

**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 6)**

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**APPENDIX TO PETITION FOR WRIT OF MANDAMUS**  
**VOLUME 1**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
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**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
4	Defendants' Reply in Support of Motion to Compel Rule 35 Exam	APP- 205 -258
5	Recorder's Transcript of Hearing Re: Defendant's Motion to Compel NRCP 35 Examination – 11/19/20	APP- 259 - 280
6	Supplemental Briefing on Defendants' Motion to Compel Neuropsychological Rule 35 Examination	APP – 281- 407

**VOLUME 3**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
7	Defendants' Reply in Support of Motion to Compel Rule 35 Exam	APP- 408 - 477
8	Transcript of Proceedings Re: Further Proceedings: Scope of Examination/Whether A Neuropsychological Evaluation is Appropriate in this Case – 12/10/20	APP- 478 - 493
9	Discovery Commissioner's Report and Recommendations	APP- 494 – 500

**VOLUME 4**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
10	Defendants' Objection to Discovery Commissioner's Report and Recommendation E-Filed on 12/22/20	APP- 501 - 750

**VOLUME 5**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
10	Defendants' Objection to Discovery Commissioner's Report and Recommendation E-Filed on 12/22/20	APP- 751 - 1016

**VOLUME 6**

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
11	Joshua Green's Reply to Defendant's Objection to Discovery Commissioner's Report and Recommendations	APP- 1017 – 1107
12	Second Amended Complaint	APP – 1108 – 1119
13	Discovery Commissioner's Report and Recommendations	APP – 1120 – 1125
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

*/s/ Felicia Galati, Esq.*

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*/s/ Steven M. Goldstein, Esq.*

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## **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of March, 2021, I sent via e-mail a true and correct copy of the above and foregoing **APPENDIX TO PETITION FOR WRIT OF MANDAMUS (VOLUME 6)** 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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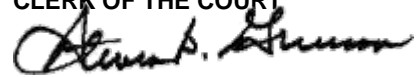
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DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**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.

Case No.: A-19-795381-C

Dept. No.: XXXI

**Joshua Green's Reply to  
Defendant's Objection to  
Discovery Commissioner's Report  
and Recommendations**

**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;

Hearing date: January 26, 2020

Hearing time: 9:30 a.m.





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Cross-Defendants.

**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**

On June 13, 2018, Defendant, Mario Gonzalez (“Mr. Gonzalez”) noticed his outdoor barbeque—fueled and maintained by Defendant, Ferrellgas, Inc. (“Ferrellgas”)—was abnormally hot to the touch. Upon closer examination, Mr. Gonzalez observed flames shooting out of the line, and as a result, he contacted Ferrellgas’ emergency customer service line. The next day, a Ferrellgas technician visited the Gonzalez property, and after a very short inspection, stated the propane system was not leaking. Without any substantiated proof, Ferrellgas determined the source of the heat was an “electrical problem,” and deemed the grill safe for use.

Despite being aware that his grill was experiencing issues, Mr. Gonzalez elected to host a barbeque at his house. Mr. Gonzalez invited his friend, Joshua Green (“Josh”), over to grill and watch a hockey game. Mr. Gonzalez placed a few steaks on the barbeque and asked Josh to monitor the steaks while he went inside his house for a moment. As a professional chef, Josh decided to check the steaks about four minutes later. When Josh opened the lid, his body was suddenly engulfed in flames. Josh, at 5’8, remembers these flames surpassing the height of his entire body.<sup>1</sup> His shoes, pants, and shirt were scorched from blaze, rendering them useless.<sup>2</sup> And, the explosion replicated a

<sup>1</sup> See Deposition transcript of Plaintiff, Joshua Green Volume I at 123:12-21, as Exhibit 1.

<sup>2</sup> *Id.* at 123:23-24.

bomb—reverberating through the neighborhood like a warzone.<sup>3</sup>

Since this horrific experience, Josh—a professional chef—has been afraid to use propane grills.<sup>4</sup> When exposed to fire or flames, the memories of the June 2018 explosion are awoken:<sup>5</sup>

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.

After nearly two years of suffering with depression and debilitating flashbacks, Josh presented to Michael Elliott, Ph.D for the first time on May 20, 2020. Dr. Elliott evaluated Josh for "severe headaches," "stress," "exhaustion" and a generalized fear of using grills and propane.<sup>6</sup> During a follow up appointment on July 1st, Dr. Elliott noted Josh continued to experience "flashbacks to the accident, especially whenever he sees flames," noticeable "waves of depression...[that] cause him to withdraw from relationships," and "anxiety."<sup>7</sup> Dr. Elliott has since diagnosed Josh with traumatic stress disorder, generalized anxiety, and reaction to severe stress.<sup>8</sup> While Dr. Elliott does recognize Josh suffers from mild cognitive impairment, he also notes Josh "has

<sup>3</sup> *Id.* at 122:24–123:11 and Video footage of explosion, provided through email as Exhibit 2.

<sup>4</sup> Exhibit 1 at 52:20–53:16.

<sup>5</sup> See Deposition transcript of Plaintiff, Joshua Green Volume II at 298:10–299:3, as Exhibit 3.

<sup>6</sup> See Michael Elliott, Ph.D and Associates medical records at GREEN 1086–1087, as Exhibit 4.

<sup>7</sup> *Id.* at GREEN 1088.

<sup>8</sup> *Id.* at GREEN 1247.

1 a history of seizures” and was in “a major car accident in the past.”<sup>9</sup> This history  
2 is something Josh has acknowledged since the beginning of this litigation,<sup>10</sup>  
3 but also asserts he has not experienced any depression, stress, or anxiety as  
4 a result.<sup>11</sup>

5 On October 26, 2020, Defendants filed a Motion to Compel NRCP Rule 35  
6 Examination of Josh. During the hearing on the matter, The Honorable  
7 Discovery Commissioner recommended Josh should appear for a Defense  
8 Psychological Examination consistent with the following parameters:<sup>12</sup>

9 1. IT IS FURTHER RECOMMENDED that Plaintiff shall be Ordered to  
10 appear for a Rule 35 examination at the office of Dr. Lewis Etcoff.

11 2. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an  
12 observer present during the Rule 35 examination pursuant to NRS 52.380.

13 3. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an  
14 audio recording made of the Rule 35 examination pursuant to NRS 52.380.

15 4. IT IS FURTHER RECOMMENDED that Defendant’s examiner shall be  
16 allowed to inquire into Plaintiff’s mental condition before the incident, and  
17 Plaintiff’s general physical condition before the incident. The examiner may  
18 inquire as to Plaintiff’s medical treatment for five years prior to the incident.

19 5. IT IS FURTHER RECOMMENDED that Defendants’ examiner shall be  
20 allowed to inquire into Plaintiff’s life events prior to and after the incident.

21 6. IT IS FURTHER RECOMMENDED that Defendants’ examiner shall be  
22 allowed to inquire into Plaintiff’s mental and physical condition since the  
23 incident occurred.

24 7. IT IS FURTHER RECOMMENDED that Defendants’ examiner shall be  
25 allowed to inquire into Plaintiff’s history with regard to inability to focus and

26 <sup>9</sup> *Id.* at GREEN 1087.

27 <sup>10</sup> Exhibit 1 at 38:19–20.

28 <sup>11</sup> *Id.* at 44:11–52:19.

<sup>12</sup> See Discovery Commissioner’s Report and Recommendations, as Exhibit 5.

memory issues.

Defendant then filed the instant Objection, claiming an observer and audio recording are “prohibited by Rule 35(a)(4)(A)(i)” and that “Plaintiff failed to submit any admissible evidence establishing good cause for prohibiting the same under Rule 35(a)(3).”<sup>13</sup> NRS 52.380 creates a **substantive right** for Plaintiff to have an observer *and* to audio record the examination.

In a Bench Bar Meeting on October 8, 2019 presided over by Judge Allf, 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 Defendants believe, 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.

<sup>13</sup> See Defs. Obj. at 11:2–8.

II.

**Law and Argument**

Discovery orders may only be reviewed for an abuse of discretion.<sup>14</sup> The Honorable Discovery Commissioner did not err in this instance; as she and other District Court Judges have determined countless times,<sup>15</sup> NRS 52.380 offers the inherent right for an examinee to be accompanied by an observer and to audio record during a Rule 35 Examination.

Enacted May 29, 2019, the plain language of NRS 52.380 reads:

1. **An observer may attend an examination** but shall not participate in or disrupt the examination.
2. The observer attending the examination pursuant to subsection 1 may be:
  - (a) An attorney of an examinee or party producing the examinee; or
  - (b) A designated representative of the attorney, if:
    - 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.
    - 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.

<sup>14</sup> *Club Vista Fin. Servs. v. Eighth Judicial Dist. Court*, 128 Nev. 224, 276 P.3d 246, 2012 Nev. LEXIS 60, 128 Nev. Adv. Rep. 21, 2012 WL 1751785.

<sup>15</sup> See Notice of Entry of Order from Department 13, Judge Denton, dated September 18, 2020, as Exhibit 6.

- (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. NRS 52.380 creates a substantive right to record and have observed a court ordered Independent Medical Examination.**

The United States Supreme Court defines a substantive rule or statute as "creat[ing] duties, rights and obligations."<sup>16</sup> In contrast, a procedural standard "specifies how those duties, rights, and obligations should be enforced."<sup>17</sup> Nevada case law clearly states if a procedural rule conflicts with a substantive statute, the substantive right "supersedes" and "controls."<sup>18</sup>

The differences between the NRS 52.280 and NRCP 35 are substantive, as the statute creates substantive rights for the examinee in a NRCP 35 examination. These substantive rights are the rights to have an observer present, to have that observer be the examinee's attorney, and to record the examination. Under NRCP 35, the examinee has no such rights, as each of these aspects is either completely unavailable or is conditioned upon a request to the court and/or a showing of good cause.

A substantive standard is "one that 'creates duties, rights and obligations,' while a procedural standard specifies how those duties, rights, and obligations should be enforced."<sup>19</sup> This definition of a "substantive standard" is important since NRCP 35 already provides for the procedural right to have an observer at an examination and for recording of an examination. However, NRCP 35 provides:

On request of a party or the examiner, the court may, *for good cause shown*, require as a condition of the examination that the examination

<sup>16</sup> *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 204 L. Ed. 2d 139, 2019 U.S. LEXIS 3888, 27 Fla. L. Weekly Fed. S 870.

<sup>17</sup> *Id.*

<sup>18</sup> *State v. Connery*, 99 Nev. 342, 661 P.2d 1298, 1983 Nev. LEXIS 441.

<sup>19</sup> *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1811 (2019)).

be *audio recorded*.

The party against whom an 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 observer may not be the party's attorney, or anyone employed by the party or the party's attorney.*

The party may have one observer present for the examination, unless [ ] the examination is a neuropsychological, psychological, or psychiatric examination; or [ ] the court orders otherwise for good cause shown. *The party may not have any observer present for a neuropsychological, psychological, or psychiatric examination, unless the court orders otherwise for good cause shown.*

NRS Section 52.80, by contrast, provides that:

An observer *may attend an examination* but shall not participate in or disrupt the examination.

The observer attending the examination pursuant to subsection 1 may be [ ] *[a]n attorney of an examinee or party producing the examinee; or [ ] [a] designated representative of the attorney . . . [.]* The observer attending the examination pursuant to subsection 1 *may make an audio or stenographic recording of the examination.*<sup>20</sup>

Thus, the procedure set forth in NRCP 35 permitted an observer at an examination and recording of an examination. However, these possibilities were conditioned upon a showing of good cause for recording, limited to exclude the examinee's attorney or the attorney's employee as the observer, precluded for neuropsychological, psychological, or psychiatric examinations absent a showing of good cause, and so on.<sup>21</sup>

The statute, by contrast, transformed these conditional elements of an examination into *substantive rights of the examinee by removing all conditions and limitations*. The examinee is no longer required to "request" an observer, to show good cause for recording the examination, to show good cause to have an observer at particular types of examinations, to choose someone

<sup>20</sup> See Nev. Rev. Stats. 52.380(1), (2), (3) (emphases added).

<sup>21</sup> See Nev. R. Civ. P. 35(a)(3), (4) (emphases added).



other than his attorney as the observer, and so on.<sup>22</sup>

Under the statute, the examinee now has the right to record the examination, the right to have an observer present irrespective of the type of examination, and the right to have his attorney serve as the observer.

As the foregoing demonstrates, the procedures in the Rule and the statute are identical (i.e., observer, recording). The only difference under the statute is that the examinee now has a right to these elements, rather than having to jump through the hoops defined in the Rule. The statute on its face creates substantive rights not contained in the Rule.

**B. Although the conflict between NRCP 35 and NRS 52.380 implicates the separation of powers doctrine, NRS 52.380 is presumptively constitutional.**

The separation of powers doctrine “prevent[s] one branch of government from encroaching on the powers of another branch.”<sup>23</sup> The judicial branch has exclusive power to govern legal procedure; however, the legislative branch has the right to enact statutes governing the substance of the law.<sup>24</sup>

Under Nevada case law, all statutes are presumably constitutional and “every possible presumption will be made in favor of the constitutionality of a statute.”<sup>25</sup> It is further stated that unless a clear demonstration can be made that there is *no* rational for a statute, this Court **must** uphold the law.<sup>26</sup>

Nevada law is extraordinarily clear regarding the interrelation of court rules and legislative statutes. As the Nevada Supreme Court has noted:

The judiciary has the inherent power to govern its own procedures, and

<sup>22</sup> See Nev. Rev. Stats. 52.380(1),(2),(3).

<sup>23</sup> *Comm'n on Ethics v. Hardy*, 125 Nev. 285, 212 P.3d 1098, 2009 Nev. LEXIS 32, 125 Nev. Adv. Rep. 27.

<sup>24</sup> *State v. Connery*, 99 Nev. 342, 661 P.2d 1298, 1983 Nev. LEXIS 441.

<sup>25</sup> *List v. Whisler*, 99 Nev. 133, 660 P.2d 104, 1983 Nev. LEXIS 413.

<sup>26</sup> *Mengelkamp v. List*, 88 Nev. 542, 501 P.2d 1032, 1972 Nev. LEXIS 517.

1 this power includes the right to promulgate rules of appellate procedure  
2 as provided by law. [ ] Although such rules may not conflict with the state  
3 constitution or “abridge, enlarge or modify any substantive right,” NRS  
4 2.120, the authority of the judiciary to promulgate procedural rules is  
5 independent of legislative power, and may not be diminished or  
6 compromised by the legislature. [ ] We have held that the legislature  
may not enact a procedural statute that conflicts with a pre-existing  
procedural rule, without violating the doctrine of separation of powers,  
and that such a statute is of no effect. [ ] Furthermore, where, as here, a  
rule of procedure is promulgated in conflict with a pre-existing  
procedural statute, the rule supersedes the statute and controls. [ ]<sup>27</sup>

7 The executive prerogative is given to the judiciary to make its own rules  
8 governing its own procedures. The Legislature has the exclusive prerogative to  
9 enact status governing the substance of the law. This distinction is predicated  
10 upon the “separation of powers” doctrine, which is specifically recognized in  
11 the Nevada State Constitution.<sup>28</sup>

12 This division of powers between three separate departments (Legislative,  
13 Executive, and Judicial) is fiercely guarded under Nevada law—in fact, this  
14 Court has noted that, while the United States Constitution implicitly divides  
15 power through its creation of three branches, “Nevada’s Constitution goes one  
16 step further; it contains an express provision prohibiting any one branch of  
17 government from impinging on the functions of another.”<sup>29</sup>

18 As noted in *Connery*, the prohibition on the Legislature’s enactment of a  
19 statute that conflicts with a pre-existing procedural rule, without violating the  
20 doctrine of separation of powers,” is limited to any “procedural statute.”<sup>30</sup> A  
21 “procedural statute” that conflicts with a “procedural rule” is “of no effect,  
22 irrespective of which was enacted first.”<sup>31</sup>

23 Consistent with this separation of powers among co-equal branches of  
24 government, the district courts likewise may not promulgate a rule that would

25 <sup>27</sup> *State v. Connery*, 99 Nev. 342, 345 (1983) (internal citations omitted).

26 <sup>28</sup> *Berkson v. LePome*, 126 Nev. 492, 498 (2010) (citing Nev. Const. art. 3, § 1(1)).

27 <sup>29</sup> *Comm’n on Ethics v. Hardy*, 125 Nev. 285 (2009) (citing *Secretary of State v. Nevada State  
Legislature*, 120 Nev. 456, 466 (2004)) (emphasis added).

28 <sup>30</sup> *Connery*, 99 Nev. at 345.

<sup>31</sup> *Id.*

“abridge, enlarge or modify any substantive right[.]”<sup>32</sup>

Since NRS Section 52.380 establishes a substantive right, the rule properly governs the presence of an observer (or the conducting of a recording) in Defendant’s examinations of Plaintiff in this matter. And, as a result, the doctrine of separation of powers mandates that the statute supersedes NRCP 35.<sup>33</sup>

Although often referred to as “Independent Medical Examinations,” the nature of a Rule 35 Exam is inherently adversarial. Rule 35 Exams are conducted at the request of Defense firms; they are performed by doctors chosen and *paid* by the Defense. A Florida court recognized that these exams are less like a “medical patient seeing [their] doctor” and “more akin to a litigant attending a deposition.”<sup>34</sup> Due to this, substantive safeguards—the right for an observer present and to audio record the Rule 35 exam—were enacted in NRS 52.380. *Clearly*, rational exists for permitting such safeguards. Thus, under Nevada law, this Court must uphold the **statute**.

### III.

#### Conclusion

Based on the foregoing, Mr. Moats respectfully requests that the Court uphold the Honorable Discovery Commissioner’s Report and Recommendations on the basis that there was no abuse of discretion by Commissioner Truman. Josh requests that this Court order that the Rule 35 Examination of Josh Green be audio recorded and he be accompanied by an observer.


<sup>32</sup> *Id.*

<sup>33</sup> *Connery*, 99 Nev. at 345 (court rules cannot “abridge, enlarge or modify any substantive right”).

<sup>34</sup> *Davanzo v. Carnival Cruise Lines*, 2014 U.S. Dist. LEXIS 49061, 2014 AMC 1361, 2014 WL 1385729.

1 DATED this 11th day of January 2021.

H & P LAW

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**Certificate of Service**

I hereby certify that on the 11th day of January 2021, service of the foregoing **Joshua Green's Reply to Defendant's Objection to Discovery Commissioner's Report and Recommendations** was made by required electronic service to the following individuals:

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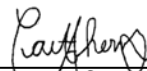
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# **EXHIBIT “1”**

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

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

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702-805-4800  
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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 &amp; 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 <b>Q. Are you saying you work fewer hours 14 because you're afraid of being in a cooking 15 environment?</b></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 <b>Q. Is it getting any better?</b></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 <b>Q. Have you talked to any medical person 13 about these issues?</b></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 <b>Q. Was this a dermatologist in Henderson you 20 told me about last time?</b></p> <p>21 A. It was that one and then there was 22 another one.</p> <p>23 <b>Q. When was the last time you talked to any 24 professional about this?</b></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 <b>Q. Show us, if you would, where the blisters 12 and the itching occur.</b></p> <p>13 A. Blister here, blister here (indicating). 14 <b>Q. Go like this so they can see.</b> 15 <b>Thank you.</b></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 <b>Q. So specifically regarding your hands, I'm 20 understanding that you have itching, you have 21 blisters, and you have scrapes?</b></p> <p>22 A. Yeah, and sensitivity issues.</p> <p>23 <b>Q. And sensitivity.</b> 24 <b>What are you doing to treat those 25 problems, if anything?</b></p>	<p style="text-align: right;">Page 294</p> <p>1 could say March or April, in those months.</p> <p>2 <b>Q. Who was that, if you remember?</b></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 <b>Q. And you got the advice about using 6 lotion?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you use lotion?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. What kind of lotion is it?</b></p> <p>11 A. It's a -- a derma -- a derma -- I don't 12 know exactly what it's called.</p> <p>13 <b>Q. Is it over the counter or prescription?</b></p> <p>14 A. Prescription.</p> <p>15 <b>Q. Who prescribed it?</b></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 <b>Q. Does it help?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Have you told your health care people 22 this lotion isn't helping?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Do they have any advice?</b></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 <b>Q. So if you see fire, that brings back</b>  5 <b>these bad memories?</b>  6 A. Yes.  7 <b>Q. Anything else regarding PTSD?</b>  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 <b>Q. So you told me before that you're less</b>  23 <b>social, you're more withdrawn?</b>  24 A. Yeah.  25 <b>Q. With regard to working in the kitchen,</b></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 <b>Q. All right. So I wanted to ask you</b>  4 <b>briefly about Green's Gourmet and SkinnyFATS. You</b>  5 <b>testified before that Green's Gourmet -- which, by</b>  6 <b>the way, is that greens like we eat greens or is</b>  7 <b>that you, Green?</b>  8 A. Me.  9 <b>Q. So it's Josh Green's Gourmet?</b>  10 A. Yes.  11 <b>Q. That was a personal chef catering</b>  12 <b>business that you with started with someone named</b>  13 <b>Demetri and an investor, correct?</b>  14 A. Yes.  15 <b>Q. What's Demetri's last name?</b>  16 A. Townsend.  17 <b>Q. I'm sorry?</b>  18 A. Townsend. T-o-w-n-s-e-n-d, I believe.  19 <b>Q. And who was the investor?</b>  20 A. Tony Clark.  21 <b>Q. Is Green's Gourmet still in business?</b>  22 A. No.  23 <b>Q. Where is Demetri Townsend today, if you</b>  24 <b>know?</b>  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 <b>Q. So what equipment do you use now that you</b>  4 <b>didn't use before?</b>  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 <b>Q. So the gas equipment that you use would</b>  13 <b>be a flat top or a fryer, but am I correct that</b>  14 <b>it's not propane that you're using?</b>  15 A. No.  16 <b>Q. It's natural gas?</b>  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 <b>Q. Anything else you can think of that you</b>  23 <b>can't do or you don't do like you did before or</b>  24 <b>other symptoms you relate to PTSD, or have we</b>  25 <b>covered it?</b></p>	<p style="text-align: right;">Page 302</p> <p>1 <b>Q. The last time you knew where he was,</b>  2 <b>where was he?</b>  3 A. Las Vegas. But I haven't talked to him  4 since.  5 <b>Q. How about Tony Clark?</b>  6 A. No.  7 <b>Q. You did testify -- the words you used</b>  8 <b>were that they sideswiped you, that they, quote,</b>  9 <b>"pushed you out of the company."</b>  10 <b>What happened?</b>  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 <b>Q. Were you an investor yourself? Did you</b></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>
Page 308	Page 310
<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</p> <p>2 to work at a restaurant which had a thousand</p> <p>3 covers. I used to grab steaks off the grill, like,</p> <p>4 with my hands. And now I can't even touch</p> <p>5 something hot.</p> <p>6 <b>Q. I think that is, you know, an incredible</b></p> <p>7 <b>feat. I just want to put that on the record. He</b></p> <p>8 <b>could take something hot before and flip it?</b></p> <p>9 A. I mean, yeah. As a chef, and every chef</p> <p>10 will tell you, that when you build -- you build</p> <p>11 your tolerance.</p> <p>12 <b>Q. Right.</b></p> <p>13 <b>In your business, in your line of work,</b></p> <p>14 <b>do you ever use oven mitts?</b></p> <p>15 A. I use towels, which is like an oven mitt.</p> <p>16 <b>Q. Kind of like that, yeah.</b></p> <p>17 <b>Now --</b></p> <p>18 A. But now, anything that I grab -- like</p> <p>19 before, I used to grab stuff with either a damp</p> <p>20 towel or whatever, just grab it. And now it's like</p> <p>21 I have to make sure everything's dry, or like if I</p> <p>22 grab something -- the other day I grabbed something</p> <p>23 out of the oven that was sitting out for probably</p> <p>24 25, 30 minutes, out of the oven, I grabbed the pan</p> <p>25 and I dropped it right away because it was hotter</p>	<p style="text-align: right;">Page 333</p> <p>1 <b>Q. Did you see any kind of certifications</b></p> <p>2 <b>hanging on the wall in her -- in her house at all?</b></p> <p>3 A. I mean, no, but I, you know, I know she</p> <p>4 went through a lot of training and, you know, I</p> <p>5 definitely -- before it wasn't just the blind</p> <p>6 thing. Like I knew that she's worked with people</p> <p>7 and helped people.</p> <p>8 <b>Q. Does she have an office or does she work</b></p> <p>9 <b>out of her house?</b></p> <p>10 A. She works out of her house.</p> <p>11 <b>Q. Does she see other -- does she have other</b></p> <p>12 <b>clients that you know of?</b></p> <p>13 A. Yes.</p> <p>14 <b>Q. I just want to follow up on your itchy</b></p> <p>15 <b>hands.</b></p> <p>16 <b>You said that they have been itchy for</b></p> <p>17 <b>approximately about two months?</b></p> <p>18 A. Yep.</p> <p>19 <b>Q. Does that mean they were not itchy before</b></p> <p>20 <b>this incident?</b></p> <p>21 A. They were. Not to the point where I got</p> <p>22 to scratch them every couple hours or whatever.</p> <p>23 They just itch more than frequently, more than they</p> <p>24 did.</p> <p>25 <b>Q. Do you have any allergies?</b></p>
<p style="text-align: right;">Page 332</p> <p>1 than I can handle.</p> <p>2 <b>Q. You work for this Scott Sibley person.</b></p> <p>3 <b>How long have you worked for him now?</b></p> <p>4 A. Five months.</p> <p>5 <b>Q. Five months.</b></p> <p>6 <b>And did you know him before?</b></p> <p>7 A. Before the incident?</p> <p>8 <b>Q. No. Before working for him.</b></p> <p>9 A. No.</p> <p>10 <b>Q. And you work about four hours a day for</b></p> <p>11 <b>him?</b></p> <p>12 A. Yep.</p> <p>13 <b>Q. Do you have any assistants help you?</b></p> <p>14 A. No.</p> <p>15 <b>Q. Now, Lauren Unger, do you know if she has</b></p> <p>16 <b>any kind of certifications, professional</b></p> <p>17 <b>certifications?</b></p> <p>18 A. I believe so, yeah.</p> <p>19 <b>Q. Have you seen them or -- do you know?</b></p> <p>20 A. No. I believe so. I said -- that's all.</p> <p>21 She's -- from my understanding, she's a certified</p> <p>22 healer and shaman, whatever you want to call it.</p> <p>23 <b>Q. All right. You have lived with her for a</b></p> <p>24 <b>little bit of time, right?</b></p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 334</p> <p>1 A. I do.</p> <p>2 <b>Q. What?</b></p> <p>3 A. Demerol, codeine, and shellfish.</p> <p>4 <b>Q. Have you had in the last two months any</b></p> <p>5 <b>of those?</b></p> <p>6 A. No.</p> <p>7 <b>Q. Or before that?</b></p> <p>8 A. No.</p> <p>9 <b>Q. All types of shellfish or just --</b></p> <p>10 A. Red shellfish, crab, lobster, shrimp.</p> <p>11 <b>Q. All the good stuff.</b></p> <p>12 A. Yes.</p> <p>13 <b>Q. That us nice Jewish boys should be</b></p> <p>14 <b>eating.</b></p> <p>15 <b>So with the psychologist,</b></p> <p>16 <b>Michael Elliott, you've seen him one time, right?</b></p> <p>17 A. Yes.</p> <p>18 <b>Q. How many minutes or hours did you spend</b></p> <p>19 <b>with him on that first visit?</b></p> <p>20 A. I mean, I just did a testing visit with</p> <p>21 him. It was like two and a half hours.</p> <p>22 <b>Q. And it was you filling out forms?</b></p> <p>23 A. Me going through questions and -- yeah.</p> <p>24 <b>Q. Did he tell you the questions and you</b></p> <p>25 <b>provided answers or did you fill out --</b></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 "2"**

**Video Provided via  
Dropbox**

# **EXHIBIT “3”**

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

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

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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

Page 275	Page 277
<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>1 I N D E X  2 JOSHUA GREEN  3 Examination By Mr. McMullen  4 Examination By Ms. Winspear  5 Examination By Mr. Goldstein  6  7  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
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<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 &amp; 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>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.</p> <p>2 They said we were going to go over stuff on the</p> <p>3 1st. Just told me that I had -- from his findings,</p> <p>4 that I -- that I have PTSD on the situation, and</p> <p>5 that, you know, me working on grills or anything</p> <p>6 that has to do with potential fire, it definitely</p> <p>7 has a play on it.</p> <p>8 And, I mean, his whole thing is that he</p> <p>9 definitely thinks that there's trauma due to the</p> <p>10 incident.</p> <p>11 Q. Did he specifically diagnose you with</p> <p>12 PTSD as a result of this grill accident?</p> <p>13 A. I mean, he told me that he feels that it</p> <p>14 can and then that's why they're doing more tests</p> <p>15 and they're doing more -- that's why we're having</p> <p>16 more meetings and more sessions.</p> <p>17 Q. So if I understand, is his evaluation</p> <p>18 continuing or has he completed his --</p> <p>19 A. No. It's continuing.</p> <p>20 Q. So at this point he said it's a</p> <p>21 possibility that you have PTSD from this accident</p> <p>22 but that more evaluation is needed; is that true?</p> <p>23 A. Yes, and going more into a detailed</p> <p>24 psychological session, and that's what we're going</p> <p>25 on July 1st.</p>	<p style="text-align: right;">Page 285</p> <p>1 A. No.</p> <p>2 Q. Do you know what future tests he has in</p> <p>3 mind?</p> <p>4 A. No.</p> <p>5 Q. But some kind of testing you understand</p> <p>6 is slated for the next visit?</p> <p>7 A. Yes.</p> <p>8 Q. And that's on July 1?</p> <p>9 A. Yes.</p> <p>10 Q. Did you get any paperwork from him, any</p> <p>11 kind of report or test results from when you saw</p> <p>12 him on May 15?</p> <p>13 A. I believe everything was given to my</p> <p>14 lawyer.</p> <p>15 Q. Okay. Have you seen it?</p> <p>16 A. No.</p> <p>17 Q. Forgive me if I covered this before.</p> <p>18 Had you ever been diagnosed with PTSD</p> <p>19 before this accident?</p> <p>20 A. No.</p> <p>21 Q. Have you ever had any traumatic event</p> <p>22 before this accident that required any kind of</p> <p>23 professional care?</p> <p>24 A. No. I mean, I had a bad car accident,</p> <p>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</p> <p>2 Michael Elliott?</p> <p>3 A. Yes.</p> <p>4 Q. What kind of testing?</p> <p>5 A. I went in front of a computer and</p> <p>6 answered a bunch of questions.</p> <p>7 Q. Do you happen to know the name of that</p> <p>8 test, what it's called?</p> <p>9 A. No. I think it was like a Pearson's test</p> <p>10 or some straightforward test.</p> <p>11 Q. Do you recall how many questions were</p> <p>12 involved?</p> <p>13 A. Like 200. I don't even -- it was a lot.</p> <p>14 Q. How long did it take?</p> <p>15 A. Like two and a half hours, two hours.</p> <p>16 Q. Was it a multiple choice or an essay</p> <p>17 type?</p> <p>18 A. Multiple choice.</p> <p>19 Q. So you're given a question and then you</p> <p>20 have, what, three or four possible answers and you</p> <p>21 pick one of those?</p> <p>22 A. Yes.</p> <p>23 Q. Do you recall any other type of testing</p> <p>24 that you took on May 15 when you saw Michael</p> <p>25 Elliott for psychological evaluation?</p>	<p style="text-align: right;">Page 286</p> <p>1 from it.</p> <p>2 Q. You were seeing Lauren Unger, a shaman in</p> <p>3 Miami?</p> <p>4 A. Mm-hmm.</p> <p>5 Q. And what specifically were you seeing her</p> <p>6 for?</p> <p>7 A. I was seeing her for -- I've had a lot of</p> <p>8 businesses and I was, you know, taken advantage of</p> <p>9 in a couple ways. And I saw her because I was</p> <p>10 super negative in my life and saw a lot of things</p> <p>11 going in a negative spiral. So I went to her to</p> <p>12 fix -- to fix things and going into a better</p> <p>13 direction, positive and -- you know, kind of fix my</p> <p>14 life in different ways.</p> <p>15 Q. And that had to do in part, I think, from</p> <p>16 what you testified before, with what happened with</p> <p>17 Green Gourmet and SkinnyFATS?</p> <p>18 A. Yes.</p> <p>19 Q. That was a negative impact?</p> <p>20 A. Yes.</p> <p>21 Q. Psychologically?</p> <p>22 A. Yes. I mean, everything.</p> <p>23 Q. Right.</p> <p>24 Do you feel that you had recovered from</p> <p>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 <b>Q. Are you saying you work fewer hours 14 because you're afraid of being in a cooking 15 environment?</b></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 <b>Q. Is it getting any better?</b></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 <b>Q. Have you talked to any medical person 13 about these issues?</b></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 <b>Q. Was this a dermatologist in Henderson you 20 told me about last time?</b></p> <p>21 A. It was that one and then there was 22 another one.</p> <p>23 <b>Q. When was the last time you talked to any 24 professional about this?</b></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 <b>Q. Show us, if you would, where the blisters 12 and the itching occur.</b></p> <p>13 A. Blister here, blister here (indicating).</p> <p>14 <b>Q. Go like this so they can see.</b></p> <p>15 <b>Thank you.</b></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 <b>Q. So specifically regarding your hands, I'm 20 understanding that you have itching, you have 21 blisters, and you have scrapes?</b></p> <p>22 A. Yeah, and sensitivity issues.</p> <p>23 <b>Q. And sensitivity.</b></p> <p>24 <b>What are you doing to treat those 25 problems, if anything?</b></p>	<p style="text-align: right;">Page 294</p> <p>1 could say March or April, in those months.</p> <p>2 <b>Q. Who was that, if you remember?</b></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 <b>Q. And you got the advice about using 6 lotion?</b></p> <p>7 A. Yes.</p> <p>8 <b>Q. Do you use lotion?</b></p> <p>9 A. Yes.</p> <p>10 <b>Q. What kind of lotion is it?</b></p> <p>11 A. It's a -- a derma -- a derma -- I don't 12 know exactly what it's called.</p> <p>13 <b>Q. Is it over the counter or prescription?</b></p> <p>14 A. Prescription.</p> <p>15 <b>Q. Who prescribed it?</b></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 <b>Q. Does it help?</b></p> <p>20 A. No.</p> <p>21 <b>Q. Have you told your health care people 22 this lotion isn't helping?</b></p> <p>23 A. Yes.</p> <p>24 <b>Q. Do they have any advice?</b></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 <b>Q. So if you see fire, that brings back</b>  5 <b>these bad memories?</b>  6 A. Yes.  7 <b>Q. Anything else regarding PTSD?</b>  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 <b>Q. So you told me before that you're less</b>  23 <b>social, you're more withdrawn?</b>  24 A. Yeah.  25 <b>Q. With regard to working in the kitchen,</b></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 <b>Q. All right. So I wanted to ask you</b>  4 <b>briefly about Green's Gourmet and SkinnyFATS. You</b>  5 <b>testified before that Green's Gourmet -- which, by</b>  6 <b>the way, is that greens like we eat greens or is</b>  7 <b>that you, Green?</b>  8 A. Me.  9 <b>Q. So it's Josh Green's Gourmet?</b>  10 A. Yes.  11 <b>Q. That was a personal chef catering</b>  12 <b>business that you with started with someone named</b>  13 <b>Demetri and an investor, correct?</b>  14 A. Yes.  15 <b>Q. What's Demetri's last name?</b>  16 A. Townsend.  17 <b>Q. I'm sorry?</b>  18 A. Townsend. T-o-w-n-s-e-n-d, I believe.  19 <b>Q. And who was the investor?</b>  20 A. Tony Clark.  21 <b>Q. Is Green's Gourmet still in business?</b>  22 A. No.  23 <b>Q. Where is Demetri Townsend today, if you</b>  24 <b>know?</b>  25 A. I don't know.</p>
<p style="text-align: right;">Page 300</p> <p>1 <b>you do still cook in the kitchen, true?</b>  2 A. Yes, but very little.  3 <b>Q. So what equipment do you use now that you</b>  4 <b>didn't use before?</b>  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 <b>Q. So the gas equipment that you use would</b>  13 <b>be a flat top or a fryer, but am I correct that</b>  14 <b>it's not propane that you're using?</b>  15 A. No.  16 <b>Q. It's natural gas?</b>  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 <b>Q. Anything else you can think of that you</b>  23 <b>can't do or you don't do like you did before or</b>  24 <b>other symptoms you relate to PTSD, or have we</b>  25 <b>covered it?</b></p>	<p style="text-align: right;">Page 302</p> <p>1 <b>Q. The last time you knew where he was,</b>  2 <b>where was he?</b>  3 A. Las Vegas. But I haven't talked to him  4 since.  5 <b>Q. How about Tony Clark?</b>  6 A. No.  7 <b>Q. You did testify -- the words you used</b>  8 <b>were that they sideswiped you, that they, quote,</b>  9 <b>"pushed you out of the company."</b>  10 <b>What happened?</b>  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 <b>Q. Were you an investor yourself? Did you</b></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>
Page 308	Page 310
<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 “4”**

## 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:**

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**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**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:**

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**Sex:** M**Visit:** 09/02/2020 10:45AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Personal Injury**Subjective:**

Client shared about current symptoms including physiological, emotional and relational. He described having some flashbacks to personal injury accident, especially when he sees explosions on TV, or has to be near a barbecue at work. He shared about conflict with his wife related to his work schedule, and also explored his stress related to work. He reports working approximately 12 hour days and struggling with managing his time and self-care. Explored coping skills and scheduling strategies. He also set goal to schedule appointment with his neurologist which he has struggled to prioritize given his current work demands.

**Objective:**

Client presents with causal dress, and somewhat disheveled grooming. His attitude was cooperative throughout session. His speech was rapid but WNL. His affect was WNL, although typically flat. His mood was anxious, irritable and depressed. His thought process was goal directed. His thoughts were somewhat obsessive regarding work and economic concerns. No perceptual disturbances observed. He appeared oriented x4. Insight was fair.

**Assessment:**

Client presents with high anxiety related to work and recovery.

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
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified

**Problems:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder due to known physiological condition	10	F06.4		active	Oct. 7, 2020, 10 a.m.
Generalized anxiety disorder	10	F41.1		active	Oct. 7, 2020, 10 a.m.
Encounter for screening for traumatic brain injury	10	Z13.850		active	Oct. 7, 2020, 10 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:**

Continue with bi-weekly therapeutic coaching sessions to help meet recovery goals.

**Michael Elliott and Associates****Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 09/02/2020 10:45AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

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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**Sex:** M**Visit:** 09/16/2020 10:15AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Personal Injury**Subjective:**

Client shared that he was able to complete his goal of making appointment with his neurologist. He explored his current struggles/barriers including business and relational stress. He engaged with therapist to identify new goals and explore methods of prioritizing his time.

**Objective:**

Client presents with causal dress, and normal grooming. His attitude was cooperative throughout session. His speech was rapid but WNL. His affect was WNL, although typically flat. His mood was anxious and depressed. His thought process was goal directed. His thoughts were somewhat obsessive regarding work and economic concerns. No perceptual disturbances observed. He appeared oriented x4. Insight was fair.

**Assessment:**

Client presents with high anxiety related to work and recovery, especially related to past personal injuries.

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
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified

**Problems:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
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Generalized anxiety disorder	10	F41.1		active	Oct. 7, 2020, 10 a.m.
Encounter for screening for traumatic brain injury	10	Z13.850		active	Oct. 7, 2020, 10 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:**

Continue with bi-weekly therapeutic coaching sessions to help meet recovery goals.

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**Sex:** M**Visit:** 10/07/2020 10:30AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Personal Injury**Subjective:**

Client explored increased demands on his schedule and demonstrated increased insight into how this is impacting him emotionally- especially related to increased irritability. He explored his fatigue around ongoing recovery efforts. He was able to identify positive progress as well, and identified strategies for delegating his workload. He shared that his emotion anxiety is impacting his physical health as well. Worked well with therapist to identify strategies for coping and self-care.

**Objective:**

Client presents with causal dress, and normal grooming. His attitude was cooperative throughout session. His speech was rapid but WNL. His affect was WNL, although typically flat. His mood was anxious. His thought process was goal directed. His thoughts were somewhat obsessive regarding work and economic concerns. No perceptual disturbances observed. He appeared oriented x4. Insight was fair.

**Assessment:**

Client presents with high anxiety related to work and recovery, especially related to past personal injuries.

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
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified

**Problems:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder due to known physiological condition	10	F06.4		active	Oct. 7, 2020, 10 a.m.
Generalized anxiety disorder	10	F41.1		active	Oct. 7, 2020, 10 a.m.
Encounter for screening for traumatic brain injury	10	Z13.850		active	Oct. 7, 2020, 10 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:**

Continue with bi-weekly therapeutic coaching sessions to help meet recovery goals.

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**Sex:** M**Visit:** 10/21/2020 10:30AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Personal Injury**Subjective:**

Client shared about recent progress toward recovery goals including better prioritizing his time and delegating some of his work responsibilities. Client appeared in much better mood and shared about currently planning a belated wedding reception with his wife. Client explored goals of continuing his actions steps of time management and healthcare and shared about his plans to work on his spirituality, which helps him better manage his emotions.

**Objective:**

Client presents with causal dress, and normal grooming. His attitude was cooperative throughout session. His speech was rapid but WNL. His affect was mood congruent, although typically flat. His mood was euthymic to happy. His thought process was goal directed. His thoughts were somewhat obsessive regarding work and economic concerns. No perceptual disturbances observed. He appeared oriented x4. Insight was fair.

**Assessment:**

Client presents with moderate anxiety, demonstrating increased ability to prioritize his health and wellbeing compared with previous sessions.

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
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified

**Problems:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder due to known physiological condition	10	F06.4		active	Oct. 7, 2020, 10 a.m.
Generalized anxiety disorder	10	F41.1		active	Oct. 7, 2020, 10 a.m.
Encounter for screening for traumatic brain injury	10	Z13.850		active	Oct. 7, 2020, 10 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:**

Continue with bi-weekly therapeutic coaching sessions to help meet recovery goals.

**Michael Elliott and Associates****Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 10/21/2020 10:30AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

---

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**Sex:** M**Visit:** 11/04/2020 11:30AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:****Chief Complaint:** Personal Injury**Subjective:**

Client shared about continued progress toward his business and personal goals. He identified how is better managing his stress through making time for sleep and delegating responsibility when appropriate. He endorsed feeling increased motivation for changed recovery. He identified increased physical symptoms of headaches and explored possibility of making a doctors appointment to ensure his symptoms were not significant.

**Objective:**

Client presents with causal dress, and normal grooming. His attitude was cooperative throughout session. His speech was rapid but WNL. His affect was mood congruent, although typically flat. His mood was euthymic. His thought process was goal directed. His thoughts were somewhat obsessive regarding work and economic concerns. No perceptual disturbances observed. He appeared oriented x4. Insight was fair.

**Assessment:**

Client presents with moderate anxiety, demonstrating increased ability to prioritize his health and wellbeing compared with previous sessions.

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
ICD-10-CM Condition	F43.9	Reaction to severe stress, unspecified

**Problems:**

Description	ICD Ver.	ICD Dx Code	Snomed	Status	Diagnosed
Anxiety disorder due to known physiological condition	10	F06.4		active	Oct. 7, 2020, 10 a.m.
Generalized anxiety disorder	10	F41.1		active	Oct. 7, 2020, 10 a.m.
Encounter for screening for traumatic brain injury	10	Z13.850		active	Oct. 7, 2020, 10 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:**

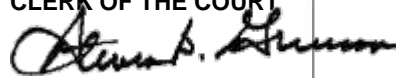
Continue with therapeutic coaching sessions to help meet recovery goals.

**Michael Elliott and Associates****Patient:** Joshua Green**Provider:** Dr. Michael Elliott**Office:** Henderson**DOB:** 02/12/1982**Sex:** M**Visit:** 11/04/2020 11:30AM**Chart:** GRJO000002**Address:** 1661 W Horizon Ridge Parkway Suite 280,  
Henderson, NV, 89012**Primary Payer ID:****Secondary Payer ID:**

---

Type	Code	Modifiers	Quantity	Description
CUSTOM	00004		1.00 UN	Coaching

# **EXHIBIT “5”**



**DCRR**  
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[fgalati@ocgas.com](mailto:fgalati@ocgas.com)  
Attorney for Defendant  
FERRELLGAS, INC.

MICHAEL C. MCMULLEN, ESQ.  
Missouri Bar No. 33211 *Pro Hac Vice*  
GREGORIO V. SILVA, ESQ.  
Nevada Bar No. 13583  
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[mmcmullen@bscr-law.com](mailto:mmcmullen@bscr-law.com)  
[gsilva@bscr-law.com](mailto: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.  
16

17          13.      Plaintiff has put his past mental and physical condition at issue in this litigation.  
18

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.  
28

          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.  
23

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.  
27  
28

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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 21<sup>st</sup> 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 5<sup>th</sup> 2021**

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

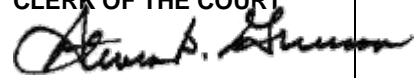
Electronically filed and served counsel on Dec. 22<sup>nd</sup>, 2020, Pursuant to N.E.F.C.R. Rule 9.

By

Natilie Simonette  
COMMISSIONER DESIGNEE

FELICIA GALATI, ESQ.

# **EXHIBIT “6”**



**NOTC**  
Jared R. Richards, Esq.  
Nevada Bar No. 11254  
Dustin E. Birch, Esq.  
Nevada Bar No. 10517  
CLEAR COUNSEL LAW GROUP  
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Facsimile: (702) 924-0709  
jared@clearcounsel.com  
dustin@clearcounsel.com  
*Attorneys for Plaintiff*  
*Kalena Davis*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KALENA DAVIS, an individual  
Plaintiff,

CASE NO.: A-18-777455-C

DEPT. NO.: XIII

vs.

ADAM DERON BRIDEWELL, an  
individual; LYFT, INC., a foreign  
corporation; THE HERTZ  
CORPORATION, a foreign corporation;  
DOE OWNERS I through X; and ROE  
LEGAL ENTITIES I through X, inclusive,

Defendants.

**NOTICE OF ENTRY OF ORDER**  
**RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

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1 Notice is hereby given that an Order Re: Discovery Commissioner's Report and  
2 Recommendations was entered by the above-referenced Court on the 18<sup>th</sup> day of September 2020.  
3 A copy of said Order is attached hereto for reference.

4 DATED this 18<sup>th</sup> day of September 2020.

6 CLEAR COUNSEL LAW GROUP

8 /s/ Jared R. Richards  
9 Jared R. Richards, Esq.  
Nevada Bar No. 11254  
10 Dustin E. Birch, Esq.  
Nevada Bar No. 10517  
11 1671 W. Horizon Ridge Pkwy, Suite 200  
Henderson, NV 89012  
12 *Attorneys for Plaintiff*  
13 *Kalena Davis*

**CERTIFICATE OF SERVICE**

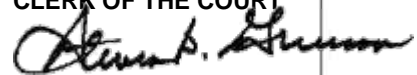
I certify pursuant to NRCP 5(b)(4) that on the 18th day of September 2020, I caused a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER RE: DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS** to be served as follows:

- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Henderson, Nevada, enclosed in a sealed envelope upon which first Class postage was fully prepaid to ; and/or
- ☐ pursuant to EDCR 7.26, by sending it via facsimile; and/or
- ☐ by hand delivery
- ☒ E-service

Karen M. Berk	kmb@thorndal.com
Master Calendar	calendar@thorndal.com
Meghan M. Goodwin	mmg@thorndal.com
Michael C. Hetey	mch@thorndal.com
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Abigail Prince	abigail.prince@lewisbrisbois.com
Jason Revzin	jason.revzin@lewisbrisbois.com
Justin Gourley	eservice@harperselim.com

/s/ Terri D. Szostek

An employee of Clear Counsel Law Group



**ORDR**

Jared R. Richards, Esq.

Nevada Bar No. 11254

Dustin E. Birch, Esq.

Nevada Bar No. 10517

**CLEAR COUNSEL LAW GROUP**

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*Attorneys for Plaintiff*

*Kalena Davis*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KALENA DAVIS, an individual

Plaintiff,

vs.

ADAM DERON BRIDEWELL, an  
individual; LYFT, INC., a foreign  
corporation; THE HERTZ  
CORPORATION, a foreign corporation;  
DOE OWNERS I through X; and ROE  
LEGAL ENTITIES I through X, inclusive,

Defendants.

CASE NO.: A-18-777455-C

DEPT. NO.: XIII

**ORDER**

**RE: DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

Date of Hearing: April 9, 2020

Time of Hearing: 10:00 a.m.

The Court, having reviewed the above Report and Recommendations prepared by the  
Discovery Commissioner and,

\_\_\_\_\_ No timely objection having been filed,

*Davis v. Bridewell, et al.*  
*A-18-777455-C*  
*April 9, 2020, at 10:00 a.m.*

✓

After reviewing the objections to the Report and Recommendations and good cause appearing,

✓

IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted.

IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations are affirmed and adopted as modified in the following manner:

(attached hereto).

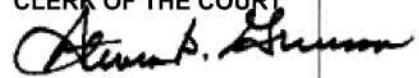
IT IS HEREBY ORDERED this matter is remanded to the Discovery Commissioner for reconsideration or further action.

IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for \_\_\_\_\_, 2020, at \_\_\_\_\_ a.m./p.m.

DATED this 18 day of September, 2020.



DISTRICT JUDGE



**DCRR**

Jared R. Richards, Esq.  
Nevada Bar No. 11254  
Dustin E. Birch, Esq.  
Nevada Bar No. 10517  
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dustin@clearcounsel.com  
*Attorneys for Plaintiff  
Kalena Davis*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

KALENA DAVIS, an individual  
Plaintiff,

vs.

ADAM DERON BRIDEWELL, an  
individual; LYFT, INC., a foreign  
corporation; THE HERTZ  
CORPORATION, a foreign corporation;  
DOE OWNERS I through X; and ROE  
LEGAL ENTITIES I through X, inclusive,

Defendants.

CASE NO.: A-18-777455-C

DEPT. NO.: XIII

**DISCOVERY COMMISSIONER'S  
REPORT AND RECOMMENDATIONS**

Date of Hearing: April 9, 2020

Time of Hearing: 10:00 a.m.

**APPEARANCES:**

*Attorney for Plaintiff Kalena Davis*

Jared R. Richards, Esq.  
Clear Counsel Law Group

*Attorney for Defendant Adam Deron Bridewell*

Justin D. Gourley, Esq.  
Harper Selim

*Attorney for Defendants Lyft, Inc.  
and The Hertz Corporation*

Jason G. Revzin Esq. and Blake A. Doerr, Esq.  
Lewis Brisbois Bisgaard & Smith, LLP

**I. FINDINGS**

1. During the Discovery Commissioner's February 13, 2020, Hearing regarding Defendants' Motion to Compel Rule 35 Examinations, the Commissioner requested that the parties provide additional briefing regarding the interrelationship and conflicts between NRCP 35 and NRS Section 52.380.

2. The parties provided such additional briefing, which came before the Commissioner for Hearing on April 9, 2020. The Commissioner makes the following Report of its findings of fact and conclusions of law, and the subsequent Recommendation to the District Court:

3. Conflicts between Nevada Rules of Civil Procedure 35 (the "Rule") and NRS Section 52.380 (the "Statute") are as follows:

- (a) whether a party's attorney, or a representative of that attorney, may serve as an observer during the examination (which is barred by the Rule but permitted by the Statute);
- (b) whether a party may have an observer during a neuropsychological, psychological, or psychiatric examination without making a showing of "good cause" (which showing is also required by the Rule but not required by the Statute); and
- (c) whether the observer may record the examination without making a showing of "good cause" (which showing is required by the Rule but not required by the Statute).

4. Each of these conflicts is irreconcilable, such that it is not possible to construe the Rule and the Statute in harmony. If the Rule is followed on any of these points, the Statute by definition is not followed. If the Statute is followed on any of these points, the Rule by definition is not followed.

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*Davis v. Bridewell, et al.*  
*A-18-777455-C*  
*April 9, 2020, at 10:00 a.m.*

5. Under Nevada law, the judiciary has the exclusive prerogative to make rules governing its own procedures, while the Legislature has the exclusive prerogative to enact statutes governing the substance of the law. *State v. Connery*, 99 Nev. 342, 345 (1983)

6. This distinction is predicated upon the “separation of powers” doctrine, which is specifically recognized in the Nevada State Constitution. *Berkson v. LePome*, 126 Nev. 492, 498 (2010) (citing Nev. Const. art. 3, § 1(1)).

7. Under Nevada law, a statute is presumed constitutionally valid until its invalidity has been “clearly established.” *List v. Whisler*, 99 Nev. 133, 137-38 (1983). “In case of doubt, every possible presumption will be made in favor of the constitutionality of a statute, and courts will interfere only when the Constitution is clearly violated.” *Id.* This “presumption of constitutional validity places upon those attacking a statute the burden of making a clear showing that the statute is unconstitutional.” *Id.* (emphasis added).

8. A single question is presented here: whether the Statute is procedural or substantive. If the Statute is substantive, the Statute governs where a conflict arises. If the Statute is procedural, it is unconstitutional (and therefore superseded by the Rule) to the extent that the Statute is both procedural and in conflict with the Rule.

9. A substantive standard is one that “creates duties, rights and obligations,” while a procedural standard specifies how those duties, rights, and obligations should be enforced. *Azar v. Allina Health Servs.*, 139 S. Ct. 1804, 1811 (2019).

10. The Statute creates substantive rights, including the right of the examinee to have his or her attorney or that attorney’s representative serve as the observer, the right to have the observer record the examination without making a showing of “good cause,” and the right to have an observer present for a neuropsychological, psychological, or psychiatric examination without making a showing of “good cause.”

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*Davis v. Bridewell, et al.*  
*A-18-777455-C*  
*April 9, 2020, at 10:00 a.m.*

11. Because the Statute creates substantive rights, it is substantive rather than procedural.

12. Because the Statute is substantive, it governs and supersedes the Rule where the two conflict.

13. An individual submitting to an examination under NRCP 35 has the following substantive rights, pursuant to NRS Section 52.380: to have his or her attorney or that attorney's representative serve as the observer; have the observer record the examination without making a showing of "good cause"; and to have an observer present for a neuropsychological, psychological, or psychiatric examination without making a showing of "good cause."

## II. RECOMMENDATIONS

**IT IS HEREBY RECOMMENDED** that, during any NRCP 35 examination of Plaintiff Kalena Davis ~~(or of any other individual in this matter)~~ <sup>ED</sup> in this matter ordered by the Discovery Commissioner or the District Judge, the individual submitting to the examination be permitted to have an observer present, without regard to the nature of the examination (e.g., neuropsychological, psychological, or psychiatric, and without any requirement of a showing of "good cause" to the Court.

**IT IS FURTHER RECOMMENDED** that, during any NRCP 35 examination of Plaintiff Kalena Davis ~~(or of any other individual)~~ <sup>ED</sup> in this matter ordered by the Discovery Commissioner or the District Judge, the observer attending the examination may be any person of the examinee's choosing, including but not limited to the examinee's attorney or that attorney's representative.

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*Davis v. Bridewell, et al.*



IT IS FURTHER RECOMMENDED that, during any NRCP 35 examination of Plaintiff Kalena Davis ~~(or of any other individual in this matter)~~ in this matter ordered by the Discovery Commissioner or the District Judge, the observer attending the examination may make an audio or stenographic recording of the examination without any requirement of a showing of "good cause" to the Court.

DATED this 14th day of August, 2020.



DISCOVERY COMMISSIONER

Respectfully submitted by:

Approved as to Form and Content:

**CLEAR COUNSEL LAW GROUP**

**HARPER | SELIM**

/s/ Jared R. Richards

/s/ Justin Gourley

Jared R. Richards, Esq.  
Nevada State Bar No. 11254  
Dustin E. Birch, Esq.  
Nevada State Bar No. 10517  
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*Attorneys for Plaintiff  
Kalena Davis*

James E. Harper, Esq.  
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*Attorneys for Defendant  
Adam Deron Bridewell*

**LEWIS BRISBOIS BISGAARD &  
SMITH, LLP**

/s/ Blake A. Doerr

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Blake A. Doerr, Esq.  
Nevada Bar No. 9001  
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Las Vegas, NV 89118  
*Attorneys for Defendants Lyft, Inc.  
And The Hertz Corporation*

*Davis v. Bridewell, et al.*  
*A-18-777455-C*  
*April 9, 2020, at 10:00 a.m.*

**NOTICE**

Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) calendar 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 September 1, 2020.**

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

\_\_\_\_\_ Mailed to Defendants at the following addresses on the \_\_\_\_\_ day of \_\_\_\_\_ 2020.

James E. Harper, Esq.  
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**HARPER | SELIM**  
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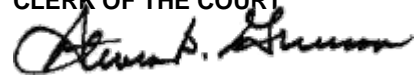
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Suite 600  
Las Vegas, NV 89118  
*Attorneys for Defendant Lyft, Inc.*  
*And The Hertz Corporation*

☒ Electronically filed and served counsel on the 18 day of August 2020,  
pursuant to N.E.F.C.R. Rule 9.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2020.

By:

Nathalie Simonard  
COMMISSIONER DESIGNEE



1 **SAC**

2 Marjorie L. Hauf, Esq.  
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5 Nevada Bar No.: 11439  
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13 Attorneys for Plaintiff,  
14 *Joshua Green*

15 DISTRICT COURT  
16 CLARK COUNTY, NEVADA

17 \* \* \*

18 **Joshua Green**, an individual,

19 Plaintiff,

20 vs.

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

26 Defendants.

27 **Mario S. Gonzalez**, an individual;

28 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

**Second Amended Complaint**



**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, being present and represented by his attorney of record, Matthew G. Pfau of Parry & Pfau, hereby complains against Defendants as follows:

**Parties, Jurisdiction, and General Allegations**

1. Plaintiff Joshua Green has at all relevant times been a resident of Clark County, Nevada.

2. Defendant Ferrellgas, Inc., is a foreign corporation authorized to conduct business and conducting business in Clark County, Nevada.

3. Josh is informed and believes, and thereupon alleges, that Mario S. Gonzales has at all relevant times been a resident of Clark County, Nevada.

4. Josh is informed and believes, and thereupon alleges, that Carl J. Kleisner has at all relevant times been a resident of Clark County, Nevada.

5. Joshua does not currently know the identities of doe and roe defendants, but believes they also proximately caused Joshua's injuries, including as participants in the use, maintenance, or creating of the appliance and appliance space. The negligence of the doe and roe defendants includes participants with any listed defendants in the act of negligence, including as agents or co-conspirators. They also include persons or entities in the chain of distribution of the appliance. Joshua will amend this complaint if he discovers their true names.

6. This Court has jurisdiction over this matter under NRS 14.065 and NRS 4.370(1), as the facts alleged occurred in Clark County, Nevada and involve an amount in controversy in excess of \$15,000.00.

7. Venue is proper pursuant to NRS 13.040, as Defendant, or any one of them,

1 resided in Clark County, Nevada at the commencement of this action.

2  
3 **Factual Background**

4 8. Mario Gonzales owns and lives in a home located at 5865 West Post Road, Las  
5 Vegas, Nevada 89118.

6 9. Mario's backyard features a built-in tiled horseshoe bar equipped with a gas  
7 barbecue grill and broiler.

8 10. A handyman, alleged here as Doe Defendant, was hired by Mario to install the  
9 grill and components, including the gas and electrical lines.

10 11. Ferrellgas, Inc. was used by Mario to install and maintain the gas lines for his  
11 home.

12 12. Ferrellgas, Inc. sent a technician to Mario's home to service the gas lines on  
13 the premises, including the grill, on or shortly prior to June 18, 2018 due to Mario's  
14 complaint that the gas lines felt abnormally warm to the touch.

15 13. An electrician, Carl Kleisner, was hired by Mario to perform electrical  
16 maintenance work on the outdoor features of Mario's backyard, including the built-  
17 in bar and grill area on or in the days prior to June 18, 2018.

18 14. Upon information and belief, Carl Kleisner is or was an employee of a Roe  
19 Defendant.

20 15. On June 18, 2018, Mario had a gathering of friends at his house and was  
21 cooking steaks on the grill top of the built-in bar.

22 16. Mario closed the lid and stepped away from the grill for several minutes.  
23 Joshua Green, a guest of Mario's, stepped forward to check the steaks in Mario's  
24 absence.

25 17. As Joshua lifted the lid, Mario's grill exploded.

26 18. The explosion consumed Joshua's person and left him engulfed in fire. Joshua  
27 launched himself into the grass sprinklers to extinguish the flames.

28 19. Joshua sustained painful burns of varying degrees to his hands, arms, and

midsection.

20. Joshua can no longer be exposed to hot or cold temperatures due to the sensitivity of his skin, creating a burden on his career as a chef.

21. Joshua's pain and limited functionality could have been avoided had Mario and associated hired technicians and contractors acted within their reasonable responsibly to keep Mario's premises safe from injury.

**First Cause of Action**  
**(Negligence – Ferrellgas, Inc.)**

1. Joshua incorporates his prior allegations here.

2. At all relevant times, Ferrellgas, Inc. owed a duty to Mario Gonzales and any guests on Mario Gonzales's premises to ensure the gas lines to the home, including the grill, were in working order.

3. Ferrellgas, Inc. carelessly maintained the gas lines in the days prior to Joshua Green's visit, permitting an unreasonably dangerously condition to Joshua.

4. Ferrellgas, Inc. and or its agents, employees and servants had actual or constructive notice of the danger the warm gas line represented, and therefore had full knowledge of, or should have had full knowledge of, the dangerous condition and failed to remedy the dangerous condition, give sufficient notice of the condition, or otherwise take action to make the gas lines safe for use.

5. Joshua has information to cause him to believe that had notice of gas line repair or maintenance been given, he would not have been injured or his injuries would have been greatly diminished.

6. As a direct and proximate result of Ferrellgas, Inc.'s negligence, Joshua has and will continue to incur losses in an amount excess of \$15,000.00.

7. As a further and direct result of Ferrellgas, Inc.'s actions, Joshua had to retain an attorney to prosecute this action and are entitled to their reasonable attorney's fees and costs.

**Second Cause of Action**

**(Negligence – Mario S. Gonzales)**

8. Joshua incorporates his prior allegations here.

9. At all relevant times, Mario was in control of his home and had a duty to maintain and inspect the home, including the grill and bar, and to protect the persons present, including Joshua.

10. Mario is responsible for the safety of his guests in his home, ensuring that dangerous conditions are not present, or ensuring that guests, including Joshua, are warned of all dangerous conditions.

11. Mario knew, or should have known, that the grill or components to the grill were malfunctioning, which is evidenced by his hiring of an electrician and a Ferrellgas, Inc. technician to service his home in the days leading to the explosion.

12. Joshua believes, based on the information available to him, that had the grill been properly maintained or repaired by Mario, it would not have exploded, and he would not have been injured.

13. Mario breached his duty of care when he did not properly maintain the grill or warn of the dangerous condition.

14. As a direct and proximate result of Mario's negligence, Joshua has and will continue to incur losses in an amount in excess of \$15,000.00.

15. As a further and direct result of the actions of Mario Gonzales, Joshua had to retain an attorney to prosecute this action and are entitled to their reasonable attorney's fees and costs.

**Third Cause of Action**

**(Negligence – Carl J. Kleisner)**

16. Joshua incorporates his prior allegations here.

17. At all relevant times, Carl J. Kleisner owed a duty to Mario Gonzales and all guests on Mario's premises to ensure the electrical lines to the home, including the



1 grill, were in working order.

2 18. Carl carelessly maintained or repaired the electrical lines in the days prior to  
3 Joshua Green's visit, permitting an unreasonably dangerously condition to Joshua.

4 19. Joshua has information to cause him to believe that had the electrical lines to  
5 the home and grill been responsibly maintained or repaired, he would not have been  
6 injured or his injuries would have been greatly diminished.

7 20. As a direct and proximate result of Carl Kleisner's negligence, Joshua has and  
8 will continue to incur losses in an amount excess of \$15,000.00.

9 21. As a further and direct result of Carl Kleisner's actions, Joshua had to retain an  
10 attorney to prosecute this action and are entitled to their reasonable attorney's fees  
11 and costs.

12  
13 **Fourth Cause of Action**

14 **(Negligence/Vicarious Liability – Roe Defendant)**

15 22. Joshua incorporates his prior allegations here.

16 23. Carl Kleisner was an agent or employee or both of Roe Defendant.

17 24. Carl Kleisner, at the time of service to the grill or other electrical components  
18 on the premises, was acting within the course and scope of his employment for and  
19 acting in furtherance of the interests of Roe Defendant.

20 25. Roe Defendant is vicariously liable for Joshua's damages resulting from the  
21 careless acts of their employee and agent, Carl Kleisner.

22 26. Upon information and belief, Roe Defendant was aware or should have been  
23 aware of Carl's electrical services to clients using tools, supplies, and training  
24 provided by Roe Defendant.

25 27. Roe Defendnat is liable for the professional negligence of their employees,  
26 including Carl, under one or more of the following: agency as principal of a tortfeasor  
27 acting within the course or scope of the agency relationship, partnership,  
28 contractual, respondent superior, vicarious liability, or any combination of such.

28. Roe Defendant breached their duty of care by failing to put into place proper employee supervision protocols.

29. As a direct and proximate result of Roe Defendant breach of duty, Joshua has suffered losses in excess of \$15,000.00.

30. As a further and direct result of Roe Defendant actions, Joshua had to retain an attorney to prosecute this action and are entitled to their reasonable attorney's fees and costs.

**Fifth Cause of Action  
(Negligence – Doe Defendant)**

31. Joshua incorporates his prior allegations here.

32. Doe Defendant was a handyman hired by Mario Gonzales to install the grill in the built-in bar.

33. At all relevant times, Doe Defendant owed a duty to Mario Gonzales and all guests on Mario's premises to ensure the grill and components to the grill, such as electrical wiring and gas lines, were installed properly.

34. Doe Defendant carelessly installed the grill and components to the grill, permitting an unreasonably dangerous condition to guests on the premises, including Joshua.

35. Joshua has information to cause him to believe that had the grill been installed properly, he would not have been injured or his injuries would have been greatly diminished.

36. As a direct and proximate result of Doe Defendant's actions, Joshua has and will continue to incur losses in an amount excess of \$15,000.00.

37. As a further and direct result of Doe Defendant's actions, Joshua had to retain an attorney to prosecute this action and are entitled to their reasonable attorney's fees and costs.

**Sixth Cause of Action**

**(Negligent Training - Ferrellgas, Inc.)**

38. Joshua incorporates his prior allegations here.

39. Ferrellgas, Inc. acted in a negligent matter, including but not limited, to its choice not to:

- a) Properly and adequately train employees, including propane system technicians, and instruct them as to their job duties and responsibilities;

40. As a direct and proximate result of Ferrellgas, Inc.'s Negligent Training, Joshua has and will continue to incur losses in an amount excess of \$15,000.00.

41. As a further and direct result of Ferrellgas, Inc.'s actions, Joshua had to retain an attorney to prosecute this action and are entitled to their reasonable attorney's fees and costs.

**Sixth Cause of Action**

**(Negligent Maintenance - Ferrellgas, Inc.)**

42. Joshua incorporates his prior allegations here.

43. Ferrellgas, Inc. acted in a negligent matter, including but not limited, to its choice not to:

- a) Establish, implement, maintain, and enforce proper policies and procedures for employees, including propane system technicians, propane system maintenance crew, propane installation staff, propane system supervisors and managers, or agents under their control;
- b) Establish, implement, maintain, and enforce proper policies and procedures for installation, maintenance, inspection, leak tests, and general upkeep of their propane system lines, including the Gonzalez property;
- c) Establish implement, maintain, and enforce proper policies and procedures warning patrons, customers, bulk residential buyers, and

1 guests, of potentially dangerous conditions, including leaking or failing  
2 propane lines;

3 d) Properly and adequately supervise and manage employees, including  
4 propane system technicians, once they were hired;

5 e) Properly and adequately delineate maintenance and inspection  
6 responsibilities to employees and agents acting on their behalf; and

7 f) Properly, adequately, and responsibly set up mechanisms to ensure that  
8 all areas and equipment, including the Gonzalez property, are reasonably  
9 kept safe for patrons, customers, bulk residential buyers, and guests,  
10 including Joshua Green and the Gonzalez family;

11 44. As a direct and proximate result of Ferrellgas, Inc.'s Negligent Maintenance  
12 Joshua has and will continue to incur losses in an amount excess of \$15,000.00.

13 45. As a further and direct result of Ferrellgas, Inc.'s actions, Joshua had to retain  
14 an attorney to prosecute this action and are entitled to their reasonable attorney's  
15 fees and costs.

### 16 17 **Sixth Cause of Action**

#### 18 **(Negligent Supervision - Ferrellgas, Inc.)**

19 46. Joshua incorporates his prior allegations here.

20 47. Ferrellgas, Inc. acted in a negligent matter, including but not limited, to its  
21 choice not to:

22 a) Properly and adequately supervise and manage employees, including  
23 propane system technicians, once they were hired;

24 b) Properly and adequately oversee, control, and issue regulations regarding  
25 the conduct of employees, including propane system technicians,;

26 48. As a direct and proximate result of Ferrellgas, Inc.'s Negligent Supervision  
27 Joshua has and will continue to incur losses in an amount excess of \$15,000.00.

28 49. As a further and direct result of Ferrellgas, Inc.'s actions, Joshua had to retain

1 an attorney to prosecute this action and are entitled to their reasonable attorney's  
2 fees and costs.

3  
4 **Punitive Damages**

5 **[NRS 42.005]**

6 50. Joshua incorporates the prior allegations here.

7 51. Joshua seeks an award of punitive damages per NRS 42.001 et seq. for  
8 Defendants' malicious, fraudulent, or oppressive conduct, including a conscious  
9 disregard of the rights or safety of others, including Joshua.

10  
11 **Prayer for Relief**

12 Wherefore, Joshua prays for judgment of this Court as follows:


- 13 1. General and special damages in excess of Fifteen Thousand Dollars  
14 (\$15,000.00);  
15 2. Punitive damages to be determined by a trier of fact;  
16 3. Cost of Suit and attorneys' fees as provided by law;  
17 4. Interest as provided by law; and  
18 5. Such other and further relief as the Court may deem just and proper.

19  
20 **Jury Demand**

21 Joshua Green hereby demands a trial by jury.

22 DATED this 11th day of January 2021.

H & P LAW

23  
24   
25 Marjorie Hauf, Esq.  
Nevada Bar No.: 8111  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439

26 Attorneys for Plaintiff,  
27 *Joshua Green*  
28

## Certificate of Service

I hereby certify that on the 11th day of January 2021, service of the foregoing **Second Amended Complaint** was made by required electronic service to the following individuals:

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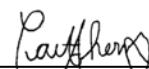
James P.C. Silvestri, Esq.  
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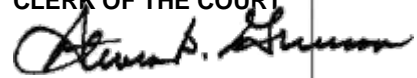
Attorneys for Defendant,  
*Mario S. Gonzalez*

Attorneys for Defendant,  
*Ferrellgas, Inc.*

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Attorney for Defendant,  
*Carl J. Kleisner*

  
An Employee of H & P LAW



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10 Attorney for Defendant  
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14 GREGORIO V. SILVA, ESQ.  
15 Nevada Bar No. 13583  
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17 2400 Pershing Road, Suite 500  
18 Kansas City, MO 64108  
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22 [gsilva@bscr-law.com](mailto:gsilva@bscr-law.com)  
23 Attorneys for Defendant  
24 FERRELLGAS, INC.

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOSHUA GREEN;

18 Plaintiff,

19 vs.

20 FERRELLGAS, INC. et al.,

21 Defendants.

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

**Discovery Commissioner's Report and  
Recommendations**

22  
23 

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AND RELATED ACTIONS  
24  
25  
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**DISCOVERY COMMISSIONER'S**  
**REPORT and RECOMMENDATIONS**

Date of Hearing: December 10, 2020

Time of Hearing: 10:00 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 but the scope of  
the examination is at issue.

4. Nevada Rules of Civil Procedure 35 precludes an observer from attending a  
neuropsychological, psychological or psychiatric examination.

5. Nevada Rules of Civil Procedure 35 preclude any observer from interfering,  
obstructing, or participating in any Rule 35 examination.



6. Nevada Revised Statute 52.380 provides a substantive right to have an observer attend a mental or physical examination; which this Court finds involves a

7. Nevada Revised Statute 52.380 precludes an observer from participating or disrupting a mental or physical examination.

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

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

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

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

12. A Rule 35 mental examination regarding psychological issues or neuropsychological issues is somewhat more involved than what would be allowed for a physical examination.

## RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Defendants' Motion to Order an NRCP  
35 Examination is GRANTED in part and DENIED in part.

IT IS FURTHER RECOMMENDED that Plaintiff shall be Ordered to appear for a Rule 35 examination at the office of Dr. Lewis Etcoff on March 3, 2021.

IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question Plaintiff's entire medical condition for the last five years.

IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question Plaintiff's medical condition for the body parts and conditions at issue in this litigation for the last ten years.

1 IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question  
2 Plaintiff generally about concentration and memory issues throughout his life.

3 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an observer  
4 present during the Rule 35 examination pursuant to NRS 52.380.

5 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an audio  
6 recording made of the Rule 35 examination pursuant to NRS 52.380.

7 IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to  
8 inquire into whether Plaintiff had a previous medical diagnosis.

9 IT IS FURTHER RECOMMENDED that Defendants shall provide a list of the testing  
10 Dr. Etcoff will conduct during the neuropsychological exam two weeks before the Rule 35  
11 examination.

12 The Discovery Commissioner met with counsel and discussed the issues noted above.  
13 Having reviewed the materials offered in support of this recommendation, she hereby submits  
14 the above recommendations.

15 DATED this 11<sup>th</sup> day of ~~December 2020~~ January 2021.

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DISCOVERY COMMISSIONER

Submitted by  
BAKER STERCHI COWDEN & RICE

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

1 Approved as to form and content

2 H&P Law

3 /s/ Matt G. Pfau

4 Matt G. Pfau, ESQ.  
5 Nevada Bar No. 11439  
6 H&P Law  
Attorneys for Plaintiff,  
Joshua Green

7 DENNETT WINSPEAR

8 /s/ Gina Winspear

9 Gina Gilbert Winspear, ESQ.  
10 Nevada Bar No. 5552  
11 Dennett Winspear  
Attorney for Defendant  
Carl J. Kleisner

12 PYATT, SILVESTRI

13 /s/ Steven M. Goldstein

14 Steven M. Goldstein, ESQ.  
15 Nevada Bar No. 6318  
16 Pyatt Silvestri  
Attorneys for Defendant  
Mario Gonzalez

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1  
2 **NOTICE**

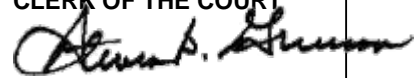
3 Pursuant to NRCP 16.3(c)(2), you are hereby notified that within fourteen (14) days after  
4 being served with a report any party may file and serve written objections to the  
5 recommendations. Written authorities may be filed with objections, but are not mandatory.  
6 If written authorities are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

8  
9 **Objection time will expire on** January 26, 2021 **2020.**

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

11  
12 ✓ 13 Electronically filed and served counsel on January 12, 2021, Pursuant to  
14 N.E.F.C.R. Rule 9.

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28  
By: Natilie Semionetti  
COMMISSIONER DESIGNEE



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Attorneys for Defendant  
FERRELLGAS, INC.

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

**Hearing Date: 1/26/2021**

**Hearing Time: 9:30 a.m.**

COME NOW Defendants FERRELLGAS, INC., MARIO GONZALEZ and CARL  
KLEISNER, by and through their attorneys of record, and hereby submit this Supplement to

Defendants’ Objection to the Discovery Commissioner’s Report and Recommendation E-Filed On December 22, 2020 (“DCRR”). This Supplement is made and based on the attached Points and Authorities, all papers and pleadings on file herein, and such oral argument as the Court may entertain at the hearing of Defendants’ Objection.

## **POINTS AND AUTHORITIES**

### **I.**

#### **INTRODUCTION**

The purpose of this Supplement is to provide the Court with the Discovery Commissioner’s second Report and Recommendation e-filed on January 12, 2021<sup>1</sup> also relating to the Rule 35 Examination.

### **II.**

#### **PROCEDURAL AND FACTUAL BACKGROUND**

On December 10, 2020, the parties attended a follow-up hearing regarding Defendants’ Motion to Compel an Independent Neuropsychological Examination of Plaintiff and the scope of the examination. On December 16, 2020, the Discovery Commissioner conducted a telephonic hearing with the parties on various outstanding issues relating to the Motion.

On January 5, 2021, Defendants filed their Objection to the Discovery Commissioner’s Report and Recommendation e-filed on December 22, 2020. On January 11, 2021, Plaintiff filed his “Reply” thereto. On January 12, 2021, the Discovery Commissioner’s second Report and Recommendation (“Second DCRR”) regarding Defendants’ Motion was filed. Consistent with the DCRR e-filed on December 22, 2020, the second DCRR made the following findings:

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<sup>1</sup> See Second DCRR, Exhibit L hereto.

4. Nevada Rules of Civil Procedure 35 precludes an observer from attending a neuropsychological, psychological or psychiatric examination.
5. Nevada Rules of Civil Procedure 35 preclude any observer from interfering, obstructing, or participating in any Rule 35 examination
6. Nevada Revised Statute 52.380 provides a Plaintiff may have an observer attend a mental or physical examinations; which this Court finds involves a substantive right.
7. Nevada Revised Statute 52.380 precludes an observer from participating or disrupting a mental or physical examination.
8. There is a clear dispute between the language of NRCP 35 and NRS 52.380.
9. The Court is tasked with reading NRCP 35 in conjunction with NRS 52.380.
10. The Court finds that under NRS 52.380 Plaintiff will be allowed to have an observer present during any psychological or neuropsychological examination in this matter.
11. The Court finds that under NRS 52.380 Plaintiff will be allowed to make an audio recording of any psychological or neuropsychological examination in this matter.
12. A Rule 35 mental examination regarding psychological issues or neuropsychological issues is somewhat more involved than what would be allowed for a physical examination.<sup>2</sup>

Based on the above, the Discovery Commissioner ordered “that Plaintiff be allowed to have an observer present during the Rule 35 examination pursuant to NRS 52.380” and “that Plaintiff be allowed to have an audio recording made of the Rule 35 examination pursuant to NRS 52.380.”<sup>3</sup>

### III.

#### **LEGAL ARGUMENT**

The Discovery Commissioner signed the Report and Recommendation submitted and/or approved by all parties, which the Discovery Commissioner interlineated adding and/or revising

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<sup>2</sup> Id. at 2-3.

<sup>3</sup> Id. at 4.

the highlighted text as follows: “6. Nevada Revised Statute 52.380 provides a **Plaintiff may** have an observer attend a mental or physical examinations; **which this Court finds involves a substantive right.**” Defendants rely on their argument made in the Objection filed on January 5, 2021 and respectfully request this Court reverse both the Discovery Commissioner’s Reports and Recommendations and order that no observer may be present at Plaintiff’s psychological or neuropsychological examination, and no audio recording may be made of the same pursuant to Rule 35, which prohibits that and/or provides that should not be done except for good cause. Defendants established good cause for their position and Plaintiff failed to submit any admissible evidence and/or authority for his position. In the alternative, Defendants request this Court stay this case until the Nevada Supreme Court enters a decision in Moats.

DATED this 19th day of January, 2021.

OLSON CANNON GORMLEY  
& STOBERSKI

*/s/ Felicia Galati, Esq.*

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1 **CERTIFICATE OF SERVICE**

2 On the 19th day of January, 2021, the undersigned, an employee of Olson Cannon  
3 Gormley & Stoberski, hereby served a true copy of **DEFENDANTS' SUPPLEMENT TO**  
4 **OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND**  
5 **RECOMMENDATION E-FILED ON 12/22/20** to the parties listed below via the EFP  
6 Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2)  
7 effective June 1, 2014, and or mailed:  
8

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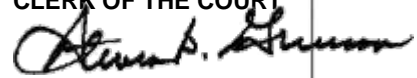
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24 */s/ Erika Parker*

25 \_\_\_\_\_  
26 An Employee of Olson Cannon Gormley  
27 & Stoberksi  
28

# **EXHIBIT L**



1 **DCRR**  
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23 Attorneys for Defendant  
24 FERRELLGAS, INC.

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 JOSHUA GREEN;

18 Plaintiff,

19 vs.

20 FERRELLGAS, INC. et al.,

21 Defendants.

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

**Discovery Commissioner's Report and  
Recommendations**

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23 

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AND RELATED ACTIONS



6. Nevada Revised Statute 52.380 provides a substantive right to have an observer attend a mental or physical examination; which this Court finds involves a

7. Nevada Revised Statute 52.380 precludes an observer from participating or disrupting a mental or physical examination.

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

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

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

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

12. A Rule 35 mental examination regarding psychological issues or neuropsychological issues is somewhat more involved than what would be allowed for a physical examination.

## RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Defendants' Motion to Order an NRCP  
35 Examination is GRANTED in part and DENIED in part.

IT IS FURTHER RECOMMENDED that Plaintiff shall be Ordered to appear for a Rule 35 examination at the office of Dr. Lewis Etcoff on March 3, 2021.

IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question Plaintiff's entire medical condition for the last five years.

IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question Plaintiff's medical condition for the body parts and conditions at issue in this litigation for the last ten years.

1 IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed to question  
2 Plaintiff generally about concentration and memory issues throughout his life.

3 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an observer  
4 present during the Rule 35 examination pursuant to NRS 52.380.

5 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to have an audio  
6 recording made of the Rule 35 examination pursuant to NRS 52.380.

7 IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to  
8 inquire into whether Plaintiff had a previous medical diagnosis.

9 IT IS FURTHER RECOMMENDED that Defendants shall provide a list of the testing  
10 Dr. Etcoff will conduct during the neuropsychological exam two weeks before the Rule 35  
11 examination.

12 The Discovery Commissioner met with counsel and discussed the issues noted above.  
13 Having reviewed the materials offered in support of this recommendation, she hereby submits  
14 the above recommendations.

15 DATED this 11<sup>th</sup> day of ~~December~~ January 2021. 2020.

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DISCOVERY COMMISSIONER

Submitted by  
BAKER STERCHI COWDEN & RICE

/s/ Gregorio V. Silva  
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1 Approved as to form and content

2 H&P Law

3 /s/ Matt G. Pfau

4 Matt G. Pfau, ESQ.  
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7 DENNETT WINSPEAR

8 /s/ Gina Winspear

9 Gina Gilbert Winspear, ESQ.  
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Carl J. Kleisner

12 PYATT, SILVESTRI

13 /s/ Steven M. Goldstein

14 Steven M. Goldstein, ESQ.  
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16 Pyatt Silvestri  
Attorneys for Defendant  
Mario Gonzalez

17

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1  
2 **NOTICE**

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

8  
9 **Objection time will expire on** January 26, <sup>2021</sup> ~~2020~~.

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

11  
12 ✓ 13 Electronically filed and served counsel on January 12, <sup>2021</sup> ~~2020~~, Pursuant to  
14 N.E.F.C.R. Rule 9.

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By: Natilie Semionetti  
COMMISSIONER DESIGNEE



TRAN

DISTRICT COURT  
CLARK COUNTY, NEVADA  
\* \* \* \* \*

JOSHUA GREEN,	)	
	)	
Plaintiff,	)	CASE NO. A-19-795381-C
	)	DEPT NO. XXXI
vs.	)	
	)	
FERRELLGAS, INC.,	)	
	)	<b>TRANSCRIPT OF</b>
	)	<b>PROCEEDINGS</b>
Defendant.	)	
	)	
AND RELATED PARTIES	)	

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

THURSDAY, JANUARY 28, 2021

**DEFENDANT 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**

APPEARANCES:

FOR THE PLAINTIFF:	MARJORIE L. HAUF, ESQ.
FOR FERRELLGAS:	FELICIA GALATI, ESQ. GREGORIO V. SILVA, ESQ.
FOR DEFENDANT GONZALES:	STEVEN M. GOLDSTEIN, ESQ.
FOR DEFENDANT KLEISNER:	GINA G. WINSPEAR, ESQ.

RECORDED BY: PATRICIA SLATTERY, COURT RECORDER  
TRANSCRIBED BY: JD REPORTING, INC.

1       **LAS VEGAS, CLARK COUNTY, NEVADA, JANUARY 28, 2021, 9:51 A.M.**

2                               \* \* \* \* \*

3               THE COURT: And now we'll move to Green versus  
4 Ferrellgas, 795381.

5               Can I have counsel for plaintiff, please.

6               MS. HAUF: Good morning, Your Honor. Marjorie Hauf  
7 for the plaintiff.

8               MR. SPINELLA: Richard Spinella, plaintiffs.

9               MS. GALATI: Good morning, Your Honor. Felicia  
10 Galati appearing for Ferrellgas.

11              MR. SILVA: Good morning, Your Honor. Gregorio Silva  
12 also appearing for Ferrellgas.

13              MS. WINSPEAR: Good morning, Your Honor. Gina  
14 Winspear on behalf of --

15              MR. GOLDSTEIN: Good morning, Your Honor. Steve --

16              THE COURT: Wait. Hold on a second.

17              MS. WINSPEAR: Go ahead.

18              THE COURT: Let's do alphabetic order here. Go  
19 ahead. We've got a few more people to make their appearances.  
20 Please go ahead in alphabetical order. Let's do it that way.

21              MR. GOLDSTEIN: Good morning, Your Honor. Steve  
22 Goldstein on behalf of defendant Gonzales.

23              MS. WINSPEAR: Good morning. Gina Winspear on behalf  
24 of defendant Kleisner.

25              THE COURT: Okay. So today we have defendant

1 Ferrellgas's motion for leave to amend the pleadings to assert  
2 cross-claims against defendant Carl Kleisner, motion for leave  
3 to file a third-party complaint against Kleisner's employer.

4 I have a joinder by plaintiff Green, and I have an  
5 opposition as well.

6 And then there's a potential issue on the Discovery  
7 Commissioner's report and recommendation which may or may not  
8 be able to --

9 MR. SPINELLA: Excuse me, Your Honor. My name is  
10 Richard Spinella. I jumped into this meeting, but it doesn't  
11 seem to be the case I'm supposed to be in. I just need to  
12 confirm if this is the Raiders -- Spinella versus Raiders,  
13 Clark County Stadium.

14 THE COURT: No, it's not.

15 (Pause in the proceedings.)

16 THE COURT: So with Ferrellgas, I was mentioning  
17 which one we had and I made a motion for partial summary  
18 judgment set for 2/9, and then we've got an issue there  
19 potentially that may or may not be addressed today.

20 Okay. So first thing is the motion to amend. The  
21 Court is going to give its inclination on the motion to amend.  
22 The Court's inclination on the motion to amend and to assert  
23 third-party complaint really is to grant it.

24 And the Court's reasoning is when you look at the  
25 appropriate standards, taking into account NRCP 15 allows

1 amendments when justice so requires, and 14 allows the parties  
2 to seek relief to file third-party complaints against  
3 nonparties.

4 And here, based on what's already gone on in this  
5 case, and Mr. Kleisner is already a party to the case, although  
6 in a first-party defendant -- third-party defendant on the  
7 status, the Court takes also that into consideration.

8 And I have to look at the low standard of what it is  
9 to take a party and join them into a case, the Court not taking  
10 any position as to the ultimate liability of any said party or  
11 parties. So that's the Court's inclination.

12 The Court does have a question, however, on the  
13 employer of Mr. Kleisner that would just need to get flushed  
14 out a little more during oral argument.

15 Go ahead, Counsel for Movant.

16 MR. SILVA: Your Honor, Gregorio Silva on behalf of  
17 Ferrellgas.

18 So I think, you know, I'm not going to reiterate the  
19 basis for the cross-claim against Mr. Kleisner, but with regard  
20 to his employer, Mr. Kleisner was at the Gonzales residence on  
21 a Wednesday, a Thursday and Friday from approximately 9:00 to  
22 noon. There's a claim against Mr. Kleisner's employer as a Doe  
23 defendant and that Mr. Kleisner was in the course of his  
24 duties. So we think if he had evidence that he wasn't, that  
25 that's something that NRCP 16.1 requires to be disclosed as it

1 relates to the claims that are asserted against him.

2           During his deposition he testified about two  
3 employers that he had at that time though we don't think he was  
4 actually employed by both of them at that time. Because he's  
5 been such an unreliable historian of his own employment record,  
6 we sought to name them both so we could untangle which one  
7 actually was his employer at the time of the incident.

8           THE COURT: And has that come up yet in any of the  
9 discovery processes?

10           Because this case -- it's wonderful to see you all a  
11 lot on this case. So I was a little bit surprised about, you  
12 know what I mean, that lack of understanding.

13           Can you elaborate a bit.

14           MR. SILVA: It came up in his deposition. It has not  
15 come up in written discovery against him.

16           THE COURT: Thank you so much.

17           I had a joinder on this. Counsel for plaintiff,  
18 would you like to be heard?

19           MS. HAUF: Your Honor, just to address the issue that  
20 you were concerned about with the employer, we did initially  
21 plead a Doe-Roe employer for Mr. Kleisner. We were convinced  
22 through discovery that he was not actually in the course and  
23 scope of his employment at the time which is why we never moved  
24 to add an employer.

25           So we do not -- our joinder was actually with

1 Mr. Kleisner's opposition in this case.

2 THE COURT: Oh, my apologies. Yes, I'm sorry.

3 But when I read your pleading, did you disagree with  
4 Kleisner being added in as a cross or just the employer?  
5 That's where there was a little bit of a disconnect between the  
6 various pleadings.

7 MS. HAUF: From plaintiff's position, we really have  
8 no dog in this fight with regards to Mr. Kleisner. We had  
9 already brought a claim against him.

10 With regards to the employer, we were convinced that  
11 he was not in the course and scope, so did not ever amend to  
12 bring in an employer.

13 So again, it would be our position that the employer  
14 did not need to be added.

15 THE COURT: Okay. Thank you.

16 Counsel for -- counsel for Kleisner, go ahead.

17 MS. WINSPEAR: Your Honor, the testimony in this case  
18 is not that there's confusion about who Mr. Kleisner was  
19 working for. At the time he was employed in June of 2018 with  
20 Emergent Technologies. He was employed out of state. He would  
21 travel to his jobs in other states. He was not -- just because  
22 this occurred on a weekday, a Wednesday, Thursday, Friday, does  
23 not mean somebody is in the course and scope of employment.

24 And I think it's noteworthy that the plaintiff joins  
25 in with the opposition, that the discovery and evidence in this

1 case has shown that Mr. Kleisner was not in the course and  
2 scope of any employment.

3 The plaintiff in naming Does and Roes employers  
4 certainly was in a position, if the evidence had shown that  
5 there was course and scope issues, the plaintiff was in the  
6 best position, and certainly it matters to the plaintiff the  
7 most.

8 This is Ferrellgas trying to muddy the waters, have  
9 as many claims, cross-claims, parties in this case as possible  
10 to divert attention from their own -- their own liability.

11 I would add, Your Honor, notwithstanding the -- and I  
12 respect the Court's inclinations in this case, but I would  
13 point out that the Nevada Supreme Court in *MEI-GSR Holdings*  
14 *versus Peppermill* notes that the Court has explicitly held that  
15 sufficient reasons to deny a motion to amend a pleading include  
16 undue delay. These issues were ferreted out in the summer of  
17 2020.

18 There is, I would submit, undue delay on the part of  
19 Ferrellgas in putting these matters before the Court, trying to  
20 add these employers and in trying to add a counterclaim or a  
21 cross-claim against Mr. Kleisner. This matter has been pending  
22 since 2019. There have been numerous complaints, cross-claim,  
23 amended complaints, counterclaims, and Ferrellgas filed on the  
24 last day to file a motion to amend even though all of the  
25 discovery related to these issues was accomplished at the

1 latest on August 31st, 2020, when Mario Gonzales, the other  
2 defendant in this case, who would've had information regarding  
3 whether Mr. Kleisner was in the course and scope of employment  
4 or what he was doing at the Gonzales property in terms of any  
5 electrician-type work. That was the last testimony offered.  
6 There's been no other discovery, and yet we don't get this  
7 motion, I would submit, because of undue delay until  
8 December 23rd.

9 And hopefully that addresses the questions the Court  
10 has.

11 But the evidence in the case, in terms of sworn  
12 deposition testimony that is not refuted at this stage is that  
13 Mr. Kleisner was working out of state, but his employer was  
14 Emergent Technology in the summer of 2018.

15 THE COURT: Okay. Thank you, Counsel. I've got a  
16 couple of questions for you.

17 Don't we have an answer, Kleisner's Amended Answer to  
18 Second Amended Complaint? Wasn't that just filed January of  
19 this week, January 25th?

20 MS. WINSPEAR: So, Your Honor, that was with regard  
21 to the amended complaint that the plaintiff had requested the  
22 Court to authorize regarding punitive damages claims and other  
23 claims Ferrellgas versus -- or plaintiff versus Ferrellgas.  
24 Kleisner answered that simply because it was an amended. There  
25 were other claims that were not changed, but just out of an



1 abundance of caution because there was an outstanding amended  
2 complaint. But there were no new claims or causes of action  
3 alleged in that pleading against Mr. Kleisner.

4 THE COURT: Okay. Thank you.

5 Does anyone else need to be heard on this matter  
6 before I go back to the movant?

7 MR. SILVA: Your Honor, Gregorio Silva on behalf of  
8 Ferrellgas.

9 I'd just like to point out that plaintiff was granted  
10 leave to amend his complaint in December, and he didn't remove  
11 the vicarious liability claim against defendant Kleisner's  
12 employer.

13 And there's testimony from Mr. Gonzales and discovery  
14 responses from Mr. Gonzales and Mr. Kleisner that discuss that  
15 Mr. Kleisner can do the work that he did at the Gonzales'  
16 residence through his employer so long as Mr. Gonzales contacts  
17 the employer.

18 We need to be able to rule out whether or not  
19 Mr. Kleisner was within the course and scope of his employment,  
20 and Mr. Kleisner has not produced sufficient information to  
21 allow us to do that.

22 With regard to the claim against Mr. Kleisner, I  
23 discussed with Mr. Kleisner's counsel that we didn't realize  
24 that we hadn't filed the cross-claim against him until we were  
25 getting ready to prepare an answer to Plaintiff's Second

1 Amended Complaint. That was, you know, primarily the reason  
2 for the delay, but I think Mr. Kleisner's testimony  
3 demonstrates a need for him to be -- for a cross-claim against  
4 him. He was the last person who looked at the Gonzales system  
5 before this incident occurred.

6 THE COURT: Okay. Counsel for plaintiff, can I just  
7 get a point of clarification since it was brought up in the  
8 reply argument about the vicarious liability issue?

9 MS. HAUF: Yes, of course, Your Honor.

10 THE COURT: Thank you.

11 MS. HAUF: What -- did you have a specific question?

12 Let me put it this way. The discovery that has been  
13 done to date has not convinced us that Mr. Kleisner was in the  
14 course and scope of his employment to the extent that we had  
15 brought a motion to amend to include a Doe-Roe employer. I  
16 mean, obviously, we're not going to remove those from the  
17 amended complaint because information could still come up that  
18 might change that, and we might be able to determine that he  
19 was working for somebody. But we have not been convinced of  
20 that as of yet.

21 THE COURT: Just for point of clarification, can  
22 someone affirm Mr. Kleisner's deposition was on or about August  
23 11th, 2020; is that correct?

24 MS. WINSPEAR: That was when the second portion of  
25 his deposition was completed.

1 THE COURT: Okay. (Indiscernible). Okay.

2 Here's the Court's ruling. The Court is going to  
3 grant in part and deny in part the motion:

4 The Court is going to grant it as to a cross-claim of  
5 Mr. Kleisner.

6 It meets the standards of 15 and 14. The Court  
7 doesn't see the prejudice at this juncture with regards to  
8 Mr. Kleisner because the stage of where this case is. You just  
9 had a second amended complaint. You just had a recent answer  
10 filed this week. And where this case is, and it's a 2019 case.  
11 So there, you know, under 14 and 15, it would be appropriately  
12 granted.

13 The Court is going to deny it with regards to the  
14 potential employers.

15 The Court doesn't see that the minimum standard has  
16 been met to add in those individuals. There's, you know, a  
17 reference of we're not sure exactly what he said at his  
18 deposition. So he may be under one employer or another  
19 employer, which is disputed by Kleisner's counsel as set forth  
20 in the pleadings that he did have it, and there's nothing that  
21 even says that he was working for the employer. That could  
22 have been an easy question asked at his deposition, and I don't  
23 have anything that was provided to the Court that even shows  
24 that he even says he was working. He says he could have been,  
25 done that work on the employer, but there's nothing that even

1 he has said.

2           You had a chance for a lot of written discovery and a  
3 lot of his actual deposition testimony. So there really is not  
4 a basis to add in a third-party complaint against a potential  
5 Kleisner employer. So that portion is denied.

6           So then we go next to there's an issue regarding the  
7 Discovery Commissioner's report and recommendation, and I guess  
8 there might need to be a little point of clarification here on  
9 the Discovery Commissioner's report and recommendation.

10           This is regarding the Rule 35 exam.

11           Now, the Court, as you all know with the DCCR, if  
12 it's unopposed, then the Court can just sign it. Because under  
13 EDCR 2.20, if the recommendation is appropriate and it's not  
14 opposed, the Court can say -- find that the parties did not  
15 object to it.

16           So the Court did sign one of the DCCRs regarding who  
17 could be at a Rule 35 exam. But I guess there's an issue with  
18 regards to whether a Rule 35 exam should take place, and so  
19 that's subject.

20           So can we get a little bit of point and clarification  
21 of what actually is the issue that you need the Court to  
22 resolve today? Because in light of the multitude of pleadings,  
23 it's a little unclear.

24           So counsel for the movement -- well, counsel who  
25 filed the objection to the DCCR, do you want to go ahead first?

1 MS. GALATI: Yes, Your Honor. Thank you. It's  
2 Felicia Galati for Ferrellgas.

3 So this case has a little bit of a complicated  
4 history in the fact that there were a number of hearings that  
5 resulted in two different reports regarding one motion, which  
6 as you said is the motion to compel the Rule 35 exam.

7 So first we had a hearing with the Discovery  
8 Commissioner on that motion on November 19th, 2020.

9 Then we had a second hearing with the Discovery  
10 Commissioner, follow up regarding the same motion on December  
11 10th, 2020.

12 Then we had a telephonic conference with the  
13 Discovery Commissioner on December 6, 2020, again still dealing  
14 with the same motion.

15 We got the first report from the Discovery  
16 Commissioner filed on December 22nd, 2020.

17 We filed an objection to that report on January  
18 5th, 2021.

19 Then plaintiff filed their reply on January 11th,  
20 21 -- 2021.

21 And then the Discovery Commissioner filed her second  
22 report regarding the same motion on January 12th, 2021.

23 Just so I can clarify, there are two District Court  
24 reports from the Commissioner. The first one pertains to the  
25 11/19 hearing. The second one pertains to the 12/10 hearing.

1           Then we filed a supplement to our objection,  
2 including that second report in the objection with the same  
3 bases, but just outlining what additional things the Discovery  
4 Commissioner said and some of the things were duplicative.  
5 That was filed on January 19th, 2021. And then, Your Honor,  
6 entered the order affirming. So there may have been some  
7 confusion about whether we were objecting to the second DCRR,  
8 and we were and are.

9           We referred to the fact that there would be a second  
10 report in our initial objection, and we would supplement that.  
11 We did supplement that on January 19th by providing you with  
12 the objection. Maybe it wasn't clear based on the title that  
13 that's what was going on, but we did explain that we were  
14 providing the second report. We gave a little bit of history  
15 again with respect to the number of hearings and the second  
16 order and that we were objecting to the Discovery  
17 Commissioner's decision, which was the same as her first  
18 decision, which was that an observer could be present and that  
19 an audio recording could be made.

20           So it's our position that the objection pertains to  
21 both reports. And I apologize if we didn't use the right title  
22 or we should have done something else, but they were all  
23 timely, and they all should be heard at the same time because  
24 it is one motion to compel although we do have two orders  
25 because there were two different hearings.

1           And I don't fault the Discovery Commissioner for  
2           having two hearings, but it just makes it complicated when you  
3           consider Rule 16.3 that talks about the objections and replies,  
4           and then we have two reports in what to do and how to handle  
5           them.

6           THE COURT: So that's the procedural aspect. Do you  
7           want to address the substantive aspect.

8           MS. GALATI: Yes.

9           THE COURT: And then let everybody respond. Go  
10          ahead.

11          MS. GALATI: Yes. Thank you so much, Your Honor.

12          So there's no doubt there is a clear conflict between  
13          Rule 35 and the statute, NRS 52.380. So Rule 35 has been in  
14          existence since prior to 1971. The Nevada Supreme Court just  
15          amended it effective January 2019.

16          And in that amendment, the Court indicated after  
17          hearing from the Nevada Psychological Board that having  
18          observers present or audio recordings made can interfere with  
19          the results, lead to inaccurate results, invalid results,  
20          et cetera.

21          As a result of that, the Court enacted the rule  
22          saying that there cannot be an observer present for a  
23          psychological or neuropsychological exam, which is exactly  
24          what's at issue here.

25          Now, the rule does provide for a good cause exception

1 to that, and also the rule indicates that there can't be a  
2 recording except for good cause. So on the other hand, the  
3 exact opposite we have is the statute, and the statute was  
4 enacted in October 2019, ten months later or nine months later,  
5 and the Court -- and the legislature there says there may be an  
6 observer, and there may be an audio recording.

7 I would just note that that statute is under Title IV  
8 which deals with witnesses and evidence, and Chapter 52, which  
9 deals with documentary and other physical evidence.

10 So here's my point. The Nevada Supreme Court has  
11 indicated in its rule, which is entitled to enact, that there  
12 cannot be an observer, and there cannot be a recording absent  
13 good cause.

14 What happens? The legislature turns it so that -- so  
15 they apparently rejected the submissions made by the  
16 plaintiff's attorneys and the NJA where they were trying to get  
17 these same provisions in the rule, and the Nevada Supreme Court  
18 apparently said no because they came out with the rule that we  
19 have.

20 And then what happens is months later the legislature  
21 enacts the statute, which is the exact opposite of that.

22 In our submission, there's no doubt that the statute  
23 is a procedural statute that tries to do away with what the  
24 rule establishes and the Court is entitled to establish.

25 There's no doubt that the rule is binding, that the



1 judiciary can make its own rules to govern its own proceedings  
2 and that the statute violates the separation of powers by  
3 trying to do away with that after the fact because that's  
4 exactly what it's doing.

5 In this case, the plaintiff is basically arguing that  
6 the statute is substantive. There is nothing that establishes  
7 that, and there is no support for that.

8 And on the other side, our support, both below,  
9 before the Discovery Commissioner and before Your Honor, is we  
10 had two affidavits from Dr. Etcoff, indicating the issues with  
11 having an observer and an audio recording, and there was no  
12 contradictory evidence to that. And all the plaintiff does is  
13 rule -- is argue that the statute is substantive based on the  
14 language of the statute. Well, that doesn't make it  
15 substantive.

16 Furthermore, I would point out we identified for Your  
17 Honor that there's a writ pending before the Nevada Supreme  
18 Court in the *Moats* (phonetic) case. Mr. Fowler's (phonetic)  
19 actually counsel for Mr. Moats in that matter. And in that  
20 case Judge Escobar ruled that, and she applied  
21 *Fredaluco* (phonetic) which is the U.S. District Court case of  
22 Judge Utah, and she ruled consistent with that decision that  
23 Rule 35 is a procedural rule, that the statute at 52.380 is  
24 procedural in nature and that the rule governs.

25 Interestingly, in that case, both *Fredaluco* and the

1 *Moats* case, the plaintiff had failed to meet its burden.

2           So basically what you have is the legislature  
3 enacting a procedural statute that conflicts with the  
4 procedural rule which violates the separation of powers, but  
5 you also have plaintiff failing to meet their burden to  
6 establish that what they want to be imposed in this case, which  
7 is under the good faith standard, and therefore we're asking  
8 you to reverse both reports because both reports order the same  
9 thing: That is an observer to be present and an audio  
10 recording to be made.

11           And we're also asking that the order that you entered  
12 yesterday be vacated.

13           THE COURT: I've got a quick question for you.  
14 Focusing on the good faith exception, isn't that part of what  
15 plaintiff is arguing, that they fall within the good faith  
16 exception so that there really isn't a conflict between the  
17 statute and the rule in this particular case, and whose burden  
18 are you saying is it to see if there is the good faith  
19 exception?

20           MS. GALATI: Well, I don't see how they can establish  
21 a good faith exception in this case. They didn't submit any  
22 evidence to the Discovery Commissioner to support that, to  
23 support that finding. Everything that was before the Court,  
24 and everything that has been cited to date supports the fact  
25 that having an observer present and an audio recording made

1 impacts the psychological examination, and there shouldn't  
2 be -- and therefore that shouldn't happen.

3 The Nevada Supreme Court has already accepted that,  
4 and they did that by enacting a rule. So I don't see how the  
5 statute coming in after the fact somehow changes that and  
6 allows them to have the observer and have an audio recording.

7 THE COURT: Okay. I appreciate it.

8 Anyone else need to be heard on this position before  
9 I go to the opposition?

10 No. Okay.

11 Counsel, you opposed it. Feel free to respond.

12 MS. HAUF: Thank you, Your Honor. First of all there  
13 was -- there was argument presented with regards to this matter  
14 falling within the good cause exception, and mainly it was the  
15 fact that in this case we are not claiming that this individual  
16 is suffering from a traumatic brain injury. This is nothing  
17 more than a routine psychological examination, although they  
18 want to characterize it as something different. We are not  
19 making a claim that he is suffering from a traumatic brain  
20 injury, and a neuropsychological evaluation to evidence a  
21 traumatic brain injury is what all of Dr. Etcoff was  
22 complaining about potentially having a problem.

23 So this case, even if Your Honor's position was that  
24 the statute is procedural, and I'll talk about that for a  
25 moment in a moment, even if that was Your Honor's position,

1 this would still meet the exception because we're not claiming  
2 traumatic brain injury.

3           What the defense is trying to conflate in this case  
4 is the fact that there is some evidence that this client has a  
5 traumatic brain injury, but it's not a -- but we're not  
6 claiming it's a result of this incident. There have been some  
7 other things in his life that may have been the cause of that.  
8 We're not making the claim that this explosion caused a  
9 traumatic brain injury.

10           So therein lies the evidence regarding the exception  
11 and the argument regarding the exception.

12           Regarding the categorization of this rule as  
13 substantive versus procedural, first the other good cause  
14 exception, by the way, is that in all of the information  
15 presented by Dr. Etcoff, it all talks about how it can be  
16 problematic for a patient.

17           It is very, very clear that Mr. Green is not  
18 Dr. Etcoff's patient. In fact, in every case I've had where  
19 Dr. Etcoff has done an examination, he actually makes them sign  
20 something that says they are not his patient. So that is  
21 another reason why the exception should apply under the good  
22 cause exception because this isn't a doctor-patient  
23 relationship. This is strictly for the point of an evaluation  
24 for -- from the defense perspective.

25           NRS 52.3 though is certainly a substantive statute.

1 As Ms. Galati just pointed out, it is categorized even in the  
2 statutory scheme as evidence, and evidence is substantive.  
3 Evidence it is what is going to be presented at trial.  
4 Evidence is not procedural. So that establishes that the  
5 legislature intended for it to be a substantive rule.

6 And this is not something that's really a new  
7 concept; right? We have been dealing with it in cases in  
8 federal court, for example. We've been dealing with a similar  
9 argument for as long as I've been practicing law with regards  
10 to federal rule of civil procedures 68 dealing with offers of  
11 judgment and the State statute of 58 dealing with -- State  
12 statute 17.115 and now 117 dealing with offers of judgment.

13 And the federal courts have long since said while the  
14 FRCP 68 may be procedural and isn't going -- and we have to  
15 abide by that conflict between that statute and the rule in a  
16 federal court case and not on federal claims, in a very  
17 diversity case where you're applying state substantive law, the  
18 NRS would take precedent. That's no different here. When  
19 there's a conflict between the statute and the rule, the  
20 statute would take precedence.

21 And there's plenty of case law, for example, that as  
22 our case that we talked about in our brief, and I'm sure you've  
23 read it, that differentiates between what's substantive and  
24 what's procedural. Procedural rules specify how something is  
25 enforced, what the procedural rule is -- the substantive rules

1 deals with how will you protect the substantive rights.

2           And here is a situation where you're going to allow  
3 somebody to be poking around in the mind of a person, and by  
4 the very nature of subjecting somebody to an examination by a  
5 person not of their choosing, it is a substantive right to that  
6 person's privacy, to that person's physical being. So it  
7 certainly is a substantive right, and that's what the Discovery  
8 Commissioner has held in every case, including *Moats*, which is,  
9 as Ms. Galati pointed out our case.

10           So while Judge Escobar, and we have that up on a writ  
11 right now, disagreed that the statute was procedural, we don't  
12 believe that is the correct ruling, and that's why it is up on  
13 a writ right now.

14           With regards to the request to stay because of that,  
15 I mean, even that case isn't stayed. *Moats* is not stayed. So  
16 I don't know why *Moats* would cause this case to be stayed. So  
17 I will --

18           THE COURT: Anything else, or should I --  
19 Go ahead.

20           MS. HAUF: So I was just going to say I'll submit on  
21 that, Your Honor, unless you have any specific questions.

22           THE COURT: I do not at this juncture.

23           Counsel for the movant, feel free to give last words.  
24 It's your motion.

25           MS. GALATI: Yes, thank you, Your Honor.

1           The plaintiff is claiming that he has confusion and  
2 memory issues, which are neuropsychological issues. The  
3 Discovery Commissioner said that herself. She's addressed that  
4 in her report; therefore, this is a neuropsych exam.

5           But even if it wasn't a neuropsych exam, a  
6 psychological exam is subject to the same rules and the same  
7 limits.

8           So Ms. Hauf says that the fact that I point out the  
9 chapter and the title of the statute establish it's a  
10 substantive statute because it deals with evidence. It's not a  
11 substantive statute. The Court enacted Rule 35 to deal with  
12 procedures for Rule 35 exams, what's allowed, what's not  
13 allowed. The substance is the outcome of the exam, not how  
14 it's done.

15           And then what happens? The legislature turns around  
16 and enacts a statute addressing those very same things. That  
17 does not convert it into a substantive right statute. They  
18 haven't cited a single case for you that says our Rule 35 and  
19 our NRS 52.380, that in that scenario the statute is  
20 substantive. There isn't anything.

21           In addition -- I'll just leave it at that, Your  
22 Honor.

23           THE COURT: Okay. I appreciate it. Thank you.

24           So all parties, thank you for the excellent briefing.  
25 All parties having an opportunity to be heard.

1 I didn't see that counsel for Kleisner, that you had  
2 a position on this, that I didn't see a briefing just before  
3 the Court rules wants to make sure. Is that correct?

4 MS. WINSPEAR: That's correct, Your Honor. Thank  
5 you.

6 THE COURT: I do appreciate it. Thank you so much.

7 Okay. So here's what the Court's going to do. First  
8 off, the Court's going to note because there was two distinct  
9 Discovery Commissioner reports and recommendations, the Court  
10 could properly evaluate one of them as being unopposed;  
11 however, the Court based on -- and remember the timing. The  
12 timing here is, remember how you prep for a hearing, about a  
13 week -- I did about a week beforehand, and then follow up a few  
14 days beforehand to make sure if there's any last-minute things,  
15 and sometimes the morning before if there's even more  
16 last-minute things.

17 But so the timing of how this happened, the Court did  
18 properly address the one as unopposed; however, in light of the  
19 argument here today, and in light of the briefing, the Court is  
20 now going to sua sponte reconsider its ruling that it signed on  
21 the Discovery Commissioner's report and recommendation to take  
22 into account the substantive arguments raised by the parties in  
23 the oral argument and in the briefing and in so doing is going  
24 to address that in just one second because first we're going to  
25 go to the Rule 35 exam.



1           The Court is going to find in this case the good  
2 faith exception does apply. And the Court does find that it  
3 does apply because the nature of the relationship between how  
4 the claims were presented, the nature of the fact that this is  
5 not a doctor-patient proceeding that is occurring and for the  
6 facts presented in the opposition, or the response to the  
7 objection, I'm sorry, the Discovery Commissioner's report and  
8 recommendation.

9           In so doing, the Court also notes the level of which  
10 this Court looks at a ruling by the Discovery Commissioner.  
11 And so for all of those reasons, the Court is going to affirm  
12 the Discovery Commissioner's report and recommendation on  
13 conducting the Rule 35 exam, allowing an observer to be  
14 present, consistent with the statute and the rule and allowing  
15 a recording thereof.

16           So what I am doing, just so we have it clear is for  
17 the hearing on -- we had two hearings. You had your 11/19 and  
18 your 12/10. To the extent that the Court had signed the  
19 Discovery Commissioner's report and recommendation timely  
20 because there was no objection specifically stated to that  
21 report and recommendation, the Court now is going to find that  
22 that -- I'm going to reaffirm that signing of it, but I'm  
23 signing it now not only because it was unopposed, but after  
24 hearing the full oral arguments with regards to that that was  
25 intended to be considered in the opposed, and so that's why I'm

1 revisiting it.

2           So I granted a reconsideration to revisit it, but in  
3 revisiting it, the Court finds that its signing of the report  
4 and recommendation was correct, albeit it was correct for the  
5 substantive reason that it should have been signed, and it was  
6 signed. Okay.

7           With regards to the other discovery report and  
8 recommendation, the one that was set for hearing today, the  
9 Court also is going to affirm that Discovery Commissioner's  
10 report and recommendation because substantively the Court does  
11 find that there is the exception, which is specifically allowed  
12 in the rule, also and this would apply here today.

13           So [video interference] the Court does not mean to  
14 address the argument of the parties on whether or not there is  
15 a direct conflict between the rule and the statute in this  
16 specific case because the Court found that even the rule allows  
17 the good faith exception, and so therefore the Court doesn't  
18 need to address if there could be viewed as a conflict because  
19 it would not apply in this case between the rule and the  
20 statute.

21           It is so ordered.

22           So for Madame Clerk and Madame Recorder, just so we  
23 have a clarity, the Court affirms the Discovery Commissioner's  
24 report and -- both Discovery Commissioner's report and  
25 recommendations, one, reaffirming the Court signing of the one

1 that was signed and filed this week after listening to the oral  
2 argument and reconsidering whether or not the Court should have  
3 signed it, but the Court finds it should have signed it and did  
4 properly sign it substantively and procedurally.

5 And second, with the other Discovery Commissioner's  
6 report and recommendation, the Court finds there is the  
7 exception. So therefore it properly gets affirmed as well.

8 In light of that, I'm going to ask counsel for the  
9 plaintiff to please prepare a detailed order to that effect.  
10 Circulate it to all other parties and provide it back to the  
11 Court in accordance with the administrative orders to the DC 31  
12 inbox, and please do make sure you embed, if you do electronic  
13 signatures, as you know as required under the administrative  
14 orders.

15 That should take care of the DCCRs.

16 Now, the last thing, which may or may not -- you may  
17 or may not wish to be addressed today, and it's perfectly fine  
18 if you don't, it's currently set for the 9th, is it appears  
19 there was a nonopposition to the motion for partial summary  
20 judgment as to Kleisner only.

21 If the parties wish the Court to address that today  
22 as a nonopposition and advance and grant the motion for partial  
23 summary judgment as to Kleisner only, the Court can do so.

24 If, however, any party wishes this to be heard on the  
25 9th that is currently scheduled, the Court will leave it on the

1 9th and we'll see you back on the 9th.

2 So I probably should ask counsel for plaintiff,  
3 Ms. Hauf, because you're the one who filed the nonopposition.

4 MS. HAUF: If you can give me just one second very  
5 quickly, Your Honor, to look up what that was. I mean,  
6 certainly if we filed a nonopposition, I don't think that we  
7 would need to be heard on it, but I'm just not --

8 THE COURT: Sure. No worries. January 19th --

9 MS. HAUF: I'm not recollecting that issue. I  
10 apologize.

11 THE COURT: No worries.

12 (Indiscernible), like I said, anybody wishes it to  
13 remain on the 9th -- well, let me go to the movant.

14 If the movant wishes it to remain on the 9th, we're  
15 leaving it on the 9th. So I just -- some parties like to  
16 advance and grant things if we can get things cleaned up and  
17 cleared up and let you move forward.

18 Go ahead, Counsel.

19 MS. WINSPEAR: Thank you, Your Honor.

20 No, if we could get it resolved today, I think that  
21 would be the best for expediency purposes.

22 I think the only party that really had a dog in the  
23 fight was the plaintiff, who has filed a notice of  
24 nonopposition. And that's the only party that has alleged the  
25 claims that were sought to be dismissed (telephonic

1 interference) that motion.

2 And we were actually going to contact plaintiff's  
3 counsel and see if they could agree to a stipulated order to be  
4 presented to the Court so that the parties, given that we've  
5 had multiple hearings in this case on other matters, wouldn't  
6 have to appear again, and the Court wouldn't have to have that  
7 on their calendar. So --

8 MS. HAUF: Your Honor, I did just look that up as  
9 well, and I agree we can deal with it today. I'm fine with you  
10 granting the motion today.

11 THE COURT: Any other counsel wish to have any  
12 opposition? It didn't look like it impacted your clients  
13 because it was only as to Mr. Kleisner, punitive damages, but  
14 do you wish to be heard, Mr. Silva and Ms. Galati?

15 MR. GOLDSTEIN: Your Honor --

16 MR. SILVA: Gregorio Silva for --

17 THE COURT: It's your --

18 MR. SILVA: Go ahead, Steve.

19 MR. GOLDSTEIN: Okay. Thank you. Your Honor, this  
20 is Steve Goldstein. I don't have any opposition to carrying it  
21 forward to today. I don't have a dog in that fight; however,  
22 Mr. Kleisner's position is the same as my position on punitive  
23 damages. I did not purposely file a joinder or a -- or my own  
24 motion because I was waiting to see what the Court was going to  
25 do with it.

1           While I have the plaintiff's counsel here on the  
2 phone here, I would like to send over a stipulation on punitive  
3 damages for my client.

4           MS. HAUF: I mean, obviously I'm not in the position  
5 to be able to fully fetter that issue out right now, but if you  
6 want to send over the stipulation, I'll certainly look at it  
7 and consider it.

8           MR. GOLDSTEIN: Thank you. I do appreciate that.

9           THE COURT: I appreciate it.

10          Does either counsel for --

11          MR. SILVA: Your Honor, Gregorio Silva for  
12 Ferrellgas. We have no problem with you hearing this or  
13 deciding this motion today.

14          THE COURT: Okay. And at the -- should I treat this  
15 as a request of counsel for Kleisner to advance and grant the  
16 nonopposition?

17          MS. WINSPEAR: Yes. Thank you, Your Honor, that  
18 would be our request.

19          THE COURT: Okay. So the -- so then at the request  
20 of counsel for Kleisner, the February 9th hearing, motion for  
21 partial summary judgment, punitive damages only as to defendant  
22 Carl J. Kleisner is advanced and granted because it was a  
23 nonopposition filed by plaintiff, which was the only party this  
24 motion was sought against on January 19th, and so therefore  
25 that is advanced.

1           And do you want to treat it as stipulated or advanced  
2 and granted as unopposed for the Court stamp? Sometimes  
3 parties like it one way or another. So I just need to know if  
4 it makes a difference from you all's standpoint.

5           MS. HAUF: I -- we could consider it stipulated, Your  
6 Honor.

7           MS. WINSPEAR: Thank you. That's fine. I'll prepare  
8 it as a stipulation then.

9           THE COURT: Okay. Then by the statement of the  
10 parties, then that would be a stipulation to grant only as to  
11 Carl Kleisner.

12           With regards to any other parties, to the extent the  
13 parties wish to reach that out on their own, we'll wait to see  
14 what we get from the Court because the Court can't find that  
15 anybody else is not on a motion that hasn't yet been filed  
16 before it, and since nobody is agreeing for that to be  
17 addressed. So that then should take care of everything for  
18 today on Green versus Ferrellgas, 795381.

19           Is there anything else the Court could do for the  
20 parties other than wish you health and happiness?

21           MS. HAUF: Your Honor.

22           THE COURT: Go ahead.

23           MS. HAUF: Your Honor, who did you want to prepare  
24 the order on the motion to amend, that have the cross-claims?

25           THE COURT: Thank you. Since it was granted in part

1 and denied in part, normally I would have the movant do it  
2 since they got some relief and then circulate to all the  
3 parties unless the parties request somebody else prepare the  
4 order.

5 MS. HAUF: That's fine, Your Honor.

6 THE COURT: Counsel for --

7 MR. SILVA: Your Honor, that works for Ferrellgas.

8 THE COURT: Okay. Great. Then Ferrellgas will  
9 prepare the order, circulate it to all parties, provide it back  
10 to the Court. To the DC 31 inbox in accordance with the  
11 administrative orders. And I'm not going to start citing all  
12 the administrative orders.

13 So anything else other than health and happiness? If  
14 not, I know I've got some other parties waiting for their  
15 hearings.

16 MS. WINSPEAR: Just one thing, Your Honor, I just  
17 want to clarify that the hearing scheduled for February 9th  
18 is vacated; correct? That's on our motion for partial summary  
19 judgment.

20 THE COURT: And that is Ms. Winspear as counsel for  
21 Carl Kleisner is making that request, and, yes.

22 MS. WINSPEAR: Yes. Sorry. Yes.

23 THE COURT: The February 9th hearing will be  
24 vacated because it was advanced and granted today pursuant to  
25 the stipulation between counsel for plaintiff and counsel for



1 Carl Kleisner with no objection from Ferrellgas.

2 MS. WINSPEAR: Thank you, Your Honor.

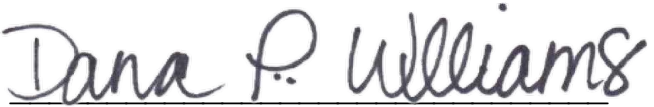
3 THE COURT: Or any other party.

4 Okay. Okay. Well, then thank you so very much.

5 (Proceedings concluded at 10:32 a.m.)

6 -oOo-

7 ATTEST: I do hereby certify that I have truly and correctly  
8 transcribed the audio/video proceedings in the above-entitled  
9 case.

10   
11 Dana L. Williams

12 Dana L. Williams  
13 Transcriber  
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<b>MR. GOLDSTEIN: [5]</b> 2/15 2/21 29/15 29/19 30/8	<b>35 [12]</b> 12/10 12/17 12/18 13/6 15/13 15/13 17/23 23/11 23/12 23/18 24/25 25/13	30/25 31/1 32/24 <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24 <b>allow [2]</b> 9/21 22/2 <b>allowed [3]</b> 23/12 23/13 26/11 <b>allowing [2]</b> 25/13 25/14 <b>allows [4]</b> 3/25 4/1 19/6 26/16 <b>alphabetic [1]</b> 2/18 <b>alphabetical [1]</b> 2/20 <b>already [4]</b> 4/4 4/5 6/9 19/3 <b>also [8]</b> 2/12 4/7 16/1 18/5 18/11 25/9 26/9 26/12 <b>although [3]</b> 4/5 14/24 19/17 <b>am [1]</b> 25/16 <b>amend [11]</b> 1/13 3/1 3/20 3/21 3/22 6/11 7/15 7/24 9/10 10/15 31/24 <b>amended [10]</b> 7/23 8/17 8/18 8/21 8/24 9/1 10/1 10/17 11/9 15/15 <b>amendment [1]</b> 15/16 <b>amendments [1]</b> 4/1 <b>another [3]</b> 11/18 20/21 31/3 <b>answer [4]</b> 8/17 8/17 9/25 11/9 <b>answered [1]</b> 8/24 <b>any [14]</b> 4/10 4/10 5/8 7/2 8/4 18/21 22/21 24/14 27/24 29/11 29/11 29/20 31/12 33/3 31/15 <b>anybody [2]</b> 28/12 <b>anyone [2]</b> 9/5 19/8	<b>anything [5]</b> 11/23 22/18 23/20 31/19 32/13 <b>apologies [1]</b> 6/2 <b>apologize [2]</b> 14/21 28/10 <b>apparently [2]</b> 16/15 16/18 <b>appear [1]</b> 29/6 <b>appearances [2]</b> 1/16 2/19 <b>appearing [2]</b> 2/10 2/12 <b>appears [1]</b> 27/18 <b>applied [1]</b> 17/20 <b>apply [5]</b> 20/21 25/2 25/3 26/12 26/19 <b>applying [1]</b> 21/17 <b>appreciate [5]</b> 19/7 23/23 24/6 30/8 30/9 <b>appropriate [2]</b> 3/25 12/13 <b>appropriately [1]</b> 11/11 <b>approximately [1]</b> 4/21 <b>are [8]</b> 5/1 13/23 14/8 18/18 19/15 19/18 20/20 23/2 <b>argue [1]</b> 17/13 <b>arguing [2]</b> 17/5 18/15 <b>argument [9]</b> 4/14 10/8 19/13 20/11 21/9 24/19 24/23 26/14 27/2 <b>arguments [2]</b> 24/22 25/24 <b>around [2]</b> 22/3 23/15 <b>as [42]</b> <b>ask [2]</b> 27/8 28/2 <b>asked [1]</b> 11/22 <b>asking [2]</b> 18/7 18/11 <b>aspect [2]</b> 15/6 15/7 <b>assert [3]</b> 1/14 3/1 3/22 <b>asserted [1]</b> 5/1 <b>at [28]</b> 3/24 4/8 4/20 5/3 5/4 5/7 5/23 6/19 7/25 8/4 8/12 9/15 10/4 11/7 11/17 11/22 12/17 14/23 15/24 17/23 21/3 22/22 23/21 25/10 30/6 30/14 30/19 33/5 <b>attention [1]</b> 7/10 <b>ATTEST [1]</b> 33/7 <b>attorneys [1]</b> 16/16 <b>audio [8]</b> 14/19 15/18 16/6 17/11 18/9 18/25 19/6 33/8 <b>audio/video [1]</b> 33/8 <b>August [2]</b> 8/1 10/22 <b>authorize [1]</b> 8/22 <b>away [2]</b> 16/23 17/3	<b>because [33]</b> 5/4 5/10 6/21 8/7 8/24 9/1 10/17 11/8 12/12 12/22 14/23 14/25 16/18 17/3 18/8 20/1 20/22 22/14 23/10 24/8 24/24 25/3 25/20 25/23 26/10 26/16 26/18 28/3 29/13 29/24 30/22 31/14 32/24 <b>been [19]</b> 5/5 7/21 7/22 8/6 10/12 10/19 11/16 11/22 11/24 14/6 15/13 18/24 20/6 20/7 21/7 21/8 21/9 26/5 31/15 <b>before [12]</b> 1/11 7/19 9/6 10/5 17/9 17/9 17/17 18/23 19/8 24/2 24/15 31/16 <b>beforehand [2]</b> 24/13 24/14 <b>behalf [5]</b> 2/14 2/22 2/23 4/16 9/7 <b>being [3]</b> 6/4 22/6 24/10 <b>believe [1]</b> 22/12 <b>below [1]</b> 17/8 <b>best [2]</b> 7/6 28/21 <b>between [10]</b> 6/5 15/12 18/16 21/15 21/19 21/23 25/3 26/15 26/19 32/25 <b>binding [1]</b> 16/25 <b>bit [6]</b> 5/11 5/13 6/5 12/20 13/3 14/14 <b>Board [1]</b> 15/17 <b>both [8]</b> 5/4 5/6 14/21 17/8 17/25 18/8 18/8 26/24 <b>brain [6]</b> 19/16 19/19 19/21 20/2 20/5 20/9 <b>brief [1]</b> 21/22 <b>briefing [4]</b> 23/24 24/2 24/19 24/23 <b>bring [1]</b> 6/12 <b>brought [3]</b> 6/9 10/7 10/15 <b>burden [3]</b> 18/1 18/5 18/17 <b>but [28]</b> 3/10 4/19 6/3 7/12 8/11 8/13 8/25 9/2 10/2 10/19 11/25 12/17 14/3 14/13 14/22 15/2 18/4 20/5 20/5 23/5 24/17 25/22 25/23 26/2 27/3 28/7 29/13 30/5
<b>MR. SILVA: [8]</b> 2/11 4/16 5/14 9/7 29/16 29/18 30/11 32/7	<b>5</b> <b>52 [1]</b> 16/8 <b>52.3 [1]</b> 20/25 <b>52.380 [3]</b> 15/13 17/23 23/19 <b>58 [1]</b> 21/11 <b>5th [1]</b> 13/18	<b>32/25 31/1 32/24</b> <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24		
<b>MR. SPINELLA: [2]</b> 2/8 3/9	<b>6</b> <b>68 [2]</b> 21/10 21/14	<b>32/25 31/1 32/24</b> <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24 <b>allow [2]</b> 9/21 22/2 <b>allowed [3]</b> 23/12 23/13 26/11 <b>allowing [2]</b> 25/13 25/14 <b>allows [4]</b> 3/25 4/1 19/6 26/16 <b>alphabetic [1]</b> 2/18 <b>alphabetical [1]</b> 2/20 <b>already [4]</b> 4/4 4/5 6/9 19/3 <b>also [8]</b> 2/12 4/7 16/1 18/5 18/11 25/9 26/9 26/12 <b>although [3]</b> 4/5 14/24 19/17 <b>am [1]</b> 25/16 <b>amend [11]</b> 1/13 3/1 3/20 3/21 3/22 6/11 7/15 7/24 9/10 10/15 31/24 <b>amended [10]</b> 7/23 8/17 8/18 8/21 8/24 9/1 10/1 10/17 11/9 15/15 <b>amendment [1]</b> 15/16 <b>amendments [1]</b> 4/1 <b>another [3]</b> 11/18 20/21 31/3 <b>answer [4]</b> 8/17 8/17 9/25 11/9 <b>answered [1]</b> 8/24 <b>any [14]</b> 4/10 4/10 5/8 7/2 8/4 18/21 22/21 24/14 27/24 29/11 29/11 29/20 31/12 33/3 31/15 <b>anybody [2]</b> 28/12 <b>anyone [2]</b> 9/5 19/8		
<b>MS. GALATI: [6]</b> 2/9 13/1 15/8 15/11 18/20 22/25	<b>7</b> <b>795381 [2]</b> 2/4 31/18	<b>32/25 31/1 32/24</b> <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24 <b>allow [2]</b> 9/21 22/2 <b>allowed [3]</b> 23/12 23/13 26/11 <b>allowing [2]</b> 25/13 25/14 <b>allows [4]</b> 3/25 4/1 19/6 26/16 <b>alphabetic [1]</b> 2/18 <b>alphabetical [1]</b> 2/20 <b>already [4]</b> 4/4 4/5 6/9 19/3 <b>also [8]</b> 2/12 4/7 16/1 18/5 18/11 25/9 26/9 26/12 <b>although [3]</b> 4/5 14/24 19/17 <b>am [1]</b> 25/16 <b>amend [11]</b> 1/13 3/1 3/20 3/21 3/22 6/11 7/15 7/24 9/10 10/15 31/24 <b>amended [10]</b> 7/23 8/17 8/18 8/21 8/24 9/1 10/1 10/17 11/9 15/15 <b>amendment [1]</b> 15/16 <b>amendments [1]</b> 4/1 <b>another [3]</b> 11/18 20/21 31/3 <b>answer [4]</b> 8/17 8/17 9/25 11/9 <b>answered [1]</b> 8/24 <b>any [14]</b> 4/10 4/10 5/8 7/2 8/4 18/21 22/21 24/14 27/24 29/11 29/11 29/20 31/12 33/3 31/15 <b>anybody [2]</b> 28/12 <b>anyone [2]</b> 9/5 19/8		
<b>MS. HAUF: [15]</b> 2/6 5/19 6/7 10/9 10/11 19/12 22/20 28/4 28/9 29/8 30/4 31/5 31/21 31/23 32/5	<b>9</b> <b>9:00 to [1]</b> 4/21 <b>9:51 [1]</b> 2/1 <b>9th [10]</b> 27/18 27/25 28/1 28/1 28/13 28/14 28/15 30/20 32/17 32/23	<b>32/25 31/1 32/24</b> <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24 <b>allow [2]</b> 9/21 22/2 <b>allowed [3]</b> 23/12 23/13 26/11 <b>allowing [2]</b> 25/13 25/14 <b>allows [4]</b> 3/25 4/1 19/6 26/16 <b>alphabetic [1]</b> 2/18 <b>alphabetical [1]</b> 2/20 <b>already [4]</b> 4/4 4/5 6/9 19/3 <b>also [8]</b> 2/12 4/7 16/1 18/5 18/11 25/9 26/9 26/12 <b>although [3]</b> 4/5 14/24 19/17 <b>am [1]</b> 25/16 <b>amend [11]</b> 1/13 3/1 3/20 3/21 3/22 6/11 7/15 7/24 9/10 10/15 31/24 <b>amended [10]</b> 7/23 8/17 8/18 8/21 8/24 9/1 10/1 10/17 11/9 15/15 <b>amendment [1]</b> 15/16 <b>amendments [1]</b> 4/1 <b>another [3]</b> 11/18 20/21 31/3 <b>answer [4]</b> 8/17 8/17 9/25 11/9 <b>answered [1]</b> 8/24 <b>any [14]</b> 4/10 4/10 5/8 7/2 8/4 18/21 22/21 24/14 27/24 29/11 29/11 29/20 31/12 33/3 31/15 <b>anybody [2]</b> 28/12 <b>anyone [2]</b> 9/5 19/8		
<b>MS. WINSPEAR: [13]</b> 2/13 2/17 2/23 6/17 8/20 10/24 24/4 28/19 30/17 31/7 32/16 32/22 33/2	<b>A</b> <b>a.m [2]</b> 2/1 33/5 <b>abide [1]</b> 21/15 <b>able [4]</b> 3/8 9/18 10/18 30/5 <b>about [14]</b> 5/2 5/11 5/20 6/18 10/8 10/22 14/7 15/3 19/22 19/24 20/15 21/22 24/12 24/13 <b>above [1]</b> 33/8 <b>above-entitled [1]</b> 33/8 <b>absent [1]</b> 16/12 <b>abundance [1]</b> 9/1 <b>accepted [1]</b> 19/3 <b>accomplished [1]</b> 7/25 <b>accordance [2]</b> 27/11 32/10 <b>account [2]</b> 3/25 24/22 <b>action [1]</b> 9/2 <b>actual [1]</b> 12/3 <b>actually [8]</b> 5/4 5/7 5/22 5/25 12/21 17/19 20/19 29/2 <b>add [6]</b> 5/24 7/11 7/20 7/20 11/16 12/4 <b>added [2]</b> 6/4 6/14 <b>addition [1]</b> 23/21 <b>additional [1]</b> 14/3 <b>address [7]</b> 5/19 15/7 24/18 24/24 26/14 26/18 27/21 <b>addressed [4]</b> 3/19 23/3 27/17 31/17 <b>addresses [1]</b> 8/9 <b>addressing [1]</b> 23/16 <b>administrative [4]</b> 27/11 27/13 32/11 32/12 <b>advance [3]</b> 27/22 28/16 30/15 <b>advanced [4]</b> 30/22			
<b>THE COURT: [39]</b>		<b>32/25 31/1 32/24</b> <b>affidavits [1]</b> 17/10 <b>affirm [3]</b> 10/22 25/11 26/9 <b>affirmed [1]</b> 27/7 <b>affirming [1]</b> 14/6 <b>affirms [1]</b> 26/23 <b>after [5]</b> 15/16 17/3 19/5 25/23 27/1 <b>again [4]</b> 6/13 13/13 14/15 29/6 <b>against [18]</b> 1/14 1/15 3/2 3/3 4/2 4/19 4/22 5/1 5/15 6/9 7/21 9/3 9/11 9/22 9/24 10/3 12/4 30/24 <b>agree [2]</b> 29/3 29/9 <b>agreeing [1]</b> 31/16 <b>ahead [11]</b> 2/17 2/19 2/20 4/15 6/16 12/25 15/10 22/19 28/18 29/18 31/22 <b>albeit [1]</b> 26/4 <b>all [17]</b> 5/10 7/24 12/11 14/22 14/23 17/12 19/12 19/21 20/14 20/15 23/24 23/25 25/11 27/10 32/2 32/9 32/11 <b>all's [1]</b> 31/4 <b>alleged [2]</b> 9/3 28/24 <b>allow [2]</b> 9/21 22/2 <b>allowed [3]</b> 23/12 23/13 26/11 <b>allowing [2]</b> 25/13 25/14 <b>allows [4]</b> 3/25 4/1 19/6 26/16 <b>alphabetic [1]</b> 2/18 <b>alphabetical [1]</b> 2/20 <b>already [4]</b> 4/4 4/5 6/9 19/3 <b>also [8]</b> 2/12 4/7 16/1 18/5 18/11 25/9 26/9 26/12 <b>although [3]</b> 4/5 14/24 19/17 <b>am [1]</b> 25/16 <b>amend [11]</b> 1/13 3/1 3/20 3/21 3/22 6/11 7/15 7/24 9/10 10/15 31/24 <b>amended [10]</b> 7/23 8/17 8/18 8/21 8/24 9/1 10/1 10/17 11/9 15/15 <b>amendment [1]</b> 15/16 <b>amendments [1]</b> 4/1 <b>another [3]</b> 11/18 20/21 31/3 <b>answer [4]</b> 8/17 8/17 9/25 11/9 <b>answered [1]</b> 8/24 <b>any [14]</b> 4/10 4/10 5/8 7/2 8/4 18/21 22/21 24/14 27/24 29/11 29/11 29/20 31/12 33/3 31/15 <b>anybody [2]</b> 28/12 <b>anyone [2]</b> 9/5 19/8		
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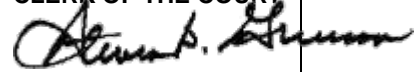
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[1]</b> 20/25</p> <p><b>NRS 52.380 [2]</b> 15/13 23/19</p> <p><b>number [2]</b> 13/4 14/15</p> <p><b>numerous [1]</b> 7/22</p>	<p><b>observers [1]</b> 15/18</p> <p><b>obviously [2]</b> 10/16 30/4</p> <p><b>occurred [2]</b> 6/22 10/5</p> <p><b>occurring [1]</b> 25/5</p> <p><b>October [1]</b> 16/4</p> <p><b>October 2019 [1]</b> 16/4</p> <p><b>off [1]</b> 24/8</p> <p><b>offered [1]</b> 8/5</p> <p><b>offers [2]</b> 21/10 21/12</p> <p><b>Oh [1]</b> 6/2</p> <p><b>Okay [20]</b> 2/25 3/20 6/15 8/15 9/4 10/6 11/1 11/1 19/7 19/10 23/23 24/7 26/6 29/19 30/14 30/19 31/9 32/8 33/4 33/4</p> <p><b>on [69]</b></p> <p><b>one [18]</b> 3/17 5/6 11/18 12/16 13/5 13/24 13/25 14/24 24/10 24/18 24/24 26/8 26/25 26/25 28/3 28/4 31/3 32/16</p> <p><b>only [9]</b> 25/23 27/20 27/23 28/22 28/24 29/13 30/21 30/23 31/10</p> <p><b>oOo [1]</b> 33/6</p> <p><b>opportunity [1]</b> 23/25</p> <p><b>opposed [3]</b> 12/14 19/11 25/25</p> <p><b>opposite [2]</b> 16/3 16/21</p> <p><b>opposition [7]</b> 3/5 6/1 6/25 19/9 25/6 29/12 29/20</p> <p><b>or [27]</b> 3/7 3/19 4/10 6/4 7/20 8/4 8/23 9/2 9/18 10/22 11/18 14/22 15/18 15/23 16/4 22/18 25/6 26/14 27/2 27/16 27/17 29/23 29/23 30/12 31/1 31/3 33/3</p> <p><b>oral [4]</b> 4/14 24/23 25/24 27/1</p> <p><b>order [11]</b> 2/18 2/20 14/6 14/16 18/8 18/11 27/9 29/3 31/24 32/4 32/9</p> <p><b>ordered [1]</b> 26/21</p> <p><b>orders [5]</b> 14/24 27/11 27/14 32/11 32/12</p> <p><b>other [20]</b> 6/21 8/1 8/6 8/22 8/25 16/2 16/9 17/8 20/7 20/13 26/7 27/5 27/10 29/5 29/11 31/12 31/20 32/13 32/14 33/3</p> <p><b>our [14]</b> 5/25 6/13 14/1 14/10 14/20 16/22 17/8 21/22 21/22 22/9 23/18 23/19 30/18 32/18</p> <p><b>out [15]</b> 4/14 6/20 7/13 7/16 8/13 8/25 9/9 9/18 16/18 17/16 21/1 22/9 23/8 30/5 31/13</p> <p><b>outcome [1]</b> 23/13</p> <p><b>outlining [1]</b> 14/3</p> <p><b>outstanding [1]</b> 9/1</p>	<p><b>over [2]</b> 30/2 30/6</p> <p><b>own [7]</b> 5/5 7/10 7/10 17/1 17/1 29/23 31/13</p>
<p><b>M</b></p> <p><b>Madame [2]</b> 26/22 26/22</p> <p><b>made [6]</b> 3/17 14/19 15/18 16/15 18/10 18/25</p> <p><b>mainly [1]</b> 19/14</p> <p><b>make [6]</b> 2/19 17/1 17/14 24/3 24/14 27/12</p> <p><b>makes [3]</b> 15/2 20/19 31/4</p> <p><b>making [3]</b> 19/19 20/8 32/21</p> <p><b>many [1]</b> 7/9</p> <p><b>Mario [1]</b> 8/1</p> <p><b>MARJORIE [2]</b> 1/17 2/6</p> <p><b>matter [4]</b> 7/21 9/5 17/19 19/13</p> <p><b>matters [3]</b> 7/6 7/19 29/5</p> <p><b>may [14]</b> 3/7 3/7 3/19 3/19 11/18 14/6 16/5 16/6 20/7 21/14 27/16 27/16 27/16 27/17</p> <p><b>Maybe [1]</b> 14/12</p> <p><b>me [4]</b> 3/9 10/12 28/4 28/13</p> <p><b>mean [7]</b> 5/12 6/23 10/16 22/15 26/13 28/5 30/4</p>	<p><b>meet [3]</b> 18/1 18/5 20/1</p> <p><b>meeting [1]</b> 3/10</p> <p><b>meets [1]</b> 11/6</p> <p><b>MEI [1]</b> 7/13</p> <p><b>MEI-GSR [1]</b> 7/13</p> <p><b>memory [1]</b> 23/2</p> <p><b>mentioning [1]</b> 3/16</p> <p><b>met [1]</b> 11/16</p> <p><b>might [3]</b> 10/18 10/18 12/8</p> <p><b>mind [1]</b> 22/3</p> <p><b>minimum [1]</b> 11/15</p> <p><b>minute [2]</b> 24/14 24/16</p> <p><b>Moats [6]</b> 17/18 17/19 18/1 22/8 22/15 22/16</p> <p><b>moment [2]</b> 19/25 19/25</p> <p><b>months [3]</b> 16/4 16/4 16/20</p> <p><b>more [4]</b> 2/19 4/14 19/17 24/15</p> <p><b>morning [8]</b> 2/6 2/9 2/11 2/13 2/15 2/21 2/23 24/15</p> <p><b>most [1]</b> 7/7</p> <p><b>motion [32]</b> 1/13 1/14 3/1 3/2 3/17 3/20 3/21 3/22 7/15 7/24 8/7 10/15 11/3 13/5 13/6 13/8 13/10 13/14 13/22 14/24 22/24 27/19 27/22 29/1 29/10 29/24 30/13 30/20 30/24 31/15 31/24 32/18</p> <p><b>movant [6]</b> 4/15 9/6 22/23 28/13 28/14 32/1</p> <p><b>move [2]</b> 2/3 28/17</p> <p><b>moved [1]</b> 5/23</p> <p><b>movement [1]</b> 12/24</p> <p><b>Mr. [35]</b></p> <p><b>Mr. Fowler's [1]</b> 17/18</p> <p><b>Mr. Gonzales [3]</b> 9/13 9/14 9/16</p> <p><b>Mr. Green [1]</b> 20/17</p> <p><b>Mr. Kleisner [22]</b> 4/5 4/13 4/19 4/20 4/23 5/21 6/8 6/18 7/1 7/21 8/3 8/13 9/3 9/14 9/15 9/19 9/20 9/22 10/13 11/5 11/8 29/13</p> <p><b>Mr. Kleisner's [6]</b> 4/22 6/1 9/23 10/2 10/22 29/22</p> <p><b>Mr. Moats [1]</b> 17/19</p> <p><b>Mr. Silva [1]</b> 29/14</p> <p><b>Ms [1]</b> 32/20</p> <p><b>Ms. [5]</b> 21/1 22/9 23/8 28/3 29/14</p> <p><b>Ms. Galati [3]</b> 21/1 22/9 29/14</p> <p><b>Ms. Hauf [2]</b> 23/8 28/3</p> <p><b>much [4]</b> 5/16 15/11 24/6 33/4</p> <p><b>muddy [1]</b> 7/8</p> <p><b>multiple [1]</b> 29/5</p> <p><b>multitude [1]</b> 12/22</p> <p><b>my [6]</b> 3/9 6/2 16/10 29/22 29/23 30/3</p>	<p><b>O</b></p> <p><b>object [1]</b> 12/15</p> <p><b>objecting [2]</b> 14/7 14/16</p> <p><b>objection [10]</b> 12/25 13/17 14/1 14/2 14/10 14/12 14/20 25/7 25/20 33/1</p> <p><b>objections [1]</b> 15/3</p> <p><b>observer [9]</b> 14/18 15/22 16/6 16/12 17/11 18/9 18/25 19/6 25/13</p>	<p><b>observers [1]</b> 15/18</p> <p><b>obviously [2]</b> 10/16 30/4</p> <p><b>occurred [2]</b> 6/22 10/5</p> <p><b>occurring [1]</b> 25/5</p> <p><b>October [1]</b> 16/4</p> <p><b>October 2019 [1]</b> 16/4</p> <p><b>off [1]</b> 24/8</p> <p><b>offered [1]</b> 8/5</p> <p><b>offers [2]</b> 21/10 21/12</p> <p><b>Oh [1]</b> 6/2</p> <p><b>Okay [20]</b> 2/25 3/20 6/15 8/15 9/4 10/6 11/1 11/1 19/7 19/10 23/23 24/7 26/6 29/19 30/14 30/19 31/9 32/8 33/4 33/4</p> <p><b>on [69]</b></p> <p><b>one [18]</b> 3/17 5/6 11/18 12/16 13/5 13/24 13/25 14/24 24/10 24/18 24/24 26/8 26/25 26/25 28/3 28/4 31/3 32/16</p> <p><b>only [9]</b> 25/23 27/20 27/23 28/22 28/24 29/13 30/21 30/23 31/10</p> <p><b>oOo [1]</b> 33/6</p> <p><b>opportunity [1]</b> 23/25</p> <p><b>opposed [3]</b> 12/14 19/11 25/25</p> <p><b>opposite [2]</b> 16/3 16/21</p> <p><b>opposition [7]</b> 3/5 6/1 6/25 19/9 25/6 29/12 29/20</p> <p><b>or [27]</b> 3/7 3/19 4/10 6/4 7/20 8/4 8/23 9/2 9/18 10/22 11/18 14/22 15/18 15/23 16/4 22/18 25/6 26/14 27/2 27/16 27/17 29/23 29/23 30/12 31/1 31/3 33/3</p> <p><b>oral [4]</b> 4/14 24/23 25/24 27/1</p> <p><b>order [11]</b> 2/18 2/20 14/6 14/16 18/8 18/11 27/9 29/3 31/24 32/4 32/9</p> <p><b>ordered [1]</b> 26/21</p> <p><b>orders [5]</b> 14/24 27/11 27/14 32/11 32/12</p> <p><b>other [20]</b> 6/21 8/1 8/6 8/22 8/25 16/2 16/9 17/8 20/7 20/13 26/7 27/5 27/10 29/5 29/11 31/12 31/20 32/13 32/14 33/3</p> <p><b>our [14]</b> 5/25 6/13 14/1 14/10 14/20 16/22 17/8 21/22 21/22 22/9 23/18 23/19 30/18 32/18</p> <p><b>out [15]</b> 4/14 6/20 7/13 7/16 8/13 8/25 9/9 9/18 16/18 17/16 21/1 22/9 23/8 30/5 31/13</p> <p><b>outcome [1]</b> 23/13</p> <p><b>outlining [1]</b> 14/3</p> <p><b>outstanding [1]</b> 9/1</p>	<p><b>over [2]</b> 30/2 30/6</p> <p><b>own [7]</b> 5/5 7/10 7/10 17/1 17/1 29/23 31/13</p>
			<p><b>APP-1174</b></p>	<p><b>P</b></p> <p><b>part [6]</b> 7/18 11/3 11/3 18/14 31/25 32/1</p> <p><b>partial [5]</b> 3/17 27/19 27/22 30/21 32/18</p> <p><b>particular [1]</b> 18/17</p> <p><b>parties [22]</b> 1/10 4/1 4/11 7/9 12/14 23/24 23/25 24/22 26/14 27/10 27/21 28/15 29/4 31/3 31/10 31/12 31/13 31/20 32/3 32/3 32/9 32/14</p> <p><b>party [15]</b> 1/14 3/3 3/23 4/2 4/5 4/6 4/6 4/9 4/10 12/4 27/24 28/22 28/24 30/23 33/3</p> <p><b>patient [5]</b> 20/16 20/18 20/20 20/22 25/5</p> <p><b>PATRICIA [1]</b> 1/24</p> <p><b>Pause [1]</b> 3/15</p> <p><b>pending [2]</b> 7/21 17/17</p> <p><b>people [1]</b> 2/19</p> <p><b>Peppermill [1]</b> 7/14</p> <p><b>perfectly [1]</b> 27/17</p> <p><b>person [3]</b> 10/4 22/3 22/5</p> <p><b>person's [2]</b> 22/6 22/6</p> <p><b>perspective [1]</b> 20/24</p> <p><b>pertains [3]</b> 13/24 13/25 14/20</p> <p><b>phone [1]</b> 30/2</p> <p><b>phonetic [3]</b> 17/18 17/18 17/21</p> <p><b>physical [2]</b> 16/9 22/6</p> <p><b>place [1]</b> 12/18</p> <p><b>plaintiff [26]</b> 1/5 1/17 2/5 2/7 3/4 5/17 6/24 7/3 7/5 7/6 8/21 8/23 9/9 10/6 13/19 17/5 17/12 18/1 18/5 18/15 23/1 27/9 28/2 28/23 30/23 32/25</p> <p><b>plaintiff's [5]</b> 6/7 9/25 16/16 29/2 30/1</p> <p><b>plaintiffs [1]</b> 2/8</p> <p><b>plead [1]</b> 5/21</p> <p><b>pleading [3]</b> 6/3 7/15 9/3</p> <p><b>pleadings [5]</b> 1/14 3/1 6/6 11/20 12/22</p> <p><b>please [4]</b> 2/5 2/20 27/9 27/12</p> <p><b>plenty [1]</b> 21/21</p> <p><b>point [10]</b> 7/13 9/9 10/7 10/21 12/8 12/20 16/10 17/16 20/23 23/8</p> <p><b>pointed [2]</b> 21/1 22/9</p> <p><b>poking [1]</b> 22/3</p> <p><b>portion [2]</b> 10/24 12/5</p> <p><b>position [13]</b> 4/10 6/7 6/13 7/4 7/6 14/20 19/8 19/23 19/25 24/2 29/22 29/22 30/4</p> <p><b>possible [1]</b> 7/9</p>

<p><b>P</b></p> <p><b>potential</b> [3] 3/6 11/14 12/4</p> <p><b>potentially</b> [2] 3/19 19/22</p> <p><b>powers</b> [2] 17/2 18/4</p> <p><b>practicing</b> [1] 21/9</p> <p><b>precedence</b> [1] 21/20</p> <p><b>precedent</b> [1] 21/18</p> <p><b>prejudice</b> [1] 11/7</p> <p><b>prep</b> [1] 24/12</p> <p><b>prepare</b> [6] 9/25 27/9 31/7 31/23 32/3 32/9</p> <p><b>present</b> [6] 14/18 15/18 15/22 18/9 18/25 25/14</p> <p><b>presented</b> [6] 19/13 20/15 21/3 25/4 25/6 29/4</p> <p><b>primarily</b> [1] 10/1</p> <p><b>prior</b> [1] 15/14</p> <p><b>privacy</b> [1] 22/6</p> <p><b>probably</b> [1] 28/2</p> <p><b>problem</b> [2] 19/22 30/12</p> <p><b>problematic</b> [1] 20/16</p> <p><b>procedural</b> [14] 15/6 16/23 17/23 17/24 18/3 18/4 19/24 20/13 21/4 21/14 21/24 21/24 21/25 22/11</p> <p><b>procedurally</b> [1] 27/4</p> <p><b>procedures</b> [2] 21/10 23/12</p> <p><b>proceeding</b> [1] 25/5</p> <p><b>proceedings</b> [5] 1/8 3/15 17/1 33/5 33/8</p> <p><b>processes</b> [1] 5/9</p> <p><b>produced</b> [1] 9/20</p> <p><b>properly</b> [4] 24/10 24/18 27/4 27/7</p> <p><b>property</b> [1] 8/4</p> <p><b>protect</b> [1] 22/1</p> <p><b>provide</b> [3] 15/25 27/10 32/9</p> <p><b>provided</b> [1] 11/23</p> <p><b>providing</b> [2] 14/11 14/14</p> <p><b>provisions</b> [1] 16/17</p> <p><b>psychological</b> [5] 15/17 15/23 19/1 19/17 23/6</p> <p><b>punitive</b> [5] 8/22 29/13 29/22 30/2 30/21</p> <p><b>purposely</b> [1] 29/23</p> <p><b>purposes</b> [1] 28/21</p> <p><b>pursuant</b> [1] 32/24</p> <p><b>put</b> [1] 10/12</p> <p><b>putting</b> [1] 7/19</p>	<p><b>R</b></p> <p><b>Raiders</b> [2] 3/12 3/12</p> <p><b>raised</b> [1] 24/22</p> <p><b>reach</b> [1] 31/13</p> <p><b>read</b> [2] 6/3 21/23</p> <p><b>ready</b> [1] 9/25</p> <p><b>reaffirm</b> [1] 25/22</p> <p><b>reaffirming</b> [1] 26/25</p> <p><b>realize</b> [1] 9/23</p> <p><b>really</b> [6] 3/23 6/7 12/3 18/16 21/6 28/22</p> <p><b>reason</b> [3] 10/1 20/21 26/5</p> <p><b>reasoning</b> [1] 3/24</p> <p><b>reasons</b> [2] 7/15 25/11</p> <p><b>recent</b> [1] 11/9</p> <p><b>recollecting</b> [1] 28/9</p> <p><b>recommendation</b> [13] 3/7 12/7 12/9 12/13 24/21 25/8 25/12 25/19 25/21 26/4 26/8 26/10 27/6</p> <p><b>recommendations</b> [2] 24/9 26/25</p> <p><b>reconsider</b> [1] 24/20</p> <p><b>reconsideration</b> [1] 26/2</p> <p><b>reconsidering</b> [1] 27/2</p> <p><b>record</b> [1] 5/5</p> <p><b>RECORDED</b> [1] 1/24</p> <p><b>RECORDER</b> [2] 1/24 26/22</p> <p><b>recording</b> [9] 14/19 16/2 16/6 16/12 17/11 18/10 18/25 19/6 25/15</p> <p><b>recordings</b> [1] 15/18</p> <p><b>reference</b> [1] 11/17</p> <p><b>referred</b> [1] 14/9</p> <p><b>refuted</b> [1] 8/12</p> <p><b>regard</b> [3] 4/19 8/20 9/22</p> <p><b>regarding</b> [11] 8/2 8/22 12/6 12/10 12/16 13/5 13/10 13/22 20/10 20/11 20/12</p> <p><b>regards</b> [11] 6/8 6/10 11/7 11/13 12/18 19/13 21/9 22/14 25/24 26/7 31/12</p> <p><b>reiterate</b> [1] 4/18</p> <p><b>rejected</b> [1] 16/15</p> <p><b>related</b> [2] 1/10 7/25</p> <p><b>relates</b> [1] 5/1</p> <p><b>relationship</b> [2] 20/23 25/3</p> <p><b>relief</b> [2] 4/2 32/2</p> <p><b>remain</b> [2] 28/13 28/14</p> <p><b>remember</b> [2] 24/11 24/12</p> <p><b>remove</b> [2] 9/10 10/16</p> <p><b>replies</b> [1] 15/3</p> <p><b>reply</b> [2] 10/8 13/19</p> <p><b>report</b> [21] 3/7 12/7 12/9 13/15 13/17 13/22 14/2 14/10 14/14 23/4 24/21 25/7 25/12 25/19 25/21 26/3 26/7 26/10 26/24 26/24 27/6</p>	<p><b>REPORTING</b> [1] 1/24</p> <p><b>reports</b> [7] 13/5 13/24 14/21 15/4 18/8 18/8 24/9</p> <p><b>request</b> [6] 22/14 30/15 30/18 30/19 32/3 32/21</p> <p><b>requested</b> [1] 8/21</p> <p><b>required</b> [1] 27/13</p> <p><b>requires</b> [2] 4/1 4/25</p> <p><b>residence</b> [2] 4/20 9/16</p> <p><b>resolve</b> [1] 12/22</p> <p><b>resolved</b> [1] 28/20</p> <p><b>respect</b> [2] 7/12 14/15</p> <p><b>respond</b> [2] 15/9 19/11</p> <p><b>response</b> [1] 25/6</p> <p><b>responses</b> [1] 9/14</p> <p><b>result</b> [2] 15/21 20/6</p> <p><b>resulted</b> [1] 13/5</p> <p><b>results</b> [3] 15/19 15/19 15/19</p> <p><b>reverse</b> [1] 18/8</p> <p><b>revisit</b> [1] 26/2</p> <p><b>revisiting</b> [2] 26/1 26/3</p> <p><b>Richard</b> [2] 2/8 3/10</p> <p><b>right</b> [8] 14/21 21/7 22/5 22/7 22/11 22/13 23/17 30/5</p> <p><b>rights</b> [1] 22/1</p> <p><b>Roe</b> [2] 5/21 10/15</p> <p><b>Roes</b> [1] 7/3</p> <p><b>routine</b> [1] 19/17</p> <p><b>rule</b> [39]</p> <p><b>Rule 16.3</b> [1] 15/3</p> <p><b>Rule 35</b> [12] 12/10 12/17 12/18 13/6 15/13 15/13 17/23 23/11 23/12 23/18 24/25 25/13</p> <p><b>ruled</b> [2] 17/20 17/22</p> <p><b>rules</b> [5] 17/1 21/24 21/25 23/6 24/3</p> <p><b>ruling</b> [4] 11/2 22/12 24/20 25/10</p> <p><b>S</b></p> <p><b>said</b> [9] 4/10 11/17 12/1 13/6 14/4 16/18 21/13 23/3 28/12</p> <p><b>same</b> [12] 13/10 13/14 13/22 14/2 14/17 14/23 16/17 18/8 23/6 23/6 23/16 29/22</p> <p><b>say</b> [2] 12/14 22/20</p> <p><b>saying</b> [2] 15/22 18/18</p> <p><b>says</b> [7] 11/21 11/24 11/24 16/5 20/20 23/8 23/18</p> <p><b>scenario</b> [1] 23/19</p> <p><b>scheduled</b> [2] 27/25 32/17</p> <p><b>scheme</b> [1] 21/2</p> <p><b>scope</b> [8] 5/23 6/11 6/23 7/2 7/5 8/3 9/19 10/14</p> <p><b>second</b> [16] 2/16 8/18 9/25 10/24 11/9 13/9 13/21 13/25 14/2 14/7 14/9 14/14 14/15 24/24</p>	<p>27/5 28/4</p> <p><b>see</b> [12] 5/10 11/7 11/15 18/18 18/20 19/4 24/1 24/2 28/1 29/3 29/24 31/13</p> <p><b>seek</b> [1] 4/2</p> <p><b>seem</b> [1] 3/11</p> <p><b>send</b> [2] 30/2 30/6</p> <p><b>separation</b> [2] 17/2 18/4</p> <p><b>set</b> [4] 3/18 11/19 26/8 27/18</p> <p><b>she</b> [2] 17/20 17/22</p> <p><b>She's</b> [1] 23/3</p> <p><b>should</b> [12] 12/18 14/22 14/23 20/21 22/18 26/5 27/2 27/3 27/15 28/2 30/14 31/17</p> <p><b>shouldn't</b> [2] 19/1 19/2</p> <p><b>shown</b> [2] 7/1 7/4</p> <p><b>shows</b> [1] 11/23</p> <p><b>side</b> [1] 17/8</p> <p><b>sign</b> [4] 12/12 12/16 20/19 27/4</p> <p><b>signatures</b> [1] 27/13</p> <p><b>signed</b> [7] 24/20 25/18 26/5 26/6 27/1 27/3 27/3</p> <p><b>signing</b> [4] 25/22 25/23 26/3 26/25</p> <p><b>SILVA</b> [7] 1/19 2/11 4/16 9/7 29/14 29/16 30/11</p> <p><b>similar</b> [1] 21/8</p> <p><b>simply</b> [1] 8/24</p> <p><b>since</b> [7] 7/22 10/7 15/14 21/13 31/16 31/25 32/2</p> <p><b>single</b> [1] 23/18</p> <p><b>situation</b> [1] 22/2</p> <p><b>SLATTERY</b> [1] 1/24</p> <p><b>so</b> [79]</p> <p><b>some</b> [7] 14/4 14/6 20/4 20/6 28/15 32/2 32/14</p> <p><b>somebody</b> [5] 6/23 10/19 22/3 22/4 32/3</p> <p><b>somehow</b> [1] 19/5</p> <p><b>someone</b> [1] 10/22</p> <p><b>something</b> [6] 4/25 14/22 19/18 20/20 21/6 21/24</p> <p><b>sometimes</b> [2] 24/15 31/2</p> <p><b>sorry</b> [3] 6/2 25/7 32/22</p> <p><b>sought</b> [3] 5/6 28/25 30/24</p> <p><b>specific</b> [3] 10/11 22/21 26/16</p> <p><b>specifically</b> [2] 25/20 26/11</p> <p><b>specify</b> [1] 21/24</p> <p><b>Spinella</b> [3] 2/8 3/10 3/12</p> <p><b>sponte</b> [1] 24/20</p> <p><b>Stadium</b> [1] 3/13</p> <p><b>stage</b> [2] 8/12 11/8</p> <p><b>stamp</b> [1] 31/2</p>	<p><b>standard</b> [3] 4/8 11/15 18/7</p> <p><b>standards</b> [2] 3/25 11/6</p> <p><b>standpoint</b> [1] 31/4</p> <p><b>start</b> [1] 32/11</p> <p><b>state</b> [5] 6/20 8/13 21/11 21/11 21/17</p> <p><b>stated</b> [1] 25/20</p> <p><b>statement</b> [1] 31/9</p> <p><b>states</b> [1] 6/21</p> <p><b>status</b> [1] 4/7</p> <p><b>statute</b> [32] 15/13 16/3 16/3 16/7 16/21 16/22 16/23 17/2 17/6 17/13 17/14 17/23 18/3 18/17 19/5 19/24 20/25 21/11 21/12 21/15 21/19 21/20 22/11 23/9 23/10 23/11 23/16 23/17 23/19 25/14 26/15 26/20</p> <p><b>statutory</b> [1] 21/2</p> <p><b>stay</b> [1] 22/14</p> <p><b>stayed</b> [3] 22/15 22/15 22/16</p> <p><b>Steve</b> [4] 2/15 2/21 29/18 29/20</p> <p><b>STEVEN</b> [1] 1/21</p> <p><b>still</b> [3] 10/17 13/13 20/1</p> <p><b>stipulated</b> [3] 29/3 31/1 31/5</p> <p><b>stipulation</b> [5] 30/2 30/6 31/8 31/10 32/25</p> <p><b>strictly</b> [1] 20/23</p> <p><b>sua</b> [1] 24/20</p> <p><b>subject</b> [2] 12/19 23/6</p> <p><b>subjecting</b> [1] 22/4</p> <p><b>submission</b> [1] 16/22</p> <p><b>submissions</b> [1] 16/15</p> <p><b>submit</b> [4] 7/18 8/7 18/21 22/20</p> <p><b>substance</b> [1] 23/13</p> <p><b>substantive</b> [20] 15/7 17/6 17/13 17/15 20/13 20/25 21/2 21/5 21/17 21/23 21/25 22/1 22/5 22/7 23/10 23/11 23/17 23/20 24/22 26/5</p> <p><b>substantively</b> [2] 26/10 27/4</p> <p><b>such</b> [1] 5/5</p> <p><b>suffering</b> [2] 19/16 19/19</p> <p><b>sufficient</b> [2] 7/15 9/20</p> <p><b>summary</b> [5] 3/17 27/19 27/23 30/21 32/18</p> <p><b>summer</b> [2] 7/16 8/14</p> <p><b>supplement</b> [3] 14/1 14/10 14/11</p> <p><b>support</b> [4] 17/7 17/8 18/22 18/23</p> <p><b>supports</b> [1] 18/24</p> <p><b>supposed</b> [1] 3/11</p> <p><b>Supreme</b> [6] 7/13 15/14 16/10 16/17 17/17 19/3</p>
<p><b>Q</b></p> <p><b>question</b> [4] 4/12 10/11 11/22 18/13</p> <p><b>questions</b> [3] 8/9 8/16 22/21</p> <p><b>quick</b> [1] 18/13</p> <p><b>quickly</b> [1] 28/5</p>				

<p><b>S</b></p> <p><b>sure</b> [6] 11/17 21/22 24/3 24/14 27/12 28/8</p> <p><b>surprised</b> [1] 5/11</p> <p><b>sworn</b> [1] 8/11</p> <p><b>system</b> [1] 10/4</p> <hr/> <p><b>T</b></p> <p><b>take</b> [7] 4/9 12/18 21/18 21/20 24/21 27/15 31/17</p> <p><b>takes</b> [1] 4/7</p> <p><b>taking</b> [2] 3/25 4/9</p> <p><b>talk</b> [1] 19/24</p> <p><b>talked</b> [1] 21/22</p> <p><b>talks</b> [2] 15/3 20/15</p> <p><b>Technologies</b> [1] 6/20</p> <p><b>Technology</b> [1] 8/14</p> <p><b>telephonic</b> [2] 13/12 28/25</p> <p><b>ten</b> [1] 16/4</p> <p><b>terms</b> [2] 8/4 8/11</p> <p><b>testified</b> [1] 5/2</p> <p><b>testimony</b> [6] 6/17 8/5 8/12 9/13 10/2 12/3</p> <p><b>than</b> [3] 19/17 31/20 32/13</p> <p><b>thank</b> [21] 5/16 6/15 8/15 9/4 10/10 13/1 15/11 19/12 22/25 23/23 23/24 24/4 24/6 28/19 29/19 30/8 30/17 31/7 31/25 33/2 33/4</p> <p><b>that</b> [230]</p> <p><b>that's</b> [17] 4/11 4/25 6/5 12/19 14/13 15/6 17/3 21/6 21/18 22/7 22/12 24/4 25/25 28/24 31/7 32/5 32/18</p> <p><b>their</b> [9] 2/19 7/10 7/10 13/19 18/5 22/5 29/7 31/13 32/14</p> <p><b>them</b> [7] 4/9 5/4 5/6 15/5 19/6 20/19 24/10</p> <p><b>then</b> [23] 3/6 3/18 12/6 12/12 13/9 13/12 13/19 13/21 14/1 14/5 15/4 15/9 16/20 23/15 24/13 30/19 31/8 31/9 31/10 31/17 32/2 32/8 33/4</p> <p><b>there</b> [43]</p> <p><b>there's</b> [18] 3/6 4/22 6/18 8/6 9/13 11/16 11/20 11/25 12/6 12/17 15/12 16/22 16/25 17/17 21/19 21/21 24/14 24/15</p> <p><b>therefore</b> [6] 18/7 19/2 23/4 26/17 27/7 30/24</p> <p><b>therein</b> [1] 20/10</p> <p><b>thereof</b> [1] 25/15</p> <p><b>these</b> [5] 7/16 7/19 7/20 7/25 16/17</p> <p><b>they</b> [15] 14/22 14/23 16/15 16/16 16/18 18/6 18/15 18/20 18/21 19/4 19/17 20/20 23/17 29/3 32/2</p>	<p><b>thing</b> [4] 3/20 18/9 27/16 32/16</p> <p><b>things</b> [8] 14/3 14/4 20/7 23/16 24/14 24/16 28/16 28/16</p> <p><b>think</b> [8] 4/18 4/24 5/3 6/24 10/2 28/6 28/20 28/22</p> <p><b>third</b> [6] 1/14 3/3 3/23 4/2 4/6 12/4</p> <p><b>third-party</b> [6] 1/14 3/3 3/23 4/2 4/6 12/4</p> <p><b>this</b> [66]</p> <p><b>those</b> [4] 10/16 11/16 23/16 25/11</p> <p><b>though</b> [3] 5/3 7/24 20/25</p> <p><b>through</b> [2] 5/22 9/16</p> <p><b>THURSDAY</b> [3] 1/12 4/21 6/22</p> <p><b>time</b> [6] 5/3 5/4 5/7 5/23 6/19 14/23</p> <p><b>timely</b> [2] 14/23 25/19</p> <p><b>timing</b> [3] 24/11 24/12 24/17</p> <p><b>title</b> [4] 14/12 14/21 16/7 23/9</p> <p><b>today</b> [15] 2/25 3/19 12/22 24/19 26/8 26/12 27/17 27/21 28/20 29/9 29/10 29/21 30/13 31/18 32/24</p> <p><b>TRAN</b> [1] 1/1</p> <p><b>transcribed</b> [2] 1/24 33/8</p> <p><b>Transcriber</b> [1] 33/12</p> <p><b>TRANSCRIPT</b> [1] 1/8</p> <p><b>traumatic</b> [6] 19/16 19/19 19/21 20/2 20/5 20/9</p> <p><b>travel</b> [1] 6/21</p> <p><b>treat</b> [2] 30/14 31/1</p> <p><b>trial</b> [1] 21/3</p> <p><b>tries</b> [1] 16/23</p> <p><b>truly</b> [1] 33/7</p> <p><b>trying</b> [6] 7/8 7/19 7/20 16/16 17/3 20/3</p> <p><b>turns</b> [2] 16/14 23/15</p> <p><b>two</b> [10] 5/2 13/5 13/23 14/24 14/25 15/2 15/4 17/10 24/8 25/17</p> <p><b>type</b> [1] 8/5</p> <hr/> <p><b>U</b></p> <p><b>U.S</b> [1] 17/21</p> <p><b>ultimate</b> [1] 4/10</p> <p><b>unclear</b> [1] 12/23</p> <p><b>under</b> [7] 11/11 11/18 12/12 16/7 18/7 20/21 27/13</p> <p><b>understanding</b> [1] 5/12</p> <p><b>undue</b> [3] 7/16 7/18 8/7</p> <p><b>unless</b> [2] 22/21 32/3</p> <p><b>unopposed</b> [5] 12/12 24/10 24/18 25/23 31/2</p> <p><b>unreliable</b> [1] 5/5</p> <p><b>untangle</b> [1] 5/6</p>	<p><b>until</b> [2] 8/7 9/24</p> <p><b>up</b> [13] 5/8 5/14 5/15 10/7 10/17 13/10 22/10 22/12 24/13 28/5 28/16 28/17 29/8</p> <p><b>us</b> [2] 9/21 10/13</p> <p><b>use</b> [1] 14/21</p> <p><b>Utah</b> [1] 17/22</p> <hr/> <p><b>V</b></p> <p><b>vacated</b> [3] 18/12 32/18 32/24</p> <p><b>various</b> [1] 6/6</p> <p><b>VEGAS</b> [1] 2/1</p> <p><b>versus</b> [7] 2/3 3/12 7/14 8/23 8/23 20/13 31/18</p> <p><b>very</b> [7] 20/17 20/17 21/16 22/4 23/16 28/4 33/4</p> <p><b>vicarious</b> [2] 9/11 10/8</p> <p><b>video</b> [2] 26/13 33/8</p> <p><b>viewed</b> [1] 26/18</p> <p><b>violates</b> [2] 17/2 18/4</p> <hr/> <p><b>W</b></p> <p><b>wait</b> [2] 2/16 31/13</p> <p><b>waiting</b> [2] 29/24 32/14</p> <p><b>want</b> [8] 12/25 15/7 18/6 19/18 30/6 31/1 31/23 32/17</p> <p><b>wants</b> [1] 24/3</p> <p><b>was</b> [75]</p> <p><b>wasn't</b> [4] 4/24 8/18 14/12 23/5</p> <p><b>waters</b> [1] 7/8</p> <p><b>way</b> [4] 2/20 10/12 20/14 31/3</p> <p><b>we</b> [66]</p> <p><b>we'll</b> [3] 2/3 28/1 31/13</p> <p><b>we're</b> [9] 10/16 11/17 18/7 18/11 20/1 20/5 20/8 24/24 28/14</p> <p><b>we've</b> [4] 2/19 3/18 21/8 29/4</p> <p><b>Wednesday</b> [2] 4/21 6/22</p> <p><b>week</b> [5] 8/19 11/10 24/13 24/13 27/1</p> <p><b>weekday</b> [1] 6/22</p> <p><b>well</b> [8] 3/5 12/24 17/14 18/20 27/7 28/13 29/9 33/4</p> <p><b>were</b> [20] 5/20 5/21 6/10 7/16 8/25 8/25 9/2 9/24 13/4 14/4 14/7 14/8 14/13 14/16 14/22 14/25 16/16 25/4 28/25 29/2</p> <p><b>what</b> [27] 4/8 5/12 8/4 10/11 11/17 12/21 14/3 14/13 15/4 16/14 16/20 16/23 17/4 18/2 18/6 18/14 19/21 20/3 21/3 21/25 22/7 23/15 24/7 25/16 28/5 29/24 31/14</p> <p><b>what's</b> [6] 4/4 15/24 21/23 21/24 23/12 23/12</p>	<p><b>when</b> [7] 3/24 4/1 6/3 8/1 10/24 15/2 21/18</p> <p><b>where</b> [7] 6/5 11/8 11/10 16/16 20/18 21/17 22/2</p> <p><b>whether</b> [6] 8/3 9/18 12/18 14/7 26/14 27/2</p> <p><b>which</b> [22] 3/7 3/17 5/6 5/23 11/19 13/5 14/17 14/18 15/23 16/8 16/8 16/11 16/21 17/21 18/4 18/6 22/8 23/2 25/9 26/11 27/16 30/23</p> <p><b>while</b> [3] 21/13 22/10 30/1</p> <p><b>who</b> [8] 6/18 8/2 10/4 12/16 12/24 28/3 28/23 31/23</p> <p><b>whose</b> [1] 18/17</p> <p><b>why</b> [5] 5/23 20/21 22/12 22/16 25/25</p> <p><b>will</b> [5] 22/1 22/17 27/25 32/8 32/23</p> <p><b>Williams</b> [1] 33/12</p> <p><b>WINSPEAR</b> [4] 1/22 2/14 2/23 32/20</p> <p><b>wish</b> [6] 27/17 27/21 29/11 29/14 31/13 31/20</p> <p><b>wishes</b> [3] 27/24 28/12 28/14</p> <p><b>within</b> [3] 9/19 18/15 19/14</p> <p><b>witnesses</b> [1] 16/8</p> <p><b>wonderful</b> [1] 5/10</p> <p><b>words</b> [1] 22/23</p> <p><b>work</b> [3] 8/5 9/15 11/25</p> <p><b>working</b> [5] 6/19 8/13 10/19 11/21 11/24</p> <p><b>works</b> [1] 32/7</p> <p><b>worries</b> [2] 28/8 28/11</p> <p><b>would</b> [25] 4/13 5/18 6/13 6/20 7/11 7/12 7/18 8/7 11/11 14/9 14/10 16/7 17/16 20/1 21/18 21/20 22/16 26/12 26/19 28/7 28/21 30/2 30/18 31/10 32/1</p> <p><b>would've</b> [1] 8/2</p> <p><b>wouldn't</b> [2] 29/5 29/6</p> <p><b>writ</b> [3] 17/17 22/10 22/13</p> <p><b>written</b> [2] 5/15 12/2</p> <hr/> <p><b>X</b></p> <p><b>XXXI</b> [1] 1/6</p> <hr/> <p><b>Y</b></p> <p><b>yes</b> [10] 6/2 10/9 13/1 15/8 15/11 22/25 30/17 32/21 32/22 32/22</p> <p><b>yesterday</b> [1] 18/12</p> <p><b>yet</b> [4] 5/8 8/6 10/20 31/15</p> <p><b>you</b> [73]</p> <p><b>you're</b> [3] 21/17 22/2 28/3</p> <p><b>you've</b> [1] 21/22</p> <p><b>your</b> [46]</p>
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1 **ORDR**

2 DISTRICT COURT  
3 CLARK COUNTY, NEVADA  
4

5 **JOSHUA GREEN**, an individual,  
6  
7 Plaintiff,

7 vs.

8 **FERRELLGAS, INC.**, a foreign corporation;  
9 **MARIO S. GONZALES**, an individual;  
10 **CARL J. KLEISNER**, an individual; Does I  
11 through XXX, inclusive; and Roes Business  
12 Entities I through XXX, inclusive

12 Defendants.

13 **MARIO S. GONZALEZ**, an individual;  
14  
15 Cross-Claimant,

15 vs.

16 **FERRELLGAS, INC.**, a foreign corporation;  
17 **CARL J, KLEISNER**, an individual; DOES  
18 1 through 100 inclusive; and ROE  
19 Corporations 101 through 200;

20 Cross-Defendants.

21 **MARIO S. GONZALEZ**, an individual;

22 Third-Party Plaintiff,

23 vs.  
24

25 **BBQ GUYS MANUFACTURING, LLC. dba**  
26 **BLAZE OUTDOOR PRODUCTS.**, a foreign  
27 corporation; **HOME DEPOT USA, INC.**, a  
28 foreign corporation; **KSUN**

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

**ORDER DENYING DEFENDANTS'  
OBJECTIONS TO DISCOVERY  
COMMISSIONER'S REPORTS AND  
RECOMMENDATIONS DATED  
DECEMBER 22, 2020, AND JANUARY  
12, 2021; 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.**



1 **MANUFACTURING**, a foreign corporation;  
2 Does 200 through 300 inclusive; and ROE  
3 Corporation 301 through 400;

4 Third–Party Defendants.

5 **FERRELLGAS, INC.**, a foreign corporation;

6 Counter–Claimant,

7 vs.

8 **MARIO S. GONZALEZ**, an individual;  
9 DOES 1 through 100 inclusive; and ROE  
10 Corporations 101 through 200;

11 Counter–Defendants.

12 **CARL J. KLEISNER**, an individual;

13 Counter–Claimant,

14 vs.

15 **MARIO S. GONZALEZ**, an individual;  
16 DOES 1 through 100 inclusive; and ROE  
17 Corporations 101 through 200;

18 Counter–Defendants.

19  
20  
21 **I. FACTUAL BACKGROUND**

22 Defendants, Ferrellgas, Inc., Mario S. Gonzalez, and Carl J. Kleisner, filed a  
23 Motion to Compel NRCP 35 Examination (Motion) on October 26, 2020. Plaintiff,  
24 Joshua Green, filed his Opposition to Defendants’ Motion to Compel NRCP 35  
25 Examination on November 9, 2020. Defendants filed their Reply in Support on  
26 November 12, 2020. This matter was first heard before the Honorable Discovery  
27 Commissioner Truman on November 19, 2020.

1 On December 7, 2020, Plaintiff filed a Supplemental Brief. On December 9,  
2 2020, Defendants filed a Supplemental Brief responding thereto. On December 10,  
3 2020, the parties attended a follow-up hearing before the Discovery Commissioner  
4 regarding the Motion. On December 16, 2020, the Discovery Commissioner  
5 conducted a telephonic hearing with the parties on various outstanding issues relating  
6 to the Motion. On December 22, 2020, the First Discovery Commissioner's Report  
7 and Recommendation regarding the November 19, 2020, hearing was e-filed and  
8 served. In January 2021, the Discovery Commissioner filed and served a second  
9 Report and Recommendation. Defendants have objected to both Discovery  
10 Commissioner Reports and Recommendations.<sup>1</sup>

11 In the first Report and Recommendation, Commissioner Truman  
12 recommended Mr. Green appear for a NRCP 35 Examination consistent with the  
13 following parameters:

- 15 1. IT IS THEREFORE RECOMMENDED that Defendants' Motion to  
16 Order an NRCP 35 Examination is GRANTED in part and  
DENIED in part.
- 17 2. IT IS FURTHER RECOMMENDED that Plaintiff shall be  
18 Ordered to appear for a Rule 35 Examination at the office of Dr.  
Lewis Etcoff.
- 19 3. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to  
20 have an observer present during the Rule 35 examination  
pursuant to NRS 52.380.
- 21 4. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to

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22 <sup>1</sup> After the December Report and Recommendation was filed, Defendants filed an Objection to  
23 Discovery Commissioner's Report and Recommendations on January 5, 2021, and sought a  
24 hearing on the Objection in accordance with the EDCR. Plaintiff filed a Reply to Defendants'  
Objection to the Discovery Commissioners' Report and Recommendations on January 11, 2021.

25 Thereafter, on January 12, 2021, the Discovery Commissioner issued a Second Report and  
26 Recommendation (DCRR) regarding the same Motion but relating to a later, December 10, 2020,  
27 hearing. Rather than filing a separate Objection to the Second DCRR, Defendants filed a  
28 "Supplement "to their January 5, 2021, Objection on January 19, 2021; which, although it contained  
language objecting to the second DCRR, it was not titled as such, nor did it request a hearing on the  
arguments in accordance with the EDCR.

1 have an audio recording made of the Rule 35 examination  
2 pursuant to NRS 52.380.

- 3 5. IT IS FURTHER RECOMMENDED that Defendants'  
4 examiner shall be allowed to inquire into Plaintiff's mental  
5 condition before the incident, and Plaintiff's general physical  
6 condition before the incident. The examiner may inquire as to  
7 Plaintiff's medical treatment for the five years prior to the incident.
- 8 6. IT IS FURTHER RECOMMENDED that Defendants'  
9 examiner shall be allowed to inquire into Plaintiff's life events prior  
10 to and after the incident.
- 11 7. IT IS FURTHER RECOMMENDED that Defendants'  
12 examiner shall be allowed to inquire into Plaintiff's mental and  
13 physical condition since the incident occurred.
- 14 8. IT IS FURTHER RECOMMENDED that Defendants'  
15 examiner shall be allowed to inquire into Plaintiff's history with  
16 regard to inability to focus and memory issues.

17 In the second Report and Recommendation, Commissioner Truman  
18 recommended Mr. Green appear for a NRCP 35 Examination consistent with the  
19 following parameters:

- 20 1. IT IS THEREFORE RECOMMENDED that Defendants' Motion to  
21 Order an NRCP 35 Examination is GRANTED in part and  
22 DENIED in part.
- 23 2. IT IS FURTHER RECOMMENDED that Plaintiff shall be Ordered  
24 to appear for a Rule 35 examination at the office of Dr. Lewis  
25 Etcoff on March 3, 2021.
- 26 3. IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed  
27 to question Plaintiff's entire medical condition for the last five  
28 years.
4. IT IS FURTHER RECOMMENDED THAT Dr. Etcoff shall be  
allowed to question Plaintiff's medical condition for the body parts  
and conditions at issue in this litigation for the last ten years.
5. IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed  
to question Plaintiff generally about concentration and memory  
issues throughout his life.
6. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to  
have an observer present during the Rule 35 examination  
pursuant to NRS 52.380.
7. IT IS FURTHER RECOMMENDED that Plaintiff be allowed to  
have an audio recording made of the Rule 35 examination  
pursuant to NRS 52.380.
8. IT IS FURTHER RECOMMENDED that Defendants' examiner  
shall be allowed to inquire into whether Plaintiff had a previous  
medical diagnosis.

1 9. IT IS FURTHER RECOMMENDED that Defendants shall provide  
2 a list of the testing Dr. Etcoff will conduct during the  
3 neurophyschological exam - two weeks before the Rule 35  
4 examination.

5 The hearing on the first Objection (which is the only one that had been set  
6 for hearing) was originally was set for hearing on January 26, 2021. Due to  
7 unrelated court issues, the hearing was continued until January 28, 2021. On the  
8 day prior to the hearing, the time period for an Objection to the second DCRR had  
9 passed, and there had not been a separate Objection filed to that DCRR nor had  
10 any hearing been set on that DCRR. Thus, on January 27, 2021, the Court signed  
11 and entered what was thought to be an unopposed Order that had been submitted  
12 affirming the second DCRR filed on January 12, 2021.<sup>2</sup>

13 The instant matter was heard before the Honorable Judge Joanna Kishner  
14 on January 28, 2021. In attendance on behalf of Plaintiff was Marjorie L. Hauf,  
15 Esq. of H & P LAW. In attendance on behalf of Defendant, Ferrellgas, Inc. was  
16 Felicia Galati, Esq., of OLSON CANNON GORMLEY & STOBERSKI; and  
17 Gregorio Silva, Esq. of BAKER STERCHI COWDEN & RICE. In attendance  
18 for Defendant, Mario S. Gonzalez, was Steven Goldstein, Esq. of PYATT  
19 SILVERSTRI. In attendance for Defendant, Carl J. Kleisner, was Gina Winspear,  
20 Esq. of DENNETT WINSPEAR.

21 At the January 28, 2021, hearing, it was set forth that it was Defendants'  
22 intention that the Supplemental pleading (s) filed by Defendants had been intended  
23 by Defendants to oppose both the DCCRs. Accordingly, per the acquiescence of  
24 the parties, the Court heard and considered all the relevant pleadings, heard

25 <sup>2</sup> In light of the confusion of whether Defendants had intended to oppose both the DCRRs, the Court *sua*  
26 *sponte* revisited, at the hearing, its signing of the January 27<sup>th</sup> Order affirming the January 12, 2021, DCRR.  
27 The Court then found that Discovery Commissioner's Recommendations regarding the examination should be  
28 affirmed, although as discussed further herein, the Court relied on NRCP 35. As such, and in order to avoid  
confusion of there being two DCRRs from one Motion, the Court struck the January 27<sup>th</sup> Order regarding the  
Discovery Commissioner's January 12, 2021, DCCR. The present Order addresses both DCRRs and this  
Order AFFIRMS, as modified herein, both the December 22, 2020, DCRR; and the January 12, 2021, DCRR.

1 argument on and ruled upon both the pending DCRRs. All arguments either  
2 having been heard or been given the opportunity to be heard, this Court enters the  
3 following Findings and Order:

4 **I. FINDINGS OF FACT AND CONCLUSIONS OF LAW**

5 In both the December 22<sup>nd</sup> and January 12<sup>th</sup> Reports and  
6 Recommendations, the Discovery Commissioner recommended that a NRCP 35  
7 Exam of Plaintiff take place. She further set forth the recommended scope and  
8 breadth of the exam as well as pre-exam and exam procedures. (See  
9 Recommendations filed December 22, 2020, and January 12, 2021.) She also  
10 recommended that an observer be present and that an audio recording be allowed  
11 as fully detailed in those DCRRs.

12 In their pleadings and at the hearings, Plaintiff had presented both NRCP  
13 35 and NRS 52.380 to the Discovery Commissioner in support of his requests.  
14 Based on the evidence presented and the specific facts of this case, the Court finds  
15 that the Recommendations in both the December 22<sup>nd</sup> and January 12<sup>th</sup> DCRRs  
16 are supported; and thus, are AFFIRMED. The pleadings set forth why there is  
17 good cause to allow the recommended pre-exam and exam procedures as well as  
18 the breadth and scope of the exam and information to be inquired about.

19 Specifically, NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) have been met in this  
20 case considering the nature of the claims presented, the lack of medical provider-  
21 patient relationship, and the other facts presented. Given the Court has found that  
22 the good cause provisions of NRCP 35 apply, and this provision allows the relief  
23 requested by Plaintiff regarding an observer and memorialization of the  
24 examination, the Court need not address an alternative basis. Accordingly, the  
25 Court finds that the Recommendations are supported by NRCP 35's good cause  
26 exception and applicable law. Thus, the DCRRs are modified to reflect affirmance  
27 of the Recommendations, but that the basis of the affirmance is NRCP 35. This  
28

1 Court need not and does not make any findings regarding the interplay, or lack  
2 thereof, between NRCP 35 and NRS 52.380 as the relief sought in the instant case  
3 is supported by the evidence of good cause presented pursuant to NRCP 35.  
4

5 **ORDER**  
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7 IT IS HEREBY ORDERED that the Discovery Commissioner's Report  
8 and Recommendations dated December 22, 2020, is AFFIRMED AS  
9 MODIFIED HEREIN; and thus, Defendants' Objections are DENIED  
10 without prejudice.

11 IT IS HEREBY FURTHER ORDERED that the Discovery  
12 Commissioner's Report and Recommendations dated January 12, 2021, is  
13 AFFIRMED AS MODIFIED HEREIN; and thus, Defendants' Objections  
14 is DENIED without prejudice.

15 IT IS HEREBY FURTHER ORDERED that Plaintiff shall be Ordered to  
16 appear for a Rule 35 Examination at the office of Dr. Lewis Etcoff on March 3,  
17 2021.

18 IT IS FURTHER ORDERED that Defendant's examiner shall be allowed  
19 to inquire into Plaintiff's mental condition before the incident, and Plaintiff's general  
20 physical condition before the incident. The examiner may inquire as to Plaintiff's  
21 entire medical treatment for five years prior to the incident and shall be allowed to  
22 question Plaintiff's medical condition for the body parts and conditions at issue in  
23 this litigation for the last ten years.

24 IT IS FURTHER ORDERED that Defendants' examiner shall be allowed  
25 to inquire generally into Plaintiff's history with regard to inability to focus and  
26 memory issues throughout his life.

27 IT IS HEREBY FURTHER ORDERED that Plaintiff will be permitted to  
28

1 have an observer present during the Rule 35 examination pursuant to NRCP  
2 35(a)(4)(A)(ii).

3 IT IS HEREBY FURTHER ORDERED that Plaintiff will be permitted to  
4 have an audio recording made of the Rule 35 examination pursuant to NRCP  
5 35(a)(3).

6 IT IS FURTHER ORDERED that Defendants' examiner shall be allowed  
7 to inquire into Plaintiff's life events prior to and after the incident.

8 IT IS FURTHER ORDERED that Defendants' examiner shall be allowed to  
9 inquire into whether Plaintiff had a previous medical diagnosis.

10 IT IS FURTHER ORDERED that Defendants' examiner shall be allowed  
11 to inquire into Plaintiff's mental and physical condition since the incident occurred.

12 IT IS FURTHER ORDERED that Defendants shall provide a list of the  
13 testing Dr. Etcoff will conduct during the neuropsychological exam two weeks  
14 before the Rule 35 Examination.

15 **IT IS SO ORDERED.**

16  
17 DATED this 2<sup>nd</sup> day of March, 2021.  
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21 HON. JOANNA S. KISHNER  
22 DISTRICT COURT JUDGE  
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**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, a copy of this Order was served via Electronic Service to all counsel/registered parties, pursuant to the Nevada Electronic Filing Rules, and/or served via in one or more of the following manners: fax, U.S. mail, or a copy of this Order was placed in the attorney's file located at the Regional Justice Center:

**ALL REGISTERED COUNSEL and/or PARTIES SERVED VIA ELECTRONIC SERVICE**

/s/ Tracy L. Cordoba  
TRACY L. CORDOBA-WHEELER  
Judicial Executive Assistant