initial encounter;
- T23.202A – Burn of second degree of left hand, unspecified site, initial encounter;
- T23.201A – Burn of second degree of head, face, and neck, unspecified site, initial encounter;
- X04.XXA – Exposure to ignition of highly flammable material, initial encounter;

Dr. Sodomini will testify about the causation of these injuries. Her testimony will be consistent with GREEN 86-97.

7. Jon Petrick, DC
Las Vegas Pain Relief Center
2779 West Horizon Ridge Parkway, Suite 210
Henderson, Nevada 89052
T: 702-948-2520

Joshua presented to Jon Petrick, DC complaining of consistent pain. Dr. Petrick noted Joshua's "continuing pain and discomfort that can be described as sharp, burning, tightness, numbing or tingling, a loss of strength." Dr. Petrick stated Joshua "presented with second and third degree burns bilaterally on both arm to trunk, chest, and flanks." Dr. Petrick determined Joshua would benefit from "functional movement screen, nitric oxide release, active release techniques, chiropractic care, strength and conditioning, and performance training."

Dr. Petrick is expected to testify about the following diagnoses:

- T31.11 – Burns involving 10-19% of body surface with 10–19% third degree burns;
- T31.20 – Burns involving 20-29% of body surface with 0% to 9% third degree burns;

Dr. Petrick will testify about the causation of these diagnoses. His testimony will be consistent with GREEN 98–186.

8. Custodian of Records
Shadow Emergency Physicians, PLLC
PO Box 13917
Philadelphia, Pennsylvania 19101
T: 800-355-2470

The Custodian of Records will verify the authenticity of GREEN 187.

9. Custodian of Records
American Medical Response
7201 West Post Road
Las Vegas, Nevada 89113
T: 800-913-9106

The Custodian of Records will verify the authenticity of GREEN 188.

10. Laurence Green
2609 Centarus Street
Henderson, Nevada 89044
T: 516-524-1310

Laurence Green is Joshua's father. Laurence is expected to testify about Joshua's life before and after the explosion. He will testify about Joshua's injuries and how the negatively affected his life. Laurence is also expected to testify about how the explosion caused a financial strain to Joshua's life.

11. Shelia Green
2609 Centarus Street
Henderson, Nevada 89044
T: 516-524-2251

Shelia Green is Joshua's mother and is expected to testify about the noticeable changes in Joshua before and after the explosion. Shelia will testify about how the burns negatively affected Joshua's life and made his job as a chef more difficult.

12. Elizabeth Sodomini, MD
 13. Paul J. Chestovich, MD
 14. Amy Urban, MD
 University Medical Center -
 5400 South Rainbow Boulevard
 Las Vegas, Nevada 89118
 T: 702-853-3000

The medical team at University Medical Center evaluated Joshua after he was transferred from Spring Valley Hospital. Dr. Urban noted Joshua "sustained flame to burns to the face, b/l forearms, b/l palms" after "lifting the lid from a propane gas grill." These burns were described as to "approximately 18% second-degree burn surface area" with some "anterior abdomen and chest first-degree burns."

To treat his burns, the medical team at University Medical Center prescribed painkillers and admitted Joshua for ongoing wound care "by burn care nurses." The medical team at University Medical Center is expected to testify about the following diagnoses:

- Burn of multiple sites of upper limb;
- Partial thickness of burns of multiple sites;

The medical team at University Medical Center is expected to testify about the causation of these diagnoses. Their testimony will be consistent with GREEN 374-845.

15. Cyril Joseph, PA-C
 Henderson Dermatology and Skin Center
 2960 Saint Rose Parkway, Suite 120
 Henderson, Nevada 89052
 T: 702-558-5100

Physician Assistant Joseph is expected to offer testimony about the treatment he administered to Joshua after the grill explosion. Physician Assistant Joseph performed an examination "including the scalp (including hair inspection), head (including face), inspection of conjunctive lids, lips (but not teeth and gums), nose, right ear, left ear, chest, abdomen, back, right upper extremity, left axilla, right hand, and inspection and palpation of the digits and nails."

Physician Assistant Joseph noted Joshua had "paresthesia on both hands. Left is

1 worse than the right-hand area where patient has burns.” Physician Assistant
2 Joseph’s testimony will be consistent with GREEN 847-48.

3
4 16. Adam Sadie
5 6983 Casa Encantada Street
6 Las Vegas, Nevada 89118
7 T: 702-378-8408

8 Adam Sadie is Josh’s business partner. Adam is expected to offer testimony
9 about how Josh’s life was dramatically affected after the grill explosion. Adam will
10 testify about the difficulties Josh faced as a chef and how the burns make his job
11 more difficult.

12 17. Lauren Unger
13 130 East 18th Street 3M
14 New York, New York 10003
15 T: 516-768-1177

16 Lauren Unger is Josh’s close friend. Lauren is expected to offer her testimony
17 about the noticeable changes in Josh before and after the explosion. She will testify
18 about how Josh’s life was negatively impacted by the explosion.

19 18. Dave Goodman
20 5431 La Jolla Boulevard C
21 La Jolla, California 92307
22 T: 310-775-3601

23 Dave Goodman is Josh’s friend and is expected to testify about the changes in
24 Josh’s emotional, physical, and mental state since the explosion.

25 19. Andrea Schuman
26 422 Merrick Road
27 Rockville Center, New York 11570
28 T: 516-983-5794

Andrea Schuman is Josh’s family member. Andrea is expected to testify about

the negative changes in Josh after the explosion.

20. Jenn Gonzalez
5865 West Post Road
Las Vegas, Nevada 89118
T: 702-241-1937

Jenn Gonzalez was present during the barbeque explosion. Jenn is expected to offer her testimony about her perspective of the explosion and the injuries Josh sustained as a result.

21. Rabbi Motti
Chabad Jewish Center of Las Vegas and Southern Nevada
1261 Arville Street
Las Vegas, Nevada 89102
T: 702-683-0333

Rabbi Motti is Josh's Rabbi. He is expected to offer his testimony about the noticeable changes to Josh before and after the explosion. Rabbi Motti will testify about how Josh became more committed to his Jewish faith after the explosion.

22. Michael Elliott, Ph.D
Michael Elliott and Associates
1661 West Horizon Ridge Parkway, Suite 280
Henderson, Nevada 89012
T: 702-307-0133

Michael Elliott, Ph.D provided psychological treatment to Josh and is expected to offer his testimony regarding his findings. On May 20, 2020, Dr. Elliott evaluated Josh for "severe headaches since his accident, difficulty focusing and following conversations/trains of thought" and "several difficulties when using grills." Dr. Elliott noted Josh expressed "losing confidence in himself and is concerned that he will not be able to continue his career."

Dr Elliott will testify about the following diagnoses:

- F06.4 – Anxiety disorder due to known physiological condition;
- F41.1 – Generalized anxiety disorder;
- Z13.850 – Encounter for screening for traumatic brain injury;

Dr. Elliott is expected to testify about the causation of these diagnoses. He will also testify regarding Joshua's comprehensive treatment plan: