

**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. 82670**

Electronically Filed  
Jul 07 2021 02:59 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

DISTRICT COURT CASE NO.

A-19-795381-C

**APPENDIX TO PETITIONERS' MOTION TO STAY PROCEEDINGS**

**VOLUME 1**

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& STOBERSKI

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Las Vegas, NV 89129

and

MICHAEL C. MCMULLEN, ESQ.

Missouri Bar No. 33211

GREGORIO V. SILVA, ESQ.

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701 Bridger Avenue, Suite 600

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Attorneys for MARIO GONZALEZ

APPENDIX TO PETITIONERS' MOTION TO STAY PROCEEDINGS  
VOLUME I

<b>NUMBER</b>	<b>DOCUMENT</b>	<b>BATES NUMBER</b>
1.	Affidavit of Felicia Galati	MOT-1-5
2.	Order Extending Discovery Deadlines dated 04/01/2021	MOT-6-16
3.	Defendants' Motion to Stay Case Pending Writ of Mandamus filed in district court on 04/16/2021	MOT-17-248

DATED this 2<sup>nd</sup> day of July, 2021

*/s/ Felicia Galati, Esq.*

---

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Attorneys for Petitioner  
FERRELLGAS, INC.



1 Answer is due on 7/20/2021.

2 5. This Court currently has three other pending Writs relating to NRCP 35  
3 and/or NRS 52.380 issues as follows: Moats v. Dist. Court; Case No. 81912; Lyft,  
4 Inc v. Dist. Court, Case No. 82148; Yusi v. Dist. Court, Case No. 82625.  
5

6 6. On 4/16/2021, Petitioners filed a Motion to Stay Case Pending Writ of  
7 Mandamus in the district court, a true and correct copy of which is attached to  
8 Petitioners' Appendix as Document 3. On 4/30/2021, Plaintiff filed an Opposition  
9 thereto, a true and correct copy of which is attached to Petitioners' Appendix as  
10 Document 4. On 5/14/2021, Petitioners filed a Reply thereto, a true and correct  
11 copy of which is attached to Petitioners' Appendix as Document 5.  
12

13 7. On 5/27/2021, the district court conducted a hearing on Petitioners' Motion,  
14 and the district court denied the Motion finding, to the best of Affiant's knowledge,  
15 recollection and belief, that: (1) the object of the Writ Petition would not be  
16 defeated because Defendants can proceed with the NRCP 35 examination either  
17 way; (2) further delay of this matter would constitute serious injury to Plaintiff and  
18 referring to his PTSD; (3) Defendants are not likely to prevail on the merits of the  
19 Writ; and (4) the Motion was premature given the examination was not scheduled  
20 to occur until July, and there was no telling what the Supreme Court will do with  
21 the Writ two months from when the hearing occurred. A true and correct copy of  
22 the Court Minutes regarding that hearing is attached to Petitioners' Appendix as  
23  
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Document 6.

8. On 6/10/2021, the Parties submitted the proposed order denying Petitioners' Motion per the Court's oral decision, a true and correct copy of the related email is attached to Petitioners' Appendix as Document 7.

9. On 6/24/2021, Plaintiff inquired about the status of the proposed order a true and correct copy of the related email is attached to Petitioners' Appendix as Document 8. To date, no formal Order has been entered.

10. Petitioners are filing this Motion now so as not to require an emergency motion and burden Plaintiff and/or this Court. NRAP 27(e).

11. The parties have been engaged in vigorous and substantial discovery from the beginning including taking 17 depositions, issuing initial and multiple supplemental NRCP 16.1 disclosures, conducting two site inspections and expert testing, and responding to various sets of written discovery as follows:

- a. 5/18/2020 Plaintiff Deposition (Vol. 1)
- b. 6/29/2020 Plaintiff Deposition (Vol. 2)
- c. 5/19/2020 Defendant Ferrellgas 30(b)(6) Deposition
- d. 5/21/2020 Defendant Mario Gonzalez Deposition (Vol. 1)
- e. 8/31/2020 Defendant Mario Gonzalez Deposition (Vol. 2)
- f. 6/29/2020 Defendant Carl Kleisner Deposition (Vol. 1)
- g. 8/11/2020 Defendant Carl Kleisner Deposition (Vol. 2)

- 1 h. 8/7/2020 Defendant Robert Vicory Deposition  
2  
3 i. 6/5/2020 Chad Brown Deposition  
4  
5 j. 8/25/2020 Monica Aragon Deposition  
6  
7 k. 8/28/2020 Kelly Kite Deposition  
8  
9 l. 12/15/2020 Adam Sadie Deposition  
10  
11 m. 1/13/2021 Laurence Green Deposition  
12  
13 n. 1/13/2021 Sheila Green Deposition  
14  
15 o. 2/12/2021 John Calo Deposition  
16  
17 p. 3/17/2021 Scott Davis April Deposition  
18  
19 q. 3/18/2021 Don Gifford Deposition  
20  
21 r. Plaintiff has issued an Initial and 15 supplemental Rule 16.1  
22 Disclosures  
23  
24 s. Defendant Ferrellgas has issued an Initial and 12 supplemental Rule  
25 16.1 Disclosures  
26  
27 t. Defendant Gonzalez has issued an Initial and 1 supplemental Rule 16.1  
28 Disclosures  
u. Defendant Kleisner has issued an Initial and 3 supplemental Rule 16.1  
Disclosures  
v. Two Site Inspections and Expert Testings – on or about 10/25/18 and  
5/15/2020

1 w. Plaintiff responded to five sets of Ferrellgas' requests for production,  
2 four sets of requests for production, one set of requests for admission,  
3 and supplemented some of the responses thereto; and two sets of  
4 Kleisner requests for production  
5

6  
7 x. Ferrellgas responded to one set of Plaintiff's interrogatories, five sets of  
8 Plaintiff's requests for production, and one set of requests for admission,  
9 and supplemented some of the responses thereto  
10

11 y. Defendant Gonzalez responded to two sets of Ferrellgas' interrogatories  
12 and two sets of requests for production, two sets of Plaintiff's requests  
13 for production, and one set of Kleisner's requests for production  
14

15 z. Defendant Kleisner responded to one set of Ferrellgas' interrogatories  
16 and one set of requests for production; and one set of Plaintiff's requests  
17 for production.  
18

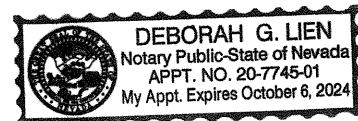
19 FURTHER AFFIANT SAITH NAUGHT.

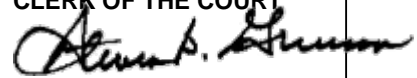
20  
21 DATED this 2<sup>nd</sup> day of July, 2021.

22  
23   
FELICIA GALATI

24 SUBSCRIBED AND SWORN to before  
25 me this 2<sup>nd</sup> day of July, 2021.

26   
27 NOTARY PUBLIC in and for said  
28 COUNTY AND STATE





**ORDR**  
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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

**[Proposed] ORDER EXTENDING  
DISCOVERY DEADLINES  
PURSUANT TO THE COURT'S  
ORDER GRANTING  
DEFENDANTS' MOTION TO  
EXTEND IN PART**

Hearing date: March 23, 2021

Hearing time: 9:00 a.m.

Defendant, Ferrellgas, Inc. ("Ferrellgas"), filed a Request for Status Check on



1 Defendants' Motion to Extend Discovery and Reset Trial. Defendants' Motion to Extend  
2 Discovery Deadlines and Reset Trial Date was filed on October 26, 2020. Plaintiff's  
3 Opposition was filed November 9, 2020, and Defendants' Reply was filed on December  
4 1, 2020. This matter was originally heard on December 8, 2020 and the Court Granted  
5 in Part Defendants' Motion, but withheld entering new discovery deadlines to allow the  
6 parties to discuss mutually agreeable deadlines.  
7

8 This matter came before the Honorable Judge Joanna Kishner for a Status Hearing  
9 on March 23, 2021. All parties either having been heard or having the opportunity to be  
10 heard, this Court enters in the following findings and order:  
11

12 **I.**

13 **Findings of Fact and Conclusions of Law**

14  
15 Defendants filed their Joint Motion to Extend Discovery Deadlines and Reset the Trial  
16 Date stating an extension was necessary per Mr. Green's newly disclosed psychological  
17 treatment and medical records. Defendants' claim Mr. Green's newly disclosed psychological  
18 treatment changes the scope of this litigation and demonstrates good cause for extending  
19 deadlines to allow Defendants to conduct a Rule 35 examination. Defendants requested  
20 staggered expert disclosures, with Mr. Green disclosing all experts within thirty days of the  
21 current expert disclosure deadline. Defendants requested the deadline for their disclosures be  
22 set within a reasonable time after a Rule 35 examination which was tentatively set for March 3,  
23 2020.  
24

25 Mr. Green contends the parties already agreed to an abnormally long discovery period,  
26 one year and five months, and the parties have diligently pursued discovery thus far. Mr. Green  
27 further states Defendants were aware of the disputed psychological treatment earlier than they  
28

claim, and Defendants are attempting to gain an unfair advantage with the staggering of deadlines.

The Court determines that an extension is warranted. The Court determines that Defendants' Rule 35 neuropsychological/psychological exam shall be conducted no later than July 31, 2021. The Court determines that Defendants' Rule 35 neuropsychological/psychological exam Report shall be produced within sixty days of the date of the Rule 35 examination. The Court determines that any rebuttal report from Plaintiff concerning Defendants' Rule 35 examination shall be produced within thirty days of the date Defendants' Rule 35 report is produced. The date of Defendants' Rule 35 examination and report production shall be controlling on the deadline for Defendants to produce their Rule 35 report and for Plaintiff to produce any rebuttal report. The Court will extend discovery deadlines as follows:

Event	Current Deadline	Proposed Deadline
Expert Disclosures	12/23/2020	1/29/2021
Rebuttal Disclosures	2/23/2021	04/30/2021
Defendants' Rule 35 expert disclosures	N/A	09/30/2021
Plaintiff's Rule 35 rebuttal	2/23/2021	11/01/2021
Close of Discovery	04/23/2021	12/01/2021
Deadline to File dispositive Motions	05/24/2021	12/30/2021

## **II.**

### **Order**

IT IS THEREFORE ORDERED that Defendants' Joint Motion to Extend Discovery Deadlines and Reset the Trial Date is GRANTED IN PART.

IT IS FURTHER ORDERED that the deadline to disclose rebuttal experts is extended to April 30, 2021.

1 IT IS FURTHER ORDERED that Defendants' Rule 35 psychological  
2 examination shall be conducted no later than July 31, 2021.

3 IT IS FURTHER ORDERED that Defendants shall produce a Rule 35 report within  
4 sixty days of the date of Defendants' Rule 35 examination.

5 IT IS FURTHER ORDERED that Plaintiff shall produce any rebuttal report to  
6 Defendants' Rule 35 report within thirty days of the date of Defendants' Rule 35 report.

7 IT IS FURTHER ORDERED that the deadline for all Parties to conduct discovery is  
8 extended to December 1, 2021.

9 IT IS FURTHER ORDERED that the deadline for Parties to file dispositive motions  
10 is extended to December 30, 2021.

11 IT IS SO ORDERED. DATED this 1st day of April, 2021.

12  
13  
14  
15   
16 DISTRICT COURT JUDGE

17 Respectfully submitted by:

18 Dated this 31st day of March, 2021. BAKER STERCHI COWDEN & RICE

19  
20 /s/ Gregorio V. Silva  
21 Michael C. McMullen  
22 Admitted *Pro Hac Vice*  
23 Gregorio V. Silva, Esq.  
24 Nevada Bar No. 13583  
25 Attorneys for Defendant  
26 Ferrellgas, Inc.  
27  
28

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Approved as to form and content by:

DATED this 31st Day of March 2021	PYATT SILVESTRI
	<u>/s/ Steven Goldstein</u>
	James P.C. Silvestri, Esq.
	Nevada Bar No. 3603
	Steven M. Goldstein, Esq.
	Nevada Bar No. 006318
	Attorneys for Defendant
	Mario S. Gonzalez
DATED this 31 <sup>st</sup> day of March, 2021	DENNETT WINSPEAR
	<u>/s/ Gina Winspear</u>
	Gina Gilbert Winspear, Esq.
	Nevada Bar No. 005552
	Attorneys for Defendant
	Carl J. Kleisner
DATED this 31 <sup>st</sup> day of March, 2021	H&P LAW
	<u>/s/ Matthew G. Pfau</u>
	Marjorie L. Hauf, Esq.
	Nevada Bar No.: 8111
	Matthew G. Pfau, Esq.
	Nevada Bar No. 11439
	Attorneys for Plaintiff
	Joshua Green

## Gregorio V. Silva

---

**From:** Gina Winspear <gwinspear@dennettwinspear.com>  
**Sent:** Tuesday, March 30, 2021 1:10 PM  
**To:** Gregorio V. Silva; Matthew G. Pfau; Cait Ahern; Marjorie Hauf; Steven Goldstein; 'Alondra Reynolds'; Brent Quist; Paula Timmons; Ashley Marchant  
**Cc:** Michael C. McMullen; Deborah L. Parker; Deborah (Deb) A. Ries; 'Felicia Galati'; 'Erika Parker'  
**Subject:** [EXTERNAL SENDER] RE: Green v. Ferrellgas et al; Proposed Order on Status Hearing

Thank you Gregoria. You may include my electronic signature.

Gina

GINA WINSPEAR, ESQ.  
702.839.1100



---

**From:** Gregorio V. Silva <gsilva@bscr-law.com>  
**Sent:** Tuesday, March 30, 2021 7:40 AM  
**To:** Matthew G. Pfau <mpfau@CourtRoomProven.com>; Cait Ahern <cahern@CourtRoomProven.com>; Marjorie Hauf <Mhauf@CourtRoomProven.com>; Steven Goldstein <sgoldstein@pyattsilvestri.com>; 'Alondra Reynolds' <areynolds@pyattsilvestri.com>; Gina Winspear <gwinspear@dennettwinspear.com>; Brent Quist <bquist@dennettwinspear.com>; Paula Timmons <ptimmons@dennettwinspear.com>; Ashley Marchant <amarchant@dennettwinspear.com>  
**Cc:** Michael C. McMullen <mmcmullen@bscr-law.com>; Deborah L. Parker <dparker@bscr-law.com>; Deborah (Deb) A. Ries <dries@bscr-law.com>; 'Felicia Galati' <fgalati@ocgas.com>; 'Erika Parker' <eparker@ocgas.com>  
**Subject:** Green v. Ferrellgas et al; Proposed Order on Status Hearing

Good morning all:

Attached for your consideration is a proposed Order Extending Discovery Deadlines. Please let me know of any comments or proposed revisions at your earliest convenience.

Matt have you confirmed the tentative July 21 and 22 dates work for the IME of Plaintiff?

**Gregorio V. Silva**  
Baker Sterchi Cowden & Rice LLC

Kansas City, MO 64108  
p: 816.471.2121 f:

**BS** Baker Sterchi  
**CR** Cowden & Rice LLC



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## Gregorio V. Silva

---

**From:** Matthew G. Pfau <mpfau@CourtRoomProven.com>  
**Sent:** Tuesday, March 30, 2021 11:16 AM  
**To:** Gregorio V. Silva; Cait Ahern; Marjorie Hauf; Steven Goldstein; 'Alondra Reynolds'; Gina Winspear; Brent Quist; Paula Timmons; Ashley Marchant  
**Cc:** Michael C. McMullen; Deborah L. Parker; Deborah (Deb) A. Ries; 'Felicia Galati'; 'Erika Parker'  
**Subject:** [EXTERNAL SENDER] Re: Green v. Ferrellgas et al; Proposed Order on Status Hearing

Thanks Gregorio,

You have my permission to add my electronic signature to this proposed Order.

Josh has confirmed that he is available on the 21<sup>st</sup> since your previous communications stated that you only wanted one day for the exam given the DCRR parameters set on the examination.

Matt

*We are excited to announce Matt Pfau Law Group has merged with Ganz & Hauf! Please note our new name.*



**Matthew G. Pfau, Esq.**  
**Partner**  
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702 598 3626 FAX  
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A row of social media icons including Facebook, Twitter, LinkedIn, and YouTube.

---

**From:** Gregorio V. Silva <gsilva@bscr-law.com>  
**Date:** Tuesday, March 30, 2021 at 7:40 AM  
**To:** Matthew G. Pfau <mpfau@CourtRoomProven.com>, Cait Ahern <cahern@CourtRoomProven.com>, Marjorie Hauf <Mhauf@CourtRoomProven.com>, Steven Goldstein <sgoldstein@pyattsilvestri.com>, 'Alondra Reynolds' <areynolds@pyattsilvestri.com>, Gina Winspear <gwinspear@dennettwinspear.com>, Brent Quist <bquist@dennettwinspear.com>, Paula Timmons <ptimmons@dennettwinspear.com>, Ashley Marchant <amarchant@dennettwinspear.com>  
**Cc:** Michael C. McMullen <mmcmullen@bscr-law.com>, Deborah L. Parker <dparker@bscr-law.com>, Deborah (Deb) A. Ries <dries@bscr-law.com>, 'Felicia Galati' <fgalati@ocgas.com>, 'Erika Parker' <eparker@ocgas.com>  
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**Gregorio V. Silva**  
Baker Sterchi Cowden & Rice LLC

Kansas City, MO 64108

p: 816.471.2121 f:



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---

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## Gregorio V. Silva

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**Cc:** Michael C. McMullen; Deborah L. Parker; Deborah (Deb) A. Ries; 'Felicia Galati'; 'Erika Parker'  
**Subject:** [EXTERNAL SENDER] RE: Green v. Ferrellgas et al; Proposed Order on Status Hearing

Hello Gregorio,

You may use my electronic signature on this. Thanks!

Kindest regards,

Steven M. Goldstein, Esq.



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**Cc:** Michael C. McMullen <mmcmullen@bscr-law.com>; Deborah L. Parker <dparker@bscr-law.com>; Deborah (Deb) A. Ries <dries@bscr-law.com>; 'Felicia Galati' <fgalati@ocgas.com>; 'Erika Parker' <eparker@ocgas.com>  
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**Gregorio V. Silva**  
Baker Sterchi Cowden & Rice LLC

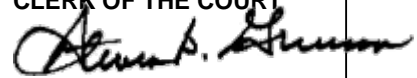
Kansas City, MO 64108  
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Attorney for Defendant  
FERRELLGAS, INC.

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

JOSHUA GREEN;  
  
Plaintiff,

vs.

FERRELLGAS, INC. et al.,  
  
Defendants.

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

**DEFENDANTS' MOTION TO STAY  
CASE PENDING WRIT OF  
MANDAMUS**

**(HEARING REQUESTED)**

\_\_\_\_\_  
AND RELATED ACTIONS

COME NOW Defendants FERRELLGAS, INC., MARIO GONZALEZ and CARL KLEISNER, by and through their attorneys of record, and hereby submit their Motion To Stay Case Pending Writ Of Mandamus. This Motion is made and based upon all papers, pleadings and records on file herein, the attached Points and Authorities, and such oral argument, testimony and evidence as the Court may entertain.

**POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

This Court should grant Defendants' Motion to stay the entire case because only the Nevada Supreme Court can resolve the NRCP 35 issues in this case, which apply to all Plaintiff's alleged claims and damages, and impact the entire case.

**II.**

**FACTUAL AND PROCEDURAL BACKGROUND**

**This Action**

On 1/28/2021, this Court denied Defendants' Objection relating to Defendants' Motion to Compel the NRCP 35 Examination.<sup>1</sup> On or about 2/4/2021, Defendants advised Plaintiff they would be filing a Writ and seeking a stay.<sup>2</sup> Defendants asked Plaintiff's attorney if he would stipulate to a stay and he indicated he would have to see what is filed first.<sup>3</sup> On 3/26/2021, Defendants filed their Writ regarding the good cause standards in NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3).<sup>4</sup>

Plaintiff provided one computation of damages for all claims and damages in this case. He seeks over \$5 million in damages in this case on all claims.<sup>5</sup> Thus, any further discovery, including the Rule 35 Examination, is relevant to all Plaintiff's claims and damages.

---

<sup>1</sup> See 3/2/2021 Order, p. 5 (Exh. A).

<sup>2</sup> See Affidavit of Felicia Galati, ¶ 3 (Exh. B).

<sup>3</sup> Id.

<sup>4</sup> See Defendants' Writ (Exh. C).

<sup>5</sup> See Plaintiff's 15<sup>th</sup> supplemental disclosure, p. 49 (Exh. D); 3/9/2021 Court Minutes (Exh. E).

Plaintiff has caused delay in this case. For example, on 9/4/2020, Plaintiff disclosed treatment with a psychologist months after that treatment began.<sup>6</sup> On 1/11/2021, Plaintiff filed a Second Amended Complaint alleging three new claims against Ferrellgas necessitating an extension of the discovery deadlines. On 1/29/2021, Plaintiff disclosed future medical treatment damages in his expert disclosure for the first time, which necessitated another continuance of the discovery deadlines.<sup>7</sup>

### **Nevada Supreme Court Pending Writs**

Effective 1/1/2019, the Nevada Supreme Court enacted NRCP 35 with its current provisions. In just under 2 years, the Nevada Supreme Court accepted two Writs regarding the Rule in Moats v. Dist. Ct. (Burgess), Case No. 81912, and Lyft, Inc. v. Dist. Ct. (Davis), Case No. 82148 – both pertaining to NRCP 35 and NRS 52.380.

In Moats, Plaintiff's attorneys (H & P Law) filed a "Motion To Stay Troy Moats' Rule 35 Examination Pending Writ Of Mandamus" consisting solely of an Affidavit without any points and authorities.<sup>8</sup> Plaintiff's attorney signed the Moats motion to stay on 10/1/2020, filed the Moats Writ on 10/9/2020, and Judge Escobar granted the motion to stay without hearing on 10/11/2020 – all before the Nevada Supreme Court accepted the Writ on 12/16/2020 – 68 days after the Moats Writ was filed when the Nevada Supreme Court entered an Order Directing Answer.<sup>9</sup>

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<sup>6</sup> See Plaintiff's 10<sup>th</sup> supplemental disclosure (Exh. F).

<sup>7</sup> See Plaintiff's Designation of Expert Witnesses and Reports, pp. 26, 28 and 30-34 (Exh. G).

<sup>8</sup> See Moats Motion To Stay and Order (Exh. H).

<sup>9</sup> Id.; Moats Writ, p. 1 (Exh. I); Moats Order Directing Answer (Exh. J).

1 In Lyft, the defendant filed the Writ on 12/2/2020 and, 29 days later, the Nevada Supreme  
2 Court accepted the Writ by Order Directing Answer.<sup>10</sup> On 1/7/2021, Judge Denton stayed Lyft in  
3 its entirety pursuant to the parties stipulation and this Court's Order.<sup>11</sup>

4 The issues in both Moats and Lyft pertain to the conflict between NRS 52.380 and NRCP  
5 35, which are different than Defendants' Writ.<sup>12</sup> The issues in Defendants' Writ relate to the good  
6 cause standards in NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) – which are beyond the scope of  
7 Moats and Lyft.<sup>13</sup>

### 8 III.

#### 9 LEGAL STANDARD

10 Generally, in determining whether to issue a stay pending disposition of an appeal,  
11 this court considers the following factors: (1) whether the object of the appeal will  
12 be defeated if the stay is denied, (2) whether appellant will suffer irreparable or  
13 serious injury if the stay is denied, (3) whether respondent will suffer irreparable or  
14 serious injury if the stay is granted, and (4) whether appellant is likely to prevail on  
15 the merits in the appeal.<sup>3</sup> We have not indicated that any one factor carries more  
16 weight than the others, although Fritz Hansen A/S v. District Court [116 Nev. 650,  
17 659, 6 P. 3d 982, 987 (2000)] recognizes that if one or two factors are especially  
18 strong, they may counterbalance other weak factors.

19 Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 251–54, 89 P.3d 36, 38–40 (2004). In Mikohn  
20 Gaming Corp., the Nevada Supreme Court granted Mikohn's motion and extended the stay for  
21 the duration of the appeal, overruling the district court's denial of the requested stay. Id. at 248  
22 and 254, 89 P.3d 36 and 40.

23 Although irreparable or serious harm remains part of the stay analysis, this factor  
24 will not generally play a significant role in the decision whether to issue a stay.  
25 Normally, the only cognizant harm threatened to the parties is increased litigation  
26 costs and delay. **We have previously explained that litigation costs, even if  
27 potentially substantial, are not irreparable harm. Similarly, a mere delay in**

28 <sup>10</sup> See Lyft Writ (Exh. K); Lyft Order Directing Answer (Exh. L)

<sup>11</sup> See Lyft Order To Stay (Exh. M).

<sup>12</sup> See Moats Writ, p. 1-2 (Exh. I); Lyft Writ, pp. 12-38 (Exh. K).

<sup>13</sup> See Defendants' Writ (Exh. C).

pursuing discovery and litigation normally does not constitute irreparable harm.

Id. at 253 and 39 (emphasis added; citations omitted).

#### IV.

### LEGAL ARGUMENT

#### A. The Object of Defendants' Writ Will Be Defeated If A Stay Is Denied

If a stay is denied, the object of Defendants' Writ will be defeated because Plaintiff disclosed one damages computation as to all his claims<sup>14</sup> as follows:

Medical Provider	Dates of Service	Damage
American Medical Response	6/18/2018	\$1,232.06
Shadow Emergency Physician	6/18/2018	\$2,071.00
Spring Valley Hospital	6/18/2018	\$7,281.00
University Medical Center – Burn Care Center	6/18/2018–9/6/2018	\$42,063.49
UNLV Medicine	6/20/2018–7/23/2018	\$832.00
Henderson Dermatology	6/19/2018	\$276.20
Las Vegas Pain Relief Center	6/26/2018–7/16/2018	\$532.00
Michael Elliott and Associates	5/20/2020–present	\$4,140.00
Out of Pocket Expenses		Damage
University Medical Center Co-Pay Receipts	6/25/2018, 6/27/2018 6/29/2018, 7/3/2018	\$140.00
<b>Life Care and Future Treatment</b>		<b>\$282,300.50</b>
<b>Total Economic Damages</b>		<b>&gt;\$340,868.25</b>

<sup>14</sup> See Plaintiff's 15<sup>th</sup> supplemental disclosure, 48-49 (Exh. D).

<b>Permanent Scarring</b>		<b>\$789,452.19</b>
<b>Pain and Suffering</b>		<b>\$3,891,234.45</b>
<b>Total Damages</b>		<b>&gt;\$5,021,554.89</b>

The NRCP 35 psychological examination pertains to all Plaintiff's physical and/or psychological injuries and damages, all his claims, and "Josh's causation[.]"<sup>15</sup> The Discovery Commissioner determined in part that:

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

15. The Court will not limit Defendants' examiner from inquiring generally into Plaintiff's pre-incident physical condition...<sup>16</sup>

IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to inquire into Plaintiff's mental condition before the incident, and Plaintiff's general physical condition before the incident. The examiner may inquire as to Plaintiff's medical treatment for the five years prior to the incident...

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

IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to inquire into Plaintiff's history with regard to inability to focus and memory issues.<sup>17</sup>

---

<sup>15</sup> See DCRR dated 12/22/2020 (Exh. N); Plaintiff's Opposition filed on 4/9/2021, at 6:4 (Exh. O).

<sup>16</sup> See DCRR dated 12/22/2020, p. 4 (Exh. N)

<sup>17</sup> Id. at 6.



1 Plaintiff makes no distinction whatsoever between certain claims and/or certain damages. As  
2 such, he should be held to that and the entire case should be stayed, including because the  
3 NRCP 35 psychological examination relates to all Plaintiff's claims and damages. Otherwise,  
4 Defendants will suffer irreparable or serious injury if the stay is denied.  
5

6 In addition, the pending Moats and Lyft Writs pertain to a conflict between NRS 52.380  
7 and NRCP 35.<sup>18</sup> Defendants' Writ relates to the good cause standards for an observer at and an  
8 audio recording of the NRCP 35 Examination pursuant to NRCP 35(a)(4)(A)(ii) and NRCP  
9 35(a)(3).<sup>19</sup> Therefore, the Nevada Supreme Court's determination of Moats and Lyft will not  
10 resolve Defendants' Writ. Gardner on Behalf of L.G., supra citing Pan, supra ("Our review in a  
11 writ proceeding is limited to the argument and documents provided by the parties.")  
12

13 There is no way for this Court to determine exactly how long the Writ will take. While  
14 7/21/2021 is currently being held for the NRCP 35 Examination and the Nevada Supreme Court  
15 probably will have made its decision on whether to accept the Writ or not by then, the related  
16 briefing, any scheduled argument, and/or the decision will not be made by then. Moats appears to  
17 be fully briefed as of 4/5/2021 with the Reply Brief being filed, but it is unknown when the Court  
18 will review the briefs, if it will set oral argument and for when, and/or when it will determine that  
19 matter.<sup>20</sup> In Lyft, it appears the plaintiff's answering brief was stricken and she has until 4/26/2021  
20 to file that brief.<sup>21</sup> In 2020, the Nevada Supreme Court had the following: 75 beginning pending  
21 original proceedings; 293 original proceedings filed; 16 petitions for review; and disposed of 259  
22  
23  
24  
25

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26 <sup>18</sup> See Moats Writ, p. 1-2 (Exh. I); Lyft Writ, pp. 12-38 (Exh. K).

27 <sup>19</sup> See Defendants' Writ (Exh. C).

28 <sup>20</sup> See Moats Docket (Exh. P); Affidavit of Felicia Galati, ¶ 4 (Exh. B).

<sup>21</sup> See Lyft Docket (Exh. Q); Affidavit of Felicia Galati, ¶ 5 (Exh. B).

1 matters.<sup>22</sup> There is no report for 2021 or regarding the average time or an estimate for how long it  
2 takes for a writ to be determined. Based on all the above, Defendants' request for a stay should be  
3 granted.  
4

5 **B. Defendants Will Be Harmed and/or Injured If The Stay Is Denied**

6 Plaintiff disclosed one damages computation as to all claims.<sup>23</sup> See Section A, *supra*.  
7 The NRCP 35 psychological examination pertains to all Plaintiff's physical and/or  
8 psychological injuries and damages, all his claims, and "Josh's causation[.]"<sup>24</sup> Plaintiff makes  
9 no distinction whatsoever between certain claims and certain damages. As such, Plaintiff  
10 should be held to that and the entire case should be stayed, including because the NRCP 35  
11 psychological examination relates to all Plaintiff's claims and damages and it cannot proceed  
12 until the Nevada Supreme Court decides Defendants' Writ. Otherwise, Defendants will suffer  
13 irreparable or serious injury if the stay is denied. Therefore, Defendants' request for a stay should  
14 be granted.  
15

16 **C. The Stay Will Not Irreparably Harm Plaintiff**

17 "[A] mere delay in pursuing discovery and litigation normally does not constitute  
18 irreparable harm." Mikohn, supra. Therefore, any claimed delay by Plaintiff to oppose the stay  
19 fails. Furthermore, there has been no delay in this case. The undisputed case history establishes  
20 the parties have been engaged in vigorous and substantial discovery from the beginning including  
21 as follows:  
22

- 23  
24 1. 5/18/2020 Plaintiff Deposition (Vol. 1)  
25

26 <sup>22</sup> See 2020 Nevada Supreme Court Annual Pending Caseload (Exh. R); Affidavit of  
27 Felicia Galati, ¶ 6 (Exh. B).

<sup>23</sup> See Plaintiff's 15<sup>th</sup> supplemental disclosure, 48-49 (Exh. D).

28 <sup>24</sup> Id.; Plaintiff's Opposition filed on 4/9/2021, at 6:4 (Exh. O).

2. 6/29/2020 Plaintiff Deposition (Vol. 2)
3. 5/19/2020 Defendant Ferrellgas 30(b)(6) Deposition
4. 5/21/2020 Defendant Mario Gonzalez Deposition (Vol. 1)
5. 8/31/2020 Defendant Mario Gonzalez Deposition (Vol. 2)
6. 6/29/2020 Defendant Carl Kleisner Deposition (Vol. 1)
7. 8/11/2020 Defendant Carl Kleisner Deposition (Vol. 2)
8. 8/7/2020 Defendant Robert Vicory Deposition
9. 6/5/2020 Chad Brown Deposition
10. 8/25/2020 Monica Aragon Deposition
11. 8/28/2020 Kelly Kite Deposition
12. 12/15/2020 Adam Sadie Deposition
13. 1/13/2021 Laurence Green Deposition
14. 1/13/2021 Sheila Green Deposition
15. 2/12/2021 John Calo Deposition
16. 3/17/2021 Scott Davis April Deposition
17. 3/18/2021 Don Gifford Deposition
18. Plaintiff has issued an Initial and 15 supplemental Rule 16.1 Disclosures
19. Defendant Ferrellgas has issued an Initial and 12 supplemental Rule 16.1 Disclosures
20. Defendant Gonzalez has issued an Initial and 1 supplemental Rule 16.1 Disclosures
21. Defendant Kleisner has issued an Initial and 3 supplemental Rule 16.1 Disclosures
22. Two Site Inspections and Expert Testings – on or about 10/25/18 and 5/15/2020

23. Plaintiff responded to five sets of Ferrellgas' requests for production, four sets of requests for production, one set of requests for admission, and supplemented some of the responses thereto; and two sets of Kleisner requests for production

24. Ferrellgas responded to one set of Plaintiff's interrogatories, five sets of Plaintiff's requests for production, and one set of requests for admission, and supplemented some of the responses thereto

25. Defendant Gonzalez responded to two sets of Ferrellgas' interrogatories and two sets of requests for production, two sets of Plaintiff's requests for production, and one set of Kleisner's requests for production

26. Defendant Kleisner responded to one set of Ferrellgas' interrogatories and one set of requests for production; and one set of Plaintiff's requests for production.<sup>25</sup>

Furthermore, Plaintiff has caused delay in this case. On 9/4/2020, Plaintiff untimely disclosed treatment with a psychologist for months after that treatment began.<sup>26</sup> On 1/11/2021, Plaintiff filed a Second Amended Complaint alleging three new claims against Ferrellgas necessitating an extension of the discovery deadlines. On 1/29/2021, eighteen days later, Plaintiff untimely disclosed future medical treatment damages in his expert disclosure for the first time, which necessitated a recent extension of the discovery deadlines.<sup>27</sup>

Finally, any delay in discovery will not prevent Plaintiff from doing the discovery he chooses to do. Therefore, Defendants' request for a stay should be granted.

///

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<sup>25</sup> See Affidavit of Felicia Galati, ¶ 7 (Exh. B).

<sup>26</sup> See Plaintiff's 10<sup>th</sup> supplemental disclosure (Exh. F).

<sup>27</sup> See Plaintiff's Designation of Expert Witnesses and Reports, pp. 26, 28 and 30-34 (Exh. G).

**D. Defendants' Will Likely Prevail On The Writ**

Effective 1/1/2019, the Nevada Supreme Court enacted the current NRCP 35. In short order, the Nevada Supreme Court accepted two Writs – on 12/16/2020 as to Moats (regarding this Plaintiff's counsel's 10/9/2020 Writ)<sup>28</sup>; and on 12/31/2020 as to Lyft<sup>29</sup> – on issues relating to NRS 52.380 and NRCP 35, which entail a serious separation of powers issue. On 3/26/2021, three months later, Defendants filed their Writ regarding the good cause standards in NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3). In the short lifespan of NRCP 35, three writs have been filed. While there is no predicting what the Nevada Supreme Court will do as to Defendants' Writ, that is not a basis to deny the stay. Clearly NRCP 35 requires clarification on many fronts and issues. Thus, at a minimum, the Nevada Supreme Court will likely accept the Writ.

In addition, Defendants' Writ raises important issues of law that require clarification, and considerations of sound judicial economy and administration militate in favor of accepting and granting the Writ regarding the good cause standards for the presence of an observer at and allowing an audio recording of NRCP 35 psychological examinations, which is required by NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3). NRCP 35 examinations are a critical and regular aspect of civil litigation and the related good cause standards need to be defined for this Court, parties and the public.

Finally, the NRCP 35 Examination is Defendants' one and only opportunity to conduct a fair NRCP 35 examination in defense of this case wherein Plaintiff seeks over \$5 million in damages. Requiring that Defendants can only have an NRCP 35 examination if an observer is present, an audio recording is made, and if Dr. Etcoff is willing to expose himself to professional

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<sup>28</sup> See Moats Order Directing Answer (Exh. J).

<sup>29</sup> See Lyft Order Directing Answer (Exh. L).

1 and ethical discipline and/or sanctions relating thereto is tantamount to denying Defendants the  
2 examination that all agree they are entitled to on the facts of this case.

3 Based on all the above, the Defendants' will likely prevail on their Writ. Therefore,  
4 Defendants' request for a stay should be granted.  
5

6 **IV.**

7 **CONCLUSION**

8 Defendants respectfully request this Court grant their Motion and stay the entire case  
9 pending the Nevada Supreme Court's determination on Defendants' Writ because the object of  
10 the Writ will be defeated if the stay is denied, Defendants will suffer irreparable or serious injury  
11 if the stay is denied, Plaintiff will not suffer irreparable or serious injury if the stay is granted  
12 because discovery will only be delayed not denied, and Defendants are likely to prevail on the  
13 merits in the appeal.  
14

15 DATED this 16th day of April, 2021.  
16

17 */s/ Felicia Galati, Esq.*

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1 DATED this 16th day of April, 2021.

2  
3 */s/ Gina Gilbert Winspear, Esq.*

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10 Attorneys for Defendant  
11 CARL J. KLEISNER

12 DATED this 16th day of April, 2021.

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

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23 Attorneys for Defendant  
24 MARIO S. GONZALEZ  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

On the 16th day of April, 2021, the undersigned, an employee of Olson Cannon Gormley & Stoberski, hereby served a true copy of **DEFENDANTS' MOTION TO STAY CASE PENDING WRIT OF MANDAMUS** to the parties listed below via the EFP Program, pursuant to the Court's Electronic Filing Service Order (Administrative Order 14-2) effective June 1, 2014, and or mailed:

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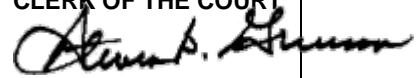
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\_\_\_\_\_  
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& Stoberksi



# **EXHIBIT A**



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;

19 Cross-Defendants.  
20

21 **MARIO S. GONZALEZ**, an individual;  
22  
23 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:  
14

- 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 Etkoff.
- 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

---

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.
- 1 IT IS FURTHER RECOMMENDED THAT Dr. Etcoff shall be  
2 allowed to question Plaintiff's medical condition for the body parts  
3 and conditions at issue in this litigation for the last ten years.
- 4 IT IS FURTHER RECOMMENDED that Dr. Etcoff shall be allowed  
5 to question Plaintiff generally about concentration and memory  
6 issues throughout his life.
- 7 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to  
8 have an observer present during the Rule 35 examination  
9 pursuant to NRS 52.380.
- 10 IT IS FURTHER RECOMMENDED that Plaintiff be allowed to  
11 have an audio recording made of the Rule 35 examination  
12 pursuant to NRS 52.380.
- 13 IT IS FURTHER RECOMMENDED that Defendants' examiner  
14 shall be allowed to inquire into whether Plaintiff had a previous  
15 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**  
6

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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20   
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

# **EXHIBIT B**

**AFFIDAVIT OF FELICIA GALATI, ESQ.**

STATE OF NEVADA )  
 )  
COUNTY OF CLARK )

FELICIA GALATI, ESQ., being first duly sworn, deposes and states:

1. Affiant is a shareholder of the law firm of Olson Cannon Gormley & Stoberski and is duly licensed to practice law before all the Courts in the State of Nevada, and represents the interests of Defendant Ferrellgas, Inc. in Green v. Ferrellgas, Inc., et al., Case No. A-19-795381-C.

2. Affiant makes this Affidavit in support of Defendants' Motion To Stay Case Pending Writ Of Mandamus (Motion). The facts set forth in this Affidavit are known to me personally, or are based upon my information and belief, and if called to do so, I would competently testify under oath regarding the same.

3. On or about 2/4/2021, after this Court made its oral ruling on 1/28/2021 denying Defendants' Objection relating to Defendants Motion to Compel the NRCP 35 Examination, Defendants advised Plaintiff they would be filing a Writ and seeking a stay. Defendants asked Plaintiff's attorney if he would stipulate to a stay and he indicated he would have to see what is filed first.

4. According to the Nevada Supreme Court docket, Moats appears to be fully briefed as of 4/5/2021 with the Reply Brief being filed, but it is unknown when the Court will review the briefs, if it will set oral argument and for when, and/or when it will determine that matter. Attached to Defendants' Motion as Exhibit P is a true and correct copy of the Moats docket.

5. According to the Nevada Supreme Court docket, it appears that plaintiff's answering brief was stricken in Lyft and she has until 4/26/2021 to file that brief. Attached to Defendants' Motion as Exhibit Q is a true and correct copy of the Lyft docket.

1           6. In 2020, the Nevada Supreme Court had the following: 75 beginning pending original  
2 proceedings; 293 original proceedings filed; 16 petitions for review; and disposed of 259 matters.  
3 Attached to Defendants' Motion as Exhibit R is a true and correct copy of the 2020 Nevada  
4 Supreme Court Annual Pending Caseload that Affiant obtained from the Nevada Supreme  
5 Court's website.  
6

7           7. The undisputed case history establishes the parties have been engaged in vigorous  
8 and substantial discovery from the beginning including as follows:  
9

- 10           a. 5/18/2020 Plaintiff Deposition (Vol. 1)
- 11           b. 6/29/2020 Plaintiff Deposition (Vol. 2)
- 12           c. 5/19/2020 Defendant Ferrellgas 30(b)(6) Deposition
- 13           d. 5/21/2020 Defendant Mario Gonzalez Deposition (Vol. 1)
- 14           e. 8/31/2020 Defendant Mario Gonzalez Deposition (Vol. 2)
- 15           f. 6/29/2020 Defendant Carl Kleisner Deposition (Vol. 1)
- 16           g. 8/11/2020 Defendant Carl Kleisner Deposition (Vol. 2)
- 17           h. 8/7/2020 Defendant Robert Vicory Deposition
- 18           i. 6/5/2020 Chad Brown Deposition
- 19           j. 8/25/2020 Monica Aragon Deposition
- 20           k. 8/28/2020 Kelly Kite Deposition
- 21           l. 12/15/2020 Adam Sadie Deposition
- 22           m. 1/13/2021 Laurence Green Deposition
- 23           n. 1/13/2021 Sheila Green Deposition
- 24           o. 2/12/2021 John Calo Deposition
- 25           p. 3/17/2021 Scott Davis April Deposition
- 26
- 27
- 28

- 1 q. 3/18/2021 Don Gifford Deposition
- 2 r. Plaintiff has issued an Initial and 15 supplemental Rule 16.1 Disclosures
- 3 s. Defendant Ferrellgas has issued an Initial and 12 supplemental Rule 16.1
- 4 Disclosures
- 5
- 6 t. Defendant Gonzalez has issued an Initial and 1 supplemental Rule 16.1 Disclosures
- 7 u. Defendant Kleisner has issued an Initial and 3 supplemental Rule 16.1 Disclosures
- 8 v. Two Site Inspections and Expert Testings – on or about 10/25/18 and 5/15/2020
- 9 w. Plaintiff responded to five sets of Ferrellgas’ requests for production, four sets of
- 10 requests for production, one set of requests for admission, and supplemented some
- 11 of the responses thereto; and two sets of Kleisner requests for production
- 12
- 13 x. Ferrellgas responded to one set of Plaintiff’s interrogatories, five sets of Plaintiff’s
- 14 requests for production, and one set of requests for admission, and supplemented
- 15 some of the responses thereto
- 16
- 17 y. Defendant Gonzalez responded to two sets of Ferrellgas’ interrogatories and two sets
- 18 of requests for production, two sets of Plaintiff’s requests for production, and one set
- 19 of Kleisner’s requests for production

20 ///

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1 z. Defendant Kleisner responded to one set of Ferrellgas' interrogatories and one set of  
2 requests for production; and one set of Plaintiff's requests for production.

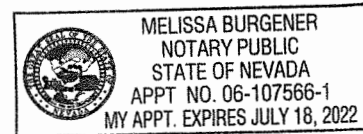
3 FURTHER AFFIANT SAITH NAUGHT.

4  
5 DATED this 16<sup>th</sup> day of April, 2021.

6  
7 

8  
9 FELICIA GALATI

10 SUBSCRIBED AND SWORN to before  
11 me this 16<sup>th</sup> day of April, 2021.



  
14 NOTARY PUBLIC in and for said  
15 COUNTY AND STATE

# **EXHIBIT C**



IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

v.

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

and

JOSHUA GREEN, an individual,

Respondents.

Electronically Filed  
Mar 26 2021 04:22 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

CASE NO.

DISTRICT COURT CASE NO.  
A-19-795381-C

**PETITION FOR WRIT OF MANDAMUS**

FELICIA GALATI, ESQ.

Nevada Bar No. 007341

OLSON CANNON GORMLEY  
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**IN THE SUPREME COURT OF THE STATE OF NEVADA**

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

Petitioners,

v.

EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF  
NEVADA IN AND FOR THE  
COUNTY OF CLARK; THE  
HONORABLE SUSAN SCANN,  
DISTRICT JUDGE,

and

JOSHUA GREEN, an individual,

Respondents.

CASE NO.

DISTRICT COURT CASE NO.  
A-19-795381-C

**NRAP 26.1 DISCLOSURE**

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the justices of this court may evaluate possible disqualification or recusal.

1. All parent corporations and publicly held companies owning 10 percent or more of the party's stock: FERRELL COMPANIES, INC., is the sole shareholder of 100% of the stock issued by FERRELLGAS, INC.

2. Names of all law firms whose attorneys have appeared for the party or amicus in this case (including proceedings in the district court or before an administrative agency) or are expected to appear in this court: Olson Cannon Gormley & Stoberski; and Baker, Sterchi, Cowden & Rice.

3. If litigant is using a pseudonym, the litigant's true name: Petitioner FERRELLGAS, INC. Otherwise, there is no pseudonym.

4. MARIO GONZALEZ, is an individual, and represented by Steven Goldstein, Esq., and James P.C. Silvestri, Esq. of the law firm H&P Law in the District Court and in this Court.

5. CARL KLEISNER, is an individual, and represented by Gina Gilbert Winspear, Esq., and Brent D. Quist, Esq. of the law firm Dennett Winspear, LLP in the District Court and in this Court.

DATED this 26th day of March, 2021

*/s/ Felicia Galati, Esq.*

---

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FERRELLGAS, INC.

DATED this 26th day of March, 2021.

*/s/ Steven M. Goldstein*

---

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DATED this 26th day of March, 2021.

*/s/ Gina Gilbert Winspear, Esq.*

---

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## **PETITION FOR WRIT OF MANDAMUS**

TO: THE HONORABLE SUPREME COURT OF THE STATE OF NEVADA

Pursuant to NRAP 21, Defendants/Petitioners FERRELLGAS, INC., MARIO GONZALEZ and CARL KLEISNER (“Defendants”), by and through their undersigned counsel, hereby petition this Court for an extraordinary writ of mandamus: (1) compelling the district court to comply with Nevada Rule of Civil Procedure (NRCP) 35(a)(4)(A)(ii) and NRCP 35(a)(3) and grant its Objection; (2) compelling the district court to issue an order denying Plaintiff the presence of an observer at and denying an audio recording of his psychological/neuropsychological examination for his failure to meet his burden of establishing good cause under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3); (3) establishing the applicable good cause standards for NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) and how they are met; and (4) staying the district court case until this Court decides the above issues and/or Moats v. Dist. Ct. (Burgess), Case No. 81912, relating to the conflict between NRCP 35 and NRS 52.380 as to examinations, and the applicable good cause standards under NRCP 35.

This Petition is based upon the grounds that the district court’s March 2, 2021 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 (March

2, 2021 Order) was made without any legal and/or factual basis, and in violation of NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3), thereby constituting a clearly erroneous decision and a clear abuse of discretion. This Petition is also based upon the ground that Petitioners have no plain, speedy and adequate remedy in the ordinary course of law, including because this is Defendants' one and only opportunity to conduct a psychological/neuropsychological examination of Plaintiff in defense of this action. In addition, this Petition raises important issues of law that require clarification, and considerations of sound judicial economy and administration militate in favor of granting the Petition. There is a clear conflict between NRCP 35 and NRS 52.380 regarding whether an observer and audio recording are permitted during a court ordered psychological/neuropsychological evaluation and when. The Respondent district court correctly ordered that NRCP 35 is the controlling authority on these issues, but erroneously ordered that Plaintiff may have an observer present and may audio record the NRCP 35 psychological/neuropsychological examination on March 3, 2020. The district court's March 2, 2021 Order is not supported by any evidence establishing "good cause" for the presence of an observer and/or allowing an audio recording, which is required by NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3).

Also, this Court is currently considering the clear conflict between NRCP 35 and NRS 52.380 in Moats, supra on a Writ Petition filed by the same Plaintiff's counsel. There are two conflicting district court decisions regarding the attendance of an

observer and making an audio recording of the examination – one applying NRCP 35 and the other applying NRS 52.380. The March 2, 2021 Order in this case improperly applies NRCP 35's good cause exceptions making this issue ripe of this Court's determination. If this Court does not exercise its discretion in this matter, irreparable harm will be done to Defendants, and the public trust in the scrupulous administration of justice. Rebuttal expert disclosures are due on March 30, 2021 pursuant to the parties' stipulation to be submitted to this court. Discovery closes on April 23, 2021. The current trial date is set for August 2, 2021.

## **I. JURISDICTION**

This Court has original jurisdiction pursuant to Article 6, Section 4 of the Nevada Constitution. Respondent The Honorable Joanna S. Kishner ("district court") was the duly appointed, acting and qualified Judge of Department XXXI of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark. On March 2, 2021, this district court entered its March 2, 2021 Order denying Defendants' Objections and affirming as modified the Discovery Commissioner Reports and Recommendations (DCRR) dated December 22, 2020, and January 12, 2021 regarding Defendants' Motion To Compel an NRCP 35. 6 Appendix (App.) 1177-85. The district court found:

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

as well as the breadth and scope of the exam and information to be inquired about.

Specifically, NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) have been met in this case considering the nature of the claims presented, the lack of medical provider-patient relationship, and the other facts presented. Given the Court has found that the good cause provisions of NRCP 35 apply, and this provision allows the relief requested by Plaintiff regarding an observer and memorialization of the examination, the Court need not address an alternative basis. Accordingly, the Court finds that the Recommendations are supported by NRCP 35's good cause exception and applicable law. Thus, the DCRRs are modified to reflect affirmance of the Recommendations, but that the basis of the affirmance is NRCP 35. This Court need not and does not make any findings regarding the interplay, or lack thereof, between NRCP 35 and NRS 52.380 as the relief sought in the instant case is supported by the evidence of good cause presented pursuant to NRCP 35.

6 App. 1182-83. The district court – applying NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) – affirmed the DCRRs finding but did so based on Plaintiff apparently establishing good cause for the presence of an observer and for an audio recording. Respectfully, that decision is clearly erroneous because there was no evidence, let alone substantial evidence, to support that decision.

Defendants have no plain, speedy, or adequate remedy at law. In addition, important issues of law require clarification regarding the good cause standards under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3), such that public policy is served by the Supreme Court's invocation of its original jurisdiction. Finally, the circumstances of this matter reveal that there will be irreparable harm to Defendants, parties and the public if this Court does not exercise its discretion. NRCP 35

examinations are a critical and regular aspect of civil litigation and the related good cause standards needs to be defined for the district court, parties and the public.

## **II. ROUTING STATEMENT NRAP 17(a)(12) and NRAP 21(a)(1)**

Pursuant to NRAP 17(a)(12) and NRAP 21(a)(1), this matter is presumptively retained by the Supreme Court because it invokes the original jurisdiction of this Court seeking a writ of mandamus for matters not presumptively assigned to the Court of Appeals. Also, this Petition raises as a principal issue a question of statewide public importance and an issue upon which there is a conflict between district court decisions as to whether NRCP 35 or NRS 52.380 applies regarding whether an observer can be present at and an audio recording can be made during a court ordered psychological/neuropsychological examination; and the related good cause standards under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3). NRAP 17(a)(12). As such, jurisdiction over this matter is retained by the Nevada Supreme Court. There is no existing authority vested in the Nevada Court of Appeals which would permit the Court of Appeals to address these issues.

The Respondent district court erroneously ordered that, under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3), Plaintiff demonstrated good cause to and may have an observer present at and may audio record the neuropsychological examination on March 3, 2021. Different judges within the Eighth Judicial District Court have made conflicting rulings on the same subject, under NRCP 35 and NRS

52.380, making this issue ripe for the Supreme Court's determination. See Moats, supra. The district court, Defendants, parties and the public need to know what the law is as to NRCP 35 psychological/neuropsychological examinations and the related good cause standards of NRCP 35. Also, depending on this Court's determination of the issues, this case potentially implicates issues regarding a conflict of law between the application of NRCP 35 and NRS 52.380 (one requiring good cause and the other not for the presence of an observer and for an audio recording to be made), which raises a separation of powers issue, this Petition should be heard and decided by the Supreme Court.

### **III. INTRODUCTION**

The district court's March 2, 2021 Order denying Defendants' Objection to the Discovery Commissioner's Reports and Recommendations entered on 12/22/2020 and 1/12/2021 is clearly erroneous because it is not based on the evidence on file; and it irrevocably, permanently, and unfairly prejudices Defendants as to their one and only opportunity to defend this action through the psychological/neuropsychological examination of Plaintiff in a case where Plaintiff seeks multi-million dollars in damages.

#### **IV. STATEMENT OF THE ISSUES**

1. Whether the district court committed error in finding that Plaintiff is entitled to have an observer at his NRCP 35 psychological/neuropsychological examination under NRCP 35(a)(4)(A)(ii).

2. Whether the district court committed error in finding that Plaintiff is entitled to have an audio recording of his NRCP 35 psychological/neuropsychological examination under NRCP 35(a)(3).

3. Whether the district court committed error in finding that Plaintiff met his burden of establishing good cause for an observer at his NRCP 35 psychological/neuropsychological examination under NRCP 35(a)(4)(A)(ii).

4. Whether the district court committed error in finding that Plaintiff met his burden of establishing good cause for an audio recording of his NRCP 35 psychological/neuropsychological examination under NRCP 35(a)(3).

The issues presented to this Court are discrete and have never been previously considered in the context of the facts of this case and the current NRCP 35.

#### **V. STATEMENT OF THE CASE**

##### **A. FACTUAL AND PROCEDURAL BACKGROUND**

This case arises out of an alleged failure of a flexible gas hose which resulted in an explosion/fire on June 18, 2018. The issues before this Court relate to the presence of an observer at and the audio recording of the NRCP 35



psychological/neuropsychological examination. The relevant facts regarding this case are as follows.

On June 14, 2019, Plaintiff Joshua Green filed a First Amended Complaint against Defendants Ferrellgas, Inc., Mario Gonzalez and Carl Kleisner alleging negligence claims. 1 App. 1-8. On January 11, 2021, Plaintiff filed a Second Amended Complaint alleging the same claims against Defendants and adding negligent training, negligent maintenance and negligent supervision claims against Defendant Ferrellgas, Inc. 6 App. 1108-19.

On October 26, 2020, Defendants filed a Motion to Compel an NRCP 35 Exam because Plaintiff admits that he has made his mental condition an issue in this case by alleging he suffered from PTSD as a result of the flashfire and has memory and concentration issues. 1 App. 9-68. The parties agree a psychological examination is in order but disagree as to the scope of the examination and other particulars. On November 9, 2020, Plaintiff filed an Opposition thereto requesting that he be allowed to have an observer present and make an audio recording of the examination. 1 App. 69-204. On November 12, 2020, Defendants filed a Reply thereto. 2 App. 205-58. On November 19, 2020, the Discovery Commissioner held a hearing on the Motion and granted and denied the Motion. 2 App. 259-80. On December 7, 2020, Plaintiff filed an unauthorized Supplemental Brief. 2 App. 281-407. On December 9, 2020, Defendants filed a Supplemental Brief responding

thereto. 3 App. 408-77. On December 10, 2020, the parties attended a follow-up hearing regarding the scope of the examination, for which a separate report and recommendation would be issued. 3 App. 478-93. On December 16, 2020, the Discovery Commissioner conducted a telephonic hearing with the parties on various outstanding issues relating to the Motion. On December 22, 2020, the DCRR regarding the November 19, 2020 hearing was e-filed and served. 3 App. 494-500.

The Honorable Discovery Commissioner recommended Plaintiff appear for a NRCP 35 Examination consistent with the following parameters:

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

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

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

IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to inquire into Plaintiff's mental condition before the incident, and Plaintiff's general physical condition before the incident. The examiner may inquire as to Plaintiff's medical treatment for five years prior to the incident.

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

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

IT IS FURTHER RECOMMENDED that Defendants' examiner shall be allowed to inquire into Plaintiff's history with regard to inability to focus and memory issues. 3 App. 498.

On January 5, 2021, Defendants filed their Objection to the DCRR dated 12/22/20. 4 App. 501 to 5 App. 1016. On January 11, 2021, Plaintiff filed his Reply thereto. 6 App. 1017-1107. On January 12, 2021, the DCRR regarding the December 10, 2020 hearing was e-filed which, consistent with the December 22, 2020 DCRR, allowed Plaintiff to have an observer at and make audio recording of the NRCP 35 psychological/neuropsychological examination pursuant to NRS 52.380. 6 App. 1120-25. On January 19, 2021, Defendants filed their Supplement objecting to the DCRR e-filed on January 12, 2021. 6 App. 1126-37.

On January 28, 2021, the district court conducted a hearing on the Objection orally ruling:

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

So [video interference] the Court does not mean to address the argument of the parties on whether or not there is a direct conflict between the rule and the statute in this specific case because the Court found that even the rule allows the good faith exception, and so therefore the Court doesn't need to address if there could be viewed as a conflict because it would not apply in this case between the rule and the statute. 6 App. 1162-63.

On March 2, 2021, the district court entered its Order denying Defendants' Objections and affirming as modified the two DCRRs regarding the NRCP 35 Exam; and ordered Plaintiff to appear on March 3, 2021 for the NRCP 35 Exam. 6 App. 1177-85. The district court found:

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

Specifically, NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) have been met in this case considering the nature of the claims presented, the lack of medical provider-patient relationship, and the other facts presented. Given the Court has found that the good cause provisions of NRCP 35 apply, and this provision allows the relief requested by Plaintiff regarding an observer and memorialization of the examination, the Court need not address an alternative basis. Accordingly, the Court finds that the Recommendations are supported by NRCP 35's good cause exception and applicable law. Thus, the DCRRs are modified to reflect affirmance of the Recommendations, but that the basis of the affirmance is NRCP 35. This Court need not and does not make any findings regarding the interplay, or lack thereof, between NRCP 35 and NRS 52.380 as the relief sought in the instant case is supported by the evidence of good cause presented pursuant to NRCP 35. 6 App. 1182.

The Court:

AFFIRMED in part and modified in part....both the December 22, 2020 and the January 12, 2020 DCRRs...

IT IS FURTHER ORDERED that Mr. Green will be permitted to have an observer present during the Rule 35 examination pursuant to NRCP 35(a)(4)(A)(ii).

IT IS FURTHER ORDERED that Mr. Green will be permitted to have an audio recording made of the Rule 35 examination pursuant to NRCP 35(a)(4)(A)(ii). 6 App. 1183-84.

On March 23, 2021, Defendants filed a Motion for Reconsideration of the district court's March 2, 2021 Order, and a Motion to Stay this case.

## **VI. SUMMARY OF THE ARGUMENT**

The district court's March 2, 2021 Order finding Plaintiff established good cause under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) for and allowing the presence of an observer at and an audio recording of the psychological/neuropsychological examination is clearly erroneous, including because the district court did not consider appropriate good cause factors established by this Court in other matters, the United States District Court, Nevada, and/or the United States Supreme Court; and because there was no evidence, let alone substantial evidence, to support the district court's findings of good cause.

## **VII. ARGUMENT**

### **A. MANDAMUS IS THE APPROPRIATE RELIEF**

"A writ of mandamus is available to compel the performance of an act which the law requires as a duty resulting from an office, trust or station, or to control a manifest abuse or an arbitrary or capricious exercise of discretion." Okada v. Eighth Judicial Dist. Court in & for Cty. of Clark, 134 Nev. 6, 8–9, 408 P.3d 566, 569 (2018). Mandamus is an extraordinary remedy, available only when there is no

“plain, speedy and adequate remedy in the ordinary course of law.” Id. at 9 citing NRS 34.170; D.R. Horton, Inc. v. Eighth Judicial Dist. Court, 123 Nev. 468, 474, 168 P.3d 731, 736 (2007). This Court has recognized that the availability of a direct appeal from a final judgment may not always be an adequate and speedy remedy. Id. citing D.R. Horton, 123 Nev. at 474–75, 168 P.3d at 736 (“Whether a future appeal is sufficiently adequate and speedy necessarily turns on the underlying proceedings’ status, the types of issues raised in the writ petition, and whether a future appeal will permit this court to meaningfully review the issues presented.”). Thus, consideration of a writ petition may be appropriate “when an important issue of law needs clarification and sound judicial economy and administration favor the granting of the petition.” Id. citing Nev. Yellow Cab Corp. v. Eighth Judicial Dist. Court, 132 Nev. 784, 788, 383 P.3d 246, 248 (2016); Aspen Fin. Servs., Inc. v. Eighth Judicial Dist. Court, 129 Nev. 878, 882, 313 P.3d 875, 878 (2013) (exercising discretion to entertain a discovery-related writ petition because it “provides a unique opportunity to define the precise parameters of a statutory privilege that this court has not previously interpreted”). “A writ of mandamus may be issued to compel the district court to vacate or modify a discovery order.” Okada v. Eighth Jud. Dist. Ct., 131 Nev. 834, 839–40, 359 P.3d 1106, 1110–11 (2015) citing Valley Health Sys., LLC v. Eighth Judicial Dist. Court, 127 Nev. 167, 171, 252 P.3d 676, 678 (2011). While, generally, “[d]iscovery matters are within the district court’s sound discretion, and

we will not disturb a district court's ruling regarding discovery unless the court has clearly abused its discretion.” Id. citing Club Vista Fin. Servs., LLC v. Eighth Judicial Dist. Court, 128 Nev. Adv. Op. 21, 276 P.3d 246, 249 (2012); Hyde & Drath v. Baker, 24 F.3d 1162, 1166 (9th Cir.1994). “[W]e generally will not exercise our discretion to review discovery orders through [writ petitions], unless the challenged discovery order is one that is likely to cause irreparable harm. Id. at 839-40 citing Club Vista, supra. “Nevertheless, in certain cases, consideration of a writ petition raising a discovery issue may be appropriate if an important issue of law needs clarification and public policy is served by this court's invocation of its original jurisdiction.” Id. at 840 citing Las Vegas Sands Corp. v. Eighth Judicial Dist. Court, 130 Nev. Adv. Op. 61, 331 P.3d 876, 878–79 (2014). Mandamus is also available to immediately correct an error that will wreak irreparable harm. Double Diamond v. Dist. Ct., 131 Nev. Adv. Op. 57, 354 P.3d 641, 647. (2015).

In Okada, this Court exercised its discretion to consider the petition because it raised important issues of law that needed clarification – the correct legal standards on a motion for a protective order – which had not previously been considered. 131 Nev. at 840. The same is true here. NRCP 35, in its current form effective January 2019, prohibits the presence of an observer at a neuropsychological, psychological, or psychiatric examination and prohibits an audio recording of the same – both except for good cause shown. NRCP 35(a)(4)(A)(i) and (ii); NRCP 35(a)(3). There

are no cases from this Court establishing the correct standards under the newly enacted NRCP 35(a)(4)(A)(i) and (ii); NRCP 35(a)(3) and as to good cause. Therefore, clarification is needed.

Although generally, this Court reviews a district court's decision regarding a petition for a writ of mandamus for an abuse of discretion, to the extent the petition depends on statutory interpretation, a question of law, the review is *de novo*. State v. Barren, 128 Nev. Adv. Op 31, 279 P.3d 182, 184 (2012). Since this case involves the interpretation of NRCP 35, which this Court enacted, that is a question of law which should be reviewed *de novo*. See, e.g., Dresser Industries, Inc., 972 F.2d 540, 543 (5<sup>th</sup> Cir. 1992) citing in part Unified Sewerage Agency v. Jelco, Inc., 646 F.2d 1339, 1342, n. 1 (9<sup>th</sup> Cir. 1981).

This Court should exercise its discretion by accepting this Petition because it raises extremely important issues regarding NRCP 35, psychological/neuropsychological examinations and the related good cause standards. Without this Court's intervention, irreparable harm will continue to be done to parties having to face these issues, which will impact the public trust in the scrupulous administration of justice. Also, clarification is needed regarding important issues of law regarding the good cause standards in NRCP 35. Simply put, this Petition involves important and critical precedential issues of statewide significance regarding psychological/neuropsychological examinations. The district



court, attorneys, parties, Defendants and the public should have a clear understanding of what is allowed and not allowed and when in court-ordered psychological/neuropsychological examinations, and how that is to be determined.

**B. NRCP 35**

This Petition deals with fundamental aspects of our legal system and requires this Court's clarification regarding NRCP 35 on very important court-ordered psychological/neuropsychological examinations. NRCP 35 came into existence over 50 years ago. In 2018, prior to amending NRCP 35 – a rule of civil procedure – this Court invited public comment. On October 1, 2018, the Nevada Board of Psychological Examiners submitted a statement regarding its position as follows:

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

**invalidating the evaluation. Ultimately, deviations from standardized administration procedures compromise the validity of the data collected and compromise the psychologist's ability to compare test results to normative data. This increases the potential for inaccurate test results and erroneous diagnostic conclusions, thus impacting reliability of results and future treatment for the patient.** In addition, the risk of secured testing and assessment procedures being released to non-Psychologists poses risk to the public in that exposure of the test and assessment confidentiality can undermine their future validity and utility. 5 App. 1016.

Thereafter and effective January 1, 2019, this Court enacted NRCP 35 (Physical and Mental examinations), which provides:

(a) Order for examination.

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

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

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

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

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

(4) ***Observers at the examination.*** The party against whom an examination is sought may request as a condition of the examination to have an observer 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.

- (A) The party may have one observer present for the examination, unless:**  
**(i) the examination is a neuropsychological, psychological, or psychiatric examination; or**  
**(ii) the court orders otherwise for good cause shown.**  
**(B) The party may not have any observer present for a neuropsychological, psychological, or psychiatric examination, unless the court orders otherwise for good cause shown.**  
**(C) An observer must not in any way interfere, obstruct, or participate in the examination. (Emphasis added.)**

NRCP 35(a) expressly addresses audio recording and attendance by an observer at court-ordered physical and mental examinations. A court may for good cause shown direct that an examination be audio recorded. A generalized fear that the examiner might distort or inaccurately report what occurs at the examination is not sufficient to establish good cause to audio record the examination. In addition, a party whose examination is ordered may have an observer present, typically a family member or trusted companion, provided the party identifies the observer and his or her relationship to the party in time for that information to be included in the examination order. However, psychological and neuropsychological examinations raise subtler questions of influence and confidential and proprietary testing materials that make it appropriate to condition the attendance of an observer on court permission, to be granted for good cause shown. This Court made clear – in enacting NRCP 35(a)(4)(A)(i) – that no observer may be present for a neuropsychological, psychological, or psychiatric examination consistent with the Nevada Board of Psychological Examiners’ position statement. However, an observer may be present

if the court orders otherwise for good cause shown. NRCp 35(a)(4)(A)(ii). Also, no audio recording may be made unless the court so orders also for good cause shown. NRCp 35(a)(3).

**C. NRS 52.380**

In October 2019 – about 9 months after this Court enacted the current NRCp 35 – the Nevada Legislature enacted, NRS 52.380, which provides:

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; and
    - (2) The designated representative presents the authorization to the examiner before the commencement of the examination.
3. **The observer attending the examination pursuant to subsection 1 may make an audio or stenographic recording of the examination.**
4. The observer attending the examination pursuant to subsection 1 may suspend the examination if an examiner:
  - (a) Becomes abusive towards an examinee; or
  - (b) Exceeds the scope of the examination, including, without limitation, engaging in unauthorized diagnostics, tests or procedures.
5. An examiner may suspend the examination if the observer attending the examination pursuant to subsection 1 disrupts or attempts to participate in the examination.
6. If the examination is suspended pursuant to subsection 4 or 5, the party ordered to produce the examinee may move for a protective order pursuant to the Nevada Rules of Civil Procedure.
7. As used in this section:

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

Notably, this Statute is found in Title 4. Witnesses and Evidence, Chapter 52. Documentary and Other Physical Evidence, Mental or Physical Examination – thereby indicating it is procedural, not substantive. In any case, Plaintiffs’ bar and/or the Nevada Justice Association (NJA) testified at a Meeting of the Assembly Committee on Judiciary, 18th Sess. (March 27, 2019), to persuade this Court to adopt some of the above into NRCP 35, which this Court rejected. Freteluco v. Smith's Food & Drug Centers, Inc., 336 F.R.D. 198, 202 (D. Nev. 2020). Thereafter, the Nevada Legislature enacted NRS 52.380. There is a clear conflict between NRCP 35 and NRS 52.380 as to an observer attending a neuropsychological or psychological examination, and an audio recording being made of the same which has caused the district court to enter inconsistent orders as to NRCP 35 examinations. 3 App. 496. Defendants, the district court, parties and the public need this Court to resolve that conflict and determine the appropriate good cause standards for NRCP 35 and apply them hereto.

**D. The District Court Abused Its Discretion**

Applying the *de novo* standard to interpreting NRCP 35, it is clear the district court clearly abused its discretion as follows.

1. **The District Court Clearly Abused Its Discretion By Failing to Consider Persuasive Federal Authority and/or Any Other Legal Authority To Support Its Decision**

There are no decisions from this Court applying NRCP 35 to the facts and circumstances of, or similar to this case. However, there is relevant legislative history regarding the recent amendment of NRCP 35, and a United States District Court decision – Freteluco, supra – the only decision in this jurisdiction regarding the conflict between NRCP 35 and NRS 52.380, which also considered the good cause standard. “Federal cases interpreting the Federal Rules of Civil Procedure are strong persuasive authority, because the Nevada Rules of Civil Procedure are based in large part upon their federal counterparts.” Executive Mgmt., Ltd. v. Ticor Title Ins. Co., 118 Nev. 46, 53, 38 P.3d 872, 876 (2002). The district court completely ignored Freteluco and simply applied NRCP 35 without citation to any authority, including in its good cause determination, although it referred to the standard in oral argument as one of “good faith.” In any case, the district court manifestly abused its discretion in ignoring Freteluco, this Court’s decisions regarding good cause as to other Rules, and/or the United States Supreme Court’s decisions regarding good cause; and in improperly interpreting and/or applying NRCP 35 as it did. As such, the district court’s decision is not supported by any law or other authority aside from the language of NRCP 35. Therefore, mandamus is appropriate.

2. **The District Court Clearly Abused Its Discretion In Conducting The Good Cause Analysis And Allowing The Presence Of An Observer At And An Audio Recording Of The NRCP 35 Psychological/Neuropsychological Examination**

In Freteluco, the United States District Court adopted and applied the “good cause” standard established by the United States Supreme Court. 336 F.R.D. at 204 citing Flack v. Nutribullet, L.L.C., 333 F.R.D. 508, 513 (C.D. Cal. 2019) citing Schlagenhauf v. Holder, 379 U.S. 104, 85 S.Ct. 234 (1964) and Smolko v. Unimark Lowboy Trans., 327 F.R.D. 59, 63 (M.D. Penn. 2018). In establishing the standards for district courts deciding whether to compel a Rule 35 examination, the United States Supreme Court determined that the “good cause” requirement of Rule 35 “is not a mere formality but is a plainly expressed limitation on the use of...Rule 35.” Schlagenhauf, 379 U.S. at 118, 85 S. Ct. at 242. The court explained that Rule 35's “good cause” requirements are not met by “mere conclusory allegations of the pleadings – nor by mere relevance to the case – but require an affirmative showing by the movant that each condition as to which the examination...that good cause exists for ordering each particular examination.” Id. (Emphasis added.) To determine whether the “good cause” requirement of Rule 35 is satisfied, several factors may be considered, including: (1) the possibility of obtaining desired information by other means; (2) whether plaintiff plans to prove her claim through testimony of expert witnesses; (3) whether the desired materials are relevant; and (4) whether plaintiff claims ongoing emotional distress. Flack,

supra citing Gavin v. Hilton Worldwide, Inc., 291 F.R.D. 161, 165 (N.D. Cal. 2013); accord Franco v. Boston Scientific Corp., 2006 WL 3065580, at \*1 (N.D. Cal. Oct. 27, 2006). Accordingly:

**Rule 35...requires discriminating application by the trial judge, who must decide, as an initial matter in every case, whether the party requesting a mental or physical examination or examinations has adequately demonstrated the existence of the Rule's requirements of 'in controversy' and 'good cause,' which requirements, as the Court of Appeals in this case itself recognized, are necessarily related. 321 F.2d, at 51. This does not, of course, mean that the movant must prove his case on the merits in order to meet the requirements for a mental or physical examination. Nor does it mean that an evidentiary hearing is required in all cases. This may be necessary in some cases, but in other cases the showing could be made by affidavits or other usual methods short of a hearing. It does mean, though, that the movant must produce sufficient information, by whatever means, so that the district judge can fulfill his function mandated by the Rule.**

Schlagenhauf, 379 U.S. at 118–19, 85 S. Ct. at 243–45 (emphasis added).

**Mental and physical examinations are only to be ordered upon a discriminating application by the district judge of the limitations prescribed by the Rule. To hold otherwise would mean that such examinations could be ordered routinely in automobile accident cases. The plain language of Rule 35 precludes such an untoward result.**

Id. at 121–22, 244 (emphasis added). The parties agree an NRCP 35 psychological examination is in order based on Plaintiff's alleged damages.

In Freteluco, the plaintiff failed to meet her burden. 336 F.R.D. at 203. The court determined there was nothing extraordinary or out of the ordinary that suggested a third-party observer was appropriate, and nothing was presented to the court that supported a concern that Dr. Etcoff has ever been or, in this case, will be



abusive to someone he is examining. Id. at 204. There was also nothing to support the conclusion that Dr. Etcoff would go beyond the agreed upon testing he had disclosed. Id. Accordingly, the court ruled the plaintiff failed to provide the court with any evidence or information, other than generic concerns, warranting an observer at the Rule 35 examination. Id. Thus, the court did not permit an observer to be present at the examination. Id.

The same is true here. In his Opposition to the Motion and his Reply to the Objection, and before the Discovery Commissioner, Plaintiff did not argue there was “good cause” under NRCP 35 for him to have an observer present and be able to make an audio recording at either of the hearings before the Discovery Commissioner, and the Discovery Commissioner made no ruling relating thereto. 1 App. 69-204, 2 App. 259-80, 3 App. 478-93 and 494-500, 6 App. 1017-1107 and 1120-50. Rather, Plaintiff argued that NRS 52.380 created substantive rights and:

**[t]he 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...** 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... 1 App. 74, 76-78, 80, 6 App. 1025-26.

Furthermore, none of the evidence Plaintiff submitted establishes good cause for his request for an observer and audio recording to support a deviation from NRCP 35’s plain language prohibiting the same at a psychological/neuropsychological examination. Plaintiff’s Opposition and Reply to the Objection were supported only

by: (1) Dr. Elliott's medical records; (2) Letter to Defense Counsel; (3) Letter to Plaintiff's Counsel; (4) Dr. Etcoff curriculum vitae; (5) Plaintiff's deposition (Vol. I); (6) Plaintiff's deposition (Vol. II); (7) video of explosion; (8) DCCR dated 12/22/2020; and (9) Judge Denton Order and Notice of Entry. 1 App. 69-204, 6 App. 1017-1107. None of the above goes to and/or establishes good cause for the presence of an observer and/or an audio recording. Therefore, Plaintiff failed to meet his burden of establishing good cause for an observer and/or audio recording, and the district court erred in finding Plaintiff had met his burden.

Furthermore, the March 2, 2021 Order is contrary to law because it fails to apply or misapplies NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3)'s good cause requirements, which are not met by "mere conclusory allegations" and require an affirmative showing by Plaintiff that there is good cause for each condition of the examination. Schlagenhauf, 379 U.S. at 118, 85 S. Ct. at 242. Considering the relevant good cause factors, Plaintiff plans to prove his claim through testimony of his expert, Dr. Elliott, and Plaintiff claims ongoing neuropsychological damages, including memory and confusion issues. Flack, supra citing Gavin, supra; Franco, supra. Plaintiff submitted no affidavits or other evidence supporting his argument for the district court to fulfill its obligation to perform the discriminating application mandated by NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3). Schlagenhauf, 379 U.S. at 118-19, 85 S. Ct. at 243-45. To accept Plaintiff's argument is to effectively

disregard the requirements of NRC 35(a)(4)(A)(ii) and NRC 35(a)(3) enacted by this Court. Finally, Defendants presented two affidavits from Dr. Etcoff and the State of Nevada Board of Psychological Examiners 10/1/18 letter and relied on Fretelucio to support the denial of an observer and audio recording, none of which was disputed.

The Rules of Civil Procedure are designed to be tools to elicit the truth. To routinely require the presence of an observer and an audio recording during an adverse psychological/neuropsychological examination would thrust the adversary process itself into the psychologist's examining room, which would only institutionalize discovery abuse, convert adverse medical examiners into advocates, and shift the forum of the controversy from the courtroom to the physician's examination room. In sum, there is no evidence of good cause, let alone substantial evidence, i.e., "evidence that a reasonable mind might accept as adequate to support a conclusion," that Plaintiff is entitled to an observer at and an audio recording of the NRC 35 examination – and there is undisputed evidence to not allow that. Therefore, mandamus is appropriate.

**3. The District Court Clearly Abused Its Discretion In Accepting Plaintiff's NRC 35 Nullification Argument**

At the Objection hearing, the district Court *sua sponte* raised the issue of "good faith," presumably good cause. 6 App. 1155, 1162-63. In response thereto, Plaintiff made a circuitous, nonsensical NRC 35 nullification argument that renders

NRCP 35 completely meaningless, and ultimately caused confusion and/or resulted in the district court making a clearly erroneous ruling.

To support his request for an observer and an audio recording, Plaintiff argued there is no doctor-patient relationship between him and Dr. Etcoff. 5 App. 1157. That argument fails and is a red herring. NRCP 35 allows an opposing party's expert to conduct a physical and/or mental examination where the plaintiff puts his physical and/or mental condition at issue. An NRCP 35 examination – by definition – will always be done by an opposing party's expert. Thus, there will never be a doctor-patient relationship in these examinations such that it is of no consequence. Critically, neither NRCP 35 nor any case says anything about that. That argument is irrelevant. This Court clearly was aware of that. In enacting NRCP 35 as it is – providing there can be no observer or audio recording unless the party requesting it establishes good cause for the same – the argument made by Plaintiff did nothing but confuse the district court and/or caused it to make a clearly erroneous ruling. The unsupported argument, most certainly, does not establish the good cause required by the NRCP 35. If that argument is accepted, it nullifies NRCP 35 and the requirements that there can be no observer or audio recording without the requesting party establishing good cause because such examinations will never involve a doctor-patient relationship. The result of accepting that argument is there will always be an observer at and/or an audio recording at every such examination,

which nullifies NRCP 35(a)(4)(A)(i) and (ii); and NRCP 35(a)(3). Therefore, the district court's related decision is clearly erroneous.

The district court's 3/2/2021 Order allowed an observer and audio recording based on "the nature of the claims presented, the lack of medical provider-patient relationship, and the other facts presented." 6 App, 1182. None of the above is one of the "good cause" Rule 35 factors that may be considered. See p. 22-26, supra. It is unclear what the district Court means by "the nature of the claims presented." If the district court was referring to the claims plead, at the time of the Objection hearing those were negligence claims. 1 App. 1-8. If the district court was referring to Plaintiff's damages claims, he admitted he made his mental condition an issue since he is alleging suffering from PTSD and an inability to focus and memory issues. 3 App. 495-97. The parties agree a psychological examination is in order, and the only dispute was whether an observer could be present at and an audio recording could be made of the examination. Therefore, the above is not determinative of the good cause issues.

Also, "the lack of medical provider-patient relationship" is not a factor to be considered nor is there any authority for it to be considered on the good cause issue, including because it would essentially require an observer at every NRCP 35 exam, which is irrelevant and nullifies NRCP 35. Finally, it is unclear what the district court means by "the other facts presented." Based on Plaintiff's papers, exhibits and

argument, there is nothing to support good cause. See Sections 2 and 3, supra. Therefore, mandamus is appropriate.

**4. Plaintiff Waived Any Good Cause Argument**

“Points or contentions not raised in the original hearing cannot be maintained or considered on rehearing.” Achrem v. Expressway Plaza Ltd., 112 Nev. 737, 742, 917 P.2d 447, 450 (1996) citing Chowdhury v. NLVH, Inc., 111 Nev. 560, 562-63, 893 P.2d 385, 387 (1995); Cannon v. Taylor, 88 Nev. 89, 92, 493 P.2d 1313, 1314-15 (1972). Defendants raised the issue of and requirement for good cause in their Motion to Compel and Reply. 1 App. 17, 2 App. 209. Plaintiff failed to respond thereto in his Opposition or Reply to the Objection and made no good cause argument before the Discovery Commissioner. Therefore, he waived any related argument. 1 App. 69-204, 2 App. 259-80, 3 App. 478-93, 6 App. 1017-1107. Dezzani v. Kern & Assocs., Ltd., 134 Nev. 61, 65, 412 P.3d 56, 60 (2018) citing Bates v. Chronister, 100 Nev. 675, 682, 691 P.2d 865, 870 (1984) (treating the failure to respond to the opposing party's arguments as a confession of error). Here, the Discovery Commissioner made no rulings on NRCP 35's good cause exception and, instead, applied NRS 52.380 as Plaintiff urged her to do. 3 App. 494-500, 6 App. 112--25. As such, Plaintiff waived any related argument.

While the district court has discretion to consider other issues to prevent plain error, considering good cause on the facts of this case was not about preventing plain

error because Plaintiff submitted no evidence to support such an argument and failed to meet his burden. See, e.g., Kapral v. Jordan, 133 Nev. 1037 (Nev. App. 2017) citing Williams v. Zellhoefer, 89 Nev. 579, 580, 517 P.2d 789, 789 (1973); Bradley v. Romeo, 102 Nev. 103, 105, 716 P.2d 227, 228 (1986) (holding that this court will consider relevant issues *sua sponte* to prevent plain error). Therefore, Plaintiff waived this argument and mandamus is appropriate.

**5. The District Court Clearly Abused Its Discretion By Conditioning The NRCP 35 Examination On The Requirement That Dr. Etcoff Or Any Other Licensed Psychologist/Neuropsychologist Violate The Rules And Ethics Of His Profession**

The Nevada Board of Psychological Examiners has indicated its position regarding the issues and problems with the presence of an observer and an audio recording, which this Court accepted in enacting NRCP 35 prohibiting the same absent good cause. The district court's order requires Dr. Etcoff, and any licensed psychologist/neuropsychologist, to violate their professional and ethical rules. In the sworn and undisputed testimony of Dr. Etcoff:

4. ...I am enjoined by the Nevada State Board of Psychological Examiners; the American Psychological Association; professional neuropsychological associations such as the National Academy of Neuropsychology, the American Board of Professional Neuropsychology, and the American Board of Clinical Neuropsychology; including the Nevada Psychological Association from allowing third party observers to observe, take notes, or audiotape copyrighted psychological and neuropsychological tests for test security, validity issues, and protection of the public (see 2020 attached letters from the Nevada State Board of Psychological Examiners and Nevada Psychological Association).

5. Consistent with my professional and ethical obligations as a Nevada Licensed Psychologist and Fellow of the National Academy of Neuropsychology, I will not allow third party observers or audiotaping of the administration of either clinical psychological or neuropsychological tests and measures in clinical or Court-ordered forensic evaluations. 5 App. 1013.

Based on the above, Dr. Etcoff and/or any other licensed psychologist/neuropsychologist must violate the Rules of his profession and ethics, thereby opening himself to personal professional discipline and/or sanction. As such, the Order essentially prohibits Defendants from getting an NRCP 35 examination here because no licensed psychologist/neuropsychologist is going to take those risks. The district court's Order does not shield Dr. Etcoff from professional discipline and/or sanction as it has no authority to control the Nevada State Board of Psychological Examiners, the American Psychological Association, the National Academy of Neuropsychology, the American Board of Professional Neuropsychology, the American Board of Clinical Neuropsychology, and the Nevada Psychological Association. Therefore, mandamus is appropriate.

6. **The District Court's Ruling Creates An Unfair Advantage For Plaintiff That Irreparably, Extremely and Unfairly Prejudices Defendants**

Plaintiff's expert, Dr. Elliott, had the benefit and advantage of examining and treating Plaintiff without any observer present and/or any audio recording being made. Pursuant to this Court's Order, Defendants' expert, Dr. Etcoff, does not have the same benefit of conducting his examination of Plaintiff in as similar



circumstances as possible given the nature of the examination. This examination will already be encumbered by the inherent fact that there is no doctor-patient relationship and Plaintiff knows he is being examined by Defendants' expert, which could impact his case and damages. Add to that – that Dr. Etcoff must do so with an observer present and an audio recording being made – and the examination becomes further, unnecessarily, and unfairly prejudicially encumbered. The Nevada Board of Psychological Examiners indicated, and this Court accepted that:

[o]bservation, monitoring, and recording can significantly alter the credibility and validity of results obtained during psychological and neuropsychological medical evaluations, as well as forensic evaluations completed for judicial proceedings. Research indicates that the presence of observers, monitors and recorders during patient clinical interviews and evaluations directly impacts patient behavior and performance such that patients may avoid disclosing crucial information essential to diagnosis and clinical recommendations. Additionally, (neuro)psychological tests and measures are developed and standardized under highly controlled conditions. Observation, monitoring, and recording of these tests is not part of the standardization. Observation, monitoring, and recording of psychological assessment components (i.e., testing) of evaluations may distort patient task performance, such that patient weaknesses and strengths are exaggerated, yielding inaccurate or invalid test data. Furthermore, research highlights that this impact on performance is independent of method of observation. In other words, there is no "good" or "safe" way to observe, monitor, or record such (neuro)psychological evaluations without impacting and potentially invalidating the evaluation. Ultimately, deviations from standardized administration procedures compromise the validity of the data collected and compromise the psychologist's ability to compare test results to normative data. This increases the potential for inaccurate test results and erroneous diagnostic conclusions, thus impacting reliability of results and future treatment for the patient. In addition, the risk of secured testing and assessment procedures being released to non-Psychologists poses risk to the public in that exposure of the test and assessment confidentiality can undermine their future validity and utility. 5 App. 1016.

Given the Order allows an observer and audio recording, Dr. Etcoff's examination and related opinions will no doubt be subject to challenge by Plaintiff based on the above. Defendants are already fighting an uphill battle because Dr. Elliott has had thirteen opportunities, and no doubt will have more, to examine and treat Plaintiff without an observer and/or audio recording, which Defendants accept they cannot obtain. While Defendants understand that is a fact of any case, they should not be so prejudiced when Plaintiff failed to meet his burden as required by NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3). Not only is that unfair and not a level playing field from the get-go, but it irreparably, extremely and unfairly prejudices Defendants without any basis therefor. This is Defendants' one and only opportunity to conduct a fair NRCP 35 examination in defense of this case wherein Plaintiff seeks multimillion dollar damages. Requiring that Defendants can only have an NRCP 35 examination if an observer is present, an audio recording is made, and if Dr. Etcoff is willing to expose himself to professional and ethical discipline and/or sanctions relating thereto is tantamount to denying Defendants the examination that all agree they are entitled to on the facts of this case. Therefore, mandamus is appropriate.

#### **VIII. CONCLUSION AND RELIEF SOUGHT.**

Based on the foregoing, Petitioners respectfully requests this Court issue a Writ of Mandamus. Respectfully, Respondent unreasonably abused its discretion

and committed clear error by ordering that Plaintiff is permitted to have an observer at and an audio recording of the NRCP 35 psychological/neuropsychological examination without citation to any authority beyond the NRCP 35 supporting that and, in the complete absence of any evidence establishing good cause; accepting an NRCP 35 nullification argument; and despite Plaintiff's waiver of that argument. Accordingly, a Writ of Mandamus should issue: (1) compelling the district court to comply with NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) and grant its Objection; (2) compelling the district court to issue an order denying Plaintiff the presence of an observer at and allowing an audio recording of his psychological/neuropsychological examination for his failure to meet his burden of establishing good cause under NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3); (3) establishing the applicable good cause standards for NRCP 35(a)(4)(A)(ii) and NRCP 35(a)(3) and how they are met; and (4) staying this case until this Court decides the above issues and/or Moats, supra.

RESPECTFULLY SUBMITTED this 26th day of March, 2021.

*/s/ Felicia Galati, Esq.*

---

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DATED this 26th day of March, 2021.

*/s/ Gina Gilbert Winspear, Esq.*

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CARL J. KLEISNER

DATED this 26th day of March, 2021.

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

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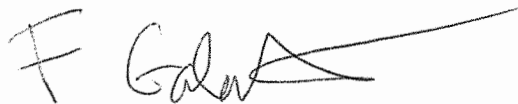
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MARIO S. GONZALEZ

**VERIFICATION**

STATE OF NEVADA     )  
                                  )     SS:  
COUNTY OF CLARK    )

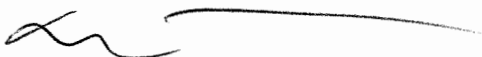
Felicia Galati, being first duly sworn, deposes and says:

That she is an attorney at law duly licensed in the State of Nevada and the attorney for FERRELLGAS, INC. in the above-entitled matter; that she makes this Verification pursuant to NRS 15.010 and NRAP 21(a)(5) for the reason that the facts are within the knowledge of affiant; that she has read the above and foregoing PETITION FOR WRIT OF MANDAMUS, knows the contents thereof, and that the same is true of her own knowledge, except as to those matters therein stated on information and belief, and as to those matters she believes them to be true; and she further states that the exhibits contained in the required Appendix accompanying this Petition are true, correct and accurate copies of those papers filed with the Eighth Judicial District Court in Case A-19-795381-C.

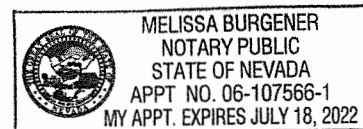


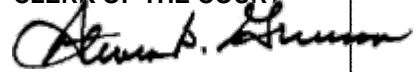
\_\_\_\_\_  
FELICIA GALATI

SUBSCRIBED and SWORN to before  
me on this 26th day of March, 2021.



\_\_\_\_\_  
Notary Public in and for said  
County and State





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Attorney for Defendant  
FERRELLGAS, INC.

DISTRICT COURT  
CLARK COUNTY, NEVADA

JOSHUA GREEN, an individual

Plaintiff,

v.

FERRELLGAS, INC., a foreign corporation;  
MARIO S. GONZALES, an individual; CARL  
J. KLEISNER, an individual, DOES I through  
X, DOE employees I through X, and Roe  
business entities I through X,

Defendants.

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

**ORDER GRANTING MOTION TO  
ASSOCIATE COUNSEL MICHAEL C.  
MCMULLEN, ESQ. UNDER NEVADA  
SUPREME COURT RULE 42**

This matter having been set and/or come on for hearing on the 27<sup>th</sup> day of September, 2019, in Chambers, in Department XXXI before the Honorable Judge Joanna S. Kishner on Defendant Ferrellgas' Motion to Associate Counsel ("Motion") under Nevada Supreme Court Rule 42, together with a Verified Application for Association of Counsel, Certificates of Good Standing, and State Bar of Nevada Statement, said application having been noticed, and the

1 Court having reviewed the Motion and no opposition being filed thereto, and good cause  
2 appearing therefor,

3 **IT IS HEREBY ORDERED, ADJUDGED AND DECREED** that Defendant  
4 Ferrellgas' Motion is hereby GRANTED with prejudice, pursuant to EDCR 2.20(e), because no  
5 opposition has been filed and that may be construed as an admission that the Motion is  
6 meritorious and a consent to granting the same, and Michael C. McMullen, Esq. is hereby  
7 admitted to practice in the above-entitled Court for the purposed of the above-entitled matter  
8 only.  
9

10 DATED this 1 day of ~~September~~, 2019.

11 *October*

12  
13   
14 DISTRICT COURT JUDGE  
15

16 Respectfully submitted by:

17 OLSON, CANNON, GORMLEY  
18 ANGULO & STOBERSKI

19   
20

21 FELICIA GALATI, ESQ.  
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23 9950 West Cheyenne Avenue  
24 Las Vegas, Nevada 89129  
25 Attorneys for Defendant  
26 FERRELLGAS, INC.  
27  
28



## **NRAP 28.2 CERTIFICATE OF COMPLIANCE**

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in Times New Roman, size 14 font.

2. I further certify that this Petition complies with the type-volume limitations of NRAP 32(a)(4)-(6) and (7)(A)&(C), but does not comply with NRAP 21(a)(6)(d) because it exceeds 15 pages and is more than 7,000 words. Petitioners are filing a motion for leave to exceed the page and/or word limits.

3. Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in

///

///

///

the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 26th day of March, 2021.

*/s/ Felicia Galati, Esq.*

---

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Attorneys for Petitioner

**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 **PETITION FOR WRIT OF MANDAMUS** 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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MARIO S. GONZALEZ

Honorable Judge Joanna S. Kishner  
Eighth Judicial District Court  
Department 31  
200 Lewis Avenue  
Las Vegas, NV 89155

*/s/ Erika Parker*

---

An Employee of OLSON CANNON GORMLEY  
& STOBERSKI

# **EXHIBIT D**



**SUPPL**

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mpfau@courtroomproven.com

Attorneys for Plaintiff,  
*Joshua Green*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Joshua Green**, an individual,

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

Cross-Defendants.

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

**Joshua Green's Fifteenth  
Supplemental Disclosures**

MOT099

1  
2 **Mario S. Gonzalez**, an individual;

3 Third-Party Plaintiff,  
4

5 vs.  
6

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

14 Third-Party Defendants.  
15

16 **Ferrellgas, Inc.**, a foreign corporation;

17 Counter-Claimant,  
18

19 vs.  
20

21 **Mario S. Gonzalez**, an individual; DOES  
22 1 through 100 inclusive; and ROE  
23 Corporations 101 through 200;

24 Counter-Defendants  
25

26 **Carl J. Kleisner**, an individual;

27 Counter-Claimant,  
28

vs.

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

Counter-Defendants.

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

**Supplemental/Amended information appears in bold.**

Abandoned claims identified with ~~strike line~~.

**I.  
Witnesses**

1. Joshua Green  
c/o H & P LAW  
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Las Vegas, Nevada 89147  
T: 702-598-4529; and  
63 East Agate, Apt # 408  
Las Vegas, Nevada 89123  
T: 702-271-1791

Joshua Green is the Plaintiff in this case. He is expected to testify about the grill that exploded while he was using it. Joshua will testify about his experience using grills. Joshua will also testify about how these injuries have negatively affected his life and his damages.

1 2. Proper 30(b)(6) Representative for Ferrellgas, Inc.  
 2 c/o OLSON, CANNON, GORMLEY, ANGULO & STROBERSKI  
 3 9950 West Cheyenne Avenue  
 4 Las Vegas, Nevada 89129  
 5 T: 702-384-4012

6 The Proper 30(b)(6) Representative for Ferrellgas, Inc. will testify about their  
 7 policies and procedures for installing and inspecting gas lines. They will also testify  
 8 about their knowledge of this case and employee training, hiring, and management.

9 3. Mario S. Gonzales  
 10 c/o PYATT SILVESTRI  
 11 700 Bridger Avenue, Suite 600  
 12 Las Vegas, Nevada 89101  
 13 T: 702-477-0088

14 Mario Gonzales is the owned the home where the grill exploded on Joshua. Mr.  
 15 Gonzales is expected to offer his testimony about his perspective of the explosion  
 16 and the safety measures he took to prevent it. As Josh's close friend, Mario will also  
 17 testify about any noticeable changes to Josh before and after the explosion.

18 4. Carl J. Kleisner  
 19 c/o DENNETT WINSPEAR, LLP  
 20 3301 North Buffalo Drive, Suite 195  
 21 Las Vegas, Nevada 89129  
 22 T: 702-839-1100

23 Carl J. Kleisner is the electrician that repaired the electrical lines at Mr. Gonzales's  
 24 home a few days before the explosion. Mr. Kleisner is expected to testify about his  
 25 experience as an electrician. He will also testify about liability.

26 5. Elad Bicer, MD  
 27 Spring Valley Hospital Medical Center  
 28 5400 South Rainbow Boulevard  
 Las Vegas, Nevada 89118  
 T: 702-853-3000

Elad Bicer, MD evaluated Joshua for emergency medical treatment immediately  
 following the explosion. Dr. Bicer is expected to testify about his observations that  
 Joshua arrived with burn "onset prior to arrival" with symptoms of "pain and  
 redness." Dr. Bicer's testimony will include the following diagnosis:

- ICD10-CM – Burn;

After review, Dr. Bicer determined Joshua required care in a burn intensive unit.



Dr. Bicer requested Joshua be transferred to University Medical Center.

Dr. Bicer's testimony will be consistent with GREEN 01-85.

6. Elizabeth Sodomini, MD  
UNLV Medicine  
2040 West Charleston Boulevard, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89102  
T: 702-895-4928

Elizabeth Sodomini, MD provided burn treatment to Joshua in the weeks following the explosion. Dr. Sodomini is expected to testify about the following diagnoses:

- T21.22XA – Burn of second degree of abdominal wall, initial encounter;
- T22.212A – Burn of second degree of left forearm, initial encounter;
- T22.211A – Burn of second degree of right forearm, initial encounter;
- T23.202A – Burn of second degree of left hand, unspecified site, initial encounter;
- T23.201A – Burn of second degree of head, face, and neck, unspecified site, initial encounter;
- X04.XXA – Exposure to ignition of highly flammable material, initial encounter;

Dr. Sodomini will testify about the causation of these injuries. Her testimony will be consistent with GREEN 86-97.

7. Jon Petrick, DC  
Las Vegas Pain Relief Center  
2779 West Horizon Ridge Parkway, Suite 210  
Henderson, Nevada 89052  
T: 702-948-2520

Joshua presented to Jon Petrick, DC complaining of consistent pain. Dr. Petrick noted Joshua's "continuing pain and discomfort that can be described as sharp, burning, tightness, numbing or tingling, a loss of strength." Dr. Petrick stated Joshua "presented with second and third degree burns bilaterally on both arm to trunk, chest, and flanks." Dr. Petrick determined Joshua would benefit from "functional movement screen, nitric oxide release, active release techniques, chiropractic care, strength and conditioning, and performance training."

Dr. Petrick is expected to testify about the following diagnoses:

- T31.11 – Burns involving 10-19% of body surface with 10–19% third degree burns;
- T31.20 – Burns involving 20-29% of body surface with 0% to 9% third degree burns;

Dr. Petrick will testify about the causation of these diagnoses. His testimony will be consistent with GREEN 98–186.

8. Custodian of Records  
Shadow Emergency Physicians, PLLC  
PO Box 13917  
Philadelphia, Pennsylvania 19101  
T: 800-355-2470

The Custodian of Records will verify the authenticity of GREEN 187.

9. Custodian of Records  
American Medical Response  
7201 West Post Road  
Las Vegas, Nevada 89113  
T: 800-913-9106

The Custodian of Records will verify the authenticity of GREEN 188.

10. Laurence Green  
2609 Centarus Street  
Henderson, Nevada 89044  
T: 516-524-1310

Laurence Green is Joshua's father. Laurence is expected to testify about Joshua's life before and after the explosion. He will testify about Joshua's injuries and how the negatively affected his life. Laurence is also expected to testify about how the explosion caused a financial strain to Joshua's life.

11. Shelia Green  
2609 Centarus Street  
Henderson, Nevada 89044  
T: 516-524-2251

Shelia Green is Joshua's mother and is expected to testify about the noticeable changes in Joshua before and after the explosion. Shelia will testify about how the burns negatively affected Joshua's life and made his job as a chef more difficult.

12. Elizabeth Sodomini, MD  
13. Paul J. Chestovich, MD  
14. Amy Urban, MD  
University Medical Center -  
5400 South Rainbow Boulevard  
Las Vegas, Nevada 89118  
T: 702-853-3000

The medical team at University Medical Center evaluated Joshua after he was transferred from Spring Valley Hospital. Dr. Urban noted Joshua "sustained flame to burns to the face, b/l forearms, b/l palms" after "lifting the lid from a propane gas grill." These burns were described as to "approximately 18% second-degree burn surface area" with some "anterior abdomen and chest first-degree burns."

To treat his burns, the medical team at University Medical Center prescribed painkillers and admitted Joshua for ongoing wound care "by burn care nurses." The medical team at University Medical Center is expected to testify about the following diagnoses:

- Burn of multiple sites of upper limb;
- Partial thickness of burns of multiple sites;

The medical team at University Medical Center is expected to testify about the causation of these diagnoses. Their testimony will be consistent with GREEN 374-845.

15. Cyril Joseph, PA-C  
Henderson Dermatology and Skin Center  
2960 Saint Rose Parkway, Suite 120  
Henderson, Nevada 89052  
T: 702-558-5100

Physician Assistant Joseph is expected to offer testimony about the treatment he administered to Joshua after the grill explosion. Physician Assistant Joseph performed an examination "including the scalp (including hair inspection), head (including face), inspection of conjunctive lids, lips (but not teeth and gums), nose, right ear, left ear, chest, abdomen, back, right upper extremity, left axilla, right hand, and inspection and palpation of the digits and nails."

Physician Assistant Joseph noted Joshua had "paresthesia on both hands. Left is

1 worse than the right-hand area where patient has burns." Physician Assistant  
2 Joseph's testimony will be consistent with GREEN 847-48.

3  
4 16. Adam Sadie  
5 6983 Casa Encantada Street  
6 Las Vegas, Nevada 89118  
7 T: 702-378-8408

8 Adam Sadie is Josh's business partner. Adam is expected to offer testimony  
9 about how Josh's life was dramatically affected after the grill explosion. Adam will  
10 testify about the difficulties Josh faced as a chef and how the burns make his job  
11 more difficult.

12 17. Lauren Unger  
13 130 East 18<sup>th</sup> Street 3M  
14 New York, New York 10003  
15 T: 516-768-1177

16 Lauren Unger is Josh's close friend. Lauren is expected to offer her testimony  
17 about the noticeable changes in Josh before and after the explosion. She will testify  
18 about how Josh's life was negatively impacted by the explosion.

19 18. Dave Goodman  
20 5431 La Jolla Boulevard C  
21 La Jolla, California 92307  
22 T: 310-775-3601

23 Dave Goodman is Josh's friend and is expected to testify about the changes in  
24 Josh's emotional, physical, and mental state since the explosion.

25 19. Andrea Schuman  
26 422 Merrick Road  
27 Rockville Center, New York 11570  
28 T: 516-983-5794

Andrea Schuman is Josh's family member. Andrea is expected to testify about

1 the negative changes in Josh after the explosion.

2  
3 20. Jenn Gonzalez  
4 5865 West Post Road  
5 Las Vegas, Nevada 89118  
6 T: 702-241-1937

7 Jenn Gonzalez was present during the barbeque explosion. Jenn is expected to  
8 offer her testimony about her perspective of the explosion and the injuries Josh  
9 sustained as a result.

10 21. Rabbi Motti  
11 Chabad Jewish Center of Las Vegas and Southern Nevada  
12 1261 Arville Street  
13 Las Vegas, Nevada 89102  
14 T: 702-683-0333

15 Rabbi Motti is Josh's Rabbi. He is expected to offer his testimony about the  
16 noticeable changes to Josh before and after the explosion. Rabbi Motti will testify  
17 about how Josh became more committed to his Jewish faith after the explosion.

18 22. Michael Elliott, Ph.D  
19 Michael Elliott and Associates  
20 1661 West Horizon Ridge Parkway, Suite 280  
21 Henderson, Nevada 89012  
22 T: 702-307-0133

23 Michael Elliott, Ph.D provided psychological treatment to Josh and is expected  
24 to offer his testimony regarding his findings. On May 20, 2020, Dr. Elliott evaluated  
25 Josh for "severe headaches since his accident, difficulty focusing and following  
26 conversations/trains of thought" and "several difficulties when using grills." Dr. Elliott  
27 noted Josh expressed "losing confidence in himself and is concerned that he will not  
28 be able to continue his career."

Dr Elliott will testify about the following diagnoses:

- F06.4 – Anxiety disorder due to known physiological condition;
- F41.1 – Generalized anxiety disorder;
- Z13.850 – Encounter for screening for traumatic brain injury;

Dr. Elliott is expected to testify about the causation of these diagnoses. He will  
also testify regarding Joshua's comprehensive treatment plan:

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

17 Dr. Elliott's testimony will be consistent with GREEN 1075-1094.

18  
19 23. Scott G. Davis, Ph.D., PE, CFEI  
20 GEXCON  
4833 Rugby Avenue, Suite 100  
Bethesda, Maryland 20814

21 Scott G. Davis, Ph.D, PE, CFEI is a Principal Engineer with specialized knowledge  
22 in combustion, thermal, and fluid processes. Dr. Davis is expected to offer testimony  
23 relevant to his area of expertise, including in investigation and prevention of fires,  
24 explosions, and dispersion hazards. Dr. Davis will also rebut any opinions offered by  
25 Defendant's expert witness, if any.

26 Dr. Davis authored a report, attached hereto as Exhibit 1. The exhibits to be  
27 used as a summary of support for Dr. Davis' opinions are all deposition testimony in  
28 this case, all written discovery responses in this case, all exhibits produced in this

case, all expert reports, and the exhibits listed in his report.

In preparation of his report, Dr. Davis reviewed the following records:

1. FG00001-FG000018: Ferrellgas Answer to First Amended Complaint;
2. FG000019-FG000021: 6/16/17 Ferrellgas Correspondence to Mario Gonzalez and Ferrellgas Customer Agreement for Propane Sales & Equipment Rental
3. FG00002-FG000023: 6/4/18 Delivery Ticket
4. FG000024: 7/3/18 Ferrellgas Invoice
5. FG000025-FG000028: Propane Safety Brochure
6. FG000030-FG000039: STS -7.46a System Check Form (SCF)
7. FG000040-FG000083: STS -5.8 Product Installation Review (PIR)
8. FG000084-FG000096: STS -7.40 Appliance Venting - Venting and Vent System Inspection -
9. FG000097-FG000098: STS 7.36 Pilot Lighting-Inspections
10. FG000099-FG000106: STS 1.71 Unsafe Condition Notice (Red Tag)
11. FG000107-FG000111: Order Details for 4/26/18, 5/9/18 and 6/4/18 Orders
12. FG000112-FG000116: Customer Call Information for June 2018
13. FG000684: Exemplar delivery ticket with customer safety information
14. FG000685: Bulk History Report
15. FG000686-FG000687: Billing Statement for May 2019
16. FG000688-FG000689: Billing Statement for June 2019
17. FG000690: Invoice for June 22, 2017
18. FG000691-FG000692: Invoice for August 14, 2017
19. FG000693: Customer Consumption Report
20. FG000694-FG000695: Case details for M. Gonzalez June 13, 2018 call to Ferrellgas
21. FG000696-FG000697: Detailed case list
22. FG000698-FG000699: 360 service order history for all deliveries and leak tests
23. FG000777-FG000791: Transcript of Recorded Statement of Mario Gonzalez taken June 26, 2018
24. FG000792: Audio Recording of Mario Gonzalez Call
25. FG000793-FG000818: Delivery tickets to Mario Gonzalez
26. FG000819-FG000820: Red Tag dated June 18, 2018
27. FG000821-FG000822: June 19, 2018 Ferrellgas email correspondence concerning incident
28. FG000823: June 19, 2018 Sniff test signed by Mario Gonzalez, Jennifer Gonzalez and Robert Vicory
29. FG000824-826: Vicory Certifications Page
30. FG000827-FG000833: Photos from Gonzalez Residence
31. FG000834: Photo of June 18, 2018
32. FG000835: Invoice for February 2, 2020
33. FG000836: Invoice for June 18, 2018
34. FG000837: Invoice for August 14, 2017
35. FG000838-FG000872: Billing Statements
36. FG000873-FG000881: Order Records
37. FG000882-000888: Notice of Inspection of gas hose
38. FG000889-000891: Notice of Entry Upon Land
39. FG000891-FG000895: Electrical Inspection Protocol
40. FG000896: Vicory Corrective Action Written Warning
41. FG000897: Vicory Corrective Action Final Written Warning
42. FG000989-FG000929: PERC Module 6: Leak Check
43. FG000930-FG000981: PERC Module 2: Vapor Distribution Systems
44. FG000982-FG001033: PERC MODULE 6: Installing Lines



45. FG001034-FG001040: Ferrellgas Training Requirements
46. FG001041-FG001306: Photographs from October 25, 2018
47. FG001307-FG001478: Photographs from May 15, 2020 site inspection and lab exam
48. FG001479-FG001519: Blaze Grills Use & Care Guide
49. FG001520-FG001535: Service Center Update – First Quarter 2018
50. FG001536-FG001537: Flashnote on Documentation
51. FG001538-FG001539: Vicory Certifications Page
52. FG001540-FG001541: STS 1.3 – Safety Communications
53. FG001542-FG001752: Safety Technical Handbook
54. FG001753-FG001755: Regional Safety Manager Job Description
55. FG001756-FG001757: Field Install Specialist Job Description for August 2017
56. FG001758-FG001763: STS 7.31 – System Test Requirements
57. FG001764-FG001768: STS 7.33 – System Leak Checking
58. FG001769-FG001826: Skills Assessment Records
59. FG001827-FG001830: Flashnote on Out of Gas Interruption
60. FG001831-FG001835: Flashnote on Customer Warnings Materials
61. FG001836-FG001837: Flashnote on Incomplete Systems
62. FG001838-FG001842: Flashnote on Placing New Systems into Operation
63. FG001843-FG001875: Excerpts from Safety Technical Handbook
64. FG001876-FG001879: Flashnote Attendance Records for Robert Vicory in 2017
65. FG001880-FG001888: Flashnote Attendance Records for Robert Vicory in 2016
66. FG001889-FG001898: Flashnote Attendance Records for Robert Vicory in 2018
67. FG001899: Flashnote Attendance Records for Robert Vicory in 2014
68. FG001900-FG001902: Flashnote Attendance Records for Robert Vicory in 2015
69. FG001903-FG001904: Email from M. Munger to all Ferrellgas employees regarding Service Center Update – First Quarter 2018
70. FG001905: STS 7.30 Placing Systems in Operation
71. FG001916-FG001921: STS 7.34 Regulator Flow and Lockout
72. FG001922-GH001925: STS 7.44 Incomplete and Disconnected Systems
73. FG001926-FG001931: STS 7.45 Out of Gas System Procedures
74. FG001932: STS 7.46 Service Work Order Entries
75. FG001933-FG002234: LV1CETBPP Training module
76. FG002235-FG002602: LV1CDOCETPPDO Training module
77. FG002603-FG003078: LV3CETPDVDS Training module
78. FG003079-FG003482: LV3CETPPDVS Training module
79. FG003483-FG003484: Manager of Operations Job Description
80. FG003485: Case Detail Report for May 29, 2016 incident
81. GREEN 943-952: Ferrellgas, Inc.'s System Check Form (SCF)
82. GREEN 953-965: Ferrellgas, Inc.'s Appliance Venting and Vent System Inspection policies and procedures
83. GREEN 966-1009: Ferrellgas, Inc.'s Product Installation Review (PIR), outlining inspection policies and procedures at installed gas systems
84. GREEN 1010-1017: Ferrellgas, Inc.'s Unsafe Condition Notice (Red Tag) policies and procedures for customer gas systems
85. GREEN 1018-1018: Ferrellgas, Inc.'s Pilot Lighting Inspection policies and procedures
86. GREEN 1020-1024: Ferrellgas, Inc.'s Order details dated April 26, 2018, May 9, 2018, and June 4, 2018
87. GREEN 1025-1029: Ferrellgas, Inc.'s Customer Call details for call made by defendant, Mario Gonzalez dated June 13, 2018
88. Deposition transcript of Plaintiff, Joshua Green Vol I



89. Deposition transcript of Plaintiff, Joshua Green Vol II
90. Deposition transcript of the 30(b)(6) designee for Ferrellgas, Inc.
91. Deposition transcript of Defendant, Mario S. Gonzalez Vol I
92. Deposition transcript of Defendant, Mario S. Gonzalez Vol II
93. Deposition transcript of Defendant, Carl J. Kleisner Vol I
94. Deposition transcript of Defendant, Carl J. Kleisner Vol II
95. Deposition transcript of Robert Vicory
96. Deposition transcript of Kelly Kite
97. Deposition transcript of Monica Aragon
98. Deposition of Chad Brown
99. Surveillance footage of Subject Explosion
100. October 25, 2018 Inspection of Gonzalez Property
101. May 14, 2020 Inspection of Subject Gas Hose

Dr. Davis is expected to offer the following opinions, as outlined in his report:

1. Inspection of the subject outdoor kitchen revealed a significant leak, e.g., a volumetric flow rate of approximately 44 SCFH (approximately 61 SCFH at 13" w.c.) in the flexible gas line to the Blaze grill. Testing confirmed that this leak was the only viable leak source within the gas system that could have caused this incident. The flexible gas line was also thermally damaged in the vicinity of the gas leak, further confirming a preexisting leak prior to ignition. Testing confirmed that the propane leak from the flexible gas line was the only possible source of propane that could accumulate in the unventilated kitchen island cavity beneath the grill. Additionally, the grill was improperly installed per the manufacturers manual and lacked the required ventilation. The following sections will analyze the cause of the explosion, the inadequate response by Ferrellgas in which it violated its own policies and procedures, and the improper installation of the gas-fired built-in grill and griddle in violation of the manufacturer's installation manual.

2. Inspection of the evidence revealed a significant leak (a volumetric flow rate of approximately 61 SCFH at 13" w.c.) in the flexible gas line to the Blaze grill. Testing confirmed that the propane leak from the flexible gas line was the only viable leak source within the gas system that could have caused propane to accumulate within the unventilated kitchen island cavity beneath the grill and subsequently ignite while cooking on an open flame. The leaking propane could accumulate within the kitchen cavity because the grill and griddle were improperly installed in a manner that

1 violated the manufacturer's installation manual by not providing the proper  
2 ventilation to this cavity.

3 3. Three hypotheses were identified as possible causes of the leak in the flexible  
4 gas line and include: (1) an electrical issue, resulting in fault current overheating the  
5 flexible gas line and damaging the flexible outer hose seal; (2) rodents penetrating  
6 the flexible outer hose seal; and (3) defective manufacture of the flexible outer hose  
7 seal. Based on Mr. Gonzalez's testimony and the Ferrellgas notes regarding the  
8 reason for the call, there was a condition that resulted in significant heating of the  
9 flexible gas line to the Blaze grill. Not only was there an "overheat" condition, but  
10 when the flexible gas line was disconnected the exiting gas was ignited and resulted  
11 in a flame "shooting out". Both of these conditions are indicators that an electrical  
12 fault condition was present at the grill and that electrical fault current was flowing  
13 through the flexible gas line to ground via the underground service line.

14 4. Testing by Don Gifford also confirmed that fault currents near 20 amps, yet  
15 below the threshold necessary to trip the 20-amp breaker, are high enough to heat  
16 the flexible gas line to above 300 °F. These temperatures are very hot and can also  
17 cause the flexible outer hose seal to degrade and fail, compromising the integrity of  
18 the gas line. Once compromised, propane will leak from such a line, similar to the  
19 incident gas line to the Blaze grill. The extremely hot gas line and the observation of  
20 the flames shooting out when Mr. Gonzalez disconnected the flexible gas line can  
21 only be reconciled by an electrical condition that resulted in fault current going  
22 through the flexible gas line to ground via the service line. This scenario is also  
23 consistent with Mr. Gifford's finding that there was an improper ground for the grill  
24 and outdoor kitchen electrical system.

25 5. The scenarios of: (1) a defectively manufactured flexible gas line and; (2)  
26 damage to the flexible gas line by rodents are not consistent with the overheating of  
27 the flexible gas line connection nor with ignition of the exiting gas when the gas line  
28 was disconnected. In addition, given a complete system check was performed for

Mr. Gonzalez's system a year prior to the incident, which included a leak check and that Mr. Gonzalez has used this system without incident approximately 50-100 times, the defective manufacture of the flexible outer hose seal is highly unlikely. While rodents were present in the kitchen cavity at the time of the inspections, such a cause for the damage cannot explain the observations in the days leading to the accident. In addition, there was no observed evidence to support that rodents had chewed, gnawed or damaged the gas line in any way. Hence both the defective manufacture of the flexible gas line outer seal and damage to the seal due to rodents can be ruled out. The only theory that reconciles the evidence is an electrical condition was present days before the incident, which ultimately overheated and degraded the seal of the flexible gas line.

6. Ferrellgas violated its own policies and procedures in the response to the call from the Gonzalez residence. Mr. Vicory found a serious issue with the system, and since he was not an electrician and did not have experience with electrical issues, he recommended that Mr. Gonzalez hire an electrician to inspect the issue. Mr. Vicory responded to a questionable or unsafe condition in an area outside his area of expertise. Per Ferrellgas's procedures, Mr. Vicory should have red tagged and disabled the system or red tagged and disabled the appliance. Mr. Vicory contacted Mr. Kite for advice on the situation, Mr. Kite advised him of two similar incidents where he red tagged the system until it was fixed.

7. Ferrellgas's disabling of appliances requires actions beyond simply turning the valve to the "off" position and red tagging. Had Ferrellgas disabled the appliance per their own policies and procedures, one or more of the following actions would have been performed: (1) Removing the handle of the manual shutoff valve; (2) Disconnecting and capping or plugging the gas line; and (3) Disconnecting the electrical supply to the appliance or equipment. Similarly the system could have been disabled via: (1) Removing a valve handle, such as the service valve handle (2) Removing a regulator; (3) Using a clamshell, lock, wire, cable tie, plastic or lead seal,

1 or similar device to prevent a valve from being operated without physically removing  
 2 the securing device; and/or (4) Disconnecting and plugging or capping a line, such as  
 3 a pigtail or hogtail. Mr. Vicory and Ferrellgas failed to red tag and disable the system  
 4 or red tag and disable the appliance and removed it from available use. The system  
 5 was required to be disabled which would have prevented the grill from being used.  
 6 Were the system properly disabled per Ferrellgas's procedures then this incident  
 7 would have been avoided.

8 8. Mr. Vicory testified that he sprayed down the lines with a leak detector,  
 9 smelled the lines, and observed no leaks. He failed to follow Ferrellgas's own policies  
 10 and procedures for leak testing and documentation of the leak test. Mr. Vicory failed  
 11 to follow any of Ferrellgas's six methods to conduct a leak check, which would have  
 12 included a pressure decay test. A pressure decay test does not rely on human factors  
 13 such as sense of smell, visual checks to identify a leak, or where the leak detection  
 14 solution is applied. Mr. Gonzalez testified that the soap and water was placed only  
 15 on the tee, which, if true, would not detect a leak in the flexible gas line. In addition,  
 16 Mr. Vicory did not document any leak testing that was performed which violates  
 17 Ferrellgas's procedures. This conflicting testimony, along with the lack of  
 18 documentation and improper procedures, brings question to whether a leak was  
 19 already present during the initial inspection by Ferrellgas.

20 9. Whether a leak was present or not at the time of the initial inspection by  
 21 Ferrellgas, there was a leak observed in the flexible gas line to the grill found during  
 22 post-incident testing. Mr. Vicory either failed to find a dangerous situation of a gas  
 23 leak by using an unapproved leak test or failed to red tag and disable the system for  
 24 a dangerous situation of electrical current flowing through the gas hose. After the  
 25 incident, current and former Ferrellgas employees, Mr. Vicory, Mr. Kite, and Mr.  
 26 Barrett all stated that the system should have been red tagged.

27 10. Mr. Gonzalez testified that sometime in July of 2017 he modified the original  
 28 installation and installed outdoor cooking equipment after purchasing new

1 equipment in June of 2017. According to his testimony he replaced the appliances  
2 and hired a handyman to do some masonry work to fit the new appliances. Listing  
3 images from 2015 (Figure 4.1), show appliances in different locations and different  
4 countertop and stone exterior.

5 11. As clearly indicated in Blaze's installation manual, vent panels were required  
6 for their gas-fired built-in outdoor cooking equipment. In their manual, Blaze  
7 provided many warnings about proper ventilation, explanations on why proper  
8 ventilation is important, and even provided multiple examples of vent panel  
9 locations. Ventilation in outdoor kitchens is important to reduce the likelihood of  
10 flammable gas buildup in the island cavity. Without ventilation, a leak can freely  
11 buildup inside the enclosure. Upon finding a competent ignition source, a flame can  
12 propagate through accumulated flammable gasses. The incident island cavity had no  
13 place to vent the combustion products except for out the access doors.

14 12. Mr. Gonzalez did not follow the manufacturer's instructions of adding proper  
15 ventilation to the enclosure. In addition, the installation was not performed or  
16 inspected by a qualified professional installer or service technician. If the installation  
17 had been inspected by a qualified professional, the enclosure would not have passed  
18 the inspection until the required vent panels were installed. In addition, Ferrellgas  
19 failed to notice that the kitchen cavity had no openings for ventilation when taking  
20 over the account in their initial inspection, and when they were called to the Gonzalez  
21 residence to inspect the outdoor kitchen, which included inspecting the gas piping  
22 in the "unventilated" kitchen cavity.

23 13. As discussed above, post-incident inspections revealed a leak in the flexible  
24 gas line supplying propane to the grill. A CFD analysis was performed to evaluate the  
25 consequences of this leak in the outdoor kitchen island. More specifically, CFD was  
26 performed to determine if the leak could have created a flammable cloud of  
27 sufficient size inside the island cavity with and without the required vents installed.

28 14. The CFD analysis was performed in FLACS, a tool developed by Gexcon in the

1980's to simulate gas dispersion and vapor cloud explosions. FLACS can simulate gas and aerosol releases, dispersion of vapors, ventilation in structures, and the effects of ambient conditions such as wind. In FLACS, the compressible Reynolds-Averaged Navier-Stokes (RANS) equations are solved on a 3D Cartesian grid using a finite volume method and the k- $\epsilon$  turbulence model. Incorporated in the model are the conservation equations for mass, impulse, enthalpy, turbulence and species, with closure provided by the ideal gas law. The FLACS non-premixed combustion model uses the Eddy Dissipation Concept<sup>56</sup> to describe the overall rate of reactivity of turbulent non-premixed reacting flows.

15. FLACS has been extensively validated against numerous gas dispersion, vapor cloud explosion, and jet fire experiments, including large-scale realistic release scenarios and full-scale experiments. Recent validation studies, including blind validation studies (i.e., simulations were performed prior to, or without knowledge of the experimental results), have demonstrated the ability of FLACS to accurately predict gas dispersion and explosion scenarios. Because it has been extensively validated, FLACS is typically required when performing fire and explosion consequence studies for complicated oil and gas offshore platforms.

16. A geometry model was created of the outdoor kitchen island (Figure 4.2). A 61 CFH release of LP gas from the leaking hose was modeled. Figure 4.3 shows how the flammable cloud spreads in the incident outdoor kitchen cavity construction with very little to no ventilation. The CFD simulations show that the leak found after the incident was of sufficient magnitude to not only create a flammable gas cloud in the outdoor grill island, but also reach the grill burners. Per the Blaze installation manual, passive vents were added to the outdoor kitchen cavity model (Figure 4.4) and the effect of ventilation on the flammable gas cloud buildup was evaluated. Simulations show that by adding only 4 vents (1 low and 1 high on each side) to the sides of the outdoor grill island, the flammable layer would be less than 4 inches (see Figure 4.5) and would remain remote from any ignition sources. These simulations assume no

external wind and conservatively underpredict the actual ventilation on the day of the incident, which would further dilute the propane in the cavity and reduce size of the flammable gas cloud shown in Figure 4.5.

17. A propane leak and subsequent explosion occurred at the residence of Mr. Mario Gonzalez on June 18, 2018 in Las Vegas, Nevada. The incident involved an outdoor kitchen equipped with built-in propane-fired appliances.

18. An explosion occurred when Mr. Joshua Green opened the lid of a built-in grill. The explosion engulfed Mr. Green, shook the Gonzalez residence and was loud enough to alert the neighbors that an incident had occurred. Mr. Gonzalez had stepped away and Mr. Joshua Green took over cooking duties per Mr. Gonzalez's request.

19. Post-incident inspection of the subject kitchen island revealed a significant leak, e.g., a volumetric flow rate of approximately 44 SCFH (corrected to 61 SCFH at 13" w.c. propane) in the flexible gas line to the Blaze grill. Testing confirmed that this leak was the only viable leak source within the gas system that could have caused this incident.

20. The grill and griddle in the outdoor kitchen cavity were installed improperly and in a manner that violated the manufacturer's installation manual by not providing the required openings and adequate ventilation to this cavity to prevent propane accumulation in the cavity in the event of a leak.

- a. The outdoor kitchen did not include any ventilation openings as stated in several places throughout the manual, including several pages that are dedicated to explicitly warning of the hazards of inadequate ventilation.
- b. The manual specifically states, "Failure to adequately vent your outdoor kitchen cavity could result in an explosion or fire."
- c. The manual specifically states, "Ensure there is adequate ventilation for both the appliance, grill cart and/or island cavity."



This is required not only for proper combustion, but also to prevent gas build up.”

21. Propane vapors accumulated within the unventilated outdoor kitchen cavity beneath the grill and griddle, which subsequently ignited while cooking on an open flame.

22. Testing and modeling confirmed that the propane leak from the flexible gas line was the only viable leak source within the gas system that could have caused propane to accumulate within the unventilated outdoor kitchen cavity beneath the grill and griddle, and subsequently ignite while cooking on an open flame.

23. An electrical fault condition was present at the grill and fault current was flowing through the flexible gas line to ground via the underground service line. This electrical condition was present at least five days before the incident, which ultimately overheated and degraded the seal of the flexible gas line causing it to leak.

- a. Both the extremely hot and “overheat” condition of the flexible gas line, and the fact when the flexible gas line was disconnected the exiting gas was ignited and resulted in a flame “shooting out”, are indicators that a fault condition was present at the grill and the fault current was flowing through the flexible line
- b. Testing showed that fault currents near 20 amps, yet below the threshold necessary to trip the 20- amp breaker, are high enough to heat the flexible gas line to above 300 °F and degrade the line.
- c. Inspections revealed that the outdoor kitchen was not properly grounded.
- d. Defective manufacture of the flexible line outer seal is not consistent with the facts of this case and can be ruled out as a possible cause.
- e. Damage due to rodents is not consistent with the facts of this case and no evidence was found to indicate that rodents had chewed,



1 gnawed or otherwise affected the integrity of the gas line and can  
2 be ruled out as a possible cause.

3 24. On June 13, 2018, five days prior to the incident, Mr. Gonzalez called  
4 Ferrellgas's emergency phone number regarding a dangerous condition with the  
5 flexible gas line to the built-in grill

6 a. When Mr. Gonzalez opened the stainless steel access door below  
7 the Blaze Grill he felt a shock from the door.

8 b. Mr. Gonzalez noted the flexible gas line to the grill was very hot  
9 even though the gas valve that serviced the built-in appliances (grill  
10 and griddle) was turned off.

11 c. Mr. Gonzalez stated that he released the quick-connect  
12 connections on the gas line and a small flame shot out of it.

13 25. On June 14, 2018, four days prior to the incident, a Ferrellgas's service  
14 technician, Robert Vicory responded to the Gonzalez residence. On June 15, 2018,  
15 three days prior to the incident, Mr. Vicory came back out to check the system for a  
16 second time and he informed Mr. Gonzalez his grill was safe to use.

17 26. Ferrellgas violated its own policies procedures in the response to the Gonzalez  
18 residence.

19 a. Ferrellgas failed to document the inspections.

20 b. Ferrellgas failed to perform a leak check per their own policies and  
21 procedures. Using soap solution and sense of smell is not in  
22 accordance with Ferrellgas policies and procedures.

23 27. Mr. Vicory and Ferrellgas recognized an unsafe and hazardous condition at  
24 Mr. Gonzalez's residence.

25 a. The service call indicated a hot gas line connection and flames  
26 shooting out when the gas line was disconnected.

27 b. Mr. Vicory conferred with his general manager at Ferrellgas, Kelly  
28 Kite and they determined that the issue was electrical. When Mr.

Kite had experienced similar issues previously he red tagged those systems because he was not an electrician.

c. Mr. Vicory recommended further corrective action by an electrician.

28. Mr. Vicory and Ferrellgas violated their own policies and procedures, and failed to red tag and disable the system, or red tag and disable the appliance and remove it from available use. Instead Mr. Vicory allowed an unreasonably dangerous condition to continue to exist and only recommended that the owner find an electrician.

a. Ferrellgas failed to red tag a questionable or unsafe condition despite unsafe and hazardous condition being present in the gas system.

b. Ferrellgas did not:

i. remove the handle of the manual shutoff valve

ii. disconnect and cap or plug the gas line

iii. disconnect the electrical energy to the appliance or equipment.

29. On June 15, 2018, Mr. Vicory and Ferrellgas went back out to check the system for a second time. Despite not verifying the condition of the system was repaired, Ferrellgas service technician informed Mr. Gonzalez his grill was safe to use. Again, Mr. Vicory and Ferrellgas failed to red tag the system, leaving an unsafe and unreasonably dangerous condition to continue to exist.

30. Had Ferrellgas followed their own procedures and red tagged the unsafe and hazardous condition in either of their inspections of the gas system, this incident would have been avoided.

a. Multiple employees of Ferrellgas, including the technician who allowed the unsafe and unreasonably hazardous condition to continue to exist, testified that the system should have been red

1 tagged and taken out of service.

2 31. In July of 2017, after recently switching to Ferrellgas as a propane supplier, Mr.  
3 Gonzalez renovated his outdoor kitchen which included replacing gas-fired  
4 appliances and masonry work. Mr. Gonzalez's installation was not performed or  
5 inspected by a qualified professional installer or service technician.

6 32. In violation of the manufacturer's installation manual, Mr. Gonzalez's created  
7 an unreasonably dangerous condition by improperly installing the Blaze grill and  
8 griddle in the outdoor kitchen, whereby he did not provide the required openings  
9 and proper ventilation to the kitchen cavity to prevent propane accumulation in the  
10 cavity in the event of a leak. In fact, the kitchen cavity had no openings for  
11 ventilations.

12 33. Modeling demonstrated that had the outdoor kitchen island included  
13 adequate ventilation per the Blaze manual, propane vapor would have escaped  
14 through the vents and would not have accumulated to significant quantities in the  
15 cavity nor reached the burners and ignited. In fact, had ventilation been provided per  
16 the Blaze manual, the gas would have remained within inches of the ground and very  
17 remote from grill burners.

18 34. Ferrellgas failed to notice that the kitchen cavity had no openings for  
19 ventilation during their initial inspection when they took over the account and when  
20 they were called to the Gonzalez residence to inspect the issue with the outdoor  
21 kitchen.

22 35. Had Mr. Gonzalez properly installed ventilation in the outdoor kitchen cavity,  
23 this incident would have been avoided.

24 Dr. Davis' testimony will be consistent with GREEN 1272-1317 and the documents  
25 provided in Dropbox as Exhibits 5 and 6.

24. Don L. Gifford  
GIFFORD CONSULTING GROUP, LLC  
4405 East Post Road, Suite A  
Las Vegas, Nevada 89120

Don L. Gifford is a licensed contractor, electrical contractor, and construction expert. Mr. Gifford is expected to offer testimony relevant to his area of expertise, including in construction, contracting, and design, general engineering, and forensics in analysis of fires, explosions, fire causation and fire propagation. Mr. Gifford will also rebut any opinions offered by Defendant's expert witness, if any.

Mr. Gifford authored a report, attached hereto as Exhibit 7. The exhibits to be used as a summary of support for Mr. Gifford's opinions are all deposition testimony in this case, all written discovery responses in this case, all exhibits produced in this case, all expert reports, and the exhibits listed in his report.

In preparation of his report, Mr. Gifford reviewed the following records:

1. FG00001-FG000018: Ferrellgas Answer to First Amended Complaint;
2. FG000019-FG000021: 6/16/17 Ferrellgas Correspondence to Mario Gonzalez and Ferrellgas Customer Agreement for Propane Sales & Equipment Rental
3. FG00002-FG000023: 6/4/18 Delivery Ticket
4. FG000024: 7/3/18 Ferrellgas Invoice
5. FG000025-FG000028: Propane Safety Brochure
6. FG000030-FG000039: STS -7.46a System Check Form (SCF)
7. FG000040-FG000083: STS -5.8 Product Installation Review (PIR)
8. FG000084-FG000096: STS -7.40 Appliance Venting - Venting and Vent System Inspection -
9. FG000097-FG000098: STS 7.36 Pilot Lighting-Inspections
10. FG000099-FG000106: STS 1.71 Unsafe Condition Notice (Red Tag)
11. FG000107-FG000111: Order Details for 4/26/18, 5/9/18 and 6/4/18 Orders
12. FG000112-FG000116: Customer Call Information for June 2018
13. FG000684: Exemplar delivery ticket with customer safety information
14. FG000685: Bulk History Report
15. FG000686-FG000687: Billing Statement for May 2019
16. FG000688-FG000689: Billing Statement for June 2019
17. FG000690: Invoice for June 22, 2017
18. FG000691-FG000692: Invoice for August 14, 2017
19. FG000693: Customer Consumption Report
20. FG000694-FG000695: Case details for M. Gonzalez June 13, 2018 call to Ferrellgas
21. FG000696-FG000697: Detailed case list
22. FG000698-FG000699: 360 service order history for all deliveries and leak tests
23. FG000777-FG000791: Transcript of Recorded Statement of Mario Gonzalez taken June 26, 2018
24. FG000792: Audio Recording of Mario Gonzalez Call
25. FG000793-FG000818: Delivery tickets to Mario Gonzalez
26. FG000819-FG000820: Red Tag dated June 18, 2018

- 1 27.FG000821-FG000822: June 19, 2018 Ferrellgas email correspondence concerning incident
- 2 28.FG000823: June 19, 2018 Sniff test signed by Mario Gonzalez, Jennifer Gonzalez and Robert Vicory
- 3 29.FG000824-826: Vicory Certifications Page
- 4 30.FG000827-FG000833: Photos from Gonzalez Residence
- 5 31.FG000834: Photo of June 18, 2018
- 6 32.FG000835: Invoice for February 2, 2020
- 7 33.FG000836: Invoice for June 18, 2018
- 8 34.FG000837: Invoice for August 14, 2017
- 9 35.FG000838-FG000872: Billing Statements
- 10 36.FG000873-FG000881: Order Records
- 11 37.FG000882-000888: Notice of Inspection of gas hose
- 12 38.FG000889-000891: Notice of Entry Upon Land
- 13 39.FG000891-FG000895: Electrical Inspection Protocol
- 14 40.FG000896: Vicory Corrective Action Written Warning
- 15 41.FG000897: Vicory Corrective Action Final Written Warning
- 16 42.FG000989-FG000929: PERC Module 6: Leak Check
- 17 43.FG000930-FG000981: PERC Module 2: Vapor Distribution Systems
- 18 44.FG000982-FG001033: PERC MODULE 6: Installing Lines
- 19 45.FG001034-FG001040: Ferrellgas Training Requirements
- 20 46.FG001041-FG001306: Photographs from October 25, 2018
- 21 47.FG001307-FG001478: Photographs from May 15, 2020 site inspection and lab exam
- 22 48.FG001479-FG001519: Blaze Grills Use & Care Guide
- 23 49.FG001520-FG001535: Service Center Update – First Quarter 2018
- 24 50.FG001536-FG001537: Flashnote on Documentation
- 25 51.FG001538-FG001539: Vicory Certifications Page
- 26 52.FG001540-FG001541: STS 1.3 – Safety Communications
- 27 53.FG001542-FG001752: Safety Technical Handbook
- 28 54.FG001753-FG001755: Regional Safety Manager Job Description
- 55.FG001756-FG001757: Field Install Specialist Job Description for August 2017
- 56.FG001758-FG001763: STS 7.31 – System Test Requirements
- 57.FG001764-FG001768: STS 7.33 – System Leak Checking
- 58.FG001769-FG001826: Skills Assessment Records
- 59.FG001827-FG001830: Flashnote on Out of Gas Interruption
- 60.FG001831-FG001835: Flashnote on Customer Warnings Materials
- 61.FG001836-FG001837: Flashnote on Incomplete Systems
- 62.FG001838-FG001842: Flashnote on Placing New Systems into Operation
- 63.FG001843-FG001875: Excerpts from Safety Technical Handbook
- 64.FG001876-FG001879: Flashnote Attendance Records for Robert Vicory in 2017
- 65.FG001880-FG001888: Flashnote Attendance Records for Robert Vicory in 2016
- 66.FG001889-FG001898: Flashnote Attendance Records for Robert Vicory in 2018
- 67.FG001899: Flashnote Attendance Records for Robert Vicory in 2014
- 68.FG001900-FG001902: Flashnote Attendance Records for Robert Vicory in 2015
- 69.FG001903-FG001904: Email from M. Munger to all Ferrellgas employees regarding Service Center Update – First Quarter 2018
- 70.FG001905: STS 7.30 Placing Systems in Operation
- 71.FG001916-FG001921: STS 7.34 Regulator Flow and Lockout
- 72.FG001922-GH001925: STS 7.44 Incomplete and Disconnected Systems
- 73.FG001926-FG001931: STS 7.45 Out of Gas System Procedures
- 74.FG001932: STS 7.46 Service Work Order Entries

75. FG001933–FG002234: LV1CETBPP Training module
76. FG002235–FG002602: LV1CDOCETPPDO Training module
77. FG002603–FG003078: LV3CETPDVDS Training module
78. FG003079–FG003482: LV3CETPPDVS Training module
79. FG003483–FG003484: Manager of Operations Job Description
80. FG003485: Case Detail Report for May 29, 2016 incident
81. GREEN 943–952: Ferrellgas, Inc.’s System Check Form (SCF)
82. GREEN 953–965: Ferrellgas, Inc.’s Appliance Venting and Vent System Inspection policies and procedures
83. GREEN 966–1009: Ferrellgas, Inc.’s Product Installation Review (PIR), outlining inspection policies and procedures at installed gas systems
84. GREEN 1010–1017: Ferrellgas, Inc.’s Unsafe Condition Notice (Red Tag) policies and procedures for customer gas systems
85. GREEN 1018–1018: Ferrellgas, Inc.’s Pilot Lighting Inspection policies and procedures
86. GREEN 1020–1024: Ferrellgas, Inc.’s Order details dated April 26, 2018, May 9, 2018, and June 4, 2018
87. GREEN 1025–1029: Ferrellgas, Inc.’s Customer Call details for call made by defendant, Mario Gonzalez dated June 13, 2018
88. Deposition transcript of Plaintiff, Joshua Green Vol I
89. Deposition transcript of Plaintiff, Joshua Green Vol II
90. Deposition transcript of the 30(b)(6) designee for Ferrellgas, Inc.
91. Deposition transcript of Defendant, Mario S. Gonzalez Vol I
92. Deposition transcript of Defendant, Mario S. Gonzalez Vol II
93. Deposition transcript of Defendant, Carl J. Kleisner Vol I
94. Deposition transcript of Defendant, Carl J. Kleisner Vol II
95. Deposition transcript of Robert Vicory
96. Deposition transcript of Kelly Kite
97. Deposition transcript of Monica Aragon
98. Deposition of Chad Brown
99. Surveillance footage of Subject Explosion
100. October 25, 2018 Inspection of Gonzalez Property
101. May 14, 2020 Inspection of Subject Gas Hose

Mr. Gifford is expected to offer the following opinions, as outlined in his report:

1. GCG will show, substantively, that the circumstances and conditions which created and/or led to the Subject Incident were a consequence of the decisions and actions of the Defendants referenced within this report.

2. We have seen no evidence to support any theory purporting Mr. Green’s prior knowledge of dangerous or non-code compliant conditions, either related to the electrical system or gas supply system pertaining to the barbeque island and its appurtenances, or that he had any control over the events that resulted in the Subject Incident and resulting injury.

3. We will provide substance in support of our determination that Ferrellgas and Mr. Gonzales each bore principal duties respective to their various roles with regard



to the events and conditions which allowed for the Subject Incident, and that each of them failed to execute those duties so as to provide for the safety, well-being, and welfare of Mr. Green and others, as mandated by the Clark County Building and Administrative Codes, the County adopted technical codes, and the standard of care.

4. It is our opinion that the Subject Incident was the consequence of overheating, melting, and failure of a Ksun flexible gas hose ("Subject Hose") feeding the island barbeque appliance, in that the hose was subjected to current flow due to an electrical fault at the barbeque island.

5. The Subject Incident, in all probability, was preventable but for the actions/inactions on the part of Defendants Ferrellgas and Mr. Gonzales, in that (a) Ferrellgas failed to Red Tag the primary gas delivery valve to the home or, at least, the gas supply line to the barbeque and (b) the failure on the part of Mr. Gonzales to (i) comply with the barbeque appliance manufacturer's (Blaze) instructions for installation and use, (ii) adhere to the terms of his agreement with Ferrellgas, (iii) obtain the services of a properly qualified service company and/or licensed electrical contractor to troubleshoot and correct electrical anomalies manifest at the barbeque area.

6. Mr. Kleisner, an electrician who provided unlicensed services and recommended the implementation of non-code complaint electrical scopes, was also contributory to the Incident.

7. The gas appliance which is a seminal point of discussion in this report is a stainless steel barbeque unit marketed by Blaze, who provides, by virtue of their distribution of the manufacturer's installation, use, and maintenance instructions. The unit is 40" wide, designed for an application, such as that utilized by Mr. Gonzales' barbeque island, and appears to be (or similar to) a Summerset Sizzler Pro, 40", 5 burner unit.

8. The deposition of Mr. Gonzales provides insights with regard to his (a) purchasing and installing the grill, (b) connecting the unit to the gas tee/valve

assembly by Ksun flex hoses which he also purchased, (c) maintaining and using the appliance, e.g., his habit of turning the gas off at the valve below the barbeque appliance during the majority of those times when he was done using it – and turning it back on at the valve at each time of use.

9. Hence, based on evidence and testimony, Mr. Gonzales turned on the gas valve, lit the barbeque grill, placed the steaks on the grill, after which time Mr. Green showed up.

10. The photo insertions below show the disposition of the Blaze grill in relation to the barbeque island as well as the location of the riser and tee/valve assembly below the grill.

11. The under-counter space of the barbeque island was observed to have been without proper venting, and thus, is not in compliance with Blaze's instructions. The interior space beneath the grill is continuously open from east to west and from north to south, thus allowing for the accumulation of leaking gas not only under the barbeque grill, but under the griddle and other areas as well. Thus, when Mr. Green opened the barbeque lid, he was unwittingly subjected to a gas explosion as the result of a good volume of propane gas that appears to have suddenly ignited once the grill cover was lifted, providing ventilation.

12. Based on my examination of the property and artifacts, the explosion showed fire scorch on the Subject Hose and, of course, to the clothing of Mr. Green. The explosion also moved the griddle directly out from its snug resting position, resulting in a significant gap (askew) between the back of the griddle and the counter backsplash area.

13. The Subject Incident was, in my opinion, dependent upon and the result of various critical factors, including, without limitation: (1) the pressurized gas supply line which runs underground from the 2nd stage at the south side of the house to the gas tee under the barbeque appliance; (2) the damaged and leaking coiled Ksun gas hose extending to the barbeque appliance from the tee; (3) a known electrical



1 issue of unknown character prior to the Incident; (4) failure on the part of Ferrellgas,  
2 at some point prior to the Subject Incident, to (a) Red Tag the system or the barbeque  
3 gas valve and (b) perform the additional steps as prescribed by Ferrellgas, such as  
4 removing the handle from the gas valve and/or disconnecting the electrical power  
5 source; (5) failure of Mr. Gonzales to hire the services of an electrical contractor to  
6 troubleshoot and resolve the electrical issue, including the deteriorated and unsafe  
7 electrical conditions at the barbeque; (6) failure on the part of Mr. Kleisner, who  
8 prescribed non-code complaint and unsafe electrical procedures.

9 14.As noted in the inspection notes further above, the electrical fault may have  
10 been intermittent at times both prior to and after the Subject Incident. This is a  
11 plausible explanation with regard to inability of the experts to re-establish the pre-  
12 existing continuity between the electrical grounding conductor of the barbeque  
13 island branch circuit and the gas riser/tee assembly. This would also explain the lack  
14 of measurable fault current (and implicitly the pathway for the same) to the gas  
15 riser/tee assembly.

16 15.I have seen no statement or testimony by anyone, wherein it was reported or  
17 where there was evidence showing that the overheated gas riser and gas hose under  
18 the barbeque appliance (a principal point of discussion with regard to this matter)  
19 was a function of some other heat generating mechanism prior to or at the time of  
20 the Subject Incident. By way of illustration and not of limitation, Mr. Gonzales  
21 testified with regard to the overheated gas line: "Q...'[t]hat was even though it was  
22 turned off.' A. Yes, which was really freaking me out...so it didn't have huge a gas leak  
23 as far as you could tell? A. No. Q. But you had a very hot line?...A. Yes" (Gonzales, p.  
24 129).

25 16.Inasmuch as the barbeque appliance is electrically powered, the housing of  
26 the appliance was, and is, per the NEC, required to be grounded. Moreover, the  
27 manufacturer's instruction also calls for grounding of the appliance.  
28 Notwithstanding that grounding of an appliance is often achieved by means of a

1 pigtail 120-volt power cord connection: (a) Blaze's instructions point to a more robust  
2 electrical bond and (b) the NEC, by virtue of Article 110.3, inherently requires  
3 conformity with the manufacturer's instructions.

4 17. In the event the barbeque had been properly grounded, it is possible that the  
5 flexible gas hoses, notwithstanding their introduction of a certain level of electrical  
6 resistance to electrical current, would have allowed for sufficient current to flow back  
7 to the grounded neutral source at the panel, thus tripping the overcurrent device  
8 (20-amp circuit breaker) and defeating the catalyst to the overheated flex line and  
9 rise/tee assembly. Conversely, the lack of proper grounding of the appliance, in  
10 conjunction with the electrical issues noted at the barbeque island, allowed for the  
11 very conditions that resulted in the Subject Incident.

12 18. I see no evidence that the electrical wiring and any electronic controls within  
13 the barbeque appliance itself were capable of sustaining the level of fault current so  
14 as to allow the overheating of the riser/tee assembly and melting of the gas hose (as  
15 a function of time) feeding the appliance.

16 19. Our testing of the exemplar Ksun gas hoses (results are provided in Table 1  
17 and narrative following Table 1) provide evidence or show, as follows:

- 18 1) The PVC covering of the Ksun gas hose distorts, melts, and opens at  
19 temperatures that are not greater than 300°F, allowing for the emission  
20 of gaseous vapor from a pressurized gas line into the surrounding  
21 atmosphere.
- 22 2) In the absence of other identifiable potential contributors to the Subject  
23 Incident, based provisions expressed within NFPA 921, Section 18, (a) the  
24 electrical phenomena reported by Mr. Brown and Mr. Gonzales  
25 (acknowledged by both Ferrellgas and Mr. Kleisner) and (b) the  
26 conditions found during site investigations, testing, and examination of  
27 evidence, combined to provide for the accumulation of gasses at the  
28 undercabinet area of the barbeque island.

1           3) The failure temperature of the Ksun hose is easily achieved within  
2           relatively brief periods of time when the hose is subjected to fault-  
3           currents easily derived from household 20-amp branch circuitry.

4           20.Mr. Gonzales testified that he observed a flame appear and extinguish as he  
5           removed the quick connect coupling between the riser tee and the appliance gas  
6           hose. As I discussed in Note (d) of Table 1, this ignition would have been, in all  
7           probability, attributable to an electrical arc, resulting from the electrical anomaly  
8           described by the deponents.

9           21.Based on evidence and belief, the Subject Hose, to a reasonable degree of  
10          probability, was damaged by virtue of electrical current flow (over time) passing  
11          through its metallic jacketing, which occurred prior to the brief timeframe during  
12          which the appliance was put into use on the evening of the Incident. It is implausible  
13          that the Subject Hose jacketing melted and emitted gaseous vapor all within the brief  
14          segment of time beginning at the point in time where Mr. Gonzales lit the barbeque  
15          grill, and ending with the point in time at which the explosion and resulting injury of  
16          Mr. Green occurred.

17          22.Our testing confirms the propensity of a 3/8" Ksun gas hose to heat up due to  
18          the flow of electrical current through the length of the hose, and that the resistance  
19          is sufficient (as a function of current and time) to bring the flex hose to failure, thus  
20          releasing nominally pressurized gas into the surrounding atmosphere. Moreover,  
21          our testing shows that electrical fault currents from 20-amp household circuitry are  
22          capable, when passing through the length of hose, of compromising the integrity of  
23          a 3/8" Ksun flexible gas hose.

24          23.Ferrellgas was in violation of company policy and County codes, principally as  
25          the result of the actions and non-actions taken by Mr. Vicory prior to the Incident.  
26          Most notably, based on several substantive evidences, Mr. Vicory did not carry out  
27          the company required red tag procedure. Among other things, Ferrellgas failed to  
28          ascertain the credentials of Mr. Kleisner and/or Mr. Gonzales with regard to the

1 electrical steps that were taken in efforts to resolve the catalyst to acknowledged  
2 overheating and shocking events. Rather, he simply relied on notice from Mr.  
3 Kleisner or Mr. Gonzales or both that the electrical anomaly had been resolved.

4 24. Ferrellgas failed to take seriously two known electrical phenomena, whether  
5 understood by Ferrellgas or not, e.g., overheating of the flexible gas hose,  
6 overheating of the gas supply tee assembly, electrical shocks experienced and  
7 expressed by more than one person, and an open flame generated by the incidence  
8 of an electrical arc, which, under the circumstances, based on the laws of physics,  
9 was an expected phenomenon.

10 25. Based on testimony, Mr. Gonzales relied on the work of an unlicensed and (by  
11 Mr. Kleisner's admission) unqualified individual to perform the work which he, Mr.  
12 Gonzales, had expressed as a life-safety concern. Mr. Kleisner made it clear, several  
13 times, that Mr. Gonzales should contact a qualified electrician/company to  
14 investigate and resolve the electrical phenomena manifest prior to the Incident.  
15 Based on evidence and belief, this was never done.

16 26. Mr. Gonzales failed to comply with each of the following obligations which  
17 rested with him as both the owner of the property and the installer/user of the  
18 subject barbeque appliance: (i) he failed to comply with the County Building Code  
19 and applicable County technical codes, which could have been achieved by obtaining  
20 the services of a licensed contractor or service company (whom, by virtue of their  
21 licensing, would have been duty bound to understand and comply with applicable  
22 electrical codes); (ii) he failed to adhere to NRS requirements with regard to the use  
23 of unlicensed persons; (iii) he was wisely advised by others to obtain the services of  
24 such an authorized contractor in the interest of resolving unknown electrical  
25 anomalies (discussed at length within this report), and failed to do so; (iv) he failed  
26 to conform to the agreement he made with Ferrellgas with regard to the safe use of  
27 his gas appliance; (v) he failed to comply with the instructions and/or provisions set  
28 forth by Blaze.

27. It is my opinion that the actions of both Ferrellgas and Mr. Gonzales, and to a lesser degree the actions of Mr. Kleisner, are directly contributory to, and a proximate cause of, the Subject Incident. Accordingly, but for the actions and inactions of the Defendants, the Subject Incident would have been prevented.

28. Table 1 Rev 1 (Table 1 is found on page 16 of the GCG Report) is produced for the purpose of increasing clarity, including some lacking data, and correcting stop-watch-to-elapsed time values.

**Table 1 Rev 1**  
**Based on Data in Attachment 3**

**Test Parameters**

- 1) 20-amp branch circuit; electrical service voltage 120/208.
- 2) No air pressure applied to interior of gas hose during either test.
- 3) Time frames expressed in seconds are approximate.
- 4) The ambient temperature is an average value at the interior building space during the time of tests.

Event	Start Time: Power	End Time: Power	Elapsed Time: Power	Initial Current (a)	End Current (a)	Initial Ambient Temp	End Temp (b)	Elapsed Time to Failure (c)
Test 1	-2 sec	6m 43s	6m 45s	22/19.6	22.7/21.4	80°F	≈300°F	6m 25s
Test 2	-3 sec	2m 36s	2m 39s	27.2	29.8	80°F	≈300°F	2m 37s

**Notes to Table 1**

- (a) Numerator: current in amps measured along Ksun gas hose; Denominator: current in amps measured along #12 cu branch conductor.
- (b) The melting/distortion temperature of the PVC jacket, allowing gaseous emission into atmosphere, is approximately equal to, but not greater than 300°F. This is well below the minimum ignition temperature required for the combustion of propane gas (>900°F) without an ignition source.
- (c) Timeframe from application of voltage until first obvious PVC opening (bubble formed and burst).

Mr. Gifford's testimony will be consistent with GREEN 1318–1396 and GREEN 1937–1938.

Mr. Gifford's testimony will be consistent with GREEN 1318–1396.

25. Ruth Brubaker Rimmer, Ph.D, CLCP  
CARE PLANS FOR LIFE  
2145 East Glencove Street  
Mesa, Arizona 85213

Ruth Brubaker Rimmer, Ph.D, CLP is a psychologist and certified life care planner. Dr. Rimmer will provide testimony regarding the past medical treatment provided for Joshua Green, the future medical treatment needed, the amount, necessity, and reasonableness of the charges for past and future treatment, and that

the charges for the past and future medical treatment are within the usual and customary charges in the community. Dr. Rimmer will also rebut any opinions offered by Defendant's expert witness, if any.

Dr. Rimmer authored a report, attached hereto as Exhibit 11. The exhibits to be used as a summary of support for Dr. Rimmer's opinions are Joshua Green's medical records, billing, radiographic studies, films, and reports, deposition testimony, her individual interview with Joshua Green, and the exhibits listed in her report.

In preparation of her report, Dr. Rimmer reviewed the following records:

1. GREEN 01-85: Medical and billing records from Spring Valley Hospital
2. GREEN 86-97: Medical and billing records from UNLV Medicine
3. GREEN 98-186: Medical and billing records from Enrico Fazzini, Ph.D
4. GREEN 187: Billing records from Shadow Emergency Physicians
5. GREEN 251-273: Medical and billing records from Interventional Pain & Spine Institute
6. GREEN 188: Medical and billing records from American Medical Response
7. GREEN 370-73: Co-Pay Receipts to University Medical Center
8. GREEN 345-346: Medical records from Las Vegas Neurosurgical Institute
9. GREEN 374-845: 9. Medical and billing records from University Medical Center
10. GREEN 846: Photograph of Josh Green's palms from burns
11. GREEN 847-48: Medical and billing records from Henderson Dermatology
12. GREEN 849-888: Color photographs of Josh Green's burns taken at University Medical Center
13. GREEN 1075-1094: Medical and billing records from Michael Elliott and Associates
14. GREEN 1239-1248: Supplemental medical and billing records from Michael Elliott and Associates
15. GREEN 1249-1271: Photos that depict scars on Josh's arms, abdomen, and hands
16. Deposition transcript of Plaintiff, Joshua Green
17. Individualized interview with Joshua Green

Dr. Rimmer is expected to offer the following opinions, as outlined in her report:

1. The physical complications of burn injuries are significant. Serious burn injuries are complex and place a major stress on all the body's major organs in the acute care phase. The skin is the largest organ of the body, and when it has been damaged by deep 2nd degree burn injuries like Joshua's, it can cause serious physiologic and metabolic disruption to the entire system. Burn injuries have been

1 noted to be the most injurious insult the human body can sustain. Burns are always  
2 unexpected, and therefore when they occur, a crisis is created. This unanticipated  
3 crisis causes the burn victim and their family to experience significant physical,  
4 emotional and psychological distress.

5 2. The skin is the largest organ of the body and provides several critical functions:  
6 protection, sensation, thermoregulation, excretion, absorption, metabolism, and  
7 non-verbal communication. Any compromise of the skin integrity can lead to the  
8 interruption of these vital functions and results in pain, discomfort, and possible  
9 infection.

10 3. Allostasis is the term used to define the adaptation that the body makes in  
11 response to stressful events. "The process involves activation of several physiologic  
12 systems, including the immune system, and is essentially the body's ability to  
13 maintain "stability through change." The body is able to cope effectively with these  
14 stressors when adaptations are activated infrequently; however, there is the  
15 potential for the system to become overloaded." (Askay & Patterson, 2008).

16 4. Joshua suffered severe pain from his burn injuries. With second degree burns,  
17 there is damage to the dermis, but the nerve endings are still intact. This makes them  
18 very painful. There appears to be a relationship between poor acute pain  
19 management such as Joshua's and later distress that might be manifested by issues  
20 such as depression and/or PTSD (post-traumatic stress system). He has worked as a  
21 chef for many years and shared that the burns to his hands has made his job quite  
22 difficult. He can no longer tolerate the long hours he put in pre-injury and finds that  
23 the pain in his hands compromises his ability to do his job.

24 5. Life expectancy according to the Vital Statistics of the United States 2017 Life  
25 Tables indicated that a 39-year-old American male would live, on average, to the age  
26 of 78.7 years.

27 6. Dr. Kevin N. Foster conducted a Zoom evaluation with Joshua Green on  
28 November 25, 2020. He had reviewed his medical records and after the evaluation



he then discussed Joshua's future care needs with this life care planner.

7. Joshua shared that he had followed up at the Las Vegas Burn Center and then was sent to another physician and dermatologist for his ongoing issues, which include chronic pain and skin sensitivity that is triggered with changes in temperature, such as stepping out of the shower into a cool bathroom. He stated that his hands become so painful when there are fluctuations in temperature that he must wrap them in blankets to warm them in order to relieve the stinging and painful sensation. He also reported ongoing itching on both arms and hands.

8. Joshua has a fear of grilling post-injury with flashbacks that occur when he tries to use a grill with a flame. He stated "I don't work as much as I used to and had to cut my hours drastically. I get really tired when using my hands as a chef." Chronic neuropathic pain and itch are commonly reported following burn injury. In one sample of burn survivors, over half of them reported having continuous pain despite being, on average, 10 years post-injury (Dauber, et al. 2002). Laser surgery can help to alleviate these issues. Additional treatment involves massage therapy as well as the use of moisturizers and lotions (Anthonissen, et. al., 2016).

9. Dr. Foster opined that Joshua will benefit from laser surgery for improved skin tone, pain and itching reduction, and improved cosmesis. The integrity of his burn-injured skin will never be the same as it was pre-injury. Dr. Foster also recommends pain management, medication, massage and psychological interventions which has been endorsed by his treating psychologist, Michael Elliott, PhD. The cost of future care is outlined in the life care plan tables.

10. A visit should take place, annually, over the next 5 years until such time as Joshua's burn-related issues will likely be resolved.

11. A visit every year should occur every 2 years through age 55 and then, annually, through life expectancy due to his heightened potential for skin cancer and other dermal problems. All burned areas and donor sites are more prone to sunburn and skin cancer and must be protected by sunscreen daily. Sun protective clothing is



also recommended.

12. Joshua will benefit from monthly massage for the next 2 years for scar management, relaxation, and anxiety reduction.

13. Pain and itch are inevitable after laser procedures. Joshua will be prescribed Ibuprofen 800mg post-laser surgery and will be able to take over the counter medications such as Tylenol and Ibuprofen for his chronic pain. At age 50 he will likely have increased pain issues in his hands, so Naproxen has been recommended.

14. Joshua will need to keep his skin hydrated and protected from the sun through life expectancy. The recommended supplies are sunscreen and moisturizers. He should also always wear sun protective clothing when he is outdoors.

15. Dr. Foster has recommended six - CO2 and six - Pulse Dye laser sessions for Joshua. These surgical interventions will address the itching, pain and skin integrity on his bilateral arms and hands. The closest burn center that performs surgical laser procedures is the Arizona Burn Center in Phoenix, Arizona. Included in the cost projection are round trip flights from Las Vegas to Phoenix with an overnight stay in a hotel each time because Joshua will receive general anesthesia for the procedure and will need to remain close to physician access in case of complications.

16. Dr. Michael Elliott is Joshua's current, injury-related, mental health provider. Dr. Elliott has provided recommendations for necessary psychological treatment associated with the burn event and his subsequent burn injuries. He opined that Joshua's symptoms will likely worsen unless his physical, cognitive, and psychological problems are treated aggressively. Joshua's post-injury memory deficits, sleep troubles, high levels of stress, and overall quality of life put him at significant risk. His stress coping skills are challenged, and he needs several strategies for stress management. As such, a normal course of recovery is threatened without treatment for his physical and mental conditions. The longer he suffers with his current levels of stress, anxiety, and depression, the more likely his mood and cognitive deficits will worsen.

17. Dr. Elliott recommends 6 months of weekly Cognitive Behavioral Therapy (24 sessions) with an additional 6 months of weekly Biofeedback and Mindfulness Training. Cognitive Behavioral Therapy will help to nurture Joshua's awareness of and responsiveness to his emotional struggles with anxiety, whereby he can more effectively manage his emotions, so they do not negatively impact his planning and follow through. This includes an 8-week course of graduated cognitive therapy that requires a weekly session with specific homework assignments for completion between sessions. An additional six months of biofeedback and mindfulness training are necessary to manage anxiety. This will include a Biofeedback/Heartmath Heart Rate Variability (HRV) program. This program offers highly effective and practical solutions for reducing stress, anxiety, depression, and sleeplessness.

18. Due to his symptoms associated with PTSD, Joshua should also participate in Eye Movement Desensitization & Reprocessing (EMDR) therapy. EMDR is a treatment designed to alleviate distress associated with traumatic memories. Data from meta-analyses and Randomized-Controlled Trials included in this review evidence the efficacy of EMDR therapy as a treatment for PTSD. Specifically, EMDR therapy improved PTSD diagnosis, reduced PTSD symptoms, and reduced other trauma-related symptoms. EMDR therapy was evidenced as being more effective than other trauma treatments and was shown to be an effective therapy when delivered with different cultures (Shalev AY., 2009).

19. Careful consideration has been given to Joshua's future medical and psychological needs which have resulted from his burn injuries. He has survived deep 2nd degree burns to both arms, hands, and his abdominal area as the result of the accident, with the most significant damage occurring to his hands. Pain is one of the biggest problems that burn victims experience. The recovery phase of a burn primarily involves tissue growth which causes pain, itchiness, numbness and tingling. Some burn patients experience nerve damage which results in longer lasting chronic pain. In addition, being on fire is a very traumatic event and the psychological

1 damage can be as significant as the physical injury. Studies have found that survivors  
2 of fire related injury can experience symptoms of major depression and anxiety, as  
3 well as an uptick in symptoms associated with Post Traumatic Stress Disorder.

4 20.The goal of this Life Care Plan is to provide reasonable and medically  
5 necessary care that will maintain/increase Joshua Green's medical stability and  
6 quality of life, and to anticipate and prevent potential complications. The plan  
7 provides for medical and surgical care, evaluations, therapies, medications, supplies,  
8 transportation needs, in order to promote and maintain his independence and  
9 prevent complications. This plan should be re-evaluated/modified if complications  
10 develop and/or as progressive aging alters Joshua's medical condition and functional  
11 status. The recommendations are outlined in specifics within the Life Care Plan  
12 Tables, which are attached as Appendix A.

13 Dr. Rimmer's testimony will be consistent with GREEN 1397-1474.

14 26.Kevin N. Foster, MD, MBA, FACS  
15 The Arizona Burn Center, Valleywise Health  
Phoenix, Arizona 85008

16 Kevin N. Foster, MD, MBA, FACS is a burn surgeon and medical provider. Dr.  
17 Foster will provide testimony regarding the past medical treatment provided for  
18 Joshua Green, the future medical treatment needed, the amount, necessity, and  
19 reasonableness of the charges for past and future treatment, and that the charges  
20 for the past and future medical treatment are within the usual and customary  
21 charges in the community. Dr. Foster will also rebut any opinions offered by  
22 Defendant's expert witness, if any.

23 Dr. Foster authored a report, attached hereto as Exhibit 1474. The exhibits to  
24 be used as a summary of support for Dr. Foster's opinions are Joshua Green's  
25 medical records, billing, radiographic studies, films, and reports, deposition  
26 testimony, Dr. Rimmer's lifecare plan, and the exhibits listed in his report.

27 In preparation of his report, Dr. Foster reviewed the following records:

- 28 1. GREEN 01-85: Medica and billing records from Spring Valley Hospital

2. GREEN 86–97: Medical and billing records from UNLV Medicine
3. GREEN 98–186: Medical and billing records from Enrico Fazzini, Ph.D
4. GREEN 187: Billing records from Shadow Emergency Physicians
5. GREEN 251–273: Medical and billing records from Interventional Pain & Spine Institute
6. GREEN 188: Medical and billing records from American Medical Response
7. GREEN 370–73: Co-Pay Receipts to University Medical Center
8. GREEN 345–346: Medical records from Las Vegas Neurosurgical Institute
9. GREEN 374–845: 9. Medical and billing records from University Medical Center
10. GREEN 846: Photograph of Josh Green's palms from burns
11. GREEN 847–48: Medical and billing records from Henderson Dermatology
12. GREEN 849–888: Color photographs of Josh Green's burns taken at University Medical Center
13. GREEN 1075–1094: Medical and billing records from Michael Elliott and Associates
14. GREEN 1239–1248: Supplemental medical and billing records from Michael Elliott and Associates
15. GREEN 1249–1271: Photos that depict scars on Josh's arms, abdomen, and hands
16. Deposition transcript of Plaintiff, Joshua Green
17. Individualized interview with Joshua Green

Dr. Foster is expected to offer the following opinions, as outlined in his report:

1. Joshua green suffered an 8% total body surface area thermal burn injury on June 18t, 2018 as the result of a propane grill explosion. He was 36 years old at the time of his injury. He was cared for in the Las Vegas burn center for seven days. He received daily dressing changes, pain control, nutritional support, physical and occupational therapy, and all of the other resources of this tertiary care burn center. He was discharged home in good condition and has been followed by the burn center as an outpatient since that time.

2. I have reviewed the medical records for Mr. Green, the photographs of his injuries and subsequent scars, the life care plan prepared for him by Dr. Rimmer and myself, and various other documentation related to his injury and hospitalizations. I have also interviewed and examined Mr. Green via telemedicine. I agree with the future needs and care projected and outlined in Mr. Green's life care plan. I consider these projections and needs to be medically likely, fair and reasonable. Thank you.

3. Dr. Foster has recommended six - CO2 and six - Pulse Dye laser sessions for

1 Joshua. These surgical interventions will address the itching, pain and skin integrity  
2 on his bilateral arms and hands. The closest burn center that performs surgical laser  
3 procedures is the Arizona Burn Center in Phoenix, Arizona. Included in the cost  
4 projection are round trip flights from Las Vegas to Phoenix with an overnight stay in  
5 a hotel each time because Joshua will receive general anesthesia for the procedure  
6 and will need to remain close to physician access in case of complications.

7 Dr. Foster's testimony will be consistent with GREEN 1397-1474 and GREEN 1475-  
8 1518.

9  
10 27.Scott Sibley  
11 930 South Fourth Street, Suite 100  
12 Las Vegas, Nevada 89100  
13 T: 702-353-3397

14 Josh offers personal chef services for Scott Sibley and his family. Mr. Sibley is  
15 expected to testify regarding his business relationship with Josh. He will also testify  
16 that Josh never uses propane grills and that he recently purchased a Traeger Grill, so  
17 Josh could cook without an open flame.

18 28.Kaitlyn Dutton  
19 930 South Fourth Street, Suite 100  
20 Las Vegas, Nevada 89100  
21 T: 252-902-4966

22 Josh offers personal chef services for Kaitlyn Dutton. Ms. Dutton is expected to  
23 offer testimony regarding the meals Josh prepares and his refusal to use propane  
24 grills or open flames.

25 29.Lauren Sara Ohayon  
26 c/o H & P LAW  
27 8950 West Tropicana Avenue, Suite 1  
28 Las Vegas, Nevada 89147  
T: 702-598-4529; and  
63 East Agate, Apt # 408  
Las Vegas, Nevada 89123  
T: 207-239-0994

Lauren Sara Ohayon is Josh's wife. Lauren is expected to testify regarding her  
facts and knowledge regarding the explosion, including the effect the explosion had

on Josh's physical, mental, and emotional health.

**30. Jim Barrett  
c/o Claggett & Sykes  
4101 Meadows Lane # 100  
Las Vegas, Nevada 89107  
T: 702-333-7777**

**Jim Barrett is a former Ferrellgas, Inc. employee and is expected to offer testimony regarding his personal knowledge of Ferrellgas, Inc.'s policies and procedures. Mr. Barrett will also testify about his personal knowledge of the investigation conducted in relation to the June 18, 2018 explosion that is the subject of Josh's complaint. Mr. Barrett will also testify about his experience with the process and procure for investigating other incidents involving Ferrellgas employees. Mr. Barrett will testify about his personal knowledge of the roles of other Ferrellgas, Inc. employees, including safety managers, customer service representatives, and other managers.**

## **II.**

### **Documents**

1. Medical and billing records from Spring Valley Hospital, as GREEN 01-85;
2. Medical and billing records from UNLV Medicine, as GREEN 86-97;
3. Medical and billing records from Las Vegas Pain Relief Center, as GREEN 98-186;
4. Billing records from Shadow Emergency Physicians, as GREEN 187;
5. Billing records from American Medical Response, as GREEN 188;
- ~~6. Billing records from Gubler Family Dental, as GREEN 190;~~
7. Photographs from the inspection of Mario Gonzales's property and grill, as GREEN 191-369;
8. Co-pay receipts to University Medical Center, as GREEN 370-73;
9. Medical and billing records from University Medical Center, as GREEN 374-45;
10. Photograph of Josh Green's palms from burns, as GREEN 846;

- 1 11. Medical and billing records from Henderson Dermatology and Skin Center, as
- 2 GREEN 847-48;
- 3 12. Color photographs of Josh Green's burns taken at University Medical Center,
- 4 as GREEN 849-888;
- 5 13. Sales summary report generated for Fries N' Pies for August 2018, as GREEN
- 6 889-890;
- 7 14. Order details summary generated for Fries N' Pies for August 2018, as GREEN
- 8 891-895;
- 9 15. Josh Green's pay stubs for August 1, 2018 through September 28, 2018, as
- 10 GREEN 869-899;
- 11 16. Sales summary report generated for Fries N' Pies for July 2019, as GREEN 900-
- 12 901;
- 13 17. Order details summary generated for Fries N' Pies for July 2019, as GREEN
- 14 902-904;
- 15 18. Text messages between Josh Green and defendant, Mario Gonzalez between
- 16 May 18, 2018 and July 18, 2019;
- 17 19. Ferrellgas, Inc.'s System Check Form (SCF), outlining proper policies and
- 18 procedures for installations of customer tank sets, as GREEN 943-952;
- 19 20. Ferrellgas, Inc.'s Appliance Venting and Vent System Inspection policies and
- 20 procedures, as GREEN 953-965;
- 21 21. Ferrellgas, Inc.'s Product Installation Review (PIR), outlining inspection policies
- 22 and procedures at installed gas systems, as GREEN 966-1009;
- 23 22. Ferrellgas, Inc.'s Unsafe Condition Notice (Red Tag) policies and procedures for
- 24 customer gas systems, as GREEN 1010-1017;
- 25 23. Ferrellgas, Inc.'s Pilot Lighting Inspection policies and procedures, as GREEN
- 26 1018-1018;
- 27 24. Ferrellgas, Inc.'s Order details dated April 26, 2018, May 9, 2018, and
- 28 June 4, 2018, for the Gonzalez property, as GREEN 1020-1024;

25. Ferrellgas, Inc.'s Customer Call details for call made by defendant, Mario Gonzalez dated June 13, 2018, as GREEN 1025-1029;

26. Clothing Josh was wearing during explosion (at our office for inspection);

27. Social media post regarding Industry Chef Battle, as GREEN 1030;

28. Social media post dated June 7, 2018, as GREEN 1031;

29. Clark County liquor license dated January 2020 - March 2020, as GREEN 1032;

30. Southern Nevada Health District 'Fries N' Pies' grade 'A', as GREEN 1033;

31. State of Nevada 'Fries N' Pies' sales tax permit, as GREEN 1034;

32. Text messages between Josh and Cardy Walchuck regarding explosion, as GREEN 1035;

33. Text messages between Josh and Estevan regarding explosion, as GREEN 1036;

34. Text messages between Josh and Huge regarding explosion, as GREEN 1037;

35. Text messages between Josh and Kristy Maguire regarding explosion, as GREEN 1038;

36. Text messages between Josh and Mike Imber regarding explosion, as GREEN 1039;

37. Text messages between Josh and Reed regarding explosion, as GREEN 1040-1042;

38. Text messages between Josh and Ryan regarding explosion, as GREEN 1043-1044;

39. Text messages between Josh and Taryn Torres regarding explosion, as GREEN 1045;

40. Propane Education and Research Council inspection protocol video (found at <https://propane.com/safety/safety-articles/safety-minute-reviewing-inspection-results-with-customers/>);

41. Text messages between Josh and Edo regarding explosion and injuries, as GREEN 1046;

42. Text messages between Josh and Adam Sadie regarding explosion and



1 injuries, as GREEN 1047–1048;

2 43. Text messages between Josh and Aunt Carol regarding explosion and injuries,  
3 as GREEN 1049;

4 44. Text messages between Josh and Benny regarding explosion and injuries, as  
5 GREEN 1050;

6 45. Text messages between Josh and Cardy Walchuck regarding explosion and  
7 injuries, as GREEN 1051;

8 46. Text messages between Josh and Randy regarding explosion and injuries, as  
9 GREEN 1052;

10 47. Text messages between Josh and Dan Herschman regarding explosion and  
11 injuries, as GREEN 1053;

12 48. Text messages between Josh and Dan Goodman regarding explosion and  
13 injuries, as GREEN 1054;

14 49. Text messages between Josh and Dean Tsakanikis regarding explosion and  
15 injuries, as GREEN 1055;

16 50. Text messages between Josh and Eric Chef regarding explosion and injuries,  
17 as GREEN 1056;

18 51. Text messages between Josh and Mike Imber regarding explosion and injuries,  
19 as GREEN 1057;

20 52. Text messages between Josh and Reed regarding explosion and injuries, as  
21 GREEN 1058–1060;

22 53. Text messages between Josh and Zac Zito regarding explosion and injuries, as  
23 GREEN 1061–1062;

24 54. Executed Settlement Release between Josh Green and BBQ Guys, as GREEN  
25 1063–1067;

26 55. Email exchange between Josh’s counsel and counsel for BBQ Guys dated  
27 March 10, 2020, as GREEN 1068–1069;

28 56. Email exchange between Josh’s counsel and counsel for BBQ Guys dated

March 23, 2020, as GREEN 1070–1071;

57.Email exchange between Josh’s counsel and counsel for BBQ Guys dated March 31, 2020, as GREEN 1072;

58.Email exchange between Josh’s counsel and counsel for BBQ Guys dated May 21, 2020, as GREEN 1073–1074;

59.Medical and billing records from Michael Elliott and Associates, as GREEN 1075–1094;

60.Pictures from May 15, 2020 inspection of propane hose and Gonzalez property, as GREEN 1095–1238;

61.Supplemental medical and billing records from Michael Elliott and Associates, as GREEN 1239–1248;

62.Photos that depict scars on Josh’s arms, abdomen, and hands, as GREEN 1249–1271;

63.Scott G. Davis, Ph.D, P.E., CFEI’s Expert Report and Opinions, as GREEN 1272–1299;

64.Scott G. Davis, Ph.D, P.E., CFEI’s Curriculum Vitae, as GREEN 1300–1314;

65.Scott G. Davis, Ph.D, P.E., CFEI’s expert fee schedule, as GREEN 1315;

66.Scott G. Davis, Ph.D, P.E., testimony history, as GREEN 1316–1317;

67.GEXCON Green v. Gonzalez Simulations Presentation (provided in Dropbox);

68.GEXCON Simulation of explosion (provided in Dropbox);

69.Don L. Gifford’s Expert Report of Findings, as GREEN 1318–1349;

70.Don. L Gifford’s Curriculum Vitae, testimony history and expert fee schedule, as GREEN 1350–1374;

71.Reference Material for Don L. Gifford’s Expert Report of Findings, as GREEN 1375–1395;

72.GCG Gas Hose Testing, as GREEN 1396 (and provided on Thumb drive);

73.Ruth B. Rimmer, Ph.D, CLCP’s Life Care Plan, as GREEN 1397–1474;

74.Ruth B. Rimmer, Ph.D, CLCP’s Curriculum Vitae, as GREEN 1455–1474;

- 1 75. Ruth B. Rimmer, Ph.D, CLCP's expert fee schedule, as GREEN 1473;
- 2 76. Kevin N. Foster, MD, MBA, FACS's Letter Regarding Record Review and Life Care
- 3 Plan, as GREEN 1474;
- 4 77. Kevin N. Foster, MD, MBA, FACS's Curriculum Vitae, as GREEN 1475–1513;
- 5 78. Kevin N. Foster, MD, MBA, FACS expert fee schedule, as GREEN 1514;
- 6 79. Kevin N. Foster, MD, MBA, FACS's testimony history, as GREEN 1515–1518;
- 7 80. Michael A. Elliott, Ph.D's Curriculum Vitae, as GREEN 1519–1523;
- 8 81. Michael A. Elliott's expert fee schedule, as GREEN 1524;
- 9 82. Jon S. Petrick, DC's Curriculum Vitae, as GREEN 1525–1526;
- 10 83. Paul J. Chestovich, MD, FACS's Curriculum Vitae, as GREEN 1527–1543;
- 11 84. Supplemental medical and billing records from Michael Elliott and Associates,
- 12 as GREEN 1544–1552;
- 13 85. Letter from Scott Sibley regarding Josh's employment, as GREEN 1553;
- 14 86. Various catering invoices for Green Catering, as GREEN 1554–1558;
- 15 87. Facebook posts regarding the June 18, 2018 explosion that is the subject of
- 16 this litigation, as GREEN 1559–1563;
- 17 88. Instagram posts regarding cooking competitions, as GREEN 1563–1556;
- 18 89. Photographs that depict Josh's arm tattoo before the June 18, 2018 explosion
- 19 that is the subject of this litigation, as GREEN 1561–1569;
- 20 90. Text messages between Josh and Yul Swinde dated March 1, 2018 through
- 21 September 1, 2018, as GREEN 1570;
- 22 91. Text messages between Josh and Nico Lopes dated March 1, 2018 through
- 23 September 1, 2018, as GREEN 1571;
- 24 92. Text messages between Josh and Lauren Unger dated October 13, 2017
- 25 through the present, as GREEN 1572–1808;
- 26 93. Text messages between Josh and Rabbi Motti dated July 19, 2018 through the
- 27 present, as GREEN 1809–1936;
- 28 94. Don L. Gifford's Expert Report of Findings, as GREEN 1937–1938;

95. Photographs of exemplar hose taken by Gifford Consulting, as GREEN 1939–1966; and

96. All documents identified by any other party in this case.

### III.

#### Joshua Green's Computation of Damages

Pursuant to NRCP 16.1(a)(1)(C), below are the calculation of damages to date. Plaintiff reserves the right to supplement/amend her calculation as discovery continues.

Medical Provider	Dates of Service	Damage
American Medical Response	6/18/2018	\$1,232.06
Shadow Emergency Physicians	6/18/2018	\$2,071.00
Spring Valley Hospital	6/18/2018	\$7,281.00
University Medical Center – Burn Care Center	6/18/2018–9/6/2018	\$42,063.49
UNLV Medicine	6/20/2018–7/23/2018	\$832.00
Henderson Dermatology	6/19/2018	\$276.20
Las Vegas Pain Relief Center	6/26/2018–7/16/2018	\$532.00
Gubler Family Dental	8/13/2018–8/21/2018	\$1,626.94
Michael Elliott and Associates	5/20/2020–present	\$4,140.00
Out of Pocket Expenses		Damage
University Medical Center Co-Pay Receipts	6/25/2018, 6/27/2018 6/29/2018, 7/3/2018	\$140.00
Fries N' Pies Lost Revenue	July 2018	\$50,000.00 (estimated based off August 2018 & July 2019 sales)
Wage Loss	July 2018	\$4,434.16
<b>Life Care and Future Treatment</b>		<b>\$282,300.50</b>

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<b>Total Economic Damages</b>		<b>&gt;\$340,868.25</b>
<b>Permanent Scarring</b>		<b>\$789,452.19</b>
Pain and Suffering		<b>\$3,891,234.45</b>
<b>Total Damages</b>		<b>&gt;\$5,021,554.89</b>

DATED this 26th day of March 2021.

H & P LAW



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

Attorneys for Plaintiff,  
*Joshua Green*



# **EXHIBIT E**

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A-19-795381-C      Joshua Green, Plaintiff(s)  
vs.  
Ferrellgas, Inc., Defendant(s)

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March 09, 2021      09:30 AM      All Pending Motions

HEARD BY:      Truman, Erin      COURTROOM: RJC Level 5 Hearing Room

COURT CLERK: Lott, Jennifer

RECORDER:      Haak, Francesca

REPORTER:

PARTIES PRESENT:

Brent D. Quist	Attorney for Counter Claimant, Cross Defendant, Defendant
Felicia Galati	Attorney for Counter Claimant, Cross Claimant, Cross Defendant, Defendant
Gregorio Silva, ESQ	Attorney for Counter Claimant, Cross Claimant, Cross Defendant, Defendant
Marjorie L. Hauf	Attorney for Plaintiff
Steven M. Goldstein	Attorney for Counter Defendant, Cross Claimant, Cross Defendant, Defendant, Third Party Plaintiff

### JOURNAL ENTRIES

Plaintiff, Joshua Green's Repeat Motion to Compel Nationwide Incident Reports from Defendant, Ferrellgas, Inc. - and - For Attorneys' Fees

Defendant Ferrellgas, Inc.'s Opposition to Plaintiff's Repeat Motion to Compel Discovery and Counter-Motion to Strike for Failure to Comply with EDCR 2.34

Commissioner received a text message this morning at 9:28 a.m. from the Discovery staff, and counsel sent over confidential exhibits for Commissioner to review in camera. Commissioner took the bench at 9:00 a.m. today, and Commissioner has not reviewed the documents. Ms. Hauf requested compliance with the initial Order, and the expanded request. Arguments by counsel. Mr. Quist, Mr. Goldstein, and Ms. Galati had nothing to add.

COMMISSIONER RECOMMENDED, Plaintiff, Joshua Green's Repeat Motion to Compel Nationwide Incident Reports from Defendant, Ferrellgas, Inc. - and - For Attorneys' Fees is GRANTED IN PART and DENIED IN PART; language is tailored to all litigation Nationwide arising from incidents, events, or occurrences for five years prior to this incident with allegations of outdoor gas grill systems exploding for resident propane customers (persons and property) must be provided. COMMISSIONER RECOMMENDED, any incidents, events, or occurrences of outdoor gas grill system explosions for residential propane customers (persons and property) in the Grand Canyon region where litigation was filed for five years prior to this incident must be provided.

Colloquy. COMMISSIONER RECOMMENDED, no production of attorney client privileged information; if anything is withheld, a privilege log must be provided. COMMISSIONER



RECOMMENDED, Defendant Ferrellgas, Inc.'s Counter-Motion to Strike for Failure to Comply with EDCR 2.34 is DENIED as stated. Mr. Silva requested relief under EDCR 2.34(e). COMMISSIONER RECOMMENDED, relief is GRANTED; documents are due 21 days after the District Court Judge makes a Decision; Status Check SET.

Ms. Hauf to prepare the Report and Recommendations, and counsel to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to [DiscoveryInbox@clarkcountycourts.us](mailto:DiscoveryInbox@clarkcountycourts.us). A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution.

5-14-2021 9:30 a.m. Status Check: Status of Case

# **EXHIBIT F**



**SUPPL**

Marjorie L. Hauf, Esq.  
Nevada Bar No.: 8111  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439  
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matt@courtroomproven.com

Attorneys for Plaintiff,  
*Joshua Green*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Joshua Green**, an individual,

Plaintiff,  
vs.

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

Defendants.

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

Cross-Claimant,  
vs.

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

Cross-Defendants.

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

**Joshua Green's Tenth  
Supplemental Disclosures**

MOT153

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

Third-Party Plaintiff,

vs.

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

Third-Party Defendants.

**Ferrellgas, Inc.**, a foreign corporation;

Counter-Claimant,

vs.

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

Counter-Defendants

**Carl J. Kleisner**, an individual;

Counter-Claimant,

vs.

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

Counter-Defendants.

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

**Supplemental/Amended information appears in bold.**

Abandoned claims identified with ~~strike line~~.

**I.  
Witnesses**

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

Joshua Green is the Plaintiff in this case. He is expected to testify about the grill that exploded while he was using it. Joshua will testify about his experience using grills. Joshua will also testify about how these injuries have negatively affected his life and his damages.

2. Proper 30(b)(6) Representative for Ferrellgas, Inc.  
c/o OLSON, CANNON, GORMLEY, ANGULO & STROBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
T: 702-384-4012

The Proper 30(b)(6) Representative for Ferrellgas, Inc. will testify about their policies and procedures for installing and inspecting gas lines. They will also testify about their knowledge of this case and employee training, hiring, and management.

3. Mario S. Gonzales  
c/o PYATT SILVESTRI  
700 Bridger Avenue, Suite 600  
Las Vegas, Nevada 89101  
T: 702-477-0088

Mario Gonzales is the owned the home where the grill exploded on Joshua. Mr. Gonzales is expected to offer his testimony about his perspective of the explosion and the safety measures he took to prevent it. As Josh's close friend, Mario will also testify about any noticeable changes to Josh before and after the explosion.

4. Carl J. Kleisner  
c/o DENNETT WINSPEAR, LLP  
3301 North Buffalo Drive, Suite 195  
Las Vegas, Nevada 89129  
T: 702-839-1100

Carl J. Kleisner is the electrician that repaired the electrical lines at Mr. Gonzales's home a few days before the explosion. Mr. Kleisner is expected to testify about his experience as an electrician. He will also testify about liability.

5. Elad Bicer, MD  
Spring Valley Hospital Medical Center  
5400 South Rainbow Boulevard  
Las Vegas, Nevada 89118  
T: 702-853-3000

Elad Bicer, MD evaluated Joshua for emergency medical treatment immediately following the explosion. Dr. Bicer is expected to testify about his observations that Joshua arrived with burn "onset prior to arrival" with symptoms of "pain and redness." Dr. Bicer's testimony will include the following diagnosis:

- ICD10-CM – Burn;

After review, Dr. Bicer determined Joshua required care in a burn intensive unit.

Dr. Bicer requested Joshua be transferred to University Medical Center.

Dr. Bicer's testimony will be consistent with GREEN 01-85.

6. Elizabeth Sodomini, MD  
UNLV Medicine  
2040 West Charleston Boulevard, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89102  
T: 702-895-4928

Elizabeth Sodomini, MD provided burn treatment to Joshua in the weeks following the explosion. Dr. Sodomini is expected to testify about the following diagnoses:

- T21.22XA – Burn of second degree of abdominal wall, initial encounter;
- T22.212A – Burn of second degree of left forearm, initial encounter;
- T22.211A – Burn of second degree of right forearm, initial encounter;
- T23.202A – Burn of second degree of left hand, unspecified site, initial encounter;
- T23.201A – Burn of second degree of head, face, and neck, unspecified site, initial encounter;
- X04.XXA – Exposure to ignition of highly flammable material, initial encounter;

Dr. Sodomini will testify about the causation of these injuries. Her testimony will be consistent with GREEN 86-97.

7. Jon Petrick, DC  
Las Vegas Pain Relief Center  
2779 West Horizon Ridge Parkway, Suite 210  
Henderson, Nevada 89052  
T: 702-948-2520

Joshua presented to Jon Petrick, DC complaining of consistent pain. Dr. Petrick noted Joshua's "continuing pain and discomfort that can be described as sharp, burning, tightness, numbing or tingling, a loss of strength." Dr. Petrick stated Joshua "presented with second and third degree burns bilaterally on both arm to trunk, chest, and flanks." Dr. Petrick determined Joshua would benefit from "functional movement screen, nitric oxide release, active release techniques, chiropractic care, strength and conditioning, and performance training."

Dr. Petrick is expected to testify about the following diagnoses:

- T31.11 – Burns involving 10-19% of body surface with 10–19% third degree burns;
- T31.20 – Burns involving 20-29% of body surface with 0% to 9% third degree burns;

Dr. Petrick will testify about the causation of these diagnoses. His testimony will be consistent with GREEN 98–186.

8. Custodian of Records  
Shadow Emergency Physicians, PLLC  
PO Box 13917  
Philadelphia, Pennsylvania 19101  
T: 800-355-2470

The Custodian of Records will verify the authenticity of GREEN 187.

9. Custodian of Records  
American Medical Response  
7201 West Post Road  
Las Vegas, Nevada 89113  
T: 800-913-9106

The Custodian of Records will verify the authenticity of GREEN 188.

10. Laurence Green  
2609 Centarus Street  
Henderson, Nevada 89044  
T: 516-524-1310

Laurence Green is Joshua's father. Laurence is expected to testify about Joshua's life before and after the explosion. He will testify about Joshua's injuries and how the negatively affected his life. Laurence is also expected to testify about how the explosion caused a financial strain to Joshua's life.

11. Shelia Green  
2609 Centarus Street  
Henderson, Nevada 89044  
T: 516-524-2251

Shelia Green is Joshua's mother and is expected to testify about the noticeable changes in Joshua before and after the explosion. Shelia will testify about how the burns negatively affected Joshua's life and made his job as a chef more difficult.



12. Elizabeth Sodomini, MD  
13. Paul J. Chestovich, MD  
14. Amy Urban, MD  
University Medical Center -  
5400 South Rainbow Boulevard  
Las Vegas, Nevada 89118  
T: 702-853-3000

The medical team at University Medical Center evaluated Joshua after he was transferred from Spring Valley Hospital. Dr. Urban noted Joshua "sustained flame to burns to the face, b/l forearms, b/l palms" after "lifting the lid from a propane gas grill." These burns were described as to "approximately 18% second-degree burn surface area" with some "anterior abdomen and chest first-degree burns."

To treat his burns, the medical team at University Medical Center prescribed painkillers and admitted Joshua for ongoing wound care "by burn care nurses." The medical team at University Medical Center is expected to testify about the following diagnoses:

- Burn of multiple sites of upper limb;
- Partial thickness of burns of multiple sites;

The medical team at University Medical Center is expected to testify about the causation of these diagnoses. Their testimony will be consistent with GREEN 374-845.

15. Cyril Joseph, PA-C  
Henderson Dermatology and Skin Center  
2960 Saint Rose Parkway, Suite 120  
Henderson, Nevada 89052  
T: 702-558-5100

Physician Assistant Joseph is expected to offer testimony about the treatment he administered to Joshua after the grill explosion. Physician Assistant Joseph performed an examination "including the scalp (including hair inspection), head (including face), inspection of conjunctive lids, lips (but not teeth and gums), nose, right ear, left ear, chest, abdomen, back, right upper extremity, left axilla, right hand, and inspection and palpation of the digits and nails."

Physician Assistant Joseph noted Joshua had "paresthesia on both hands. Left is

1 worse than the right-hand area where patient has burns.” Physician Assistant  
2 Joseph’s testimony will be consistent with GREEN 847-48.

3  
4 16. Adam Sadie  
5 6983 Casa Encantada Street  
6 Las Vegas, Nevada 89118  
7 T: 702-378-8408

8 Adam Sadie is Josh’s business partner. Adam is expected to offer testimony  
9 about how Josh’s life was dramatically affected after the grill explosion. Adam will  
10 testify about the difficulties Josh faced as a chef and how the burns make his job  
11 more difficult.

12 17. Lauren Unger  
13 130 East 18<sup>th</sup> Street 3M  
14 New York, New York 10003  
15 T: 516-768-1177

16 Lauren Unger is Josh’s close friend. Lauren is expected to offer her testimony  
17 about the noticeable changes in Josh before and after the explosion. She will testify  
18 about how Josh’s life was negatively impacted by the explosion.

19 18. Dave Goodman  
20 5431 La Jolla Boulevard C  
21 La Jolla, California 92307  
22 T: 310-775-3601

23 Dave Goodman is Josh’s friend and is expected to testify about the changes in  
24 Josh’s emotional, physical, and mental state since the explosion.

25 19. Andrea Schuman  
26 422 Merrick Road  
27 Rockville Center, New York 11570  
28 T: 516-983-5794

Andrea Schuman is Josh’s family member. Andrea is expected to testify about

the negative changes in Josh after the explosion.

20. Jenn Gonzalez  
5865 West Post Road  
Las Vegas, Nevada 89118  
T: 702-241-1937

Jenn Gonzalez was present during the barbeque explosion. Jenn is expected to offer her testimony about her perspective of the explosion and the injuries Josh sustained as a result.

21. Rabbi Motti  
Chabad Jewish Center of Las Vegas and Southern Nevada  
1261 Arville Street  
Las Vegas, Nevada 89102  
T: 702-683-0333

Rabbi Motti is Josh's Rabbi. He is expected to offer his testimony about the noticeable changes to Josh before and after the explosion. Rabbi Motti will testify about how Josh became more committed to his Jewish faith after the explosion.

22. Michael Elliott, Ph.D  
Michael Elliott and Associates  
1661 West Horizon Ridge Parkway, Suite 280  
Henderson, Nevada 89012  
T: 702-307-0133

Michael Elliott, Ph.D provided psychological treatment to Josh and is expected to offer his testimony regarding his findings. On May 20, 2020, Dr. Elliott evaluated Josh for "severe headaches since his accident, difficulty focusing and following conversations/trains of thought" and "several difficulties when using grills." Dr. Elliott noted Josh expressed "losing confidence in himself and is concerned that he will not be able to continue his career."

Dr Elliott will testify about the following diagnoses:

- F06.4 – Anxiety disorder due to known physiological condition;
- F41.1 – Generalized anxiety disorder;
- Z13.850 – Encounter for screening for traumatic brain injury;

Dr. Elliott is expected to testify about the causation of these diagnoses. He will also testify regarding Joshua's comprehensive treatment plan:

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

17       **Dr. Elliott's testimony will be consistent with GREEN**

18  
19                               **II.**

20                               **Documents**

- 21       1. Medical and billing records from Spring Valley Hospital, as GREEN 01-85;
- 22       2. Medical and billing records from UNLV Medicine, as GREEN 86-97;
- 23       3. Medical and billing records from Las Vegas Pain Relief Center, as GREEN 98-
- 24       186;
- 25       4. Billing records from Shadow Emergency Physicians, as GREEN 187;
- 26       5. Billing records from American Medical Response, as GREEN 188;
- 27       6. ~~Billing records from Gubler Family Dental, as GREEN 190;~~
- 28       7. Photographs from the inspection of Mario Gonzales's property and grill, as

GREEN 191–369;

8. Co-pay receipts to University Medical Center, as GREEN 370–73;

9. Medical and billing records from University Medical Center, as GREEN 374–45;

10. Photograph of Josh Green’s palms from burns, as GREEN 846;

11. Medical and billing records from Henderson Dermatology and Skin Center, as GREEN 847–48;

12. Color photographs of Josh Green’s burns taken at University Medical Center, as GREEN 849–888;

13. Sales summary report generated for Fries N’ Pies for August 2018, as GREEN 889–890;

14. Order details summary generated for Fries N’ Pies for August 2018, as GREEN 891–895;

15. Josh Green’s pay stubs for August 1, 2018 through September 28, 2018, as GREEN 869–899;

16. Sales summary report generated for Fries N’ Pies for July 2019, as GREEN 900–901;

17. Order details summary generated for Fries N’ Pies for July 2019, as GREEN 902–904;

18. Text messages between Josh Green and defendant, Mario Gonzalez between May 18, 2018 and July 18, 2019;

19. Ferrellgas, Inc.’s System Check Form (SCF), outlining proper policies and procedures for installations of customer tank sets, as GREEN 943–952;

20. Ferrellgas, Inc.’s Appliance Venting and Vent System Inspection policies and procedures, as GREEN 953–965;

21. Ferrellgas, Inc.’s Product Installation Review (PIR), outlining inspection policies and procedures at installed gas systems, as GREEN 966–1009;

22. Ferrellgas, Inc.’s Unsafe Condition Notice (Red Tag) policies and procedures for customer gas systems, as GREEN 1010–1017;

- 1 23.Ferrellgas, Inc.'s Pilot Lighting Inspection policies and procedures, as GREEN
- 2 1018-1018;
- 3 24.Ferrellgas, Inc.'s Order details dated April 26, 2018, May 9, 2018, and
- 4 June 4, 2018, for the Gonzalez property, as GREEN 1020-1024;
- 5 25.Ferrellgas, Inc.'s Customer Call details for call made by defendant, Mario
- 6 Gonzalez dated June 13, 2018, as GREEN 1025-1029;
- 7 26.Clothing Josh was wearing during explosion (at our office for inspection);
- 8 27.Social media post regarding Industry Chef Battle, as GREEN 1030;
- 9 28.Social media post dated June 7, 2018, as GREEN 1031;
- 10 29.Clark County liquor license dated January 2020 - March 2020, as GREEN 1032;
- 11 30.Southern Nevada Health District 'Fries N' Pies' grade 'A', as GREEN 1033;
- 12 31.State of Nevada 'Fries N' Pies' sales tax permit, as GREEN 1034;
- 13 32.Text messages between Josh and Cardy Walchuck regarding explosion, as
- 14 GREEN 1035;
- 15 33.Text messages between Josh and Estevan regarding explosion, as GREEN 1036;
- 16 34.Text messages between Josh and Huge regarding explosion, as GREEN 1037;
- 17 35.Text messages between Josh and Kristy Maguire regarding explosion, as
- 18 GREEN 1038;
- 19 36.Text messages between Josh and Mike Imber regarding explosion, as GREEN
- 20 1039;
- 21 37.Text messages between Josh and Reed regarding explosion, as GREEN 1040-
- 22 1042;
- 23 38.Text messages between Josh and Ryan regarding explosion, as GREEN 1043-
- 24 1044;
- 25 39.Text messages between Josh and Taryn Torres regarding explosion, as GREEN
- 26 1045;
- 27 40.Propane Education and Research Council inspection protocol video (found at
- 28 <https://propane.com/safety/safety-articles/safety-minute-reviewing-inspection->

[results-with-customers/](#));

41. Text messages between Josh and Edo regarding explosion and injuries, as GREEN 1046;

42. Text messages between Josh and Adam Sadie regarding explosion and injuries, as GREEN 1047–1048;

43. Text messages between Josh and Aunt Carol regarding explosion and injuries, as GREEN 1049;

44. Text messages between Josh and Benny regarding explosion and injuries, as GREEN 1050;

45. Text messages between Josh and Cardy Walchuck regarding explosion and injuries, as GREEN 1051;

46. Text messages between Josh and Randy regarding explosion and injuries, as GREEN 1052;

47. Text messages between Josh and Dan Herschman regarding explosion and injuries, as GREEN 1053;

48. Text messages between Josh and Dan Goodman regarding explosion and injuries, as GREEN 1054;

49. Text messages between Josh and Dean Tsakanikis regarding explosion and injuries, as GREEN 1055;

50. Text messages between Josh and Eric Chef regarding explosion and injuries, as GREEN 1056;

51. Text messages between Josh and Mike Imber regarding explosion and injuries, as GREEN 1057;

52. Text messages between Josh and Reed regarding explosion and injuries, as GREEN 1058–1060;

53. Text messages between Josh and Zac Zito regarding explosion and injuries, as GREEN 1061–1062;

54. Executed Settlement Release between Josh Green and BBQ Guys, as GREEN

1063-1067;

55.Email exchange between Josh's counsel and counsel for BBQ Guys dated March 10, 2020, as GREEN 1068-1069;

56.Email exchange between Josh's counsel and counsel for BBQ Guys dated March 23, 2020, as GREEN 1070-1071;

57.Email exchange between Josh's counsel and counsel for BBQ Guys dated March 31, 2020, as GREEN 1072;

58.Email exchange between Josh's counsel and counsel for BBQ Guys dated May 21, 2020, as GREEN 1073-1074;

**59.Medical and billing records from Michael Elliott and Associates, as GREEN 1075-1094; and**

60.All documents identified by any other party in this case.

### III.

#### Joshua Green's Computation of Damages

Pursuant to NRCP 16.1(a)(1)(C), below are the calculation of damages to date. Plaintiff reserves the right to supplement/amend her calculation as discovery continues.

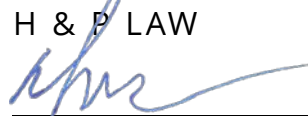
Medical Provider	Dates of Service	Damage
American Medical Response	6/18/2018	\$1,232.06
Shadow Emergency Physicians	6/18/2018	\$2,071.00
Spring Valley Hospital	6/18/2018	\$7,281.00
University Medical Center – Burn Care Center	6/18/2018-9/6/2018	\$42,063.49
UNLV Medicine	6/20/2018-7/23/2018	\$832.00
Henderson Dermatology	6/19/2018	\$276.20
Las Vegas Pain Relief Center	6/26/2018-7/16/2018	\$532.00
Gubler Family Dental	8/13/2018-8/21/2018	\$1,626.94



<b>Michael Elliott and Associates</b>	<b>5/20/2020-present</b>	<b>\$3,060.00</b>
<b>Out of Pocket Expenses</b>		<b>Damage</b>
University Medical Center Co-Pay Receipts	6/25/2018, 6/27/2018 6/29/2018, 7/3/2018	\$140.00
Fries N' Pies Lost Revenue	July 2018	\$50,000.00 (estimated based off August 2018 & July 2019 sales)
Wage Loss	July 2018	\$4,434.16
<b>Total Economic Damages</b>		<b>&gt;\$56,114.69</b>
<b>Permanent Scarring</b>		<b>\$789,452.19</b>
Pain and Suffering		<b>\$3,891,234.45</b>
<b>Total Damages</b>		<b>&gt;\$4,739,801.33</b>

DATED this 4th day of September 2020.

H & P LAW

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

Attorneys for Plaintiff,  
*Joshua Green*

**Certificate of Service**

I hereby certify that on the 4th day of September 2020, service of the foregoing **Joshua Green's Tenth Supplemental Disclosures** was made by required electronic service to the following individuals:

Felicia Galati, Esq.  
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ANGULO & STROBERSKI  
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T: 702-384-4012; and  
Michael McMullen, Esq.  
BAKER CANNON GORMLEY &  
STOBERSKI  
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Kansas City, Missouri  
T: 816-474-2121

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Attorney for Defendant,  
*Carl J. Kleisner*

Michael J. Nunez, Esq.  
Nevada Bar. No.: 10703  
Tyler N. Ure, Esq.  
Nevada Bar No.: 011730  
MURCHISON & CUMMING, LLP  
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Las Vegas, Nevada 89145

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Outdoor Products*

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Attorneys for Defendant,  
*Mario S. Gonzalez*

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Nevada Bar No.: 009502  
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600  
Las Vegas, Nevada 89118

Attorneys for Defendant,  
*Home Depot U.S.A., Inc.*

An Employee of H & P LAW

# **EXHIBIT G**



**DOEW**

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Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439  
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Attorneys for Plaintiff,  
*Joshua Green*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Joshua Green**, an individual,

Plaintiff,

vs.

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

Defendants.

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

Cross-Claimant,

vs.

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

Cross-Defendants.

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

**Plaintiff, Joshua Green's Initial  
Designation of Expert Witnesses  
and Reports**

MOT170

1  
2 **Mario S. Gonzalez**, an individual;

3 Third-Party Plaintiff,  
4

5 vs.  
6

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

12 Third-Party Defendants.  
13

14 **Ferrellgas, Inc.**, a foreign corporation;

15 Counter-Claimant,  
16

17 vs.  
18

19 **Mario S. Gonzalez**, an individual; DOES  
20 1 through 100 inclusive; and ROE  
Corporations 101 through 200;

21 Counter-Defendants  
22

23 **Carl J. Kleisner**, an individual;

24 Counter-Claimant,  
25

26 vs.  
27

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

Counter-Defendants.

Plaintiff, Joshua Green, through his attorneys of record, Marjorie L. Hauf, Esq. and Matthew G. Pfau, Esq. of H & P LAW, hereby produces the following Initial Expert Disclosures pursuant to N.R.C.P. 26(B). Said witnesses are expected to testify in person at the time of trial of this matter, however, Plaintiff reserves the right to use each of the below-listed experts as well as those previously listed experts' respective depositions.

**I.**

**Retained Expert Witnesses**

1. Scott G. Davis, Ph.D., PE, CFEI  
GEXCON  
4833 Rugby Avenue, Suite 100  
Bethesda, Maryland 20814

Scott G. Davis, Ph.D, PE, CFEI is a Principal Engineer with specialized knowledge in combustion, thermal, and fluid processes. Dr. Davis is expected to offer testimony relevant to his area of expertise, including in investigation and prevention of fires, explosions, and dispersion hazards. Dr. Davis will also rebut any opinions offered by Defendant's expert witness, if any.

Dr. Davis authored a report, attached hereto as Exhibit 1. The exhibits to be used as a summary of support for Dr. Davis' opinions are all deposition testimony in this case, all written discovery responses in this case, all exhibits produced in this case, all expert reports, and the exhibits listed in his report.

In preparation of his report, Dr. Davis reviewed the following records:

1. FG00001-FG000018: Ferrellgas Answer to First Amended Complaint;
2. FG000019-FG000021: 6/16/17 Ferrellgas Correspondence to Mario Gonzalez and Ferrellgas Customer Agreement for Propane Sales & Equipment Rental

- 1 3. FG00002-FG000023: 6/4/18 Delivery Ticket
- 2 4. FG000024: 7/3/18 Ferrellgas Invoice
- 3 5. FG000025-FG000028: Propane Safety Brochure
- 4 6. FG000030-FG000039: STS -7.46a System Check Form (SCF)
- 5 7. FG000040-FG000083: STS -5.8 Product Installation Review (PIR)
- 6 8. FG000084-FG000096: STS -7.40 Appliance Venting - Venting and Vent System Inspection -
- 7 9. FG000097-FG000098: STS 7.36 Pilot Lighting-Inspections
- 8 10. FG000099-FG000106: STS 1.71 Unsafe Condition Notice (Red Tag)
- 9 11. FG000107-FG000111: Order Details for 4/26/18, 5/9/18 and 6/4/18 Orders
- 10 12. FG000112-FG000116: Customer Call Information for June 2018
- 11 13. FG000684: Exemplar delivery ticket with customer safety information
- 12 14. FG000685: Bulk History Report
- 13 15. FG000686-FG000687: Billing Statement for May 2019
- 14 16. FG000688-FG000689: Billing Statement for June 2019
- 15 17. FG000690: Invoice for June 22, 2017
- 16 18. FG000691-FG000692: Invoice for August 14, 2017
- 17 19. FG000693: Customer Consumption Report
- 18 20. FG000694-FG000695: Case details for M. Gonzalez June 13, 2018 call to Ferrellgas
- 19 21. FG000696-FG000697: Detailed case list
- 20 22. FG000698-FG000699: 360 service order history for all deliveries and leak tests
- 21 23. FG000777-FG000791: Transcript of Recorded Statement of Mario Gonzalez taken June 26, 2018
- 22 24. FG000792: Audio Recording of Mario Gonzalez Call
- 23 25. FG000793-FG000818: Delivery tickets to Mario Gonzalez
- 24 26. FG000819-FG000820: Red Tag dated June 18, 2018
- 25 27. FG000821-FG000822: June 19, 2018 Ferrellgas email correspondence concerning incident
- 26 28. FG000823: June 19, 2018 Sniff test signed by Mario Gonzalez, Jennifer Gonzalez and Robert Vicory
- 27 29. FG000824-826: Vicory Certifications Page
- 28 30. FG000827-FG000833: Photos from Gonzalez Residence
31. FG000834: Photo of June 18, 2018
32. FG000835: Invoice for February 2, 2020
33. FG000836: Invoice for June 18, 2018
34. FG000837: Invoice for August 14, 2017
35. FG000838-FG000872: Billing Statements
36. FG000873-FG000881: Order Records
37. FG000882-000888: Notice of Inspection of gas hose
38. FG000889-000891: Notice of Entry Upon Land
39. FG000891-FG000895: Electrical Inspection Protocol
40. FG000896: Vicory Corrective Action Written Warning
41. FG000897: Vicory Corrective Action Final Written Warning
42. FG000989-FG000929: PERC Module 6: Leak Check
43. FG000930-FG000981: PERC Module 2: Vapor Distribution Systems
44. FG000982-FG001033: PERC MODULE 6: Installing Lines
45. FG001034-FG001040: Ferrellgas Training Requirements
46. FG001041-FG001306: Photographs from October 25, 2018
47. FG001307-FG001478: Photographs from May 15, 2020 site inspection and lab exam
48. FG001479-FG001519: Blaze Grills Use & Care Guide
49. FG001520-FG001535: Service Center Update - First Quarter 2018
50. FG001536-FG001537: Flashnote on Documentation
51. FG001538-FG001539: Vicory Certifications Page

52. FG001540-FG001541: STS 1.3 – Safety Communications
53. FG001542-FG001752: Safety Technical Handbook
54. FG001753-FG001755: Regional Safety Manager Job Description
55. FG001756-FG001757: Field Install Specialist Job Description for August 2017
56. FG001758-FG001763: STS 7.31 – System Test Requirements
57. FG001764-FG001768: STS 7.33 – System Leak Checking
58. FG001769-FG001826: Skills Assessment Records
59. FG001827-FG001830: Flashnote on Out of Gas Interruption
60. FG001831-FG001835: Flashnote on Customer Warnings Materials
61. FG001836-FG001837: Flashnote on Incomplete Systems
62. FG001838-FG001842: Flashnote on Placing New Systems into Operation
63. FG001843-FG001875: Excerpts from Safety Technical Handbook
64. FG001876-FG001879: Flashnote Attendance Records for Robert Vicory in 2017
65. FG001880-FG001888: Flashnote Attendance Records for Robert Vicory in 2016
66. FG001889-FG001898: Flashnote Attendance Records for Robert Vicory in 2018
67. FG001899: Flashnote Attendance Records for Robert Vicory in 2014
68. FG001900-FG001902: Flashnote Attendance Records for Robert Vicory in 2015
69. FG001903-FG001904: Email from M. Munger to all Ferrellgas employees regarding Service Center Update – First Quarter 2018
70. FG001905: STS 7.30 Placing Systems in Operation
71. FG001916-FG001921: STS 7.34 Regulator Flow and Lockout
72. FG001922-GH001925: STS 7.44 Incomplete and Disconnected Systems
73. FG001926-FG001931: STS 7.45 Out of Gas System Procedures
74. FG001932: STS 7.46 Service Work Order Entries
75. FG001933-FG002234: LV1CETBPP Training module
76. FG002235-FG002602: LV1CDOCETPPDO Training module
77. FG002603-FG003078: LV3CETPDVDS Training module
78. FG003079-FG003482: LV3CETPPDVS Training module
79. FG003483-FG003484: Manager of Operations Job Description
80. FG003485: Case Detail Report for May 29, 2016 incident
81. GREEN 943-952: Ferrellgas, Inc.'s System Check Form (SCF)
82. GREEN 953-965: Ferrellgas, Inc.'s Appliance Venting and Vent System Inspection policies and procedures
83. GREEN 966-1009: Ferrellgas, Inc.'s Product Installation Review (PIR), outlining inspection policies and procedures at installed gas systems
84. GREEN 1010-1017: Ferrellgas, Inc.'s Unsafe Condition Notice (Red Tag) policies and procedures for customer gas systems
85. GREEN 1018-1018: Ferrellgas, Inc.'s Pilot Lighting Inspection policies and procedures
86. GREEN 1020-1024: Ferrellgas, Inc.'s Order details dated April 26, 2018, May 9, 2018, and June 4, 2018
87. GREEN 1025-1029: Ferrellgas, Inc.'s Customer Call details for call made by defendant, Mario Gonzalez dated June 13, 2018
88. Deposition transcript of Plaintiff, Joshua Green Vol I
89. Deposition transcript of Plaintiff, Joshua Green Vol II
90. Deposition transcript of the 30(b)(6) designee for Ferrellgas, Inc.
91. Deposition transcript of Defendant, Mario S. Gonzalez Vol I
92. Deposition transcript of Defendant, Mario S. Gonzalez Vol II
93. Deposition transcript of Defendant, Carl J. Kleisner Vol I
94. Deposition transcript of Defendant, Carl J. Kleisner Vol II
95. Deposition transcript of Robert Vicory
96. Deposition transcript of Kelly Kite



97. Deposition transcript of Monica Aragon
98. Deposition of Chad Brown
99. Surveillance footage of Subject Explosion
100. October 25, 2018 Inspection of Gonzalez Property
101. May 14, 2020 Inspection of Subject Gas Hose

Dr. Davis is expected to offer the following opinions, as outlined in his report:

1. Inspection of the subject outdoor kitchen revealed a significant leak, e.g., a volumetric flow rate of approximately 44 SCFH (approximately 61 SCFH at 13" w.c.) in the flexible gas line to the Blaze grill. Testing confirmed that this leak was the only viable leak source within the gas system that could have caused this incident. The flexible gas line was also thermally damaged in the vicinity of the gas leak, further confirming a preexisting leak prior to ignition. Testing confirmed that the propane leak from the flexible gas line was the only possible source of propane that could accumulate in the unventilated kitchen island cavity beneath the grill. Additionally, the grill was improperly installed per the manufacturers manual and lacked the required ventilation. The following sections will analyze the cause of the explosion, the inadequate response by Ferrellgas in which it violated its own policies and procedures, and the improper installation of the gas-fired built-in grill and griddle in violation of the manufacturer's installation manual.

2. Inspection of the evidence revealed a significant leak (a volumetric flow rate of approximately 61 SCFH at 13" w.c.) in the flexible gas line to the Blaze grill. Testing confirmed that the propane leak from the flexible gas line was the only viable leak source within the gas system that could have caused propane to accumulate within the unventilated kitchen island cavity beneath the grill and subsequently ignite while cooking on an open flame. The leaking propane could accumulate within the kitchen cavity because the grill and griddle were improperly installed in a manner that violated the manufacturer's installation manual by not providing the proper ventilation to this cavity.

3. Three hypotheses were identified as possible causes of the leak in the flexible gas line and include: (1) an electrical issue, resulting in fault current overheating the

1 flexible gas line and damaging the flexible outer hose seal; (2) rodents penetrating  
2 the flexible outer hose seal; and (3) defective manufacture of the flexible outer hose  
3 seal. Based on Mr. Gonzalez's testimony and the Ferrellgas notes regarding the  
4 reason for the call, there was a condition that resulted in significant heating of the  
5 flexible gas line to the Blaze grill. Not only was there an "overheat" condition, but  
6 when the flexible gas line was disconnected the exiting gas was ignited and resulted  
7 in a flame "shooting out". Both of these conditions are indicators that an electrical  
8 fault condition was present at the grill and that electrical fault current was flowing  
9 through the flexible gas line to ground via the underground service line.

10 4. Testing by Don Gifford also confirmed that fault currents near 20 amps, yet  
11 below the threshold necessary to trip the 20-amp breaker, are high enough to heat  
12 the flexible gas line to above 300 °F. These temperatures are very hot and can also  
13 cause the flexible outer hose seal to degrade and fail, compromising the integrity of  
14 the gas line. Once compromised, propane will leak from such a line, similar to the  
15 incident gas line to the Blaze grill. The extremely hot gas line and the observation of  
16 the flames shooting out when Mr. Gonzalez disconnected the flexible gas line can  
17 only be reconciled by an electrical condition that resulted in fault current going  
18 through the flexible gas line to ground via the service line. This scenario is also  
19 consistent with Mr. Gifford's finding that there was an improper ground for the grill  
20 and outdoor kitchen electrical system.

21 5. The scenarios of: (1) a defectively manufactured flexible gas line and; (2)  
22 damage to the flexible gas line by rodents are not consistent with the overheating of  
23 the flexible gas line connection nor with ignition of the exiting gas when the gas line  
24 was disconnected. In addition, given a complete system check was performed for  
25 Mr. Gonzalez's system a year prior to the incident, which included a leak check and  
26 that Mr. Gonzalez has used this system without incident approximately 50-100 times,  
27 the defective manufacture of the flexible outer hose seal is highly unlikely. While  
28 rodents were present in the kitchen cavity at the time of the inspections, such a cause

for the damage cannot explain the observations in the days leading to the accident. In addition, there was no observed evidence to support that rodents had chewed, gnawed or damaged the gas line in any way. Hence both the defective manufacture of the flexible gas line outer seal and damage to the seal due to rodents can be ruled out. The only theory that reconciles the evidence is an electrical condition was present days before the incident, which ultimately overheated and degraded the seal of the flexible gas line.

6. Ferrellgas violated its own policies and procedures in the response to the call from the Gonzalez residence. Mr. Vicory found a serious issue with the system, and since he was not an electrician and did not have experience with electrical issues, he recommended that Mr. Gonzalez hire an electrician to inspect the issue. Mr. Vicory responded to a questionable or unsafe condition in an area outside his area of expertise. Per Ferrellgas's procedures, Mr. Vicory should have red tagged and disabled the system or red tagged and disabled the appliance. Mr. Vicory contacted Mr. Kite for advice on the situation, Mr. Kite advised him of two similar incidents where he red tagged the system until it was fixed.

7. Ferrellgas's disabling of appliances requires actions beyond simply turning the valve to the "off" position and red tagging. Had Ferrellgas disabled the appliance per their own policies and procedures, one or more of the following actions would have been performed: (1) Removing the handle of the manual shutoff valve; (2) Disconnecting and capping or plugging the gas line; and (3) Disconnecting the electrical supply to the appliance or equipment. Similarly the system could have been disabled via: (1) Removing a valve handle, such as the service valve handle (2) Removing a regulator; (3) Using a clamshell, lock, wire, cable tie, plastic or lead seal, or similar device to prevent a valve from being operated without physically removing the securing device; and/or (4) Disconnecting and plugging or capping a line, such as a pigtail or hogtail. Mr. Vicory and Ferrellgas failed to red tag and disable the system or red tag and disable the appliance and removed it from available use. The system

1 was required to be disabled which would have prevented the grill from being used.  
 2 Were the system properly disabled per Ferrellgas's procedures then this incident  
 3 would have been avoided.

4 8. Mr. Vicory testified that he sprayed down the lines with a leak detector,  
 5 smelled the lines, and observed no leaks. He failed to follow Ferrellgas's own policies  
 6 and procedures for leak testing and documentation of the leak test. Mr. Vicory failed  
 7 to follow any of Ferrellgas's six methods to conduct a leak check, which would have  
 8 included a pressure decay test. A pressure decay test does not rely on human factors  
 9 such as sense of smell, visual checks to identify a leak, or where the leak detection  
 10 solution is applied. Mr. Gonzalez testified that the soap and water was placed only  
 11 on the tee, which, if true, would not detect a leak in the flexible gas line. In addition,  
 12 Mr. Vicory did not document any leak testing that was performed which violates  
 13 Ferrellgas's procedures. This conflicting testimony, along with the lack of  
 14 documentation and improper procedures, brings question to whether a leak was  
 15 already present during the initial inspection by Ferrellgas.

16 9. Whether a leak was present or not at the time of the initial inspection by  
 17 Ferrellgas, there was a leak observed in the flexible gas line to the grill found during  
 18 post-incident testing. Mr. Vicory either failed to find a dangerous situation of a gas  
 19 leak by using an unapproved leak test or failed to red tag and disable the system for  
 20 a dangerous situation of electrical current flowing through the gas hose. After the  
 21 incident, current and former Ferrellgas employees, Mr. Vicory, Mr. Kite, and Mr.  
 22 Barrett all stated that the system should have been red tagged.

23 10. Mr. Gonzalez testified that sometime in July of 2017 he modified the original  
 24 installation and installed outdoor cooking equipment after purchasing new  
 25 equipment in June of 2017. According to his testimony he replaced the appliances  
 26 and hired a handyman to do some masonry work to fit the new appliances. Listing  
 27 images from 2015 (Figure 4.1), show appliances in different locations and different  
 28 countertop and stone exterior.

11. As clearly indicated in Blaze's installation manual, vent panels were required for their gas-fired built-in outdoor cooking equipment. In their manual, Blaze provided many warnings about proper ventilation, explanations on why proper ventilation is important, and even provided multiple examples of vent panel locations. Ventilation in outdoor kitchens is important to reduce the likelihood of flammable gas buildup in the island cavity. Without ventilation, a leak can freely buildup inside the enclosure. Upon finding a competent ignition source, a flame can propagate through accumulated flammable gasses. The incident island cavity had no place to vent the combustion products except for out the access doors.

12. Mr. Gonzalez did not follow the manufacturer's instructions of adding proper ventilation to the enclosure. In addition, the installation was not performed or inspected by a qualified professional installer or service technician. If the installation had been inspected by a qualified professional, the enclosure would not have passed the inspection until the required vent panels were installed. In addition, Ferrellgas failed to notice that the kitchen cavity had no openings for ventilation when taking over the account in their initial inspection, and when they were called to the Gonzalez residence to inspect the outdoor kitchen, which included inspecting the gas piping in the "unventilated" kitchen cavity.

13. As discussed above, post-incident inspections revealed a leak in the flexible gas line supplying propane to the grill. A CFD analysis was performed to evaluate the consequences of this leak in the outdoor kitchen island. More specifically, CFD was performed to determine if the leak could have created a flammable cloud of sufficient size inside the island cavity with and without the required vents installed.

14. The CFD analysis was performed in FLACS, a tool developed by Gexcon in the 1980's to simulate gas dispersion and vapor cloud explosions. FLACS can simulate gas and aerosol releases, dispersion of vapors, ventilation in structures, and the effects of ambient conditions such as wind. In FLACS, the compressible Reynolds-Averaged Navier-Stokes (RANS) equations are solved on a 3D Cartesian grid using a

1 finite volume method and the k- $\epsilon$  turbulence model. Incorporated in the model are  
2 the conservation equations for mass, impulse, enthalpy, turbulence and species,  
3 with closure provided by the ideal gas law. The FLACS non-premixed combustion  
4 model uses the Eddy Dissipation Concept<sup>56</sup> to describe the overall rate of reactivity  
5 of turbulent non-premixed reacting flows.

6 15. FLACS has been extensively validated against numerous gas dispersion, vapor  
7 cloud explosion, and jet fire experiments, including large-scale realistic release  
8 scenarios and full-scale experiments. Recent validation studies, including blind  
9 validation studies (i.e., simulations were performed prior to, or without knowledge  
10 of the experimental results), have demonstrated the ability of FLACS to accurately  
11 predict gas dispersion and explosion scenarios. Because it has been extensively  
12 validated, FLACS is typically required when performing fire and explosion  
13 consequence studies for complicated oil and gas offshore platforms.

14 16. A geometry model was created of the outdoor kitchen island (Figure 4.2). A 61  
15 CFH release of LP gas from the leaking hose was modeled. Figure 4.3 shows how the  
16 flammable cloud spreads in the incident outdoor kitchen cavity construction with  
17 very little to no ventilation. The CFD simulations show that the leak found after the  
18 incident was of sufficient magnitude to not only create a flammable gas cloud in the  
19 outdoor grill island, but also reach the grill burners. Per the Blaze installation manual,  
20 passive vents were added to the outdoor kitchen cavity model (Figure 4.4) and the  
21 effect of ventilation on the flammable gas cloud buildup was evaluated. Simulations  
22 show that by adding only 4 vents (1 low and 1 high on each side) to the sides of the  
23 outdoor grill island, the flammable layer would be less than 4 inches (see Figure 4.5)  
24 and would remain remote from any ignition sources. These simulations assume no  
25 external wind and conservatively underpredict the actual ventilation on the day of  
26 the incident, which would further dilute the propane in the cavity and reduce size of  
27 the flammable gas cloud shown in Figure 4.5.

28 17. A propane leak and subsequent explosion occurred at the residence of Mr.

Mario Gonzalez on June 18, 2018 in Las Vegas, Nevada. The incident involved an outdoor kitchen equipped with built-in propane-fired appliances.

18. An explosion occurred when Mr. Joshua Green opened the lid of a built-in grill. The explosion engulfed Mr. Green, shook the Gonzalez residence and was loud enough to alert the neighbors that an incident had occurred. Mr. Gonzalez had stepped away and Mr. Joshua Green took over cooking duties per Mr. Gonzalez's request.

19. Post-incident inspection of the subject kitchen island revealed a significant leak, e.g., a volumetric flow rate of approximately 44 SCFH (corrected to 61 SCFH at 13" w.c. propane) in the flexible gas line to the Blaze grill. Testing confirmed that this leak was the only viable leak source within the gas system that could have caused this incident.

20. The grill and griddle in the outdoor kitchen cavity were installed improperly and in a manner that violated the manufacturer's installation manual by not providing the required openings and adequate ventilation to this cavity to prevent propane accumulation in the cavity in the event of a leak.

- a. The outdoor kitchen did not include any ventilation openings as stated in several places throughout the manual, including several pages that are dedicated to explicitly warning of the hazards of inadequate ventilation.
- b. The manual specifically states, "Failure to adequately vent your outdoor kitchen cavity could result in an explosion or fire."
- c. The manual specifically states, "Ensure there is adequate ventilation for both the appliance, grill cart and/or island cavity. This is required not only for proper combustion, but also to prevent gas build up."

21. Propane vapors accumulated within the unventilated outdoor kitchen cavity beneath the grill and griddle, which subsequently ignited while cooking on an open



1 flame.

2 22. Testing and modeling confirmed that the propane leak from the flexible gas  
3 line was the only viable leak source within the gas system that could have caused  
4 propane to accumulate within the unventilated outdoor kitchen cavity beneath the  
5 grill and griddle, and subsequently ignite while cooking on an open flame.

6 23. An electrical fault condition was present at the grill and fault current was  
7 flowing through the flexible gas line to ground via the underground service line. This  
8 electrical condition was present at least five days before the incident, which  
9 ultimately overheated and degraded the seal of the flexible gas line causing it to leak.

10 a. Both the extremely hot and “overheat” condition of the flexible gas  
11 line, and the fact when the flexible gas line was disconnected the  
12 exiting gas was ignited and resulted in a flame “shooting out”, are  
13 indicators that a fault condition was present at the grill and the  
14 fault current was flowing through the flexible line

15 b. Testing showed that fault currents near 20 amps, yet below the  
16 threshold necessary to trip the 20- amp breaker, are high enough  
17 to heat the flexible gas line to above 300 °F and degrade the line.

18 c. Inspections revealed that the outdoor kitchen was not properly  
19 grounded.

20 d. Defective manufacture of the flexible line outer seal is not  
21 consistent with the facts of this case and can be ruled out as a  
22 possible cause.

23 e. Damage due to rodents is not consistent with the facts of this case  
24 and no evidence was found to indicate that rodents had chewed,  
25 gnawed or otherwise affected the integrity of the gas line and can  
26 be ruled out as a possible cause.

27 24. On June 13, 2018, five days prior to the incident, Mr. Gonzalez called  
28 Ferrellgas’s emergency phone number regarding a dangerous condition with the



flexible gas line to the built-in grill

- a. When Mr. Gonzalez opened the stainless steel access door below the Blaze Grill he felt a shock from the door.
- b. Mr. Gonzalez noted the flexible gas line to the grill was very hot even though the gas valve that serviced the built-in appliances (grill and griddle) was turned off.
- c. Mr. Gonzalez stated that he released the quick-connect connections on the gas line and a small flame shot out of it.

25. On June 14, 2018, four days prior to the incident, a Ferrellgas's service technician, Robert Vicory responded to the Gonzalez residence. On June 15, 2018, three days prior to the incident, Mr. Vicory came back out to check the system for a second time and he informed Mr. Gonzalez his grill was safe to use.

26. Ferrellgas violated its own policies procedures in the response to the Gonzalez residence.

- a. Ferrellgas failed to document the inspections.
- b. Ferrellgas failed to perform a leak check per their own policies and procedures. Using soap solution and sense of smell is not in accordance with Ferrellgas policies and procedures.

27. Mr. Vicory and Ferrellgas recognized an unsafe and hazardous condition at Mr. Gonzalez's residence.

- a. The service call indicated a hot gas line connection and flames shooting out when the gas line was disconnected.
- b. Mr. Vicory conferred with his general manager at Ferrellgas, Kelly Kite and they determined that the issue was electrical. When Mr. Kite had experienced similar issues previously he red tagged those systems because he was not an electrician.
- c. Mr. Vicory recommended further corrective action by an electrician.

28. Mr. Vicory and Ferrellgas violated their own policies and procedures, and failed to red tag and disable the system, or red tag and disable the appliance and remove it from available use. Instead Mr. Vicory allowed an unreasonably dangerous condition to continue to exist and only recommended that the owner find an electrician.

a. Ferrellgas failed to red tag a questionable or unsafe condition despite unsafe and hazardous condition being present in the gas system.

b. Ferrellgas did not:

i. remove the handle of the manual shutoff valve

ii. disconnect and cap or plug the gas line

iii. disconnect the electrical energy to the appliance or equipment.

29. On June 15, 2018, Mr. Vicory and Ferrellgas went back out to check the system for a second time. Despite not verifying the condition of the system was repaired, Ferrellgas service technician informed Mr. Gonzalez his grill was safe to use. Again, Mr. Vicory and Ferrellgas failed to red tag the system, leaving an unsafe and unreasonably dangerous condition to continue to exist.

30. Had Ferrellgas followed their own procedures and red tagged the unsafe and hazardous condition in either of their inspections of the gas system, this incident would have been avoided.

a. Multiple employees of Ferrellgas, including the technician who allowed the unsafe and unreasonably hazardous condition to continue to exist, testified that the system should have been red tagged and taken out of service.

31. In July of 2017, after recently switching to Ferrellgas as a propane supplier, Mr. Gonzalez renovated his outdoor kitchen which included replacing gas-fired appliances and masonry work. Mr. Gonzalez's installation was not performed or

1 inspected by a qualified professional installer or service technician.

2 32. In violation of the manufacturer's installation manual, Mr. Gonzalez's created  
3 an unreasonably dangerous condition by improperly installing the Blaze grill and  
4 griddle in the outdoor kitchen, whereby he did not provide the required openings  
5 and proper ventilation to the kitchen cavity to prevent propane accumulation in the  
6 cavity in the event of a leak. In fact, the kitchen cavity had no openings for  
7 ventilations.

8 33. Modeling demonstrated that had the outdoor kitchen island included  
9 adequate ventilation per the Blaze manual, propane vapor would have escaped  
10 through the vents and would not have accumulated to significant quantities in the  
11 cavity nor reached the burners and ignited. In fact, had ventilation been provided per  
12 the Blaze manual, the gas would have remained within inches of the ground and very  
13 remote from grill burners.

14 34. Ferrellgas failed to notice that the kitchen cavity had no openings for  
15 ventilation during their initial inspection when they took over the account and when  
16 they were called to the Gonzalez residence to inspect the issue with the outdoor  
17 kitchen.

18 35. Had Mr. Gonzalez properly installed ventilation in the outdoor kitchen cavity,  
19 this incident would have been avoided.

20 Dr. Davis' testimony will be consistent with GREEN 1272-1317 and the documents  
21 provided in Dropbox as Exhibits 5 and 6.

22  
23 2. Don L. Gifford  
24 GIFFORD CONSULTING GROUP, LLC  
4405 East Post Road, Suite A  
Las Vegas, Nevada 89120

25 Don L. Gifford is a licensed contractor, electrical contractor, and construction  
26 expert. Mr. Gifford is expected to offer testimony relevant to his area of expertise,  
27 including in construction, contracting, and design, general engineering, and forensics  
28 in analysis of fires, explosions, fire causation and fire propagation. Mr. Gifford will

also rebut any opinions offered by Defendant's expert witness, if any.

Mr. Gifford authored a report, attached hereto as Exhibit 7. The exhibits to be used as a summary of support for Mr. Gifford's opinions are all deposition testimony in this case, all written discovery responses in this case, all exhibits produced in this case, all expert reports, and the exhibits listed in his report.

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14. FG000685: Bulk History Report
15. FG000686-FG000687: Billing Statement for May 2019
16. FG000688-FG000689: Billing Statement for June 2019
17. FG000690: Invoice for June 22, 2017
18. FG000691-FG000692: Invoice for August 14, 2017
19. FG000693: Customer Consumption Report
20. FG000694-FG000695: Case details for M. Gonzalez June 13, 2018 call to Ferrellgas
21. FG000696-FG000697: Detailed case list
22. FG000698-FG000699: 360 service order history for all deliveries and leak tests
23. FG000777-FG000791: Transcript of Recorded Statement of Mario Gonzalez taken June 26, 2018
24. FG000792: Audio Recording of Mario Gonzalez Call
25. FG000793-FG000818: Delivery tickets to Mario Gonzalez
26. FG000819-FG000820: Red Tag dated June 18, 2018
27. FG000821-FG000822: June 19, 2018 Ferrellgas email correspondence concerning incident
28. FG000823: June 19, 2018 Sniff test signed by Mario Gonzalez, Jennifer Gonzalez and Robert Vicory
29. FG000824-826: Vicory Certifications Page
30. FG000827-FG000833: Photos from Gonzalez Residence
31. FG000834: Photo of June 18, 2018
32. FG000835: Invoice for February 2, 2020
33. FG000836: Invoice for June 18, 2018
34. FG000837: Invoice for August 14, 2017
35. FG000838-FG000872: Billing Statements
36. FG000873-FG000881: Order Records

37. FG000882-000888: Notice of Inspection of gas hose
38. FG000889-000891: Notice of Entry Upon Land
39. FG000891-FG000895: Electrical Inspection Protocol
40. FG000896: Vicory Corrective Action Written Warning
41. FG000897: Vicory Corrective Action Final Written Warning
42. FG000989-FG000929: PERC Module 6: Leak Check
43. FG000930-FG000981: PERC Module 2: Vapor Distribution Systems
44. FG000982-FG001033: PERC MODULE 6: Installing Lines
45. FG001034-FG001040: Ferrellgas Training Requirements
46. FG001041-FG001306: Photographs from October 25, 2018
47. FG001307-FG001478: Photographs from May 15, 2020 site inspection and lab exam
48. FG001479-FG001519: Blaze Grills Use & Care Guide
49. FG001520-FG001535: Service Center Update – First Quarter 2018
50. FG001536-FG001537: Flashnote on Documentation
51. FG001538-FG001539: Vicory Certifications Page
52. FG001540-FG001541: STS 1.3 – Safety Communications
53. FG001542-FG001752: Safety Technical Handbook
54. FG001753-FG001755: Regional Safety Manager Job Description
55. FG001756-FG001757: Field Install Specialist Job Description for August 2017
56. FG001758-FG001763: STS 7.31 – System Test Requirements
57. FG001764-FG001768: STS 7.33 – System Leak Checking
58. FG001769-FG001826: Skills Assessment Records
59. FG001827-FG001830: Flashnote on Out of Gas Interruption
60. FG001831-FG001835: Flashnote on Customer Warnings Materials
61. FG001836-FG001837: Flashnote on Incomplete Systems
62. FG001838-FG001842: Flashnote on Placing New Systems into Operation
63. FG001843-FG001875: Excerpts from Safety Technical Handbook
64. FG001876-FG001879: Flashnote Attendance Records for Robert Vicory in 2017
65. FG001880-FG001888: Flashnote Attendance Records for Robert Vicory in 2016
66. FG001889-FG001898: Flashnote Attendance Records for Robert Vicory in 2018
67. FG001899: Flashnote Attendance Records for Robert Vicory in 2014
68. FG001900-FG001902: Flashnote Attendance Records for Robert Vicory in 2015
69. FG001903-FG001904: Email from M. Munger to all Ferrellgas employees regarding Service Center Update – First Quarter 2018
70. FG001905: STS 7.30 Placing Systems in Operation
71. FG001916-FG001921: STS 7.34 Regulator Flow and Lockout
72. FG001922-GH001925: STS 7.44 Incomplete and Disconnected Systems
73. FG001926-FG001931: STS 7.45 Out of Gas System Procedures
74. FG001932: STS 7.46 Service Work Order Entries
75. FG001933-FG002234: LV1CETBPP Training module
76. FG002235-FG002602: LV1CDOCETPPDO Training module
77. FG002603-FG003078: LV3CETPDVDS Training module
78. FG003079-FG003482: LV3CETPPDVS Training module
79. FG003483-FG003484: Manager of Operations Job Description
80. FG003485: Case Detail Report for May 29, 2016 incident
81. GREEN 943-952: Ferrellgas, Inc.'s System Check Form (SCF)
82. GREEN 953-965: Ferrellgas, Inc.'s Appliance Venting and Vent System Inspection policies and procedures
83. GREEN 966-1009: Ferrellgas, Inc.'s Product Installation Review (PIR), outlining inspection policies and procedures at installed gas systems
84. GREEN 1010-1017: Ferrellgas, Inc.'s Unsafe Condition Notice (Red Tag)

- 1 policies and procedures for customer gas systems
- 2 85. GREEN 1018–1018: Ferrellgas, Inc.’s Pilot Lighting Inspection policies and
- 3 procedures
- 4 86. GREEN 1020–1024: Ferrellgas, Inc.’s Order details dated April 26, 2018, May
- 5 9, 2018, and June 4, 2018
- 6 87. GREEN 1025–1029: Ferrellgas, Inc.’s Customer Call details for call made by
- 7 defendant, Mario Gonzalez dated June 13, 2018
- 8 88. Deposition transcript of Plaintiff, Joshua Green Vol I
- 9 89. Deposition transcript of Plaintiff, Joshua Green Vol II
- 10 90. Deposition transcript of the 30(b)(6) designee for Ferrellgas, Inc.
- 11 91. Deposition transcript of Defendant, Mario S. Gonzalez Vol I
- 12 92. Deposition transcript of Defendant, Mario S. Gonzalez Vol II
- 13 93. Deposition transcript of Defendant, Carl J. Kleisner Vol I
- 14 94. Deposition transcript of Defendant, Carl J. Kleisner Vol II
- 15 95. Deposition transcript of Robert Vicory
- 16 96. Deposition transcript of Kelly Kite
- 17 97. Deposition transcript of Monica Aragon
- 18 98. Deposition of Chad Brown
- 19 99. Surveillance footage of Subject Explosion
- 20 100. October 25, 2018 Inspection of Gonzalez Property
- 21 101. May 14, 2020 Inspection of Subject Gas Hose

Mr. Gifford is expected to offer the following opinions, as outlined in his report:

1. GCG will show, substantively, that the circumstances and conditions which created and/or led to the Subject Incident were a consequence of the decisions and actions of the Defendants referenced within this report.

2. We have seen no evidence to support any theory purporting Mr. Green’s prior knowledge of dangerous or non-code compliant conditions, either related to the electrical system or gas supply system pertaining to the barbeque island and its appurtenances, or that he had any control over the events that resulted in the Subject Incident and resulting injury.

3. We will provide substance in support of our determination that Ferrellgas and Mr. Gonzales each bore principal duties respective to their various roles with regard to the events and conditions which allowed for the Subject Incident, and that each of them failed to execute those duties so as to provide for the safety, well-being, and welfare of Mr. Green and others, as mandated by the Clark County Building and Administrative Codes, the County adopted technical codes, and the standard of care.

4. It is our opinion that the Subject Incident was the consequence of overheating, melting, and failure of a Ksun flexible gas hose (“Subject Hose”) feeding the island



barbeque appliance, in that the hose was subjected to current flow due to an electrical fault at the barbeque island.

5. The Subject Incident, in all probability, was preventable but for the actions/inactions on the part of Defendants Ferrellgas and Mr. Gonzales, in that (a) Ferrellgas failed to Red Tag the primary gas delivery valve to the home or, at least, the gas supply line to the barbeque and (b) the failure on the part of Mr. Gonzales to (i) comply with the barbeque appliance manufacturer's (Blaze) instructions for installation and use, (ii) adhere to the terms of his agreement with Ferrellgas, (iii) obtain the services of a properly qualified service company and/or licensed electrical contractor to troubleshoot and correct electrical anomalies manifest at the barbeque area.

6. Mr. Kleisner, an electrician who provided unlicensed services and recommended the implementation of non-code complaint electrical scopes, was also contributory to the Incident.

7. The gas appliance which is a seminal point of discussion in this report is a stainless steel barbeque unit marketed by Blaze, who provides, by virtue of their distribution of the manufacturer's installation, use, and maintenance instructions. The unit is 40" wide, designed for an application, such as that utilized by Mr. Gonzales' barbeque island, and appears to be (or similar to) a Summerset Sizzler Pro, 40", 5 burner unit.

8. The deposition of Mr. Gonzales provides insights with regard to his (a) purchasing and installing the grill, (b) connecting the unit to the gas tee/valve assembly by Ksun flex hoses which he also purchased, (c) maintaining and using the appliance, e.g., his habit of turning the gas off at the valve below the barbeque appliance during the majority of those times when he was done using it – and turning it back on at the valve at each time of use.

9. Hence, based on evidence and testimony, Mr. Gonzales turned on the gas valve, lit the barbeque grill, placed the steaks on the grill, after which time Mr. Green

showed up.

10. The photo insertions below show the disposition of the Blaze grill in relation to the barbeque island as well as the location of the riser and tee/valve assembly below the grill.

11. The under-counter space of the barbeque island was observed to have been without proper venting, and thus, is not in compliance with Blaze's instructions. The interior space beneath the grill is continuously open from east to west and from north to south, thus allowing for the accumulation of leaking gas not only under the barbeque grill, but under the griddle and other areas as well. Thus, when Mr. Green opened the barbeque lid, he was unwittingly subjected to a gas explosion as the result of a good volume of propane gas that appears to have suddenly ignited once the grill cover was lifted, providing ventilation.

12. Based on my examination of the property and artifacts, the explosion showed fire scorch on the Subject Hose and, of course, to the clothing of Mr. Green. The explosion also moved the griddle directly out from its snug resting position, resulting in a significant gap (askew) between the back of the griddle and the counter backsplash area.

13. The Subject Incident was, in my opinion, dependent upon and the result of various critical factors, including, without limitation: (1) the pressurized gas supply line which runs underground from the 2nd stage at the south side of the house to the gas tee under the barbeque appliance; (2) the damaged and leaking coiled Ksun gas hose extending to the barbeque appliance from the tee; (3) a known electrical issue of unknown character prior to the Incident; (4) failure on the part of Ferrellgas, at some point prior to the Subject Incident, to (a) Red Tag the system or the barbeque gas valve and (b) perform the additional steps as prescribed by Ferrellgas, such as removing the handle from the gas valve and/or disconnecting the electrical power source; (5) failure of Mr. Gonzales to hire the services of an electrical contractor to troubleshoot and resolve the electrical issue, including the deteriorated and unsafe



1 electrical conditions at the barbeque; (6) failure on the part of Mr. Kleisner, who  
2 prescribed non-code complaint and unsafe electrical procedures.

3 14.As noted in the inspection notes further above, the electrical fault may have  
4 been intermittent at times both prior to and after the Subject Incident. This is a  
5 plausible explanation with regard to inability of the experts to re-establish the pre-  
6 existing continuity between the electrical grounding conductor of the barbeque  
7 island branch circuit and the gas riser/tee assembly. This would also explain the lack  
8 of measurable fault current (and implicitly the pathway for the same) to the gas  
9 riser/tee assembly.

10 15.I have seen no statement or testimony by anyone, wherein it was reported or  
11 where there was evidence showing that the overheated gas riser and gas hose under  
12 the barbeque appliance (a principal point of discussion with regard to this matter)  
13 was a function of some other heat generating mechanism prior to or at the time of  
14 the Subject Incident. By way of illustration and not of limitation, Mr. Gonzales  
15 testified with regard to the overheated gas line: "Q...'[t]hat was even though it was  
16 turned off.' A. Yes, which was really freaking me out...so it didn't have huge a gas leak  
17 as far as you could tell? A. No. Q. But you had a very hot line?...A. Yes" (Gonzales, p.  
18 129).

19 16.Inasmuch as the barbeque appliance is electrically powered, the housing of  
20 the appliance was, and is, per the NEC, required to be grounded. Moreover, the  
21 manufacturer's instruction also calls for grounding of the appliance.  
22 Notwithstanding that grounding of an appliance is often achieved by means of a  
23 pigtail 120-volt power cord connection: (a) Blaze's instructions point to a more robust  
24 electrical bond and (b) the NEC, by virtue of Article 110.3, inherently requires  
25 conformity with the manufacturer's instructions.

26 17.In the event the barbeque had been properly grounded, it is possible that the  
27 flexible gas hoses, notwithstanding their introduction of a certain level of electrical  
28 resistance to electrical current, would have allowed for sufficient current to flow back

to the grounded neutral source at the panel, thus tripping the overcurrent device (20-amp circuit breaker) and defeating the catalyst to the overheated flex line and rise/tee assembly. Conversely, the lack of proper grounding of the appliance, in conjunction with the electrical issues noted at the barbeque island, allowed for the very conditions that resulted in the Subject Incident.

18. I see no evidence that the electrical wiring and any electronic controls within the barbeque appliance itself were capable of sustaining the level of fault current so as to allow the overheating of the riser/tee assembly and melting of the gas hose (as a function of time) feeding the appliance.

19. Our testing of the exemplar Ksun gas hoses (results are provided in Table 1 and narrative following Table 1) provide evidence or show, as follows:

- 1) The PVC covering of the Ksun gas hose distorts, melts, and opens at temperatures that are not greater than 300°F, allowing for the emission of gaseous vapor from a pressurized gas line into the surrounding atmosphere.
- 2) In the absence of other identifiable potential contributors to the Subject Incident, based provisions expressed within NFPA 921, Section 18, (a) the electrical phenomena reported by Mr. Brown and Mr. Gonzales (acknowledged by both Ferrellgas and Mr. Kleisner) and (b) the conditions found during site investigations, testing, and examination of evidence, combined to provide for the accumulation of gasses at the undercabinet area of the barbeque island.
- 3) The failure temperature of the Ksun hose is easily achieved within relatively brief periods of time when the hose is subjected to fault-currents easily derived from household 20-amp branch circuitry.

20. Mr. Gonzales testified that he observed a flame appear and extinguish as he removed the quick connect coupling between the riser tee and the appliance gas hose. As I discussed in Note (d) of Table 1, this ignition would have been, in all

1 probability, attributable to an electrical arc, resulting from the electrical anomaly  
2 described by the deponents.

3 21. Based on evidence and belief, the Subject Hose, to a reasonable degree of  
4 probability, was damaged by virtue of electrical current flow (over time) passing  
5 through its metallic jacketing, which occurred prior to the brief timeframe during  
6 which the appliance was put into use on the evening of the Incident. It is implausible  
7 that the Subject Hose jacketing melted and emitted gaseous vapor all within the brief  
8 segment of time beginning at the point in time where Mr. Gonzales lit the barbeque  
9 grill, and ending with the point in time at which the explosion and resulting injury of  
10 Mr. Green occurred.

11 22. Our testing confirms the propensity of a 3/8" Ksun gas hose to heat up due to  
12 the flow of electrical current through the length of the hose, and that the resistance  
13 is sufficient (as a function of current and time) to bring the flex hose to failure, thus  
14 releasing nominally pressurized gas into the surrounding atmosphere. Moreover,  
15 our testing shows that electrical fault currents from 20-amp household circuitry are  
16 capable, when passing through the length of hose, of compromising the integrity of  
17 a 3/8" Ksun flexible gas hose.

18 23. Ferrellgas was in violation of company policy and County codes, principally as  
19 the result of the actions and non-actions taken by Mr. Vicory prior to the Incident.  
20 Most notably, based on several substantive evidences, Mr. Vicory did not carry out  
21 the company required red tag procedure. Among other things, Ferrellgas failed to  
22 ascertain the credentials of Mr. Kleisner and/or Mr. Gonzales with regard to the  
23 electrical steps that were taken in efforts to resolve the catalyst to acknowledged  
24 overheating and shocking events. Rather, he simply relied on notice from Mr.  
25 Kleisner or Mr. Gonzales or both that the electrical anomaly had been resolved.

26 24. Ferrellgas failed to take seriously two known electrical phenomena, whether  
27 understood by Ferrellgas or not, e.g., overheating of the flexible gas hose,  
28 overheating of the gas supply tee assembly, electrical shocks experienced and

expressed by more than one person, and an open flame generated by the incidence of an electrical arc, which, under the circumstances, based on the laws of physics, was an expected phenomenon.

25. Based on testimony, Mr. Gonzales relied on the work of an unlicensed and (by Mr. Kleisner's admission) unqualified individual to perform the work which he, Mr. Gonzales, had expressed as a life-safety concern. Mr. Kleisner made it clear, several times, that Mr. Gonzales should contact a qualified electrician/company to investigate and resolve the electrical phenomena manifest prior to the Incident. Based on evidence and belief, this was never done.

26. Mr. Gonzales failed to comply with each of the following obligations which rested with him as both the owner of the property and the installer/user of the subject barbeque appliance: (i) he failed to comply with the County Building Code and applicable County technical codes, which could have been achieved by obtaining the services of a licensed contractor or service company (whom, by virtue of their licensing, would have been duty bound to understand and comply with applicable electrical codes); (ii) he failed to adhere to NRS requirements with regard to the use of unlicensed persons; (iii) he was wisely advised by others to obtain the services of such an authorized contractor in the interest of resolving unknown electrical anomalies (discussed at length within this report), and failed to do so; (iv) he failed to conform to the agreement he made with Ferrellgas with regard to the safe use of his gas appliance; (v) he failed to comply with the instructions and/or provisions set forth by Blaze.

27. It is my opinion that the actions of both Ferrellgas and Mr. Gonzales, and to a lesser degree the actions of Mr. Kleisner, are directly contributory to, and a proximate cause of, the Subject Incident. Accordingly, but for the actions and inactions of the Defendants, the Subject Incident would have been prevented.

Mr. Gifford's testimony will be consistent with GREEN 1318-1396.

3. Ruth Brubaker Rimmer, Ph.D, CLCP  
CARE PLANS FOR LIFE  
2145 East Glencove Street  
Mesa, Arizona 85213

Ruth Brubaker Rimmer, Ph.D, CLP is a psychologist and certified life care planner. Dr. Rimmer will provide testimony regarding the past medical treatment provided for Joshua Green, the future medical treatment needed, the amount, necessity, and reasonableness of the charges for past and future treatment, and that the charges for the past and future medical treatment are within the usual and customary charges in the community. Dr. Rimmer will also rebut any opinions offered by Defendant's expert witness, if any.

Dr. Rimmer authored a report, attached hereto as Exhibit 11. The exhibits to be used as a summary of support for Dr. Rimmer's opinions are Joshua Green's medical records, billing, radiographic studies, films, and reports, deposition testimony, her individual interview with Joshua Green, and the exhibits listed in her report.

In preparation of her report, Dr. Rimmer reviewed the following records:

1. GREEN 01-85: Medical and billing records from Spring Valley Hospital
2. GREEN 86-97: Medical and billing records from UNLV Medicine
3. GREEN 98-186: Medical and billing records from Enrico Fazzini, Ph.D
4. GREEN 187: Billing records from Shadow Emergency Physicians
5. GREEN 251-273: Medical and billing records from Interventional Pain & Spine Institute
6. GREEN 188: Medical and billing records from American Medical Response
7. GREEN 370-73: Co-Pay Receipts to University Medical Center
8. GREEN 345-346: Medical records from Las Vegas Neurosurgical Institute
9. GREEN 374-845: 9. Medical and billing records from University Medical Center
10. GREEN 846: Photograph of Josh Green's palms from burns
11. GREEN 847-48: Medical and billing records from Henderson Dermatology
12. GREEN 849-888: Color photographs of Josh Green's burns taken at University Medical Center
13. GREEN 1075-1094: Medical and billing records from Michael Elliott and Associates
14. GREEN 1239-1248: Supplemental medical and billing records from Michael Elliott and Associates
15. GREEN 1249-1271: Photos that depict scars on Josh's arms, abdomen, and hands
16. Deposition transcript of Plaintiff, Joshua Green
17. Individualized interview with Joshua Green

1 Dr. Rimmer is expected to offer the following opinions, as outlined in her report:

2 1. The physical complications of burn injuries are significant. Serious burn

3 injuries are complex and place a major stress on all the body's major organs in the

4 acute care phase. The skin is the largest organ of the body, and when it has been

5 damaged by deep 2nd degree burn injuries like Joshua's, it can cause serious

6 physiologic and metabolic disruption to the entire system. Burn injuries have been

7 noted to be the most injurious insult the human body can sustain. Burns are always

8 unexpected, and therefore when they occur, a crisis is created. This unanticipated

9 crisis causes the burn victim and their family to experience significant physical,

10 emotional and psychological distress.

11 2. The skin is the largest organ of the body and provides several critical functions:

12 protection, sensation, thermoregulation, excretion, absorption, metabolism, and

13 non-verbal communication. Any compromise of the skin integrity can lead to the

14 interruption of these vital functions and results in pain, discomfort, and possible

15 infection.

16 3. Allostasis is the term used to define the adaptation that the body makes in

17 response to stressful events. "The process involves activation of several physiologic

18 systems, including the immune system, and is essentially the body's ability to

19 maintain "stability through change." The body is able to cope effectively with these

20 stressors when adaptations are activated infrequently; however, there is the

21 potential for the system to become overloaded." (Askay & Patterson, 2008).

22 4. Joshua suffered severe pain from his burn injuries. With second degree burns,

23 there is damage to the dermis, but the nerve endings are still intact. This makes them

24 very painful. There appears to be a relationship between poor acute pain

25 management such as Joshua's and later distress that might be manifested by issues

26 such as depression and/or PTSD (post-traumatic stress system). He has worked as a

27 chef for many years and shared that the burns to his hands has made his job quite

28 difficult. He can no longer tolerate the long hours he put in pre-injury and finds that

the pain in his hands compromises his ability to do his job.

5. Life expectancy according to the Vital Statistics of the United States 2017 Life Tables indicated that a 39-year-old American male would live, on average, to the age of 78.7 years.

6. Dr. Kevin N. Foster conducted a Zoom evaluation with Joshua Green on November 25, 2020. He had reviewed his medical records and after the evaluation he then discussed Joshua's future care needs with this life care planner.

7. Joshua shared that he had followed up at the Las Vegas Burn Center and then was sent to another physician and dermatologist for his ongoing issues, which include chronic pain and skin sensitivity that is triggered with changes in temperature, such as stepping out of the shower into a cool bathroom. He stated that his hands become so painful when there are fluctuations in temperature that he must wrap them in blankets to warm them in order to relieve the stinging and painful sensation. He also reported ongoing itching on both arms and hands.

8. Joshua has a fear of grilling post-injury with flashbacks that occur when he tries to use a grill with a flame. He stated "I don't work as much as I used to and had to cut my hours drastically. I get really tired when using my hands as a chef." Chronic neuropathic pain and itch are commonly reported following burn injury. In one sample of burn survivors, over half of them reported having continuous pain despite being, on average, 10 years post-injury (Dauber, et al. 2002). Laser surgery can help to alleviate these issues. Additional treatment involves massage therapy as well as the use of moisturizers and lotions (Anthonissen, et. al., 2016).

9. Dr. Foster opined that Joshua will benefit from laser surgery for improved skin tone, pain and itching reduction, and improved cosmesis. The integrity of his burn-injured skin will never be the same as it was pre-injury. Dr. Foster also recommends pain management, medication, massage and psychological interventions which has been endorsed by his treating psychologist, Michael Elliott, PhD. The cost of future care is outlined in the life care plan tables.



1 10.A visit should take place, annually, over the next 5 years until such time as  
2 Joshua's burn-related issues will likely be resolved.

3 11.A visit every year should occur every 2 years through age 55 and then,  
4 annually, through life expectancy due to his heightened potential for skin cancer and  
5 other dermal problems. All burned areas and donor sites are more prone to sunburn  
6 and skin cancer and must be protected by sunscreen daily. Sun protective clothing is  
7 also recommended.

8 12.Joshua will benefit from monthly massage for the next 2 years for scar  
9 management, relaxation, and anxiety reduction.

10 13.Pain and itch are inevitable after laser procedures. Joshua will be prescribed  
11 Ibuprofen 800mg post-laser surgery and will be able to take over the counter  
12 medications such as Tylenol and Ibuprofen for his chronic pain. At age 50 he will  
13 likely have increased pain issues in his hands, so Naproxen has been recommended.

14 14.Joshua will need to keep his skin hydrated and protected from the sun through  
15 life expectancy. The recommended supplies are sunscreen and moisturizers. He  
16 should also always wear sun protective clothing when he is outdoors.

17 15.Dr. Foster has recommended six - CO2 and six - Pulse Dye laser sessions for  
18 Joshua. These surgical interventions will address the itching, pain and skin integrity  
19 on his bilateral arms and hands. The closest burn center that performs surgical laser  
20 procedures is the Arizona Burn Center in Phoenix, Arizona. Included in the cost  
21 projection are round trip flights from Las Vegas to Phoenix with an overnight stay in  
22 a hotel each time because Joshua will receive general anesthesia for the procedure  
23 and will need to remain close to physician access in case of complications.

24 16.Dr. Michael Elliott is Joshua's current, injury-related, mental health provider.  
25 Dr. Elliott has provided recommendations for necessary psychological treatment  
26 associated with the burn event and his subsequent burn injuries. He opined that  
27 Joshua's symptoms will likely worsen unless his physical, cognitive, and psychological  
28 problems are treated aggressively. Joshua's post-injury memory deficits, sleep



1 troubles, high levels of stress, and overall quality of life put him at significant risk. His  
 2 stress coping skills are challenged, and he needs several strategies for stress  
 3 management. As such, a normal course of recovery is threatened without treatment  
 4 for his physical and mental conditions. The longer he suffers with his current levels  
 5 of stress, anxiety, and depression, the more likely his mood and cognitive deficits will  
 6 worsen.

7 17. Dr. Elliott recommends 6 months of weekly Cognitive Behavioral Therapy (24  
 8 sessions) with an additional 6 months of weekly Biofeedback and Mindfulness  
 9 Training. Cognitive Behavioral Therapy will help to nurture Joshua's awareness of  
 10 and responsiveness to his emotional struggles with anxiety, whereby he can more  
 11 effectively manage his emotions, so they do not negatively impact his planning and  
 12 follow through. This includes an 8-week course of graduated cognitive therapy that  
 13 requires a weekly session with specific homework assignments for completion  
 14 between sessions. An additional six months of biofeedback and mindfulness training  
 15 are necessary to manage anxiety. This will include a Biofeedback/Heartmath Heart  
 16 Rate Variability (HRV) program. This program offers highly effective and practical  
 17 solutions for reducing stress, anxiety, depression, and sleeplessness.

18 18. Due to his symptoms associated with PTSD, Joshua should also participate in  
 19 Eye Movement Desensitization & Reprocessing (EMDR) therapy. EMDR is a treatment  
 20 designed to alleviate distress associated with traumatic memories. Data from meta-  
 21 analyses and Randomized-Controlled Trials included in this review evidence the  
 22 efficacy of EMDR therapy as a treatment for PTSD. Specifically, EMDR therapy  
 23 improved PTSD diagnosis, reduced PTSD symptoms, and reduced other trauma-  
 24 related symptoms. EMDR therapy was evidenced as being more effective than other  
 25 trauma treatments and was shown to be an effective therapy when delivered with  
 26 different cultures (Shalev AY., 2009).

27 19. Careful consideration has been given to Joshua's future medical and  
 28 psychological needs which have resulted from his burn injuries. He has survived

1 deep 2nd degree burns to both arms, hands, and his abdominal area as the result of  
2 the accident, with the most significant damage occurring to his hands. Pain is one of  
3 the biggest problems that burn victims experience. The recovery phase of a burn  
4 primarily involves tissue growth which causes pain, itchiness, numbness and tingling.  
5 Some burn patients experience nerve damage which results in longer lasting chronic  
6 pain. In addition, being on fire is a very traumatic event and the psychological  
7 damage can be as significant as the physical injury. Studies have found that survivors  
8 of fire related injury can experience symptoms of major depression and anxiety, as  
9 well as an uptick in symptoms associated with Post Traumatic Stress Disorder.

10 20. The goal of this Life Care Plan is to provide reasonable and medically  
11 necessary care that will maintain/increase Joshua Green's medical stability and  
12 quality of life, and to anticipate and prevent potential complications. The plan  
13 provides for medical and surgical care, evaluations, therapies, medications, supplies,  
14 transportation needs, in order to promote and maintain his independence and  
15 prevent complications. This plan should be re-evaluated/modified if complications  
16 develop and/or as progressive aging alters Joshua's medical condition and functional  
17 status. The recommendations are outlined in specifics within the Life Care Plan  
18 Tables, which are attached as Appendix A.

19 Dr. Rimmer's testimony will be consistent with GREEN 1397-1474.

20 4. Kevin N. Foster, MD, MBA, FACS  
21 The Arizona Burn Center, Valleywise Health  
22 Phoenix, Arizona 85008

23 Kevin N. Foster, MD, MBA, FACS is a burn surgeon and medical provider. Dr.  
24 Foster will provide testimony regarding the past medical treatment provided for  
25 Joshua Green, the future medical treatment needed, the amount, necessity, and  
26 reasonableness of the charges for past and future treatment, and that the charges  
27 for the past and future medical treatment are within the usual and customary  
28 charges in the community. Dr. Foster will also rebut any opinions offered by  
Defendant's expert witness, if any.

Dr. Foster authored a report, attached hereto as Exhibit 1474. The exhibits to be used as a summary of support for Dr. Foster's opinions are Joshua Green's medical records, billing, radiographic studies, films, and reports, deposition testimony, Dr. Rimmer's lifecare plan, and the exhibits listed in his report.

In preparation of his report, Dr. Foster reviewed the following records:

1. GREEN 01-85: Medical and billing records from Spring Valley Hospital
2. GREEN 86-97: Medical and billing records from UNLV Medicine
3. GREEN 98-186: Medical and billing records from Enrico Fazzini, Ph.D
4. GREEN 187: Billing records from Shadow Emergency Physicians
5. GREEN 251-273: Medical and billing records from Interventional Pain & Spine Institute
6. GREEN 188: Medical and billing records from American Medical Response
7. GREEN 370-73: Co-Pay Receipts to University Medical Center
8. GREEN 345-346: Medical records from Las Vegas Neurosurgical Institute
9. GREEN 374-845: 9. Medical and billing records from University Medical Center
10. GREEN 846: Photograph of Josh Green's palms from burns
11. GREEN 847-48: Medical and billing records from Henderson Dermatology
12. GREEN 849-888: Color photographs of Josh Green's burns taken at University Medical Center
13. GREEN 1075-1094: Medical and billing records from Michael Elliott and Associates
14. GREEN 1239-1248: Supplemental medical and billing records from Michael Elliott and Associates
15. GREEN 1249-1271: Photos that depict scars on Josh's arms, abdomen, and hands
16. Deposition transcript of Plaintiff, Joshua Green
17. Individualized interview with Joshua Green

Dr. Foster is expected to offer the following opinions, as outlined in his report:

1. Joshua green suffered an 8% total body surface area thermal burn injury on June 18t, 2018 as the result of a propane grill explosion. He was 36 years old at the time of his injury. He was cared for in the Las Vegas burn center for seven days. He received daily dressing changes, pain control, nutritional support, physical and occupational therapy, and all of the other resources of this tertiary care burn center. He was discharged home in good condition and has been followed by the burn center as an outpatient since that time.

2. I have reviewed the medical records for Mr. Green, the photographs of his

1 injuries and subsequent scars, the life care plan prepared for him by Dr. Rimmer and  
2 myself, and various other documentation related to his injury and hospitalizations. I  
3 have also interviewed and examined Mr. Green via telemedicine. I agree with the  
4 future needs and care projected and outlined in Mr. Green's life care plan. I consider  
5 these projections and needs to be medically likely, fair and reasonable. Thank you.

6 3. Dr. Foster has recommended six - CO2 and six - Pulse Dye laser sessions for  
7 Joshua. These surgical interventions will address the itching, pain and skin integrity  
8 on his bilateral arms and hands. The closest burn center that performs surgical laser  
9 procedures is the Arizona Burn Center in Phoenix, Arizona. Included in the cost  
10 projection are round trip flights from Las Vegas to Phoenix with an overnight stay in  
11 a hotel each time because Joshua will receive general anesthesia for the procedure  
12 and will need to remain close to physician access in case of complications.

13 Dr. Foster's testimony will be consistent with GREEN 1397-1474 and GREEN 1475-  
14 1518.

## 15 II.

### 16 Treating Physicians

17 The following non-retained physicians and witnesses are expected to give  
18 opinions regarding the treatment of Joshua Green at their respective facilities, the  
19 authenticity of the records for said treatment, the necessity of treatment rendered,  
20 the causation of the necessity for the medical treatment rendered and any treatment  
21 they have recommended. Their opinions shall include the cost of past medical care,  
22 diagnostic testing, surgery and medication; the cost of future medical care medical  
23 care, diagnostic testing, surgery and medication; and whether those past and future  
24 medical costs fall within the ordinary and customary charges in the community for  
25 similar medical care and treatment. They are expected to also review documents  
26 outside their report(s) for the purpose of providing and defending those opinions:  
27  
28

1. Elad Bicer, MD  
Spring Valley Hospital Medical Center  
5400 South Rainbow Boulevard  
Las Vegas, Nevada 89118  
T: 702-853-3000
2. Elizabeth Sodomini, MD  
UNLV Medicine  
2040 West Charleston Boulevard, 3<sup>rd</sup> Floor  
Las Vegas, Nevada 89102  
T: 702-895-4928
3. Jon Petrick, DC  
Las Vegas Pain Relief Center  
2779 West Horizon Ridge Parkway, Suite 210  
Henderson, Nevada 89052  
T: 702-948-2520
4. Elizabeth Sodomini, MD
5. Paul J. Chestovich, MD
6. Amy Urban, MD  
University Medical Center -  
5400 South Rainbow Boulevard  
Las Vegas, Nevada 89118  
T: 702-853-3000
7. Cyril Joseph, PA-C  
Henderson Dermatology and Skin Center  
2960 Saint Rose Parkway, Suite 120  
Henderson, Nevada 89052  
T: 702-558-5100
8. Michael Elliott, Ph.D  
Michael Elliott and Associates  
1661 West Horizon Ridge Parkway, Suite 280  
Henderson, Nevada 89012  
T: 702-307-0133

### III.

#### Documents

1. Scott G. Davis, Ph.D, P.E., CFEI's Expert Report and Opinions (GREEN 1272-1299), as Exhibit 1.
2. Scott G. Davis, Ph.D, P.E., CFEI's Curriculum Vitae (GREEN 1300-1314), as Exhibit 2.
3. Scott G. Davis, Ph.D, P.E., CFEI's expert fee schedule (GREEN 1315), as Exhibit 3.
4. Scott G. Davis, Ph.D, P.E., testimony history (GREEN 1316-1317), as Exhibit 4.

1 5. GEXCON Green v. Gonzalez Simulations Presentation (provided in Dropbox),  
2 as Exhibit 5.

3 6. GEXCON Simulation of explosion (provided in Dropbox), as Exhibit 6.

4 7. Don L. Gifford's Expert Report of Findings (GREEN 1318-1349), as Exhibit 7.

5 8. Don. L Gifford's Curriculum Vitae, testimony history and expert fee schedule  
6 (GREEN 1350-1374), as Exhibit 8.

7 9. Reference Material for Don L. Gifford's Expert Report of Findings (GREEN  
8 1375-1395), as Exhibit 9.

9 10.GCG Gas Hose Testing (GREEN 1396 and provided in Dropbox), as  
10 Exhibit 10.

11 11.Ruth B. Rimmer, Ph.D, CLCP's Life Care Plan (GREEN 1397-1474), as Exhibit 11.

12 12.Ruth B. Rimmer, Ph.D, CLCP's Curriculum Vitae (GREEN 1455-1474), as  
13 Exhibit 12.

14 13.Ruth B. Rimmer, Ph.D, CLCP's expert fee schedule (GREEN 1473), as Exhibit 13.

15 14.Kevin N. Foster, MD, MBA, FACS's Letter Regarding Record Review and Life Care  
16 Plan (GREEN 1474), as Exhibit 14.

17 15.Kevin N. Foster, MD, MBA, FACS's Curriculum Vitae (GREEN 1475-1513), as  
18 Exhibit 15.

19 16.Kevin N. Foster, MD, MBA, FACS expert fee schedule (GREEN 1514), as  
20 Exhibit 16.

21 17.Kevin N. Foster, MD, MBA, FACS's testimony history (GREEN 1515-1518), as  
22 Exhibit 17.

23 18.Michael A. Elliott, Ph.D's Curriculum Vitae (GREEN 1519-1523), as Exhibit 18.

24 19.Michael A. Elliott's expert fee schedule (GREEN 1524), as Exhibit 19.

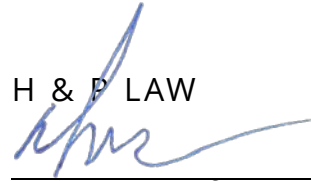
25 20.Jon S. Petrick, DC's Curriculum Vitae (GREEN 1525-1526), as Exhibit 20.

26 21.Paul J. Chestovich, MD, FACS's Curriculum Vitae (GREEN 1527-1543), as  
27 Exhibit 21.

28

1 DATED this 29th day of January 2021.

H & P LAW



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

Attorneys for Plaintiff,  
*Joshua Green*

**Certificate of Service**

I hereby certify that on the 29th day of January 2021, service of the foregoing **Plaintiff, Joshua Green's Initial Designation of Expert Witnesses and Reports** was made by required electronic service to the following individuals:

Felicia Galati, Esq.  
Nevada Bar No.: 007341  
OLSON, CANNON, GORMLEY,  
ANGULO & STROBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, Nevada 89129  
T: 702-384-4012; and  
Michael McMullen, Esq.  
BAKER STERCHI COWDEN & RICE  
2400 Pershing Road, Suite 500  
Kansas City, Missouri 64108  
T: 816-474-2121

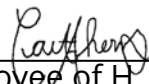
James P.C. Silvestri, Esq.  
Nevada Bar No.: 3603  
Steven M. Goldstein, Esq.  
Nevada Bar No.: 006318  
PYATT SILVERSTRI  
700 Bridger Avenue, Suite 600  
Las Vegas, Nevada 89101  
Tel: 702-477-0088

Attorneys for Defendant,  
*Mario S. Gonzalez*

Attorneys for Defendant,  
*Ferrellgas, Inc.*

Gina Gilbert Winspear, Esq.  
Nevada Bar No.: 005552  
DENNETT WINSPEAR, LLP  
3301 North Buffalo Drive, Suite 195  
Las Vegas, Nevada 89129  
T: 702-839-1100

Attorney for Defendant,  
*Carl J. Kleisner*

  
An Employee of H & P LAW



# **EXHIBIT H**

*Heather S. Linn*  
CLERK OF THE COURT

**MSTY**

Marjorie L. Hauf, Esq.  
Nevada Bar No.: 8111  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439  
H&P LAW  
8950 W Tropicana Ave., #1  
Las Vegas, NV 89147  
702 598 4529 TEL  
702 598 3626 FAX  
mhauf@courtroomproven.com  
matt@courtroomproven.com

Attorneys for Plaintiff,  
*Troy Moats*

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \*

**Troy Moats**, an individual,

Plaintiff,

vs.

**Troy Burgess**, an individual; Does I  
through X, inclusive and Roe Business  
Entities I through X, inclusive

Defendants.

Case No.: A-18-769459-C  
Dept. No.: XIV

**Motion to Stay Troy Moats'  
Rule 35 Examination Pending  
Writ of Mandamus**

**ON ORDER OF SHORTENING  
TIME**

HEARING REQUESTED

**Affidavit of Marjorie L. Hauf, Esq.**

STATE OF NEVADA

COUNTY OF CLARK

I, Marjorie L. Hauf, Esq., being first duly sworn, states as follows:

1. I am an attorney licensed to practice law in the State of Nevada and represent  
Plaintiff, Troy Moats, in the matter of *Moats v. Burgess*, Eighth Judicial District Court,

MOT208



Case No.: A-18-769459-C.

2. The facts set forth in this affidavit are known to me personally, or are based upon my information and belief, and if called to do so, I would competently testify under oath regarding the same.

3. On May 28, 2020, the Discovery Commissioner recommended a Rule 35 Psychological Examination of Plaintiff, Troy Moats. The Discovery Commissioner scheduled a Status Check for the parties to discuss parameters for the Rule 35 Examination. Prior to the Status Check, the parties stipulated to 29 of 31 parameters.<sup>1</sup> The parties remained disputed on two parameters: (1) Troy Moats will be permitted to audio record the examination and (2) Troy Moats will be accompanied by a silent observer during the examination.

4. During the July 31, 2020 Status Check, the Honorable Discovery Commissioner recommended Mr. Moats be accompanied by an independent observer and be permitted to audio record his October 12-13 neuropsychological examination.<sup>2</sup> Defendant filed an Objection to this Recommendation.<sup>3</sup>

5. Defendant's Objection came before this Court on September 29, 2020. This Court reversed the Discovery Commissioner's recommendation, determining that under NRC 35, Mr. Moats may not audio record the psychological examination nor be accompanied by an observer.

6. It is my position this ruling contradicts the substantive right afforded to my client in NRS 52.380. My office will be filing a file a Writ of Mandamus regarding this issue.

7. Mr. Moats's Rule 35 Psychological Examination is currently scheduled for October 12-13, 2020. If this Examination moves forward prior to resolution of the Writ of Mandamus, Mr. Moats's rights will be irreparably harmed.

<sup>1</sup> See Proposed Stipulation and Order Regarding Rule 35 Examination Parameters, as Exhibit 1.

<sup>2</sup> See Discovery Commissioner's Report and Recommendations at 3:18-19, as Exhibit 2.

<sup>3</sup> Defs. Objection.

1 8. This court therefore need Issue an Order to Stay Mr. Moats's Rule 35  
2 Examination pending the Writ.

3 9. Pursuant to EDCR 2.26, this Motion to Stay is filed on Order of Shortening Time  
4 as Mr. Moats's Rule 35 Examination is currently scheduled for October 12-13, 2020  
5 and this matter need be resolved prior.

6 I declare under penalty of perjury that the information in this declaration is true.

7  
8   
MARJORIE L. HAUF, ESQ.

9 Signed and sworn to before me on

10 1 October 2020

by Marjorie L. Hauf, Esq.



15   
16 Notary Public in and for above state  
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# Order Shortening Time

For good case appearing therefore and to the satisfaction of the court, it is hereby ORDERED that Plaintiff's Motion to Stay Troy Moats' Rule 35 Examination Pending Writ of Mandamus on Order of Shortening Time ~~will be heard in Department 14 on~~ **is granted.** ~~the — day of — 2020.~~

DATED this 11th day of October 2020.

Dated this 11th day of October, 2020

Adriana Escobar  
DISTRICT COURT JUDGE

Respectfully submitted by:

H & P LAW

Marjorie L. Hauf, Esq.  
Nevada Bar No.: 8111  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439

Attorneys for Plaintiff,  
Troy Moats

FB9 5E0 9780 9A72  
Adriana Escobar  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Troy Moats, Plaintiff(s)

CASE NO: A-18-769459-C

7 vs.

DEPT. NO. Department 14

8 Troy Burgess, Defendant(s)

9  
10 **AUTOMATED CERTIFICATE OF SERVICE**

11 This automated certificate of service was generated by the Eighth Judicial District  
12 Court. The foregoing Order Granting was served via the court's electronic eFile system to all  
13 recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 10/11/2020

15 Matt Pfau	matt@mattpfaulaw.com
16 Ronald Pehr	rpehr@geico.com
17 James Smith	jamesmith@aol.com
18 Stella Taylor	stella@mattpfaulaw.com
19 AWS E-Services	eservices@winnerfirm.com
20 Caitlin Lorelli	clorelli@winnerfirm.com
21 Christine Miller	cmiller@winnerfirm.com
22 Colette Thorne	cthorne@winnerfirm.com
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24 Cait Ahern	cahern@CourtRoomProven.com
25 H&P Law	efile@courtroomproven.com

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# **EXHIBIT I**



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

**Troy Moats,**

Petitioner,

vs.

**The Eighth Judicial District Court  
of the State of Nevada ex rel the  
County of Clark and the  
Honorable Judge Adriana  
Escobar,**

Respondents.

**Troy Burgess,**

Real Party in Interest.

Supreme Court No.:

Electronically Filed  
Oct 09 2020 01:26 p.m.  
District Court No. Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION UNDER FOR A  
WRIT OF MANDAMUS OR OTHER EXTRAORDINARY RELIEF  
H&P LAW**

Matthew G. Pfau, Esq.

Nevada Bar No. 11439

Marjorie L. Hauf, Esq.

Nevada Bar No. 8111

8950 W. Tropicana Ave., #1

Las Vegas, Nevada 89147

702 598 4529 TEL

*Attorneys for Troy Moats, Petitioner*

## **ROUTING STATEMENT**

This Petition raises a principal issue and question of statewide public importance in compliance with NRAP 17(a)(12). As such, jurisdiction over this matter is retained by the Nevada Supreme Court. There is no existing authority vested in the Nevada Court of Appeals which would permit the Court of Appeals to address this issue.

This Petition concerns the clear conflict between NRCP 35 and NRS 52.380 regarding whether an observer and audio recording are permitted during a court ordered psychological and neuro-psychological evaluations. The Respondent District Court erroneously ordered that NRCP 35 is the controlling authority on these issues and that Plaintiff may not have a third-party observer present and may not audio record the NRCP 35 neuropsychological examination on October 12, 2020, and October 13, 2020.

The District Court's order is conflicting with the parameters set forth in NRS 52.380 regarding attendance by an observer. And different judges within the Eighth Judicial District have made conflicting rulings on the

same subject making this issue ripe of the Supreme Court's determination.<sup>1</sup>

Since this case involves a conflict of law – the application of NRCP 35 and NRS 52.380 – which also implies a separation of powers determination, this petition should be heard and decided by the Supreme Court pursuant to the Nevada Rule of Appellate Procedure.

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



---

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

Attorneys for Petitioner,  
*Troy Moats*

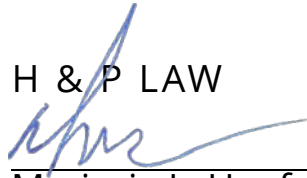
### **NRAP 26.1 DISCLOSURE**

TROY MOATS, is an individual, and represented by Matthew G. Pfau, Esq., and Marjorie L. Hauf, Esq. of the law firm of H&P LAW in the District Court and in this Court.

---

<sup>1</sup> See Conflicting Orders from Judge Mark Denton and Judge Adriana Escobar in Appendix, Volume I.

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



---

Marjorie L. Hauf, Esq.  
Nevada Bar No.: 8111  
Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439

Attorney for Petitioner,  
*Troy Moats*

**DECLARATION OF MATTHEW G. PFAU, ESQ. IN SUPPORT OF  
PETITION**

Matthew G. Pfau, Esq., declares and submits the following facts in support of the Petition for Writ of Mandamus:

1. I am licensed to practice law in this Court and am a partner at H&P Law, counsel for Petitioner.
2. I certify that I have read this Petition and to the best of my knowledge, this Petition complies with the form requirements of NRAP 21(d), and that it is not frivolous or interposed for any improper purpose such as to harass or cause unnecessary delay or needless increase in the cost of litigation.
3. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, including the requirement of NRAP 28(e) that references to matters in the record be supported by a reference to the appendix where the matter relied upon is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in

conformity with the requirements of the Nevada Rules of Appellate Procedure.

4. I have discussed the Petition with the appropriate persons and have obtained authorization to file this Petition.

5. I declare under penalty of perjury that the foregoing is true and correct.

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



---

Matthew G. Pfau, Esq.  
Nevada Bar No.: 11439

Attorney for Petitioner,  
*Troy Moats*

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## TABLE OF AUTHORITIES

### Cases

<i>Oxbow Constr., LLC v. Eighth Judicial Dist. Court</i> , 130 Nev. Adv. Op. 86, 335 P.3d 1234, 1238 (2014). .....	4
<i>Azar v. Allina Health Servs.</i> , 139 S. Ct. 1804, 1811 (2019).....	4
<i>State v. Connery</i> , 99 Nev. 342, 345 (1983).....	passim
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<i>Comm’n on Ethics v. Hardy</i> , 125 Nev. 285 (2009).....	11
<i>Secretary of State v. Nevada State Legislature</i> , 120 Nev. 456, 466 (2004)..	19

### Statutes

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### Constitutional Provisions

Nevada Constitution, Article 3, Section 1.....	11
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## **I. INTRODUCTION**

NRS 52.280 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."

Since NRS 52.380 creates substantive rights, it is substantive rather than procedural. And, since NRS 52.380 is substantive, it governs and supersedes NRCP 35 where the two conflict under the constitutional separation of powers. Therefore, NRS 52.280 applies when determining whether an individual has the substantive right to an observer present or to audio record a neuropsychological, psychological, or psychiatric examination in Nevada.

## **II. STATEMENT OF ISSUES PRESENTED**

Whether the District Court committed error in finding that NRCP 35 is controlling on the issue of whether a third-party observer and/or an

audio recording is permissible during an NRCP 35 psychological examination.

### **III. PROCEDURAL BACKGROUND**

On February 13, 2018, Plaintiff, Troy Moats filed his Complaint against Defendant, Troy Burgess, claiming Negligence and Negligence Per Se. This case was deemed exempt from Nevada's Mandatory Arbitration program on December 11, 2018 and discovery thereafter commenced.

On April 21, 2020, Defendant filed a Motion to Compel Rule 35 Examination of Plaintiff, to which Plaintiff opposed on May 6, 2020. Defendant then filed their Reply in Support of Motion to Compel Rule 35 Psychological Examination on May 20, 2020.

The matter came before the Honorable Discovery Commissioner on May 28, 2020. The Discovery Commissioner recommended Plaintiff undergo a Rule 35 Psychological Examination and requested the parties confer regarding parameters prior to a Status Check on July 31, 2020. The parties ultimately stipulated to 29 of 31 topics, but remained

contested on two parameters:

1. Troy Moats will be permitted to audio record the examination.
2. Troy Moats will be accompanied by a silent observer during the examination.

During the Status Check on July 31, 2020, the Discovery Commissioner recommended per NRS 52.380, Troy Moats was permitted to audio record the examination and could be accompanied by an independent observer. The Discovery Commissioner made this ruling in deference to NRS 52.380, as “affects the substantive right inherent in a physical examination.”

Defendant then filed an Objection to the Discovery Commissioner’s recommendation, claiming the instant matter was procedural not substantive. The matter was heard before the Honorable Adriana Escobar on September 29, 2020. Judge Escobar sustained Defendant’s objection and determined NRCP 35 governs whether a third-party observer and audio recording is permitted.

Judge Escobar entered an Order on October 7, 2020 compelling Troy

Moats to appear for a Rule 35 Psychological Examination on October 12-13, 2020 and barring Troy Moats being accompanied by an observer or audio recording.<sup>2</sup> A Motion to Stay that Rule 35 Examination is pending.

#### **IV. LEGAL ARGUMENT**

##### **A. Operative Law Regarding Writ**

This Court noted that “writ relief is available only when there is no plain, speedy and adequate remedy in the ordinary course of law.”<sup>3</sup> However, the Court will consider writ petitions “when an important issue of law needs clarification and considerations of sound judicial economy and administration militate in favor of granting the petition.”<sup>4</sup> Such is the case here.

---

<sup>2</sup> Conflicting Orders from Judge Mark Denton and Judge Adriana Escobar in Appendix, Volume I.

<sup>3</sup> *Oxbow Constr., LLC v. Eighth Judicial Dist. Court*, 130 Nev. Adv. Op. 86, 335 P.3d 1234, 1238 (2014).

<sup>4</sup> *Id.*

## **B. The right to the presence of an observer afforded under NRS**

### **52.280 establishes a substantive right created by the judiciary.**

The differences between the NRS 52.280 and NRCP 35 are substantive, as the statute creates substantive rights for the examinee in a NRCP35 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>5</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

---

Conflicting Orders from Judge Mark Denton and Judge Adriana Escobar in Appendix, Volume I. (citing Azar v. Allina Health Servs., 139 S. Ct. 1804, 1811 (2019)).

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 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.*<sup>6</sup>

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>7</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,

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<sup>6</sup> See Nev. R. Civ. P. 35(a)(3), (4) (emphases added).

<sup>7</sup> See Nev. Rev. Stats. 52.380(1), (2), (3) (emphases added).



psychological, or psychiatric examinations absent a showing of good cause, and so on.<sup>8</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 other than his attorney as the observer, and so on.<sup>9</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

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<sup>8</sup> See Nev. R. Civ. P. 35(a)(3), (4) (emphases added).

<sup>9</sup> See Nev. Rev. Stats. 52.380(1),(2),(3).

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.

**C. NRS 52.380 controls the presence of observers in the examination room—superseding NRCP 35—due to the separation of powers afforded to the judiciary.**

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

The judiciary has the inherent power to govern its own procedures, and this power includes the right to promulgate rules of appellate procedure as provided by law. [ ] Although such rules may not conflict with the state constitution or “abridge, enlarge or modify any substantive right,” NRS 2.120, the authority of the judiciary to promulgate procedural rules

is independent of legislative power, and may not be diminished or 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>10</sup>

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

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<sup>10</sup> *State v. Connery*, 99 Nev. 342, 345 (1983) (internal citations omitted).

<sup>11</sup> *Berkson v. LePome*, 126 Nev. 492, 498 (2010) (citing Nev. Const. art. 3, § 1(1)).

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

As noted in *Connery*, the prohibition on the Legislature’s enactment of a statute that conflicts with a pre-existing procedural rule, without violating the doctrine of separation of powers,” is limited to any “procedural statute.”<sup>13</sup> A “procedural statute” that conflicts with a “procedural rule” is “of no effect, irrespective of which was enacted first.”<sup>14</sup>

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<sup>12</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).

<sup>13</sup> *Connery*, 99 Nev. at 345.

<sup>14</sup> *Id.*

Consistent with this separation of powers among co-equal branches of government, the district courts likewise may not promulgate a rule that would “abridge, enlarge or modify any substantive right[.]”<sup>15</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>16</sup>

## **V. CONCLUSION**

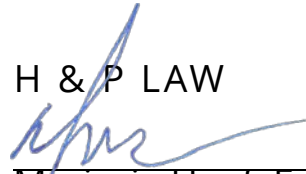
Petitioner respectfully requests this Court issue a Writ of Mandamus. Respondent unreasonably abused its discretion and committed clear error by ordering that Plaintiff is not permitted to audio record or have a third-party observer present at the NRCP 35 psychological examination with Dr. Etcoff on October 12, 2020, and October 13, 2020.

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<sup>15</sup> *Id.*

<sup>16</sup> *Connery*, 99 Nev. at 345 (court rules cannot “abridge, enlarge or modify any substantive right”).

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



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*Troy Moats*

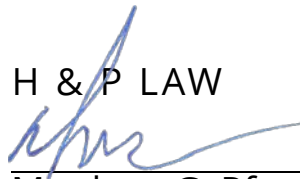
## **CERTIFICATE OF COMPLIANCE**

I, Matthew G. Pfau, the undersigned, hereby certify as follows:

1. I have prepared and read this Petition.
2. To the best of my knowledge, information, and belief, the Petition is not frivolous or interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation.
3. This Petition complies with all applicable Nevada Rules of Appellate Procedure, including Rule 28(e), that every assertion in the brief regarding matters in the record be supported by a reference to the page and volume number, if any, of the appendix where the matter relied on is to be found.
4. The Petition complies with the formatting requirements of Rule 32(a)(4)-(6) and 32(a)(7).
5. The Petition is written using 14-point proportional-spaced font called "Open Sans."
6. Although this Petition exceeds 15 pages at a total of 25 pages, it

contains fewer than 7,000 words at 2,955 words.

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



---

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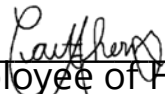


## CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of October 2020, service of the foregoing Petition for a Writ of Mandamus or Other Extraordinary Relief was made by required electronic service and U.S. Mail to the following individuals:

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The Eighth Judicial District Court  
of the State of Nevada ex rel The  
County of Clark and the Honorable  
Judge Adriana Escobar  
Department 14  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, Nevada 89101  
*Respondent*

  
\_\_\_\_\_  
An employee of H&P LAW

# **EXHIBIT J**

IN THE SUPREME COURT OF THE STATE OF NEVADA

TROY MOATS,  
Petitioner,

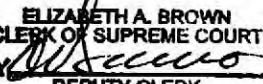
vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF CLARK;  
AND THE HONORABLE ADRIANA  
ESCOBAR, DISTRICT JUDGE,  
Respondents,  
and  
TROY BURGESS,  
Real Party in Interest.

No. 81912

**FILED**

DEC 16 2020

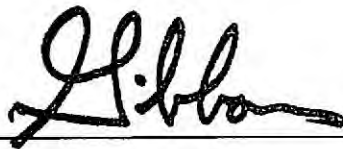
ELIZABETH A. BROWN  
CLERK OF SUPREME COURT  
BY   
DEPUTY CLERK

*ORDER DIRECTING ANSWER AND GRANTING AMICUS MOTION*

This original petition for a writ of prohibition or mandamus challenges a district court order compelling petitioner to appear for a psychological and/or neuropsychological examination and barring petitioner from recording the examination or having a third-party observer present. Having reviewed the petition, it appears that an answer may assist the court in resolving this matter. Therefore, real party in interest, on behalf of respondents, shall have 28 days from the date of this order within which to file and serve an answer, including authorities, against issuance of the requested writ. NRAP 21(b)(1). We further direct real party in interest to address the propriety of writ relief, in addition to addressing the merits of the petition, in its answer. Petitioner shall have 14 days from service of the answer to file and serve any reply. We also grant the Nevada Justice Association's motion for leave to file an amicus brief in support of petitioner. See *Howard Delivery Serv., Inc. v. Zurich Am. Ins. Co.*, 547 U.S. 651, 661 (2006) (considering amicus curiae arguments regarding the legislative history of a statute); *Miller-Wohl Co. v. Comm'r of Labor &*

*Indus.*, 694 F.2d 203, 204 (9th Cir. 1982) (indicating that the classic role of an amicus curiae is to assist in cases of general public interest and to supplement the efforts of counsel by drawing the court's attention to law that may have escaped consideration).

It is so ORDERED.

 , A.C.J.

cc: H&P Law, PLLC  
Winner & Sherrod  
Claggett & Sykes Law Firm

# **EXHIBIT K**

**IN THE SUPREME COURT OF NEVADA**

LYFT, INC.,  
Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT  
OF THE STATE OF NEVADA, in and for  
the County of Clark, and THE  
HONORABLE MARK R. DENTON,  
District Judge,  
Respondents,

and

KALENA DAVIS,  
Real Party in Interest.

District Court No. A-18-777455-C  
Electronically Filed  
Dec 02 2020 01:39 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

**PETITION FOR WRIT OF MANDAMUS**

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## NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

Lyft, Inc. (“Lyft”) is a publicly held corporation traded on the Nasdaq Global Select Market with no parent corporation. Based on Lyft’s knowledge from publicly available U.S. Securities and Exchange Commission filings, no publicly held corporation or entity owns ten percent or more of Lyft’s outstanding common stock.

DATED this 2<sup>nd</sup> day of December, 2020.

LEWIS BRISBOIS BISGAARD & SMITH LLP

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