

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

**YEONHEE LEE,**

**Petitioner,**

**v.**

**EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, THE HONORABLE DAVID  
M. JONES, DISTRICT JUDGE,**

**Respondent,**

**and**

**ALBERTO EDUARDO CARIO,**

**Real Party in Interest.**

Electronically Filed  
Apr 30 2021 11:20 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Supreme Court Case No.: \_\_\_\_\_

District Court Case No.: A-19-803446-C

**PETITIONER YEONHEE LEE'S APPENDIX TO PETITION FOR  
WRIT OF MANDAMUS AND/OR PROHIBITION – VOLUME III of III**

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DATED: April 30, 2021

**DUANE MORRIS LLP**

By: /s/ Tyson E. Hafen  
**DOMINICA C. ANDERSON**  
Nevada Bar No.: 2988  
**TYSON E. HAFEN**  
Nevada Bar No.: 13139

Attorneys for Petitioner  
*Yeonhee Lee*

**CERTIFICATE OF SERVICE**

I hereby certify that on April 30, 2021, a true and correct copy of **PETITIONER ALANA ALLEN’S APPENDIX TO PETITION FOR WRIT OF MANDAMUS AND/OR PROHIBITION – VOLUME III of III** was submitted for filing via the Court’s eFlex electronic filing system, and electronic notification will be sent to the following:

Jason R. Maier  
Julia M. Chumbler  
MAIER GUTIERRE & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Attorneys for Real Party in Interest Alberto Eduardo Cario

With a copy delivered by U.S. Mail to:

Honorable David M. Jones  
Eighth Judicial District Court, Dept. 29  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

Office of the Attorney General  
100 N. Carson Street  
Carson City, NV 89701

/s/ Jana Dailey  
Jana Dailey, an employee of  
Duane Morris LLP



1 **OCRR**  
2 RHONDA LONG, ESQ.  
3 Nevada Bar No.: 10921  
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9 Attorney for Defendant,  
10 YEONHEE LEE

7 **DISTRICT COURT**  
8  
9 **CLARK COUNTY, NEVADA**

10 ALBERTO EDUARDO CARIO, an individual,

11 Plaintiff,

12 vs.

13 YEONHEE LEE, an individual; DOES I  
14 through X and ROE CORPORATIONS I  
15 through X, inclusive,

16 Defendants.

Case No.: A-19-803446-C

Dept. No.: 29

**OBJECTION TO DISCOVERY**  
**COMMISSIONER'S REPORT AND**  
**RECOMMENDATIONS RE:**  
**DEFENDANT'S MOTION TO**  
**COMPEL RULE 35 EXAM**

**HEARING REQUESTED**

18 COME NOW Defendant YEONHEE LEE, by and through her attorney of record,  
19 Rhonda Long, Esq., of the LAW OFFICE OF LEE J. GRANT, II, and hereby submits  
20 Objection to the Discovery Commissioner's Report and Recommendations regarding  
21 Defendant's Motion to Compel Rule 35 Exam.  
22

23 ///

24 ///

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26 ///

27 ///

28 ///



1 Defendant's Objection is made and based upon the papers and pleadings on file herein,  
2 the exhibits attached hereto, and the following points and authorities submitted in support  
3 hereof.

4 Dated this 21st day of October, 2020.

6 LAW OFFICE OF LEE J. GRANT, II

7  
8   
9 By: \_\_\_\_\_  
10 RHONDA LONG, ESQ.  
11 Nevada Bar #10921  
12 8345 West Sunset Road, Suite 250  
13 Las Vegas, Nevada 89113  
14 *Attorney for Defendant,*  
15 *YEONHEE LEE*

16 **DECLARATION OF RHONDA LONG, ESQ. IN SUPPORT OF THE**  
17 **OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND**  
18 **RECOMMENDATIONS**

19 RHONDA LONG, declares under penalty of perjury as follows:

20 1. That Declarant is an attorney duly licensed to practice in the State of Nevada and  
21 is an attorney at the law firm of LAW OFFICE OF LEE J. GRANT, II, counsel for Defendant in  
22 the within action. Declarant is over the age of 18 years and is in all respects competent to make  
23 this Declaration. This Declaration is based upon my personal knowledge unless stated upon  
24 information and belief and, if called to testify, Declarant would testify as set forth in this  
25 declaration.  
26

27 ///

28 ///

1           2.     That on August 7, 2020, paralegal for Declarant, Candice Harris, reached out to  
2 Plaintiff's counsel, the law firm of MAIER GUTIERREZ & ASSOCIATES with proposed dates  
3 for an independent medical exam of Plaintiff. See, August 2020 Rule 35 E-Mail Chain attached  
4 as **Exhibit A**.

5           3.     That on or about August 20, 2020, paralegal for Plaintiff's firm provided a  
6 proposed stipulation and order setting forth parameters and restrictions on the independent  
7 medical exam.  
8

9           4.     That on August 21, 2020, Declarant replied that she would not agree the  
10 stipulation and order as written. Declarant provided a redlined version which struck the  
11 parameters allowing a nurse consultant as an observer and the provision providing that the expert  
12 must retain his drafts and notes and that such is subject to be subpoenaed by Plaintiff. See,  
13 **Exhibit B**.  
14

15           6.     That in reply to this objection, Plaintiff's counsel, Jason Maier, Esq. said he  
16 would not agree to the redline revisions. See, **Exhibit A**.  
17

18           7.     On August 25, 2020, an EDCR 2.34 conference was held regarding the IME  
19 dispute and parties were not able to come to an agreement.

20           8.     Pursuant to EDCR 2.34, Declarant attempted to resolve this matter as described  
21 above.  
22

23           9.     After review of Defendant's Motion to Compel Rule 35 Exam, Plaintiff's  
24 Opposition, and Defendant's Reply thereto, on October 8, 2020, the Discovery Commissioner  
25 entered a Report and Recommendations which included permitting Plaintiff to have a legal nurse  
26 consultant observe and record the Rule 35 exam and also permitted Plaintiff the ability to  
27 subpoena the Rule 35 expert's drafts and notes.  
28

1           10. Defendant now seek an order from this Honorable Court denying the Discovery  
2 Commissioner's Report and Recommendations on the matters listed in the above paragraph.

3           11. This Objection is made in good faith and is not made for purposes of delay.

4           12. FURTHER DECLARANT SAYETH NAUGHT.

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RHONDA LONG, ESQ.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I.

#### ISSUES PRESENTED

The issue before the Court is whether Plaintiff Alberto Cario ("Plaintiff CARIO") should be permitted to (1). have an observer at the Rule 35 Exam who is a nurse and legal expert consultant and more generally any observer who is an attorney, attorney representative, or paid for expert/consultant; (2). record the exam even though Plaintiff provided no good cause for recording the same; and (3). have a court order allowing Plaintiff to subpoena the Rule 35 expert's draft reports and notes.

### II.

#### NATURE OF OBJECTION

This litigation arises from a personal injury claim stemming from an automobile accident which occurred on November 24, 2018 involving Plaintiff CARIO and Defendant Yeonhee Lee ("Defendant LEE"). Defendant has requested that Plaintiff CARIO submit to a Nevada Rule of Civil Procedure Rule 35 medical examination to be conducted by Dr. Mark Rosen. See, Curriculum Vitae of Dr. Rosen attached as **Exhibit C**. The examination will

1 concern the current status and future prognosis of Plaintiff's alleged back injury which is the  
2 basis for Plaintiff's claim for damages against Defendant.

3 In this lawsuit, Plaintiff CARIO seeks recovery of damages, resulting from an  
4 automobile accident including actual medical specials, unspecified past and continuing  
5 suffering, and physical limitations and restrictions according to Plaintiff's written answers to  
6 discovery. Plaintiff's attorney has agreed to a Rule 35 exam of their client; however, Plaintiff's  
7 attorney wishes to impose restrictions on the exam which are not required by Rule 35 including  
8 specifically having Lynn Belcher Legal Nurse Consulting & Life Care Planning Associates  
9 attend and record the Rule 35 exam and has also requested that Plaintiff be allowed to subpoena  
10 the experts' draft reports and notes. As such, Defendant brought a Motion before the Discovery  
11 Commissioner to request that such not be permitted.  
12  
13

14 On October 8, 2020, the Discovery Commissioner entered a report and recommendations  
15 that provided, in pertinent part, that there is a conflict between NRCP 35 and NRS 52.380. The  
16 Commissioner found that NRS 52.380 is applicable to Rule 35 exams and that such statute is  
17 controlling in this matter. The Commissioner found that a Rule 35 exam involves a substantive  
18 right of privacy that is covered by NRS 52.380. In addition, the Commissioner found that the  
19 examination doctor shall keep and maintain all notes and draft reports in his or her file and the  
20 examination doctor may not destroy any documents related to the examination.  
21

22 As detailed below, this Court should decline to adopt the Discovery Commissioner's  
23 recommendations. The Nevada Rules of Civil Procedure should govern the parties' dispute as  
24 the issue pertains to the Court's procedures rather than any substantive right of Plaintiff; as  
25 such, NRS 52.380 should be of no effect. In light of the significance of the issue and the  
26 apparent conflict in laws, Defendant requests that this Court issue an order denying Plaintiff the  
27  
28

1 right to a nurse/legal expert consultant observer, denying that such observe be permitted to  
2 record, and denying Plaintiff an order permitting them to subpoena the expert's draft reports.

3 **III.**

4 **STATEMENT OF FACTS**

5 This matter arises from a two-car accident which occurred in the early morning hours  
6 around 4:30 am on November 24, 2018 at the intersection of Sahara Avenue and Buffalo Drive.  
7 Defendant LEE was driving a 2017 Audi A4 and the Plaintiff CARIO, was operating a 2018  
8 Dodge Challenger. The two vehicles collided at the intersection. Plaintiff has alleged that he  
9 was injured in the automobile accident and has made this lawsuit seeking damages.  
10

11 **IV.**

12 **LEGAL ARGUMENT**

13 **A.**

14 **LEGAL STANDARD – NRCP 35**

15 Nevada Rule of Civil Procedure 35 provides in pertinent part as follows:  
16

17 “Rule 35. Physical and Mental Examinations  
18

19 (a) Order for Examination.

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

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

27 (A) The order may be made only on motion for good cause and on  
28 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

1 will perform it. The examination must take place in an  
2 appropriate professional setting in the judicial district in which  
3 the action is pending, unless otherwise agreed by the parties or  
4 ordered by the court.

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

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

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

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

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

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

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

27 A party seeking to compel a plaintiff's physical examination must show that the  
28 plaintiff's physical condition is in controversy and there is good cause for the examination.  
Requests under Rule 35 are liberally constructed in favor of granting discovery, but due to their  
intrusive nature remain a matter of discretion. See Schlagenhauf v. Holder, (1964) 379 U.S.  
104, 114-15 (interpreting the analogous federal rule concerning independent medical  
examinations). As so stated in the rule, it is proper to order a plaintiff in a personal injury

lawsuit to submit to an independent medical examination by the defendant when good cause has been shown, and the time, place, manner, conditions, and scope of the examination and the person by whom it is to be made have been specified.

A.

**NRCP 35 CONTROLS PARAMETERS OF INDEPENDENT MEDICAL EXAMS IN NEVADA COURTS NOT NRS 52.380 BECAUSE NRS 52.380 VIOLATES THE SEPARATION OF POWERS CLAUSE OF THE NEVADA CONSTITUTION**

Plaintiff's position is that NRS 52.380 supersedes any language in NRCP 35 concerning Rule 35 exams. Specifically, Plaintiff relies on NRS 52.380 for its position that they be entitled to have an observer at the Rule 35 Exam who is both a nurse and legal consultant and that observer should be permitted to record the exam. The Discovery Commissioner's report and recommendations agree with Plaintiff's position. Defendant maintains that NRS 52.380 is an inappropriate infringement by the Nevada legislature upon the powers of the Nevada judicial branch, and as NRS 52.380 violates the Separation of Powers Clause of Nevada's Constitution and, that statute has no effect on Rule 35 Exams.

In Defendant's Motion to Compel the Rule 35 Exam, Defendant cited Berkson v. LePome, 126 Nev. 492, 498, 245 P.3d 560, 564 (2010) for its essential premise that "[t]he separation of powers doctrine is the most important foundation for preserving and protecting liberty by preventing the accumulation of power in any one branch of government." Berkson v. LePome, 126 Nev. 492, 498, 245 P.3d 560, 564 (2010). To this end and pursuant to Article 3, Section 1(1) of the Nevada Constitution, governmental power of the State of Nevada is divided into three separate, coequal departments: legislative, executive, and judicial. The powers specific to each department, or branch, are set forth within Articles 4, 5, and 6. Each branch has "inherent power to administer its own affairs and perform its duties, so as not to become a

1 subordinate branch of government.” Id. The judicial branch is entrusted with “rule-making and  
2 other incidental powers reasonable and necessary to carry out the duties required for the  
3 administration of justice and to economically and fairly manage litigation.” Id. at  
4 499 (internal quotations omitted); See also, Halverson v. Hardcastle, 123 Nev. 245, 261, 163  
5 P.3d 428, 439 (2007) and Blackjack Bonding v. Las Vegas Mun. Ct., 116 Nev. 1213, 1218, 14  
6 P.3d 1275, 1279 (2000).

8 The Nevada Supreme Court has “been especially prudent to keep the powers of the  
9 judiciary separate from those of either the legislative or the executive branches.” Berkson, at  
10 498, 245 P.3d at 565 (citing, e.g., Galloway v. Truesdell, 83 Nev. 13, 19, 422 P.2d 237, 242  
11 (1967)). “This separation is fundamentally necessary because ‘[w]ere the power of judging  
12 joined with the legislative, the life and liberty of the subject would be exposed to arbitrary  
13 control, for the judge would be the legislator: Were it joined to the executive power the judge  
14 might behave with all the violence of an oppressor.’ Berkson, at 498-99, 245 P.3d at 565.

16 In Berkson, the Nevada Supreme Court held that a statute enacted by the Legislature  
17 which attempted to supersede a procedural rule regarding the course of litigation violated the  
18 separation of powers doctrine of the Nevada Constitution. Id. at 501, 245 P.3d at 566. To arrive  
19 at their holding, the Berkson Court stated:

21  
22 Regarding such discord between the legislative and judicial branches of  
23 government, it is well settled that the judiciary retains the authority to “‘hear and  
24 determine justiciable controversies’” as a coequal power to the Legislature’s broad  
25 authority to enact, amend, and repeal legislation. Halverson, 123 Nev. at 260, 163  
26 P.3d at 439 (quoting Galloway, 83 Nev. at 20, 422 P.2d at 242). And as one  
commentator aptly explained this distinction, “[t]o declare what the law *is or has*  
27 *been* is judicial power; to declare what the law *shall be* is legislative.” 1 Thomas  
M. Cooley, *Constitutional Limitations* 191 (8th ed.1927).

28 In keeping with this theory, “ ‘[t]he judiciary ... has the inherent power to govern  
its own procedures.’” State v. Dist Ct. [Marshall ], 116 Nev. 953, 959, 11 P.3d



1 1209, 1212 (2000) (quoting Whitlock v. Salmon, 104 Nev. 24, 26, 752 P.2d 210,  
2 211 (1988)); See also NRS 2.120(2) (legislative recognition that this court  
3 regulates civil practice in order to promote “the speedy determination of litigation  
4 upon its merits”). The judiciary is entrusted with “rule-making and other  
5 incidental powers reasonable and necessary to carry out the duties required for the  
6 administration of justice” and “to economically and fairly manage litigation.”  
7 Borger v. Dist. Ct., 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004) (quoting  
8 Goldberg v. District Court, 93 Nev. 614, 616, 572 P.2d 521, 522  
9 (1977)); See also Marshall, 116 Nev. at 959, 11 P.3d at 1213 (stating that “[t]here  
10 are regulating ... powers of the Judicial Department that are within the province  
11 of the judicial function, i.e., ... promulgating and prescribing any and all rules  
12 necessary or desirable to handle the business of the courts or their judicial  
13 functions” (second and third alterations in original) (quoting Galloway, 83 Nev. at  
14 23, 422 P.2d at 244)). Thus, **“the legislature may not enact a procedural  
15 statute that conflicts with a preexisting procedural rule, without violating the  
16 doctrine of separation of powers, and ... such a statute is of no effect.”**  
17 Marshall, 116 Nev. at 959, 11 P.3d at 1213 (quoting State v. Connery, 99 Nev.  
18 342, 345, 661 P.2d 1298, 1300 (1983)); See also, Secretary of State, 120 Nev. at  
19 465, 93 P.3d at 752 (explaining that the Legislature cannot restrict, substantially  
20 impair, or defeat the exercise of this court's constitutional powers); Whitlock 104  
21 Nev. at 26, 752 P.2d at 211 (concluding that a particular statute did not encroach  
22 on judicial authority because it did not disrupt or abrogate a court  
23 rule); *but see* Connery, 99 Nev. at 345, 661 P.2d at 1300 (noting that any court-  
24 created procedural rules “may not conflict with the state constitution or abridge,  
25 enlarge or modify any substantive right” (internal quotations omitted)). In  
26 addition to the constitutionally mandated bases for keeping separate those  
27 inherent powers of the judiciary, leaving control of court rules and the  
28 administration of justice to the judiciary, and thereby placing the responsibility for  
the system's continued effectiveness with those most familiar with the latest issues  
and the experience and flexibility to more quickly bring into effect workable  
solutions and amendments, makes good sense. Goldberg, 93 Nev. at 617–18, 572  
P.2d at 523.

Berkson, at 499-500, 245 P.3d at 565 (emphasis added).  
The Berkson Court's holding extended the long-standing rule that the Legislature cannot enact  
a procedural statute that conflicts with a pre-existing procedural rule to apply to legal doctrines,  
such as issue and claim preclusion, which the Court recognized were not procedural rules. Id. at  
500, 245 P.3d at 566.

On December 31, 2018, the Nevada Supreme Court adopted revisions to NRCP 35  
which specifically addressed audio recording and the presence of observers during Rule 35  
exams. The changes were made effective on March 1, 2019. The current Rule 35 permits, for

1 “good cause” shown, audio recording of an independent examination under the Rule. See,  
2 NRCP 35(a)(3). Further, any observer to such examination may not be the party’s attorney or  
3 anyone employed by the party or the party’s attorney. See, NRCP 35(a)(4).

4 The 2019 Advisory Committee Notes Subsection (a) provides the rationale for the  
5 changes to the observer and recording language as follows:  
6

7 “ADVISORY COMMITTEE NOTES 2019 Amendment

8 Subsection (a). Rule 35(a) expressly addresses audio recording and  
9 attendance by an observer at court-ordered physical and mental  
10 examinations. A court may for good cause shown direct that an  
11 examination be audio recorded. **A generalized fear that the examiner  
12 might distort or inaccurately report what occurs at the examination is  
13 not sufficient to establish good cause to audio record the  
14 examination.** In addition, a party whose examination is ordered may have  
15 an observer present, **typically a family member or trusted companion,**  
16 provided the party identifies the observer and his or her relationship to the  
17 party in time for that information to be included in the order for the  
18 examination. Psychological and neuropsychological examinations raise  
19 subtler questions of influence and confidential and proprietary testing  
20 materials that make it appropriate to condition the attendance of an  
21 observer on court permission, to be granted for good cause shown. **In  
22 either event, the observer should not be the attorney or employed by  
23 the attorney for the party against whom the request for examination  
24 is made,** and the observer may not disrupt or participate in the  
25 examination. A party requesting an audio recording or an observer should  
26 request such a condition when making or opposing a motion for an  
27 examination or at a hearing on the motion.”

21 On or about May 29, 2019, after the recent Nevada Supreme Court Rule changes to  
22 NRCP 35, the Nevada legislature passed NRS 52.380. This statutory language allows attorney  
23 and attorney employee observers at a Rule 35 exam. In addition, the language does not  
24 expressly contain any good cause requirements for recording.  
25

26 NRCP 35 is a procedural rule over which the judiciary has exclusive power to regulate  
27 and control. The United States Supreme has long held that “**rules authorizing court order[s]  
28 for physical and mental examination of a party are rules of ‘procedure[.]’**” Sibbach v.

1 Wilson & Co., 312 U.S. 1, 13-14 (1941) (emphasis added). In contrast, “[s]ubstantive rules ‘are  
2 directed at individuals and government and tell them to do or abstain from certain conduct on  
3 pain of some sanction. Substantive rules are based on legislative and judicial assessments of the  
4 society’s wants and needs and they help to shape the world of primary activity outside the  
5 courtroom.’” Sims v. Great American Life Insurance Company, 469 F.3d 870, 882 (10th Cir.  
6 2006) (quoting Barron v. Ford Motor Co., 965 F.2d 195 (7th Cir. 1992)).  
7 The Court in Sims went on to propound a litmus test to distinguish between procedural  
8 and substantive rules, stating:

10 “In short, although the distinction between substance and procedure is not always  
11 clear, we can distinguish a substantive rule from a procedural rule by examining  
12 the language and the policy of the rule in question. **If these inquiries point to**  
13 **achieving fair, accurate and efficient resolution of disputes, the rule is**  
14 **procedural.** If however, the primary objective is directed to influencing conduct  
15 through legal incentives, the rule is substantive.”

15 Sims, at 883 (emphasis added).

16 NRCP 35 is not directed at influencing conduct through legal incentives but, instead, is a  
17 rule aimed at achieving fair, accurate and efficient resolution of disputes through the discovery  
18 process and to allow a defendant the opportunity to have its own chosen medical professional  
19 evaluate a plaintiff. NRCP 35, is nothing more than the procedure required to be followed when  
20 a defendant requests that a plaintiff, who has put his physical condition at issue by way of  
21 litigation, to present for a Rule 35 Exam to allow that defendant an opportunity to have an  
22 examination performed by someone other than that plaintiff’s treatment provider(s).  
23 Specifically, NRCP 35, is simply a procedural roadmap as to how the Rule 35 Exam will be  
24 conducted.  
25

26 ///

27 ///

1 While it is true the Nevada legislature has the power and authority to create and modify  
2 substantive rights, NRS 52.380 did not create or modify any substantive rights, meaning causes  
3 of action that can be alleged or damages that may be sought. The statute instead expressly  
4 attempts to modify the process by which the Nevada judiciary governs a specific part of  
5 personal injury litigation. It is expressly procedural and nothing within NRCP 35 conflicts with  
6 the Nevada Constitution, nor does it abridge, enlarge or modify any substantive right. See,  
7 Connery, 99 Nev. At 345, 661 P.2d at 1300 (noting that any court-created procedural rules  
8 “may not conflict with the state constitution or abridge, enlarge or modify any substantive  
9 right” (internal quotations omitted)).  
10

11 Plaintiff contends that NRS 52.380 created or reinforced a substantive right. However, to  
12 the extent this was NRS 52.280's intention, it interferes “with procedure to a point of  
13 disruption” and attempts to abrogate the existing Court rule (NRCP) concerning physical  
14 examinations of personal injury plaintiffs. See contra, Whitlock v. Salmon, 104 Nev. 24, 26  
15 (1988)(“[a]lthough the statute does implicate trial procedure, it does not interfere with  
16 procedure to a point of disruption or attempted abrogation of an existing court rule....”).  
17

18 In fact, the legislative history of NRS 52.380 indicates the statute's express purpose was  
19 to enact a draft of Rule 35 the Supreme Court rejected. On March 18, 2019, AB 285 was  
20 introduced. The legislative minutes make clear AB 285 was expressly intended to implement  
21 changes to Rule 35. Supporters of NRS 52.390 noted what became AB 285 was rejected during  
22 the process that led to Nevada's amended rules of civil procedure:  
23  
24

25 “We voted 7-to-1 to make substantial changes, the changes that are set forth or  
26 embodied in the bill before you, Assembly Bill 285. Unfortunately, when our  
27 recommendations went to the full Supreme Court of Nevada, they rejected our  
28 changes for reasons we are still not clear on. At that point, we reassessed our  
position.” See, Minutes of Assembly Committee on Judiciary, March 27, 2019,  
Page 4, statement of Graham Galloway.

1 The Nevada Supreme Court, which has promulgated the Nevada Rules of Civil  
2 Procedure, and the Nevada Legislature, which issues the Nevada Revised Statutes, serve  
3 separate and distinct purposes. Obviously, both NRCP 35 and NRS 52.380 cannot both govern  
4 this issue as they conflict. The issues of audio recording and the presence of observers during  
5 an independent medical examinations are procedural in nature, and therefore, the Nevada Rules  
6 of Civil Procedure Rule 35 governs.  
7

8 **B.**  
9

10 **THE ONLY LIMITATIONS TO THE RULE 35 EXAM SHOULD BE THOSE**  
11 **PARAMETERS SET FORTH IN RULE 35**

12 Plaintiff's proposed Rule 35 observer is Lynn Belcher Legal Nurse Consulting & Life  
13 Care Planning Associates. The consultant's website is [www.lynnbelcherlnc.com](http://www.lynnbelcherlnc.com). This firm  
14 represents itself as a legal consultant that provides "professional, evidence based opinion[s]"  
15 regarding medical issues. The website also provides that their representatives "can collaborate  
16 with plaintiff or defendant attorneys, healthcare organizations, insurance providers, or any  
17 organization needing medical record review, interpretation, analysis or summary."  
18

19 It is obvious that Plaintiff seeks to have a 2<sup>nd</sup> medical expert in the Rule 35 exam, an  
20 expert who is a nurse and not a doctor, not just to observe, but to also render an opinion  
21 regarding what was right or wrong about the way the exam was conducted. According to the  
22 NRCP 35 2019 Advisory Committee Notes, the drafters of the current NRCP 35 rules did not  
23 envision having competing medical professional observers in the room during the exam.  
24 Moreover, the rule explicitly states that such observer may not be an attorney or an attorney  
25 representative. Instead, the drafters envisioned an observer being a family friend or trusted  
26 companion; not a paid legal medical consultant.  
27  
28

1 In addition, Plaintiff has not provided good cause for having the Rule 35 exam be  
2 recorded. As provided in the above 2019 Advisory Committee Notes, a Plaintiff has not  
3 established good cause simply because they state a general fear of the integrity of the exam  
4 process. Plaintiff has not provided any specific reason necessitating the recording of this exam.

5 As NRS 52.380 is of no effect on Rule 35 exams, Plaintiff should be compelled to  
6 present without an observer, unless Plaintiff has made a showing of good cause for same,  
7 which Plaintiff simply had not accomplished by way of Plaintiff's Opposition to Defendant's  
8 Motion to Compel Rule 35 Exam. Furthermore, even if Plaintiff had good cause for an  
9 observer, he should not be allowed a legal nurse expert observer. In addition, Plaintiff has not  
10 showed good cause as to why this physical exam should be recorded. As such, Defendant asks  
11 that the Discovery Commissioner's recommendations which allowed an attorney/attorney  
12 representative observer and recording be overturned.  
13  
14

15  
16 C.

17 **NRCP 26 PROVIDES THAT THE MEDICAL EXPERT'S DRAFT REPORTS ARE**  
18 **PROTECTED FROM DISCLOSURE**

19 NRCP26(b)(3) provides as follows:  
20

21 "(3) Trial Preparation: Materials.

22 (A) Documents and Tangible Things. Ordinarily, a party may not  
23 discover documents and tangible things that are prepared in  
24 anticipation of litigation or for trial by or for another party or its  
25 representative (including the other party's attorney, consultant,  
26 surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4),  
those materials may be discovered if:

27 (i) they are otherwise discoverable under Rule 26(b)(1); and  
28

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party's attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person's own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person's oral statement."

NRCP26(b)(4)(B) provides as follows:

"Trial Preparation: Experts.

...

(B) Trial-Preparation Protection for Draft Reports or Disclosures.

**Rule 26(b)(3) protects drafts of any report or disclosure required under Rule 16.1(a), 16.2(d) or (e), 16.205(d) or (e) 26(b)(1), regardless of the form in which the draft is recorded." (emphasis added).**

///

///

///

///

///

1 As with the previous rules discussed in these pleadings, NRC 26 was also revised on  
2 March 1, 2019. The revisions specifically included protection of disclosure of draft reports  
3 made by experts. Here, Plaintiff wants to include a provision in the Rule 35 examination order  
4 which states that the medical expert must maintain all drafts and that Plaintiff has the right to  
5 subpoena such drafts.

6  
7 NRC 26 provides that an expert's drafts are protected under a work product privilege  
8 protection. The Discovery Commissioner has recommended that Plaintiff be permitted to have  
9 a finding in the Rule 35 exam order that the medical expert must keep all draft reports and that  
10 Plaintiff may have the right to subpoena the same. The Commissioner also provided that  
11 Defendant could object to such subpoena. However, Defendant believes that the  
12 Commissioner's ruling is incorrect as the newly revised 2019 rule explicitly states that expert  
13 draft reports are not subject to disclosure regardless of the form of the draft. See,  
14 NRC26(b)(4)(B). As such, Plaintiff should not be permitted by court order the automatic right  
15 to subpoena draft expert reports, even if Defendant may object.  
16

17  
18 V.

19 CONCLUSION

20 Based on the foregoing, Defendant respectfully requests that the Discovery  
21 Commissioner's recommendations be denied. Defendant requests that the Court issue an order:  
22 (1) compelling Plaintiff Albert Lee Cario to submit to a Rule 35 Exam; (2) precluding audio  
23

24 ///

25 ///

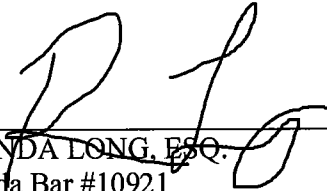
26 ///

27 ///



1 recording; (3) precluding the presence of any observer who is an attorney, attorney  
2 representative, or paid for expert/consultant; and (4) finding that expert drafts and notes are  
3 protected from disclosure.  
4  
5

6 LAW OFFICE OF LEE J. GRANT, II

7  
8 By:   
9 RHONDA LONG, ESQ.  
10 Nevada Bar #10921  
11 8345 West Sunset Road, Suite 250  
12 Las Vegas, Nevada 89113  
13 Attorney for Defendant,  
14 YEONHEE LEE  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of LAW OFFICE OF LEE J. GRANT, II,  
3 and that on this 21<sup>st</sup> day of October 2020, I caused a true and correct copy of the foregoing  
4 document **OBJECTION TO DISCOVERY COMMISSIONER'S REPORT AND**  
5 **RECOMMENDATIONS RE: DEFENDANT'S MOTION TO COMPEL RULE 35**

6 **EXAM**to be served as follows:

7   X   VIA ECF: by electronic filing with the Court delivering the document(s)  
8 listed above via the Court's e-filing and service system, upon each party in this  
case who is registered as an electronic case filing user with the Clerk.

9        VIA U.S. POSTAL MAIL: by placing a true and correct copy thereof  
10 enclosed in a sealed envelope with the postage thereon fully prepaid, addresses  
as indicated on the attached service list in the United States Mail.

11        VIA ELECTRONIC MAIL: by causing a true and correct copy thereof to  
12 be mailed electronically to the email addressee(s) at the attached email  
13 addresses set forth in the service list.

14 Jason R. Maier, Esq.  
15 Julia M. Chumbler, Esq.  
16 MAIER GUTIERREZ & ASSOCIATES  
17 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Plaintiff*

18  
19  
20 /s/ Jackie De La Paz  
21 EMPLOYEE OF LAW OFFICE OF LEE J.  
GRANT, II

22 DATED: 10/21/2020  
23  
24  
25  
26  
27  
28

# **EXHIBIT A**

**AUGUST 2020 E-MAIL CHAIN  
RE: IME ISSUES**

# **EXHIBIT A**

**Long, Rhonda**

---

**From:** Jason Maier <jrm@mgalaw.com>  
**Sent:** Friday, August 21, 2020 2:47 PM  
**To:** Long, Rhonda; Harris, Candice  
**Cc:** Natalie Vazquez; Julia Chumbler  
**Subject:** RE: [SECURE] RE: [SAO for Rule 35 examination] LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.

Hi Rhonda. Based on your proposed edits, it appears we will not be able to stipulate to a Rule 35 exam. Feel free to file a motion with the discovery commissioner. Thanks.

**Jason R. Maier**  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[jrm@mgalaw.com](mailto:jrm@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

**From:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Sent:** Friday, August 21, 2020 1:00 PM  
**To:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>  
**Subject:** [SECURE] RE: [SAO for Rule 35 examination] LEE adv. Cario

Attached is my version with red line revisions.

Sincerely,

Rhonda Long, Esq.  
**LAW OFFICE OF LEE J. GRANT II**  
*Attorneys and Support Staff are Employees of  
Government Employees Insurance Company*

8345 W. Sunset Road, Ste. 250  
Las Vegas, Nevada 89113  
(702) 233-9303 Ext. 5507  
[rhlong@geico.com](mailto:rhlong@geico.com)

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**From:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>  
**Sent:** Thursday, August 20, 2020 11:03 AM  
**To:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** RE: [SAO for Rule 35 examination] LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
Ms. Long,

Mr. Cario is available on 9/17, please see the attached for the proposed stipulation and order for Mr. Cario's Rule 35 examination. Please redline any edits and/or advise if you are agreeable so we may submit to the Discovery Commissioner.

Thank you,

**Natalie D. Vazquez | Paralegal**  
**MAIER GUTIERREZ & ASSOCIATES**  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[ndv@mgalaw.com](mailto:ndv@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

**From:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>  
**Sent:** Monday, August 17, 2020 9:34 AM  
**To:** Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** RE: LEE adv. Cario

Hello Julia,

Dr. Rosen's availability has changed. Dr. Rosen's updated availability is:

Sept 15<sup>th</sup>

Sept 17<sup>th</sup>

Sept 29<sup>th</sup> all for a start time of 1:15pm, check-in of 12:45pm. The dates and times fill up fast so please let me know ASAP when your client will be available. I appreciate your assistance in this matter.

Kind Regards,

*Candice Harris*

Paralegal

**LAW OFFICE OF LEE J. GRANT II**

Attorneys and support staff are employees of

Government Employees Insurance Company

8345 West Sunset, Suite 250

Las Vegas, NV 89113

702-233-9303x5498 - telephone

702-780-8119 -- fax

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Sensitivity: Confidential

**From:** Julia Chumbler [<mailto:jmc@mgalaw.com>]  
**Sent:** Thursday, August 13, 2020 9:12 AM  
**To:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>

**Cc:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** Re: LEE adv. Carlo

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
I'm sorry confused with the depo dates . Stand by

Sent from my iPhone

On Aug 13, 2020, at 9:11 AM, Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)> wrote:

Your original email gave the 21st at 10a as an option . Is that date no longer available ?

Sent from my iPhone

On Aug 13, 2020, at 9:03 AM, Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)> wrote:

Hi Julia,  
Thank you for responding. Do you mean the August 20<sup>th</sup> date?

Kind Regards,  
*Candice Harris*  
Paralegal  
**LAW OFFICE OF LEE J. GRANT II**  
Attorneys and support staff are employees of  
Government Employees Insurance Company  
8345 West Sunset, Suite 250  
Las Vegas, NV 89113  
702-233-9303x5498 - telephone  
702-780-8119 – fax

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Sensitivity: Confidential

**From:** Julia Chumbler [mailto:jmc@mgalaw.com]  
**Sent:** Thursday, August 13, 2020 8:42 AM  
**To:** Harris, Candice <CandHarris@geico.com>  
**Cc:** Natalie Vazquez <ndv@mgalaw.com>; Long, Rhonda <RhLong@geico.com>  
**Subject:** Re: LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
Candice I apologize I thought I responded last week that he can make the 21st. Is that not available anymore ?

Sent from my iPhone

On Aug 13, 2020, at 8:20 AM, Harris, Candice <CandHarris@geico.com> wrote:

Hello Ladies,  
I am following up on the previous email sent last week regarding scheduling your client's Rule 35 Exam. I haven't received a response and dates with doctors fill up fast. Please respond at your earliest convenience. I appreciate your assistance in this matter.

Kind Regards,  
*Candice Harris*  
Paralegal  
**LAW OFFICE OF LEE J. GRANT II**  
Attorneys and support staff are employees of  
Government Employees Insurance Company  
8345 West Sunset, Suite 250  
Las Vegas, NV 89113  
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Sensitivity: Confidential

**From:** Harris, Candice

**Sent:** Friday, August 7, 2020 2:42 PM

**To:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>

**Cc:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>

**Subject:** LEE adv. Cario

Hello,

We are in the process of setting up a Rule 35 Exam for Albert Cario. The doctor we are planning to retain for the exam is Mark Rosen, MD. Dr. Rosen is available the following dates:

- Aug 20 at 2:30pm
- Sept 8 at 1:15pm
- Sept 10 at 1:15pm

There is a 30min check-in required prior to the scheduled time. Please let me know if one of the dates works for Mr. Cario. I appreciate your assistance in this matter.

Kind Regards,

*Candice Harris*

Paralegal

**LAW OFFICE OF LEE J. GRANT II**

Attorneys and support staff are employees of  
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8345 West Sunset, Suite 250

Las Vegas, NV 89113

702-233-9303x5498 - telephone

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# **EXHIBIT B**

**DRAFT STIPULATION AND ORDER  
W/REDLINE REVISIONS  
RE: RULE 35 EXAM**

# **EXHIBIT B**

1 **SAO**

JASON R. MAIER, ESQ.

2 Nevada Bar No. 8557

JULIA M. CHUMBLER, ESQ.

3 Nevada Bar No. 15025

**MAIER GUTIERREZ & ASSOCIATES**

4 8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

5 Telephone: 702.629.7900

Facsimile: 702.629.7925

6 E-mail: [jrm@mgalaw.com](mailto:jrm@mgalaw.com)

[jmc@mgalaw.com](mailto:jmc@mgalaw.com)

7 *Attorneys for Plaintiff Alberto Eduardo Cario*

10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ALBERTO EDUARDO CARIO, an individual,

13 Plaintiff,

14 vs.

15 YEONHEE LEE; an individual; DOES I through  
16 X; and ROE CORPORATIONS I through X,  
17 inclusive,

18 Defendants.

Case No.: A-19-803446-C

Dept. No.: XXIX

**STIPULATION AND ORDER FOR  
RULE 35 EXAMINATION OF PLAINTIFF**

19 **IT IS HEREBY STIPULATED AND AGREED:**

20 Defendant has requested that plaintiff Alberto Eduardo Cario submit to a Rule 35 medical  
21 examination, and Mr. Cario has agreed to the request subject to the following rules and conditions:

- 22 1. The Rule 35 examination shall be conducted pursuant to Nevada Rule of Civil  
23 Procedure 35, as amended.
- 24 2. Defendants have selected Mark J. Rosen, M.D. to conduct the Rule 35 examination of  
25 Mr. Cario
- 26 3. The scope of the Rule 35 examination is as follows: the Dr. Rosen's evaluation of Mr.  
27 Cario's injuries and treatment.
- 28 4. The date, time and location of the Rule 35 examination are as follows: September 17,  
2020 at 1:15pm with an arrival time of 12:45pm.

- 1        5.        The Rule 35 examination shall be held in a medical office in compliance with HIPAA.
- 2        6.        Dr. Rosen will not require Mr. Cario to sign any paperwork at the time of the Rule 35
- 3                examination other than a "sign-in" sheet limited to his name, date and time of arrival.
- 4        7.        The intake forms to be completed by Mr. Cario shall be provided to plaintiff's counsel
- 5                at least ten business days prior to the Rule 35 examination and will be returned to
- 6                defense counsel prior to the examination.
- 7        8.        Mr. Cario shall not be required to wait in the waiting room for longer than 30 minutes
- 8                before the commencement of the Rule 35 examination.
- 9        ~~9.        The Rule 35 examination will be audio recorded by LYNN BELCHER LNC ASSOCIATES,~~
- 10                ~~in which Mr. Cario's counsel will arrange and pay for the recording. Mr. Cario's~~
- 11                ~~counsel shall disclose a copy of the recording within 30 days of receipt of the same.~~
- 12                ~~The doctor and all persons present must be notified that the examination will be~~
- 13                ~~recorded before the examination begins.~~
- 14        ~~10.        Mr. Cario will have a nurse observer present at the Rule 35 examination from LYNN~~
- 15                ~~BELCHER LNC ASSOCIATES. The nurse observer must not in any way interfere,~~
- 16                ~~obstruct, or participate in the examination.~~
- 17        ~~11.9.~~ 9. Defense counsel, or any other representatives of defendants, will not attend the Rule
- 18                35 examination.
- 19        ~~12.10.~~ 10. Liability questions may not be asked by Dr. Rosen or any of his agents or
- 20                representatives during the Rule 35 examination.
- 21        ~~13.11.~~ 11. No x-rays or radiographs may be obtained during the Rule 35 examination. Dr. Rosen
- 22                can rely upon the same film studies relied upon by the treating physicians in this case.
- 23                If additional film studies are necessary for the Rule 35 examination, this must be
- 24                detailed in writing by Dr. Rosen at least 30 days prior to the examination and this issue
- 25                may be revisited.
- 26        ~~14.12.~~ 12. No invasive procedures shall be allowed during the Rule 35 examination.
- 27        ~~15.13.~~ 13. Mr. Cario shall not be required to disrobe during the Rule 35 examination.
- 28        ~~16.14.~~ 14. If Dr. Rosen subjects Mr. Cario to physically painful or invasive procedures, Mr. Cario
- reserves the right to immediately terminate the examination in his sole discretion.
- ~~17.15.~~ 15. Dr. Rosen shall not engage in *ex parte* contact with Mr. Cario's treating health care
- providers.
- ~~18.16.~~ 16. Dr. Rosen must prepare and disclose a written report ~~within 30 days of the Rule 35~~
- examination that accurately sets out in detail his findings, including diagnosis,
- conclusions, and the results of any tests, as required by Rule 35(b)(2). Dr. Rosen's
- written report must include a complete statement of all opinions he will express, and

the basis and reasons for them, as well as all of the facts or data he considered in forming said opinions, as required by Rule 16.1(a)(2)(B).

~~19.17.~~ Defense counsel shall disclose a copy of Dr. Rosen's written report within 30 days of the Rule 35 examination or by the Rule 16.1(a)(2) initial expert disclosure deadline, whichever occurs first.

~~20.~~ Dr. Rosen shall retain a complete copy of the entire file pertaining to the Rule 35 examination, including but not limited to draft reports, handwritten notes, e-mails or other communications sent and received, and all documents generated or received, including draft reports shared with defense counsel, defendants or an agent of defendants, communications regarding draft reports with defense counsel, defendants or an agent of defendants, redlines of draft reports shared with defense counsel, defendants or an agent of defendants, and test materials and/or raw data related to the Rule 35 examination. Following the disclosure of the Rule 35 examination report, counsel for plaintiff may serve Dr. Rosen with a subpoena and/or serve defendants with a request for production to produce these materials.

~~21.18.~~ Defense counsel shall be responsible for providing Dr. Rosen with a copy of this stipulation and order prior to the Rule 35 examination.

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

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

MAIER GUTIERREZ & ASSOCIATES

LAW OFFICE OF LEE J. GRANT, II

JASON R. MAIER, ESQ.  
Nevada Bar No. 8557  
JULIA M. CHUMBLER, ESQ.  
Nevada Bar No. 15025  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Plaintiff Alberto Cario*

RHONDA LONG, ESQ.  
Nevada Bar No. 10921  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
*Attorneys for Defendant Yeonhee Lee*

**ORDER**

IT IS SO ORDERED.

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

\_\_\_\_\_  
DISCOVERY COMMISSIONER

# **EXHIBIT C**

**CURRICULUM VITAE OF DR. ROSEN**

**EXHIBIT C**

**MARK J. ROSEN M.D.**  
Orthopaedic Surgery  
[www.OrthoDoc.AAOS.org/MarkRosen](http://www.OrthoDoc.AAOS.org/MarkRosen)

2020 Palomino Lane, Ste 220  
Las Vegas Nevada 89106  
702-474-7200 Ph#  
702-474-0009 Fax#

2680 Crimson Canyon Drive  
Las Vegas Nevada 89128  
702-228-7355 Ph#  
702-228-4499 Fax#

**UNDERGRADUATE:**

Massachusetts Institute of Technology  
Cambridge, Massachusetts  
B.S. in Management  
B.S. in Chemical Engineering  
07/80 to 05/84

**MEDICAL EDUCATION:**

Baylor College of Medicine  
Houston, Texas  
M.D.  
08/84 to 06/88

**POST GRADUATE TRAINING:**

Orthopaedic Surgery Residency  
University of Texas Health and Science Center  
San Antonio, Texas  
07/88 to 06/93

**PRACTICAL EXPERIENCE:**

Bone & Joint Specialist  
2020 Palomino Lane Suite 220  
Las Vegas Nevada 89106  
1994 to present

Founding Member  
Trauma Orthopaedics Surgical Services  
701 South Tonopah Drive  
Las Vegas Nevada 89106  
2000 to present

Member Orthopaedic Trauma Services  
University Medical Center  
1800 West Charleston Blvd  
Las Vegas Nevada 89102

Orthopaedic Associates of Nevada  
700 Shadow Lane Suite 165  
Las Vegas Nevada 89106  
1993 to 1994



**LICENSURE:**

State of Nevada NV6850

**CERTIFICATION:**

Board Certified, American Board of Orthopaedic Surgery

Re-Board Certified, American Board of Orthopaedic Surgery  
March 2005

Re-Board Certified, American Board of Orthopaedic Surgery  
January 2017

**PROFESSIONAL AND  
ACADEMIC APPOINTMENTS:**

Vice Chief of Orthopaedic Surgery  
University Medical Center  
Las Vegas Nevada  
2001 to 2010

Acting Chief of Orthopaedic Surgery  
University Medical Center  
Las Vegas Nevada  
2002

Chief of Orthopaedic Surgery  
Mountain View Hospital  
Las Vegas Nevada  
2000 to 2002

Chairman Utilization Review Committee  
Member Medical Executive Committee  
Mountain View Hospital  
Las Vegas Nevada  
2003 to 2005

Chief of Orthopaedic Surgery  
Summerlin Hospital  
Las Vegas Nevada  
2007 to 2008

Vice Chief of Staff  
Centennial Hills Hospital  
Las Vegas Nevada  
2008 to 2010

**HOSPITAL AFFILIATIONS:**

University Medical Center  
Valley Hospital  
Mountain View Hospital  
Summerlin Hospital  
Centennial Hills Hospital

**CME/COURSES:**

Available by request

TRIAL TESTIMONY'S DONE BY DR. ROSEN  
Updated 10/31/2013

03/22/01	Frances Clappetta
05/03/01	Derrick Leblanc
07/12/01	Debra Magee
09/13/01	Anna Wilson
08/01/04	Wynanda Hoffman
08/19/05	Terry Barcus
09/13/05	Michelle Gillum
06/09/06	Guy Zewadski
12/13/06	Lucy Morelli
03/06/07	Darren Carney
03/15/07	Katrina Duncan
10/11/07	Randy Hipple
03/27/08	Eva Buff
04/04/08	Audrey Quinian
03/24/09	Kevin Bibbins
09/30/10	Livia Farina
01/18/11	Gerardo Lopez-Celelos
04/08/11	Katrina Duncan
11/30/11	Cano, Angela
04/18/12	Desalvo, Nancy
06/19/12	Axtell, Catherine
08/30/12	Garabedian, Tom
10/17/13	John Phillips (Arbitration)

**TRIALS FROM 2014 TO PRESENT FOR DR MARK ROSEN**

**Updated 6/25/18**

**10/2/2014**

Gerald Geiger (treating) v Joshua Galloway and dominos Pizza Case N# A-12\_663 12-663843-C  
Deposed by Jolley Urg Wirth Plaintiff

**Oct 13,16**

Blanca Jimenez (plaintiff) vs Blue Martini Las Vegas Case # A-15-716334-C  
Deposed by Lewis Brisbois Bisgaard & Smith

**2/1/2018**

Joshua Nieto (Plaintiff) Vs Chandler , et al. Case# A-13-686092-C  
Deposed by Kirst & Associates

**3/8/2018**

George Paz (plaintiff) Vs Rent a Center, Case # se # A-15-7154448-C  
Deposed by Wilson Elser

**5/31/2018**

Robert Novak (plaintiff) vs Nexcom  
Deposed by Aleccia & Mitani

DEPOSITIONS BY DR. MARK ROSEN

Updated 12/13/13

02/01/02 Douglas Edwards  
05/21/02 Brenda Vulcano  
07/15/02 Andrew Thompson  
07/18/02 Audrey Gelashvill-Presley  
08/20/02 Jocelyn Juliano  
10/24/02 Sylvia Atencio  
11/12/02 Dale Alumbaugh  
09/09/03 Velma Lee Armstrong  
09/23/03 Shaun Johnson  
10/22/03 Kenneth Morris  
02/25/04 Karen Lindblom  
08/27/04 David Beatty  
09/07/04 David Cozart

02/08/05 Robert Arechiga  
06/06/05 Lance Otterstein  
06/07/05 Terry Barcus  
07/11/05 Michelle Gillum  
07/25/05 Donna Preedan  
08/16/05 James Williams  
09/20/05 Ronald Calhoun  
02/13/06 Sandra Terreberry  
04/12/06 Guy Zewadski  
05/15/06 Andrea Ackers  
06/16/06 Katrina Duncan  
09/15/06 Harry Glasser  
10/24/06 Darren Carney  
02/22/07 Susan Gargiulo  
04/23/07 Joe Zaczek  
05/07/07 Gregory Peters  
06/19/07 Rose Garcia  
07/19/07 Patricia Bonesteele  
07/31/07 Sandy Meier  
04/15/08 Alan Jensen  
05/01/08 Maricela Arenas De Castillo  
05/16/08 Gloria Loyd  
07/21/08 Hilda Moss  
10/28/08 Lola Anastasia  
12/04/08 Christina Ashenfelter-Tisdal  
01/20/09 Shirley Whitney  
02/12/09 Livia Farina  
04/15/09 Alexandria Striegel  
05/11/09 Jose Cabrera  
06/19/09 Candace Nason  
06/23/09 Sara Conley  
07/20/09 Nellie Macdairmid  
07/30/09 Carmelita Musni  
08/11/09 Lina Khachekian  
11/25/09 Roberta Tillinger

05/04/10 Raymond Lanplear  
05/06/10 Sam Mofford  
05/06/10 Clayton Mofford  
05/09/11 Ann Johnson  
06/22/11 Jaqueline Van Wagner  
07/15/11 William Stout  
08/17/11 Joseph Allison  
09/12/11 Barbara Dvorak  
01/16/12 Debra Partridge  
01/31/12 Joan Gaipman  
02/23/12 Digiovanna, Debby  
05/17/12 Wendy Blettchart  
08/09/12 Cho, Jae

03/28/13 Diane Vogelzang  
05/06/13 Maryann Medina  
07/25/13 Benjamin Martin  
08/27/13 Wendy Wood  
10/08/13 John Phillips  
12/10/13 James Pedersen

**DEPOSITIONS GOING FORWARD FROM 2014**

**DR MARK ROSEN**

**Updated 10/17/2018**

**Page 1**

**1/14/2014**

**Gerald Geiger v Dominoes No.8006-11**

Deposed by Jolley Urga Wirth Woodbury & Standish (treating)

**1/23/2014**

**William Candow Plaintiff v David Dust defendant Case No. 2:11-CV-00343-LRH-GWF.**

Deposed by Barron & Pruitt (expert)

**2/25/2014**

**Tina Thomas Plaintiff v MGM Case#: A-12-661785-C**

Deposed by Kunin & Carman (expert)

**4/15/2014**

**Karen Milmesister Plaintiff v Coast Hotels & Casinos Inc d/b/a The Orleans Hotel Case# A-12-672331**

Deposed by t Thorndal

**8/27/2014**

**Sheila Galper Plaintiff v Merck, Sharp and Dohme, Corp Case# JCCP 4644/30-2012-00547764**

Deposed by Mark P. Rob (treating)

**9/12/2014**

**Mohammad Sultan Plaintiff v Mission essential Personnel, LLC**

**File#228-1378**

Deposed by Flicker, Garelick & Associates (expert)

**2/12/2015**

**Norma Cantero Plaintiff v Kusina NI Loraine Case No: A-13-691384-C**

Deposed by Hall Jaffe & Clayton Tre: (treating)

**4/16/2015**

**Sheree Hufstetler v Dependable Highway Express Inc. File# a-14-698141-C**

Deposed by Christopher Gellner (expert)

**4/30/2015**

**Stefani Caneva Plaintiff v Jeffy Holland and Russel Sigler Inc File # YKZ AL 98038**

Deposed by Robert Amick (expert)

**5/16/2016**

**Michael Kling Plaintiff vs IDS Property Casualty Ins (Ameriprise) File# A-13-6892244-C**

Deposed by Brown, Bonn & Friedmann (expert)

**6/20/2016**

**William Lacombe Plaintiff vs Dewqne White: Lifetrans Inc (Roe Corp) Case No# A-15-720164-C**

Deposed by Bremer Whyte Brown & O'Meara (expert)

**6/14/2016**

**Doris Yahraus Plaintiff** vs Paragon Tavern Dba (off the Strip) Case#A-12-667376-C  
Deposed by Kenneth Go Goates (expert)

**8/29/2016**

**Dale Maxwell Plaintiff** vs Arizona charlies Case# A-15-720740-C  
Deposed by Morris, Sullivan, Lemkul & Pitegoff (treating)

**9/7/2016**

**Robert Kilroy Plaintiff** vs Steven Taylor & Mary Taylor Case# A580860  
Deposed by Atkin Winner & Sherrod (expert)

**10/11/2016**

**Manuel Cruz Plaintiff** vs Ashley Cockrell Individual goes through Roe Corp l  
Case# CV15-01441 Dept#D8  
Deposed by Gollightly & Vannah PLLC (expert)

**3/7/2017**

**Donna Apostolec Plaintiff** vs Target Corp Case # CV 2:16 CV-01184-JCM-VCF  
Deposed by Trevor Atkin, Atkin winner & Sherrod (expert)

**3/9/2017**

**Charles Bertrand Plaintiff** vs Goodwill Industries of S. NV NV  
Case# A-15-715208-C  
Deposed by Richard Harris Law Firm (expert)

**3/27/2017**

**Jeanne Wondra Plaintiff** vs Old Fenrm Case# P949-259168-01  
Deposed by Attorney John Shannon (expert)

**10/10/2017**

**Carlos Diaz Plaintiff** vs MGM Grand Hotel Case#A-12-658149-C  
Deposed by Harris & Harris Law Firm (expert)

**11/16/2017**

**Nicolas Scott Plaintiff** vs Ethan Hoopes Corp. of Church Latter Day Saints  
Case No. 2:16-CV-02646-APG-PAL  
Deposed by Clear Counsel Law Group (expert)

**2/19/2018**

**Shan Terada Plaintiff** vs Ma Lynn Aguilar Individual Case #A-17-757912-C  
Deposed by Steven Burris (expert)

**3/13/2018**

**Shaun Phillips vs Tre Builders LLC, Great Salt Lake Electrical**

**Case# A-16-743080-C**

**Deposed by Cisneros & Marias (expert)**

**6/18/2018**

**Enrique Garcia-Lopez Plaintiff vs Checker Cab Corp Case # A-16-739239-C**

**Deposed by Ladah Law Firm (expert)**

**6/26/2018**

**Tracy Sunahara vs Yichang Fu Individual Case# A-16-743707-C**

**Deposed by Maier Gutierrez & Assoc (expert)**

**7/24/2018**

**Rebecca Todorovich Plaintiff vs Smiths Food & Drug Case# A-16-742940-C**

**Deposed by Glen Lerner (expert)**

**9/27/2018**

**Trixa Belloso-Rivas Plaintiff vs Covenant Care Ca LLC, Johnathan Geocanny Amaya individual**

**Case# A-16-74-2390-C**

**Deposed by Eric Blank (expert)**

**BONE & JOINT SPECIALIST  
FEE SCHEDULES & POLICIES**  
TAX ID #88-0293830  
**EFFECTIVE JUNE 1, 2019 PRICE CHANGE**  
Deposits are due with the case work

**INDEPENDENT MEDICAL EXAMINATION:**

Minimum Charge	\$ 1000.00	1 <sup>st</sup> Hour
Additional Hr.	\$ 800.00	Hour
Cancellation Fee	\$ 1600.00	Non refundable if cancellation less than 5 Business days prior to the scheduled appt.
Deposit	\$ 1900.00	Due <b>prior</b> to the appointment.

**OFFICE POLICY DOES NOT ALLOW ANY THIRD PARTIES AFFILIATED WITH DEFENSE OR APPLICANT TO BE PRESENT DURING THE EXAM.**

**MEDICAL RECORDS REVIEW:**

Hourly Rate	\$ 900.00	1 Hour Minimum
Deposit	\$ 1800.00	Due with records under 3 inches
Deposit	\$ 2700.00	Due with records up to 5 inches
Deposit	\$ 3600.00	Due with records over 5 inches
Chart Prep	\$ 35.00	Per Hr. Sorting, removing dups, prepping in date order
<b><u>Stat Report Fee:</u></b>	\$ 1200.00	Requesting any report in 5 days or less

**DEPOSITION:**

First Hour	\$ 1300.00	1 Hour Minimum
Additional Hr.	\$ 850.00	
Pre-Depo/Trial Meeting	\$ 700.00	Per Hour 1 Hour Minimum
Video Deposition	\$ 2500.00	Per Hour
Deposit	\$ 1300.00	Due <b>1 week prior to Deposition</b>
Cancellation		Payment is <b><u>Non- Refundable</u></b> if less than 1 week

**TELEPHONE CONFERENCE:**

1 Hour	\$600.00	1 Hour Minimum
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**COURT APPEARANCE:**

Half Day	\$ 5,000.00	
Full Day	\$10,000.00	
Out of City Court	\$15,000.00	Plus travel expenses
Deposit	\$ 5,000.00	Due 2 weeks prior to Court appearance
Cancellation Fee	\$ 5,000.00	Non-refundable 10 days prior to appearance

**DELIVERY OF REPORTS REQUIRES PAYMENT IN FULL**

I UNDERSTAND THE POLICIES & THE FEES SCHEDULE FOR BONE & JOINT SPECIALIST.

---

Attorney's /Insurance Representative's Signature	Date
--	------

**Please Sign & fax back to me at 702-228-4499**

All records need to be sent to our office in paper form. Only X-rays are accepted on a disk.

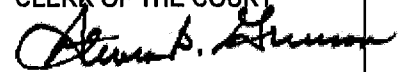
**Send Records to :**

Bone & Joint Specialist  
**Attn: Debra Cosgrove**  
2680 Crimson Canyon Drive  
Las Vegas NV 89128

Thank you

Debra Cosgrove  
Legal Assist to Dr. Rosen





**OPPS**

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

**MAIER GUTIERREZ & ASSOCIATES**

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[djb@mgalaw.com](mailto:djb@mgalaw.com)

*Attorneys for Plaintiff Alberto Eduardo Cario*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

ALBERTO EDUARDO CARIO, an individual,

Plaintiff,

vs.

YEONHEE LEE; an individual; DOES I through X; and ROE CORPORATIONS I through X, inclusive,

Defendants.

Case No.: A-19-803446-C

Dept. No.: XXIX

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S OBJECTION TO  
DISCOVERY REPORT AND  
RECOMMENDATIONS RE:  
DEFENDANT'S MOTION TO COMPEL  
RULE 35 EXAM**

Plaintiff Alberto Eduardo Cario, by and through his attorneys, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby submits this opposition to defendant Yeonhee Lee's objection to the Discovery Commissioner's Report and Recommendations regarding Defendant's motion to compel a Rule 35 examination. This opposition is made and based on the following memorandum of points and authorities, the pleadings and papers on file in this matter, and any oral argument the Court may allow at the hearing on this matter.

**MEMORANDUM OF POINTS AND AUTHORITIES**

**I. INTRODUCTION**

In this matter, plaintiff had no opposition to undergoing a Rule 35 examination. In fact, plaintiff's counsel prepared and provided defendant's counsel with a draft stipulation and order for

1 the Rule 35 examination that was consistent with NRCP 35 and NRS 52.380. After defendant decided  
2 not to abide by the straightforward parameters set forth in the draft stipulation that has been used and  
3 approved in numerous other cases, defendant filed a motion to compel plaintiff to participate in a Rule  
4 35 examination that would violate both NRCP 35 and NRS 52.380. *See Exhibit 1*, motion to compel,  
5 filed on 9/2/2020.

6 Specifically, defendant asked the Discovery Commissioner to ignore NRS 52.380 and refuse  
7 to allow plaintiff to have an observer appear at and audio record the Rule 35 examination. *Id.* at p. 9.  
8 Defendant also asked the Discovery Commissioner to allow the Rule 35 examination doctor to destroy  
9 all draft reports, which would obviously create a spoliation of evidence issue and preclude plaintiff  
10 from attempting to subpoena such documents should doing so become needed. *Id.* at p. 9. Defendant  
11 also asked to not be held to the 30 day reporting requirements set forth in Rule 35. *Id.* at Ex. B, p. 2.

12 Plaintiff duly opposed the motion to compel, noting that it would be improper for the  
13 Discovery Commissioner to disregard the requirements of NRCP 35 and NRS 52.380, as defendant  
14 was requesting. *See Exhibit 2*, opposition to motion to compel, filed on 9/15/2020.

15 Defendant then raised constitutional arguments for the first time in her reply and at the hearing  
16 before the Discovery Commissioner, insisting that NRCP 35 controls the parameters of Rule 35  
17 examinations and not NRS 52.380 because NRS 52.380 allegedly “violates the separation of powers  
18 clause of the Nevada Constitution.” *See Exhibit 3*, reply in support of motion to compel at p. 4, filed  
19 on 9/16/2020. Crucially, defendant failed to provide the requisite notice of her constitutional  
20 argument to the Nevada Attorney General – a clear violation of NRS 30.130 which deems defendant’s  
21 constitutional argument invalid.

22 Despite the obvious deficiencies with defendant’s improperly-raised position on the  
23 constitutionality of NRS 52.380, the Discovery Commissioner still heard arguments on the issue  
24 before largely ruling in favor of plaintiff, finding that NRS 52.380, which allows for an observer to  
25 attend and audio record the Rule 35 examination, is “substantive in nature” and “controlling in this  
26 matter.” *See Exhibit 4*, 10/8/2020 DCRR. Thus, the Discovery Commissioner recommended that  
27 plaintiff be permitted to select the observer to be present at the examination, with an audio recording  
28 of the examination being allowed. *Id.*

1       The Discovery Commissioner also recommended that the Rule 35 examination report  
2 requirements concerning disclosure time will apply, meaning the Rule 35 examination doctor must  
3 disclose his written report within 30 days of the examination, and defendant's counsel must disclose  
4 a copy of that report within 30 days of the Rule 35 examination, or by the Rule 16.1(a)(2) initial expert  
5 disclosure deadline, whichever comes first. *Id.*

6       Finally, the Discovery Commissioner recommended that the examination doctor keep and  
7 maintain all notes and draft reports in his or her file and cannot destroy any documents related to the  
8 examination, with any party being permitted to file an objection to a notice of intent to subpoena such  
9 documents. *Id.* To be clear, the Discovery Commissioner did not enter an order "allowing Plaintiff  
10 to subpoena the Rule 35 expert's draft reports and notes" as defendant has represented. Obj. at p. 4.  
11 Defendant is disingenuously overstating what is actually just a preservation of evidence  
12 recommendation.

13       Dissatisfied with the DCRR, defendant has now filed an objection that distorts the Discovery  
14 Commissioner's recommendations and creates new "issues" that do not actually exist. The objection  
15 asks this district court to disregard NRS 52.380 and refuse to allow plaintiff to have an observer appear  
16 at and audio record the Rule 35 examination. Obj. at p. 4. Incredibly, defendant repeated her  
17 constitutional arguments while once again failing to provide the required notice to the Nevada  
18 Attorney General, thus making those arguments invalid per NRS 30.130. Defendant also argues that  
19 NRCP 26 states that medical expert's draft reports are "protected from disclosure." Obj. at pp. 16-17.  
20 But merely requiring that the medical expert maintain such drafts does not contravene NRCP 26.

21       There is no legal basis to disregard NRS 52.380, which provides Mr. Cario with the substantive  
22 right to have an observer attend and make an audio or stenographic recording of an examination.  
23 There is no legal basis to deviate from the Discovery Commissioner's recommendation that the 30-  
24 day report requirement contained in NRCP 35 should apply. And there is no legal basis to deviate  
25 from the mere requirement that the Rule 35 examiner maintain and not destroy documents related to  
26 the examination.

27       Accordingly, the Court should sustain the Discovery Commissioner's Report and  
28 Recommendations in the entirety and deny defendant's objection.

1     **II.     LEGAL ARGUMENT**

2             **A.   DEFENDANT HAS WAIVED ANY CONSTITUTIONAL ARGUMENTS**

3             As a preliminary matter, defendant's constitutional arguments (claiming that NRS 52.380  
4 violates the separation of powers clause of the Nevada Constitution) are all procedurally defective due  
5 to defendant's failure to provide proper notice of such arguments to the Nevada Attorney General.  
6 See NRS 30.130 ("[I]f the statute, ordinance, or franchise is alleged to be unconstitutional, the  
7 Attorney General shall also be served with a copy of the proceeding and be entitled to be heard.")  
8 (emphasis added). See also, *Moldon v. Cty. of Clark*, 124 Nev. 507, 516, 188 P.3d 76, 82 (2008)  
9 ("NRS 30.130 provides that when declaratory relief is sought as to the validity of a statute, *the*  
10 *Attorney General must be served with a copy of the proceedings.*") (emphasis added).

11            Defendant failed to abide by NRS 30.130 twice: first, when she failed to serve the Nevada  
12 Attorney General with a copy of her reply brief in support of her motion to compel (as the reply brief  
13 is the first time constitutional arguments were raised, which is a separate defective issue); and second,  
14 when she failed to serve the Nevada Attorney General with a copy of this instant objection.

15            This Court should not condone defendant's blatant violation of NRS 30.130, especially as  
16 defendant was already made aware of this issue during the hearing before the Discovery  
17 Commissioner. Because the Nevada Attorney General has not had the opportunity to be heard, the  
18 Court should refuse to entertain any arguments on the constitutionality of NRS 52.380.

19             **B.   NRS 52.380 AFFECTS SUBSTANTIVE RIGHTS AND THEREFORE SUPERSEDES NRS 35**  
20             **WHERE THE TWO CONFLICT**

21            In the unlikely event the Court is inclined to consider defendant's procedurally-defective  
22 constitutional arguments, they still lack merit. Defendant contends that NRS 52.380 is an  
23 infringement by the Nevada legislature upon the powers of the Nevada juridical branch, and that it  
24 "violates the Separation of Powers Clause of Nevada's Constitution." Obj. at p. 8. It does no such  
25 thing.

26            Nevada's separation of powers provision, contained in Article 3, Section 1(1) of the Nevada  
27 Constitution, provides that:

28                   [t]he powers of the Government of the State of Nevada shall be

1 divided into three separate departments,—the Legislative,—the  
2 Executive and the Judicial; and no persons charged with the exercise  
3 of powers properly belonging to one of these departments shall  
exercise any functions, appertaining to either of the others, except  
in the cases expressly directed or permitted in this constitution.

4 As coequal branches, each of the three governmental departments has “inherent power to administer  
5 its own affairs and perform its duties, so as not to become a subordinate branch of  
6 government.” *Halverson v. Hardcastle*, 123 Nev. 245, 261, 163 P.3d 428, 439 (2007). The Nevada  
7 Supreme Court has been “especially prudent to keep the powers of the judiciary separate from those  
8 of either the legislative or the executive.” *Berkson v. LePome*, 126 Nev. 492, 498, 245 P.3d 560, 564  
9 (2010). This separation is fundamentally necessary because “[w]ere the power of judging joined  
10 with the legislative, the life and liberty of the subject would be exposed to arbitrary control, for the  
11 judge would be the legislator: Were it joined to the executive power the judge might behave with all  
12 the violence of an oppressor.” *Id.* at 498-99, 565 (2010).

13 The judiciary is entrusted with governing its own procedures and with “rule-making and other  
14 incidental powers reasonable and necessary to carry out the duties required for the administration of  
15 justice” and “to economically and fairly manage litigation.” *Borger v. Dist. Ct.*, 120 Nev. 1021, 1029,  
16 102 P.3d 600, 606 (2004).

17 With respect to the separation of powers doctrine, the Nevada Supreme Court has clarified that  
18 while the Legislature may not enact a *procedural* statute that conflicts with a pre-existing procedural  
19 rule, it may enact statutes that affect *substantive* rights, which will in fact supersede any conflicting  
20 procedural rules.

21 The judiciary has the inherent power to govern its own procedures,  
22 and this power includes the right to promulgate rules of appellate  
23 procedure as provided by law. NRS 2.120; see *Goldberg v. District*  
24 *Court*, 93 Nev. 614, 572 P.2d 521 (1977). Although such rules may  
25 not conflict with the state constitution or “abridge, enlarge or modify  
26 any substantive right,” NRS 2.120, the authority of the judiciary to  
27 promulgate procedural rules is independent of legislative power, and  
28 may not be diminished or compromised by the legislature. *Goldberg*  
*v. District Court, supra*. 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. *Lindauer v. Allen*, 85  
Nev. 430, 456 P.2d 851 (1969). Furthermore, where, as here, a rule  
of procedure is promulgated in conflict with a pre-existing

1 procedural statute, the rule supersedes the statute and controls.

2 *State v. Connery*, 99 Nev. 342, 345, 661 P.2d 1298, 1300 (1983).

3 In *State v. Connery*, the Nevada Supreme Court held that NRAP 4(b) may supersede NRS  
4 177.066 and govern the period of time during which a timely notice of appeal must be filed, “so long  
5 as the rule does not conflict with the state constitution or alter a substantive right.” 99 Nev. at 345,  
6 1300 (1983). Similarly, to the extent that NRCP 35 conflicts with NRS 52.380, the statute prevails  
7 on issues that go to substantive rights.

8 A statute is substantive when it concerns matters that are based upon subjects other than court  
9 administration. See *Muci v. State Farm Mut. Auto Ins.*, 732 N.W.2d 88, 96 (Mich. 2007). And the  
10 enactment of substantive rules is well within the powers conferred upon the Legislature by the Nevada  
11 Constitution and courts must defer to the Legislature regarding the statute’s validity. See *Zamora v.*  
12 *Price*, 125 Nev. 388, 392 (2009).

13 The Discovery Commissioner has found that NRS 52.380 provides plaintiffs like Mr. Cario  
14 with the substantive right to have an observer attend and make an audio or stenographic recording of  
15 an examination. See Ex. 4 at p. 2.

16 The Discovery Commissioner’s findings are sound, as NRCP 35 set forth a *procedure* for  
17 permitting an observer at a Rule 35 examination and allowing the recording of the examination.  
18 However, these procedures were conditioned upon the plaintiff requesting an observer, a showing of  
19 good cause for recording, limited to exclude the examinee’s attorney or the attorney’s employee as  
20 the observer, and precluded for neuropsychological, psychological, or psychiatric examinations absent  
21 a showing of good cause. NRCP 35.

22 The Legislature’s enactment of NRS 52.380 eliminated these conditional elements of the  
23 examination, and instilled *substantive rights* for the examinee by taking away the conditions and  
24 limitations set forth in NRCP 35. NRS 52.380 allows an observer to attend the examination (removing  
25 the previous requirement for the examinee to “request” the observer per NRCP 35), allows the  
26 observer to make an audio or stenographic recording of the examination (removing the previous  
27 condition set forth in NRCP 35 that such a recording can only take place upon a showing of good  
28 cause), allows the observer to be either an attorney of the examinee or a designated representative of

1 the attorney (removing this limitation set forth in NRCP 35), and allows an observer to appear  
2 regardless of the type of examination (removing the previous conditions on neuropsychological,  
3 psychological, or psychiatric examinations set forth in NRCP 35).

4 Thus, NRS 52.380 granted examinees the substantive rights to have an observer present at the  
5 examination, have the examination recorded, and have the examinee's attorney serve as the observer.  
6 The legislative history confirms that NRS 52.380 goes to substantive, and not procedural, rights:

7 Contrary to opponents of this bill who want to say this is a  
8 procedural matter, this is not a procedural matter; it is a substantive  
right. It is the right to protect and control your own body.

9 The reason we are before you today is because this bill protects  
substantive rights. This is not a procedural rule, which you would  
10 usually find within our NRCP. Our *Nevada Rules of Civil Procedure*  
11 involve things such as how many years someone has to file a lawsuit  
and how many days someone has to file a motion or an opposition  
12 to a motion. This bill does not involve those types of issues but,  
instead, involves a substantive right of a person during an  
13 examination by a doctor whom he did not chose, does not know, and  
has no relationship with whatsoever, a doctor who was chosen by an  
14 insurance defense attorney. This is a doctor who is going to handle  
this patient. It is not really a patient because there is no doctor-  
15 patient relationship. This examinee is going to be touched and  
handled by this doctor with whom he has zero relationship. It is  
16 before forced upon him as part of this examination. That is why this  
is a substantive right, and this is why we are before you here today.

17 The procedural part of Rule 35 is, how do you get there? You agree  
to it or you file a motion. That stays with NRCP 35. The mechanics  
18 of the actual examination is a whole other issue. That is a person  
being handled and touched by a doctor who is not chosen by them  
19 but selected by an insurance defense attorney. That is why that is a  
substantive right.

20  
21 Assembly Committee on Judiciary Hearing on AB 285, March 27, 2019.

22 Also acknowledged during the Judiciary Hearing on AB 285 was that having someone present  
23 at an examination and audio recording the examination were already substantive rights individuals  
24 have in California, Utah and Arizona, as well as in Nevada worker compensation cases. *See id.*  
25 Additionally, recording of the examination promotes openness and transparency during the  
26 examinations. *See id.*

27 While defendant heavily relies on the United States Supreme Court decision that in general,  
28

1 Rule 35 is a rule of procedure,<sup>1</sup> this issue is more nuanced, as it goes to the fact that NRS 52.380 has  
2 provided Rule 35 examinees with *substantive* rights that now supersede NRCP 35. Tellingly,  
3 defendant's objection fails to provide any authority indicating that NRS 52.380 is in any way  
4 unconstitutional because it is procedural or interferes with procedural rights. Instead, defendant just  
5 repeatedly alleges that the issues of audio recording and the presence of observers during Rule 35  
6 examinations are "procedural in nature," without supporting such conclusory arguments with actual  
7 case law.

8 In other words, defendant does not come close to providing enough of a basis to defeat the  
9 presumption that statutes are constitutional, as the party challenging a statute has "the burden of  
10 making a clear showing of invalidity." *Silvar v. Dist. Ct.*, 122 Nev. 289, 292, 129 P.3d 682, 684  
11 (2006). Further, "every reasonable construction must be resorted to, in order to save a statute from  
12 unconstitutionality." *Hooper v. California*, 155 U.S. 648, 657, 15 S.Ct. 207 (1895); *accord Virginia*  
13 *and Truckee R.R. Co. v. Henry*, 8 Nev. 165, 174 (1873) ("It requires neither argument nor reference  
14 to authorities to show that when the language of a statute admits of two constructions, one of which  
15 would render it constitutional and valid and the other unconstitutional and void, that construction  
16 should be adopted which will save the statute."). This canon of constitutional avoidance dates back  
17 to *Murray v. The Charming Betsy*, 2 Cranch 64, 6 U.S. 64 (1804), and remains in full force  
18 today. *Skilling v. United States*, 561 U.S. 358, 423, 130 S. Ct. 2896, 2940 (2010).

19 Defendant also fails to acknowledge authority from other states indicating that statutes  
20 regarding medical examinations are substantive law, and therefore supreme over state and federal  
21 procedural court rules. *See, e.g. Muci v. State Farm Mut. Auto. Ins. Co.*, 478 Mich. 178, 191, 732  
22 N.W.2d 88, 96 (2007) ("[T]he provisions concerning medical examinations . . . are substantive, not  
23 procedural, and are supreme over the court rule."); *Brooks v. First Nat'l Ins. Co. of Am.*, No. 18-12627,  
24 2019 WL 3296237, at \*2 (E.D. Mich. Apr. 17, 2019) (holding that a legislative statute governs the  
25 conduct of examinations in a Michigan insurance case because the statute is substantive and Rule 35  
26 does not alter the parties' substantive rights and duties, therefore the substantive law supersedes the

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27  
28 <sup>1</sup> *See Sibbach v. Wilson & Co.*, 312 U.S. 1, 11, 61 S. Ct. 422, 425 (1941).



1 procedural rule.).

2 Accordingly, although plaintiff agrees that “both NRCP 35 and NRS 52.380 cannot both  
3 govern this issue as they conflict,” it is clear that NRS 52.380 supersedes NRCP 35 to the extent that  
4 there are conflicts, as NRS 52.380 has set forth *substantive rights* for examinees that are not bound  
5 by procedural rules, terms, and conditions.

6 While defendant may take umbrage with the fact that Rule 35 examinees are now entitled to  
7 have an observer appear at and audio record the examination, and while defendant may try to  
8 negatively taint plaintiff’s observer as a “legal nurse expert observer” (whatever that means), any  
9 objections that defendant has need to be taken up with the Legislature, not through the court system.

10 In any event, defendant’s allegations that a mere observer who happens to be a nurse somehow  
11 amounts to a “second medical expert” and there will now be “competing medical professional  
12 observers in the room during the exam” are pure histrionics that only serve to underscore the  
13 illegitimate nature of defendant’s objection. Obj. at p. 14.

14 This Court should not deviate from well-set rules of construction and take the extreme action  
15 of finding that the substantive rights afforded to Rule 35 examinees under NRS 52.380 are  
16 unconstitutional and should be disregarded in favor of the procedural rules set forth in NRCP 35.

17 **C. THE DISCOVERY COMMISSIONER DID NOT STATE THAT PLAINTIFF HAS A “RIGHT” TO**  
18 **SUBPOENA THE RULE 35 MEDICAL EXPERT’S DRAFT REPORTS**

19 Finally, defendant contends that the Discovery Commissioner’s recommendation that  
20 defendant’s medical examination doctor shall “keep and maintain all notes and draft reports in his or  
21 her file and the examination doctor may not destroy any documents related to the examination”  
22 somehow amounts to a violation of NRCP 26(b)(3). It does not.

23 Plaintiff understands that NRCP 26(b)(4)(B) states that Rule 26(b)(3) protects drafts of any  
24 report or disclosure required under Rule 16.1(a), 16.2(d) or (e), 16.205(d) or (e), or 26(b)(1),  
25 regardless of the form in which the draft is recorded. Respectfully, that has nothing to do with the  
26 medical examination doctor being required to not destroy documents, which is what the Discovery  
27 Commissioner’s recommendation speaks to. Nevertheless, defendant is insisting that plaintiff wants  
28 to have the “right to subpoena such drafts.” Obj. at p. 17.

1 But the Discovery Commissioner did not grant plaintiff an automatic right to subpoena the  
2 drafts. The Discovery Commissioner specifically recommended that “any party has the right to file  
3 an objection to the subpoena pursuant to Rule 34, Rule 45 or Rule 26.” Ex. 4 at p. 2. As such, this is  
4 a non-problem that defendant has manufactured by refusing to correctly comprehend the DCRR,  
5 which actually only requires the preservation – not the production or disclosure – of documents. To  
6 the extent defendant has objections about a future subpoena or request for production that has not yet  
7 been drafted or served, such objections are premature at this time, just as they were when this issue  
8 was in front of the Discovery Commissioner.

9 **III. CONCLUSION**

10 Based upon the foregoing, Mr. Cario respectfully requests that the court deny defendant’s  
11 objection in its entirety and sustain the Discovery Commissioner’s Report and Recommendations on  
12 defendant’s motion to compel the Rule 35 exam.

13 DATED this 28th day of October, 2020.

14 **MAIER GUTIERREZ & ASSOCIATES**

15  
16 /s/ Jason R. Maier

17 JASON R. MAIER, ESQ.

18 Nevada Bar No. 8557

DANIELLE J. BARRAZA, ESQ.

Nevada Bar No. 13822

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

*Attorneys for Plaintiff Alberto Eduardo Cario*

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Rhonda Long, Esq.  
LAW OFFICE OF LEE J. GRANT II  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
*Attorneys for Defendant Yeonhee Lee*

An Employee of MAIER GUTIERREZ & ASSOCIATES

# **EXHIBIT 1**

# **EXHIBIT 1**



1 MTN  
2 RHONDA LONG, ESQ.  
3 Nevada Bar No.: 10921  
4 LAW OFFICE OF LEE J. GRANT, II  
5 8345 West Sunset Road, Suite 250  
6 Las Vegas, Nevada 89113  
7 Telephone: 702-233-9303  
8 E-mail: rhlong@geico.com  
9 Attorney for Defendant  
10 YEONHEE LEE

9/17/20  
9:30 a.m.

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

ALBERTO EDUARDO CARIO, an individual,  
Plaintiff,  
vs.

Case No.: A-19-803446-C  
Dept. No.: 29

YEONHEE LEE, an individual; DOES I  
through X and ROE CORPORATIONS I  
through X, inclusive,  
Defendants.

**MOTION TO COMPEL RULE 35  
EXAM – ORDER SHORTENING  
TIME REQUESTED**  
**HEARING REQUESTED - BEFORE  
THE DISCOVERY COMMISSIONER**

COME NOW Defendant YEONHEE LEE, by and through her attorney of record,  
Rhonda Long, Esq., of the LAW OFFICE OF LEE J. GRANT, II, and hereby submits  
Defendant's Motion to Compel a Rule 35 Exam of Plaintiff Alberto Cario.

///

///

///

1 Defendant's Motion is made and based upon the papers and pleadings on file herein, the  
2 exhibits attached hereto, and the following points and authorities submitted in support hereof.

3 Dated this 27th day of August, 2020.

4  
5 LAW OFFICE OF LEE J. GRANT, II

6 By: 

7 RHONDA LONG, ESQ.

8 Nevada Bar #10921

9 8345 West Sunset Road, Suite 250

10 Las Vegas, Nevada 89113

11 Attorney for Defendant

12 YEONHEE LEE

13 **ORDER SHORTENING TIME**

14 GOOD CAUSE APPEARING THEREFORE, it is hereby ORDERED, that the time for  
15 the hearing of the foregoing Defendant's MOTION TO COMPEL RULE 35 EXAM be  
16 shortened the 17th day of September, 2020, at 9:30 a.m.

17 Dated this 2nd Day of September, 2020.

18  
19 Submitted by:



20 DISCOVERY COMMISSIONER

21 LAW OFFICE OF LEE J. GRANT, II

22 By: 

23 RHONDA LONG, ESQ.

24 Nevada Bar #10921

25 8345 West Sunset Road, Suite 250

26 Las Vegas, Nevada 89113

27 Attorney for Defendant

28 YEONHEE LEE

1                   **DECLARATION OF RHONDA LONG, ESQ. IN SUPPORT OF THE**  
2                   **MOTION TO COMPEL RULE 35 EXAM AND ORDER SHORTENING TIME**

3                   RHONDA LONG, declares under penalty of perjury as follows:

4                   1.       That Declarant is an attorney duly licensed to practice in the State of Nevada and  
5 is an attorney at the law firm of LAW OFFICE OF LEE J. GRANT, II, counsel for Defendant in  
6 the within action. Declarant is over the age of 18 years and is in all respects competent to make  
7 this Declaration. This Declaration is based upon my personal knowledge unless stated upon  
8 information and belief and, if called to testify, Declarant would testify as set forth in this  
9 declaration.  
10

11                   2.       That on August 7, 2020, paralegal for Declarant, Candice Harris, reached out to  
12 Plaintiff's counsel, the law firm of MAIER GUTIERREZ & ASSOCIATES with proposed dates  
13 for an independent medical exam of Plaintiff. See, August 2020 Rule 35 E-Mail Chain attached  
14 as **Exhibit A**.  
15

16                   3.       That on or about August 20, 2020, paralegal for Plaintiff's firm provided a  
17 proposed stipulation and order setting forth parameters and restrictions on the independent  
18 medical exam.  
19

20                   4.       That on August 21, 2020, Declarant replied that she would not agree the  
21 stipulation and order as written. Declarant provided a redlined version which struck the  
22 parameters allowing a nurse consultant as an observer and the provision providing that the expert  
23 must retain his drafts and notes and that such is subject to be subpoenaed by Plaintiff. See,  
24 **Exhibit B**.  
25

26                   6.       That in reply to this objection, Plaintiff's counsel, Jason Maeier, Esq. said he  
27 would not agree to the redline revisions. See, **Exhibit A**.  
28

1           7.     On August 25, 2020, an EDCR 2.34 conference was held regarding the IME  
2 dispute and parties were not able to come to an agreement.

3           9.     That good cause exists to hear this motion on order shortening time as the initial  
4 expert disclosure deadline is October 9, 2020 and as this motion concerns actions required of  
5 Plaintiff for an expert disclosure.

6           10.    Pursuant to EDCR 2.34, Declarant attempted to resolve this matter as described  
7 above. As such, Defendant now seek an order from the Discovery Commissioner compelling an  
8 exam pursuant to NRCP 35.

9           11.    This motion is made in good faith and is not made for purposes of delay. An Order  
10 Shortening Time and a setting before September 1, 2020 is respectfully requested.

11           12.    FURTHER DECLARANT SAYETH NAUGHT.

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RHONDA LONG, ESQ.



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1 was injured in the automobile accident and has made this lawsuit seeking damages. See,  
2 **Exhibit D.**

3 **III.**

4 **LEGAL ARGUMENT**

5 **A.**

6 **LEGAL STANDARD**

7  
8 Nevada Rule of Civil Procedure 35 provides in pertinent part as follows:

9 “Rule 35. Physical and Mental Examinations

10 (a) Order for Examination.

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

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

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

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

23 (3) Recording the Examination. On request of a party or the examiner, the court  
24 may, for good cause shown, require as a condition of the examination that the  
25 examination be audio recorded. The party or examiner who requests the audio  
26 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.

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

1 at the examination. When making the request, the party must identify the observer  
2 and state his or her relationship to the party being examined. The observer may  
3 not be the party's attorney or anyone employed by the party or the party's  
4 attorney.

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

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

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

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

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

15 Thus, a party seeking to compel a plaintiff's physical examination must show that the  
16 plaintiff's physical condition is in controversy and there is good cause for the examination.  
17 Requests under Rule 35 are liberally constructed in favor of granting discovery, but due to their  
18 intrusive nature remain a matter of discretion. See Schlagenhauf v. Holder, (1964) 379 U.S.  
19 104, 114-15 (interpreting the analogous federal rule concerning independent medical  
20 examinations). As so stated in the rule, it is proper to order a plaintiff in a personal injury  
21 lawsuit to submit to an independent medical examination by the defendant when good cause  
22 has been shown, and the time, place, manner, conditions, and scope of the examination and the  
23 person by whom it is to be made have been specified.

24 As will be demonstrated below, good cause exists and all requirements of NRCP 35(a)  
25 have been satisfied for ordering Plaintiff to submit to a defense Independent Medical  
26 Examination ("IME") and Plaintiff should be compelled to attend the IME by Dr. Rosen sought  
27 by Defendant in this matter.  
28

1 B.

2 PLAINTIFF'S PHYSICAL CONDITION IS IN CONTROVERSY AND GOOD CAUSE  
3 EXISTS FOR AN EXAMINATION

4  
5 "A plaintiff in a negligence action who asserts mental or physical injury . . . places that  
6 mental or physical injury clearly in controversy and provides the defendant with good cause for  
7 an examination to determine the existence and extent of such asserted injury." Schlagenhauf,  
8 379 U.S. at 119. There is no doubt Plaintiff's physical condition is "in controversy" – Plaintiff  
9 placed his physical condition in controversy by filing this action to recover monetary damages  
10 for her claimed physical injuries and purported on going pain and suffering and physical  
11 limitations and restrictions. Thus, by filing suit seeking recovery for his physical and  
12 emotional injuries, Plaintiff placed his condition in controversy.  
13

14  
15 Moreover, Plaintiff has asserted that he has continued and ongoing pain complaints since  
16 the accident. See, **Exhibit D**. In fact, in Plaintiff's deposition, which took place on August 21,  
17 2020, he stated that he had an upcoming appointment with a chiropractor at ChiroYoga.  
18 Accordingly, there is good cause for the examination requested.  
19

20 C.

21 THE ONLY LIMITATIONS TO THE RULE 35 EXAM SHOULD BE THOSE  
22 PARAMETERS SET FORTH IN RULE 35

23 The judiciary has the inherent power to govern its own procedures. See, Nev. Const. Art.  
24 3 and Berkson v. Lepome, 126 Nev. 492 (2010). "The judiciary is entrusted with rule-making  
25 and other incidental powers reasonable and necessary to carry out the duties required for the  
26 administration of justice and to economically and fairly manage litigation." Berkson, 126 Nev.  
27 at 499 (citing in part Borger v. Dist. Ct., 120 Nev. 1021, 1029, 102 P.3d 600, 606 (2004); State  
28

1 v. Dist Ct. [Marshall], 116 Nev. 953, 959, 11 P.3d 1209, 1212 (2000); Goldberg v. District  
2 Court, 93 Nev. 614, 616, 572 P.2d 521, 522 (1977)). This means “the legislature may not enact  
3 a procedural statute that conflicts with a pre-existing procedural rule, without violating the  
4 doctrine of separation of powers, and such a statute is of no effect.” Id. The judiciary’s  
5 authority “to promulgate procedural rules is independent of legislative power, and may not be  
6 diminished or compromised by the legislature...[f]urthermore, where, as here, a rule of  
7 procedure is promulgated in conflict with a preexisting procedural statute, the rule supersedes  
8 the statute and controls.” State v. Connery, 99 Nev. 342, 345 (1983).

10 Accordingly, Defendant requests that any order for a Rule 35 exam be limited to the  
11 provisions which are in Rule 35 and not any other rule, statute, or unilateral parameters set  
12 forth by Plaintiff’s counsel. To the extent any statute conflicts with Rule 35, the provisions of  
13 Rule 35 control. Specifically, Defendant asks that no parameters be included in the order which  
14 limit the opinions of the doctor or which asks that observers or recording be permitted unless  
15 there is good cause as established by the Discovery Commissioner.

17 Further, Plaintiff’s request that the independent medical exam doctor retain all of his  
18 draft reports and that such drafts may be subpoenaed by Plaintiff is also in dispute. NRC  
19 16.1(a)(2), which governs expert disclosures, does not have such a requirement. Moreover, the  
20 March 2019 changes to the Nevada Rules of Civil Procedure specifically wrote this rule to  
21 avoid any request made by a party to compel drafts from an expert<sup>1</sup>.

---

25 <sup>1</sup> See, Advisory Committee Note—2019 Amendment: “Rule 16.1(a)(2) incorporates the federal rule requirement  
26 that the report of a retained expert witness disclose “the facts or data considered by the witness” in forming his or  
27 her opinions. The former language—“the data or other information considered by the witness”—has been construed  
28 broadly by most federal courts to include drafts of expert reports and virtually any communications between counsel  
and the expert. The new language avoids that result. The 2019 amendments do not abrogate the 2012 drafter’s notes  
to Rule 16.1.”).

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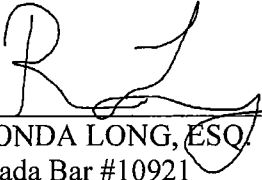
IV.

CONCLUSION

Based on the foregoing, Defendant respectfully requests relief from the Discovery Commissioner an order compelling that a Rule 35 Exam will be conducted by Dr. Mark Rosen at his office on a date and time agreed upon by the parties; and that no other parameters except for those allowed under NRCP 35 be imposed.

Dated this 27th day of August 2020.

LAW OFFICE OF LEE J. GRANT, II

  
By: \_\_\_\_\_  
RHONDA LONG, ESQ.  
Nevada Bar #10921  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
Attorney for Defendant  
YEONHEE LEE

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X VIA ECF: by electronic filing with the Court delivering the document(s) listed above via the Court's e-filing and service system, upon each party in this case who is registered as an electronic case filing user with the Clerk.

\_\_\_\_\_ VIA U.S. POSTAL MAIL: by placing a true and correct copy thereof enclosed in a sealed envelope with the postage thereon fully prepaid, addresses as indicated on the attached service list in the United States Mail.

\_\_\_\_\_ VIA ELECTRONIC MAIL: by causing a true and correct copy thereof to be mailed electronically to the email addressee(s) at the attached email addresses set forth in the service list.

Jason R. Maier, Esq.  
Julia M. Chumbler, Esq.  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Attorneys for Plaintiff

/s/ Jackie De La Paz  
EMPLOYEE OF LAW OFFICE OF LEE J.  
GRANT, II

DATED: 8/27/2020

# **EXHIBIT A**

**AUGUST 2020 E-MAIL CHAIN  
RE: IME ISSUES**

# **EXHIBIT A**



**Long, Rhonda**

---

**From:** Jason Maier <jrm@mgalaw.com>  
**Sent:** Friday, August 21, 2020 2:47 PM  
**To:** Long, Rhonda; Harris, Candice  
**Cc:** Natalie Vazquez; Julia Chumbler  
**Subject:** RE: [SECURE] RE: [SAO for Rule 35 examination] LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.

Hi Rhonda. Based on your proposed edits, it appears we will not be able to stipulate to a Rule 35 exam. Feel free to file a motion with the discovery commissioner. Thanks.

Jason R. Maier  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[jrm@mgalaw.com](mailto:jrm@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

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**From:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Sent:** Friday, August 21, 2020 1:00 PM  
**To:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>  
**Subject:** [SECURE] RE: [SAO for Rule 35 examination] LEE adv. Cario

Attached is my version with red line revisions.

Sincerely,

Rhonda Long, Esq.  
**LAW OFFICE OF LEE J. GRANT II**  
*Attorneys and Support Staff are Employees of  
Government Employees Insurance Company*

8345 W. Sunset Road, Ste. 250  
Las Vegas, Nevada 89113  
(702) 233-9303 Ext. 5507  
[rhlmg@geico.com](mailto:rhlmg@geico.com)

=====

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Sensitivity: Confidential

**From:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>  
**Sent:** Thursday, August 20, 2020 11:03 AM  
**To:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** RE: [SAO for Rule 35 examination] LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
Ms. Long,

Mr. Cario is available on 9/17, please see the attached for the proposed stipulation and order for Mr. Cario's Rule 35 examination. Please redline any edits and/or advise if you are agreeable so we may submit to the Discovery Commissioner.

Thank you,

Natalie D. Vazquez | Paralegal  
MAIER GUTIERREZ & ASSOCIATES  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
Tel: 702.629.7900 | Fax: 702.629.7925  
[ndv@mgalaw.com](mailto:ndv@mgalaw.com) | [www.mgalaw.com](http://www.mgalaw.com)

**From:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>  
**Sent:** Monday, August 17, 2020 9:34 AM  
**To:** Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>  
**Cc:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** RE: LEE adv. Cario

Hello Julia,

Dr. Rosen's availability has changed. Dr. Rosen's updated availability is:

Sept 15<sup>th</sup>

Sept 17<sup>th</sup>

Sept 29<sup>th</sup> all for a start time of 1:15pm, check-in of 12:45pm. The dates and times fill up fast so please let me know ASAP when your client will be available. I appreciate your assistance in this matter.

Kind Regards,

*Candice Harris*

Paralegal

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8345 West Sunset, Suite 250

Las Vegas, NV 89113

702-233-9303x5498 - telephone

702-780-8119 – fax

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Sensitivity: Confidential

**From:** Julia Chumbler [<mailto:jmc@mgalaw.com>]

**Sent:** Thursday, August 13, 2020 9:12 AM

**To:** Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)>

**Cc:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>  
**Subject:** Re: LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
I'm sorry confused with the depo dates . Stand by

Sent from my iPhone

On Aug 13, 2020, at 9:11 AM, Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)> wrote:

Your original email gave the 21st at 10a as an option . Is that date no longer available ?

Sent from my iPhone

On Aug 13, 2020, at 9:03 AM, Harris, Candice <[CandHarris@geico.com](mailto:CandHarris@geico.com)> wrote:

Hi Julia,  
Thank you for responding. Do you mean the August 20<sup>th</sup> date?

Kind Regards,  
*Candice Harris*  
Paralegal  
**LAW OFFICE OF LEE J. GRANT II**  
Attorneys and support staff are employees of  
Government Employees Insurance Company  
8345 West Sunset, Suite 250  
Las Vegas, NV 89113  
702-233-9303x5498 - telephone  
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**From:** Julia Chumbler [mailto:jmc@mgalaw.com]  
**Sent:** Thursday, August 13, 2020 8:42 AM  
**To:** Harris, Candice <CandHarris@geico.com>  
**Cc:** Natalie Vazquez <ndv@mgalaw.com>; Long, Rhonda <RhLong@geico.com>  
**Subject:** Re: LEE adv. Cario

CAUTION EXTERNAL EMAIL. This email originated outside of GEICO.  
Candice I apologize I thought I responded last week that he can make the 21st. Is that not available anymore ?

Sent from my iPhone

On Aug 13, 2020, at 8:20 AM, Harris, Candice <CandHarris@geico.com> wrote:

Hello Ladies,  
I am following up on the previous email sent last week regarding scheduling your client's Rule 35 Exam. I haven't received a response and dates with doctors fill up fast. Please respond at your earliest convenience. I appreciate your assistance in this matter.

Kind Regards,  
*Candice Harris*  
Paralegal  
**LAW OFFICE OF LEE J. GRANT II**  
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8345 West Sunset, Suite 250  
Las Vegas, NV 89113  
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Sensitivity: Confidential

**From:** Harris, Candice

**Sent:** Friday, August 7, 2020 2:42 PM

**To:** Natalie Vazquez <[ndv@mgalaw.com](mailto:ndv@mgalaw.com)>; Julia Chumbler <[jmc@mgalaw.com](mailto:jmc@mgalaw.com)>

**Cc:** Long, Rhonda <[RhLong@geico.com](mailto:RhLong@geico.com)>

**Subject:** LEE adv. Cario

Hello,

We are in the process of setting up a Rule 35 Exam for Albert Cario. The doctor we are planning to retain for the exam is Mark Rosen, MD. Dr. Rosen is available the following dates:

- Aug 20 at 2:30pm
- Sept 8 at 1:15pm
- Sept 10 at 1:15pm

There is a 30min check-in required prior to the scheduled time. Please let me know if one of the dates works for Mr. Cario. I appreciate your assistance in this matter.

Kind Regards,

*Candice Harris*

Paralegal

**LAW OFFICE OF LEE J. GRANT II**

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Las Vegas, NV 89113

702-233-9303x5498 - telephone

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# **EXHIBIT B**

**DRAFT STIPULATION AND ORDER  
W/REDLINE REVISIONS  
RE: RULE 35 EXAM**

# **EXHIBIT B**



1 **SAO**

JASON R. MAIER, ESQ.

2 Nevada Bar No. 8557

JULIA M. CHUMBLER, ESQ.

3 Nevada Bar No. 15025

**MAIER GUTIERREZ & ASSOCIATES**

4 8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

5 Telephone: 702.629.7900

Facsimile: 702.629.7925

6 E-mail: [jrm@mgalaw.com](mailto:jrm@mgalaw.com)

[jmc@mgalaw.com](mailto:jmc@mgalaw.com)

7 *Attorneys for Plaintiff Alberto Eduardo Cario*

8  
9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12 ALBERTO EDUARDO CARIO, an individual,

13 Plaintiff,

14 vs.

15 YEONHEE LEE; an individual; DOES I through  
16 X; and ROE CORPORATIONS I through X,  
17 inclusive,

18 Defendants.

Case No.: A-19-803446-C

Dept. No.: XXIX

**STIPULATION AND ORDER FOR  
RULE 35 EXAMINATION OF PLAINTIFF**

19  
20 **IT IS HEREBY STIPULATED AND AGREED:**

21 Defendant has requested that plaintiff Alberto Eduardo Cario submit to a Rule 35 medical  
22 examination, and Mr. Cario has agreed to the request subject to the following rules and conditions:

- 23 1. The Rule 35 examination shall be conducted pursuant to Nevada Rule of Civil  
24 Procedure 35, as amended.
- 25 2. Defendants have selected Mark J. Rosen, M.D. to conduct the Rule 35 examination of  
26 Mr. Cario
- 27 3. The scope of the Rule 35 examination is as follows: the Dr. Rosen's evaluation of Mr.  
28 Cario's injuries and treatment.
4. The date, time and location of the Rule 35 examination are as follows: September 17,  
2020 at 1:15pm with an arrival time of 12:45pm.

5. The Rule 35 examination shall be held in a medical office in compliance with HIPAA.
6. Dr. Rosen will not require Mr. Cario to sign any paperwork at the time of the Rule 35 examination other than a "sign-in" sheet limited to his name, date and time of arrival.
7. The intake forms to be completed by Mr. Cario shall be provided to plaintiff's counsel at least ten business days prior to the Rule 35 examination and will be returned to defense counsel prior to the examination.
8. Mr. Cario shall not be required to wait in the waiting room for longer than 30 minutes before the commencement of the Rule 35 examination.
- ~~9. The Rule 35 examination will be audio recorded by LYNN BELCHER LNC ASSOCIATES, in which Mr. Cario's counsel will arrange and pay for the recording. Mr. Cario's counsel shall disclose a copy of the recording within 30 days of receipt of the same. The doctor and all persons present must be notified that the examination will be recorded before the examination begins.~~
- ~~10. Mr. Cario will have a nurse observer present at the Rule 35 examination from LYNN BELCHER LNC ASSOCIATES. The nurse observer must not in any way interfere, obstruct, or participate in the examination.~~
- ~~11.9.~~ 9. Defense counsel, or any other representatives of defendants, will not attend the Rule 35 examination.
- ~~12.10.~~ 10. Liability questions may not be asked by Dr. Rosen or any of his agents or representatives during the Rule 35 examination.
- ~~13.11.~~ 11. No x-rays or radiographs may be obtained during the Rule 35 examination. Dr. Rosen can rely upon the same film studies relied upon by the treating physicians in this case. If additional film studies are necessary for the Rule 35 examination, this must be detailed in writing by Dr. Rosen at least 30 days prior to the examination and this issue may be revisited.
- ~~14.12.~~ 12. No invasive procedures shall be allowed during the Rule 35 examination.
- ~~15.13.~~ 13. Mr. Cario shall not be required to disrobe during the Rule 35 examination.
- ~~16.14.~~ 14. If Dr. Rosen subjects Mr. Cario to physically painful or invasive procedures, Mr. Cario reserves the right to immediately terminate the examination in his sole discretion.
- ~~17.15.~~ 15. Dr. Rosen shall not engage in *ex parte* contact with Mr. Cario's treating health care providers.
- ~~18.16.~~ 16. Dr. Rosen must prepare and disclose a written report ~~within 30 days~~ of the Rule 35 examination that accurately sets out in detail his findings, including diagnosis, conclusions, and the results of any tests, as required by Rule 35(b)(2). Dr. Rosen's written report must include a complete statement of all opinions he will express, and

the basis and reasons for them, as well as all of the facts or data he considered in forming said opinions, as required by Rule 16.1(a)(2)(B).

~~19, 17.~~ Defense counsel shall disclose a copy of Dr. Rosen's written report within 30 days of the Rule 35 examination or by the Rule 16.1(a)(2) initial expert disclosure deadline, whichever occurs first.

~~20.~~ Dr. Rosen shall retain a complete copy of the entire file pertaining to the Rule 35 examination, including but not limited to draft reports, handwritten notes, e-mails or other communications sent and received, and all documents generated or received, including draft reports shared with defense counsel, defendants or an agent of defendants, communications regarding draft reports with defense counsel, defendants or an agent of defendants, redlines of draft reports shared with defense counsel, defendants or an agent of defendants, and test materials and/or raw data related to the Rule 35 examination. Following the disclosure of the Rule 35 examination report, counsel for plaintiff may serve Dr. Rosen with a subpoena and/or serve defendants with a request for production to produce these materials.

~~21, 18.~~ Defense counsel shall be responsible for providing Dr. Rosen with a copy of this stipulation and order prior to the Rule 35 examination.

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

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

MAIER GUTIERREZ & ASSOCIATES

LAW OFFICE OF LEE J. GRANT, II

JASON R. MAIER, ESQ.  
Nevada Bar No. 8557  
JULIA M. CHUMBLER, ESQ.  
Nevada Bar No. 15025  
8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
*Attorneys for Plaintiff Alberto Cario*

RHONDA LONG, ESQ.  
Nevada Bar No. 10921  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
*Attorneys for Defendant Yeonhee Lee*

**ORDER**

IT IS SO ORDERED.

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

\_\_\_\_\_  
DISCOVERY COMMISSIONER

# **EXHIBIT C**

**CURRICULUM VITAE OF DR. ROSEN**

# **EXHIBIT C**

**MARK J. ROSEN M.D.**  
Orthopaedic Surgery  
[www.OrthoDoc.AAOS.org/MarkRosen](http://www.OrthoDoc.AAOS.org/MarkRosen)

2020 Palomino Lane, Ste 220  
Las Vegas Nevada 89106  
702-474-7200 Ph#  
702-474-0009 Fax#

2680 Crimson Canyon Drive  
Las Vegas Nevada 89128  
702-228-7355 Ph#  
702-228-4499 Fax#

**UNDERGRADUATE:**

Massachusetts Institute of Technology  
Cambridge, Massachusetts  
B.S. in Management  
B.S. in Chemical Engineering  
07/80 to 05/84

**MEDICAL EDUCATION:**

Baylor College of Medicine  
Houston, Texas  
M.D.  
08/84 to 06/88

**POST GRADUATE TRAINING:**

Orthopaedic Surgery Residency  
University of Texas Health and Science Center  
San Antonio, Texas  
07/88 to 06/93

**PRACTICAL EXPERIENCE:**

Bone & Joint Specialist  
2020 Palomino Lane Suite 220  
Las Vegas Nevada 89106  
1994 to present

Founding Member  
Trauma Orthopaedics Surgical Services  
701 South Tonopah Drive  
Las Vegas Nevada 89106  
2000 to present

Member Orthopaedic Trauma Services  
University Medical Center  
1800 West Charleston Blvd  
Las Vegas Nevada 89102

Orthopaedic Associates of Nevada  
700 Shadow Lane Suite 165  
Las Vegas Nevada 89106  
1993 to 1994

**LICENSURE:**

State of Nevada NV6850

**CERTIFICATION:**

Board Certified, American Board of Orthopaedic Surgery

Re-Board Certified, American Board of Orthopaedic Surgery  
March 2005

Re-Board Certified, American Board of Orthopaedic Surgery  
January 2017

**PROFESSIONAL AND  
ACADEMIC APPOINTMENTS:**

Vice Chief of Orthopaedic Surgery  
University Medical Center  
Las Vegas Nevada  
2001 to 2010

Acting Chief of Orthopaedic Surgery  
University Medical Center  
Las Vegas Nevada  
2002

Chief of Orthopaedic Surgery  
Mountain View Hospital  
Las Vegas Nevada  
2000 to 2002

Chairman Utilization Review Committee  
Member Medical Executive Committee  
Mountain View Hospital  
Las Vegas Nevada  
2003 to 2005

Chief of Orthopaedic Surgery  
Summerlin Hospital  
Las Vegas Nevada  
2007 to 2008

Vice Chief of Staff  
Centennial Hills Hospital  
Las Vegas Nevada  
2008 to 2010

**HOSPITAL AFFILIATIONS:**

University Medical Center  
Valley Hospital  
Mountain View Hospital  
Summerlin Hospital  
Centennial Hills Hospital

**CME/COURSES:**

Available by request

TRIAL TESTIMONY'S DONE BY DR. ROSEN  
Updated 10/31/2013

03/22/01	Frances Clappetta
05/03/01	Derrick Leblanc
07/12/01	Debra Magee
09/13/01	Anna Wilson
08/01/04	Wynanda Hoffman
08/19/05	Terry Barcus
09/13/05	Michelle Gillum
06/09/06	Guy Zewadski
12/13/06	Lucy Morelli
03/06/07	Darren Carney
03/15/07	Katrina Duncan
10/11/07	Randy Hipple
03/27/08	Eva Buff
04/04/08	Audrey Quinian
03/24/09	Kevin Bibbins
09/30/10	Livia Farina
01/18/11	Gerardo Lopez-Celelos
04/08/11	Katrina Duncan
11/30/11	Cano, Angela
04/18/12	Desalvo, Nancy
06/19/12	Axtell, Catherine
08/30/12	Garabedian, Tom
10/17/13	John Phillips (Arbitration)

TRIALS FROM 2014 TO PRESENT FOR DR MARK ROSEN

Updated 6/25/18

10/2/2014

Gerald Geiger (treating) v Joshua Galloway and dominos Pizza Case N# A-12\_66312-663843-C  
Deposed by Jolley Urg Wirth Plaintiff

Oct 13,16

Blanca Jimenez (plaintiff) vs Blue Martin Las Vegas Case # A-15-716334-C  
Deposed by Lewis Brisbois Bisgaard & Smith

2/1/2018

Joshua Nieto (Plaintiff) Vs Chandler , et al. Case# A-13-686092-C  
Deposed by Kirst & Associates

3/8/2018

George Paz (plaintiff) Vs Rent a Center, Case # se # A-15-7154448-C  
Deposed by Wilson Elser

5/31/2018

Robert Novak (plaintiff) vs Nexcom  
Deposed by Aleccia & Mitani



DEPOSITIONS BY DR. MARK ROSEN

Updated 12/13/13

02/01/02 Douglas Edwards  
05/21/02 Brenda Vulcano  
07/15/02 Andrew Thompson  
07/18/02 Audrey Gelashvill-Presley  
08/20/02 Jocelyn Juliano  
10/24/02 Sylvia Atencio  
11/12/02 Dale Alumbaugh  
09/09/03 Velma Lee Armstrong  
09/23/03 Shaun Johnson  
10/22/03 Kenneth Morris  
02/25/04 Karen Lindblom  
08/27/04 David Beatty  
09/07/04 David Cozart

02/08/05 Robert Arechiga  
06/06/05 Lance Otterstein  
06/07/05 Terry Barcus  
07/11/05 Michelle Gillum  
07/25/05 Donna Preedan  
08/16/05 James Williams  
09/20/05 Ronald Calhoun  
02/13/06 Sandra Terreberry  
04/12/06 Guy Zewadski  
05/15/06 Andrea Ackers  
06/16/06 Katrina Duncan  
09/15/06 Harry Glasser  
10/24/06 Darren Carney  
02/22/07 Susan Gargiulo  
04/23/07 Joe Zaczek  
05/07/07 Gregory Peters  
06/19/07 Rose Garcia  
07/19/07 Patricia Bonesteele  
07/31/07 Sandy Meier  
04/15/08 Alan Jensen  
05/01/08 Maricela Arenas De Castillo  
05/16/08 Gloria Loyd  
07/21/08 Hilda Moss  
10/28/08 Lola Anastasia  
12/04/08 Christina Ashenfelter-Tisdal  
01/20/09 Shirley Whitney  
02/12/09 Livia Farina  
04/15/09 Alexandria Striegel  
05/11/09 Jose Cabrera  
06/19/09 Candace Nason  
06/23/09 Sara Conley  
07/20/09 Nellie Macdairmid  
07/30/09 Carmelita Musni  
08/11/09 Lina Khachekian  
11/25/09 Roberta Tillinger

05/04/10 Raymond Lanplear  
05/06/10 Sam Mofford  
05/06/10 Clayton Mofford  
05/09/11 Ann Johnson  
06/22/11 Jaqueline Van Wagner  
07/15/11 William Stout  
08/17/11 Joseph Allison  
09/12/11 Barbara Dvorak  
01/16/12 Debra Partridge  
01/31/12 Joan Gaipman  
02/23/12 Digiovanna, Debby  
05/17/12 Wendy Blettchart  
08/09/12 Cho, Jae

03/28/13 Diane Vogelzang  
05/06/13 Maryann Medina  
07/25/13 Benjamin Martin  
08/27/13 Wendy Wood  
10/08/13 John Phillips  
12/10/13 James Pedersen

**DEPOSITIONS GOING FORWARD FROM 2014**

**DR MARK ROSEN**

**Updated 10/17/2018**

**Page 1**

**1/14/2014**

**Gerald Gelger v Dominoes No.8006-11**

Deposed by Jolley Urga Wirth Woodbury & Standish (treating)

**1/23/2014**

**William Candow Plaintiff v David Dust defendant Case No. 2:11-CV-00343-LRH-GWF.**

Deposed by Barron & Pruitt (expert)

**2/25/2014**

**Tina Thomas Plaintiff v MGM Case#: A-12-661785-C**

Deposed by Kunin & Carman (expert)

**4/15/2014**

**Karen Milmesister Plaintiff v Coast Hotels & Casinos Inc d/b/a The Orli Orleans Hotel Case# A-12-672331**

Deposed by t Thorndal

**8/27/2014**

**Sheila Galper Plaintiff v Merck, Sharp and Dohme, Corp Case# JCCP 4644/30-2012-00547764**

Deposed by Mark P. Rob (treating)

**9/12/2014**

**Mohammad Sultan Plaintiff v Mission essential Personnel, LLC**

**File#228-1378**

Deposed by Flicker, Garellick & Associates (expert)

**2/12/2015**

**Norma Cantero Plaintiff v Kusina NI Loraine Case No: A-13-691384-C**

Deposed by Hall Jaffe & Clayton Tre: (treating)

**4/16/2015**

**Sheree Hufstetler v Dependable Highway Express Inc. File# a-14-698141-C**

Deposed by Christopher Gellner (expert)

**4/30/2015**

**Stefani Caneva Plaintiff v Jeffy Holland and Russel Sigler Inc File # YKZ AL 98038**

Deposted by Robert Amick (expert)

**5/16/2016**

**Michael Kling Plaintiff vs IDS Property Casualty Ins (Ameriprise) File# A-13-6892244-C**

Deposed by Brown, Bonn & Friedmann (expert)

**6/20/2016**

**William Lacombe Plaintiff vs Dewqne White: Lifetrans Inc (Roe Corp) Case No# A-15-720164-C**

Deposed by Bremer Whyte Brown & O'Meara (expert)

**6/14/2016**

**Doris Yahraus Plaintiff vs Paragon Tavern Dba (off the Strip) Case#A-12-667376-C**  
Deposed by Kenneth Go Goates (expert)

**8/29/2016**

**Dale Maxwell Plaintiff vs Arizona charlies Case# A-15-720740-C**  
Deposed by Morris, Sullivan, Lemkul & Pltegoft (treating)

**9/7/2016**

**Robert Kilroy Plaintiff vs Steven Taylor & Mary Taylor Case# A580860**  
Deposed by Atkin Winner & Sherrod (expert)

**10/11/2016**

**Manuel Cruz Plaintiff vs Ashley Cockrell Individual goes through Roe Corp l**  
Case# CV15-01441 Dept#D8  
Deposed by Gollightly & Vannah PLLC (expert)

**3/7/2017**

**Donna Apostolec Plaintiff vs Target Corp Case # CV 2:16 CV-01184-JCM-VCF**  
Deposed by Trevor Atkin, Atkin winner & Sherrod (expert)

**3/9/2017**

**Charles Bertrand Plaintiff vs Goodwill Industries of S. NV NV**  
Case# A-15-715208-C  
Deposed by Richard Harris Law Firm (expert)

**3/27/2017**

**Jeanne Wondra Plaintiff vs Old Fenrm Case# P949-259168-01**  
Deposed by Attorney John Shannon (expert)

**10/10/2017**

**Carlos Diaz Plaintiff vs MGM Grand Hotel Case#A-12-658149-C**  
Deposed by Harris & Harris Law Firm (expert)

**11/16/2017**

**Nicolas Scott Plaintiff vs Ethan Hoopes Corp. of Church Latter Day Saints**  
Case No. 2:16-CV-02646-APG-PAL  
Deposed by Clear Counsel Law Group (expert)

**2/19/2018**

**Shan Terada Plaintiff vs Ma Lynn Aguilar Individual Case #A-17-757912-C**  
Deposed by Steven Burris (expert)

**3/13/2018**

**Shaun Phillips vs Tre Builders LLC, Great Salt Lake Electrical**  
Case# A-16-743080-C  
Deposed by Clsneros & Marlas (expert)

**6/18/2018**

**Enrique Garcia-Lopez Plaintiff vs Checker Cab Corp Case # A-16-739239-C**  
Deposed by Ladah Law Firm (expert)

**6/26/2018**

**Tracy Sunahara vs Yichang Fu Individual Case# A-16-743707-C**  
Deposed by Maler Gutierrez & Assoc (expert)

**7/24/2018**

**Rebecca Todorovich Plaintiff vs Smiths Food & Drug Case# A-16-742940-C**  
Deposed by Glen Lerner (expert)

**9/27/2018**

**Trixa Bellosso-Rivas Plaintiff vs Covenant Care Ca LLC, Johnathan Geocanny Amaya Individual**  
Case# A-16-74-2390-C  
Deposed by Eric Blank (expert)

**BONE & JOINT SPECIALIST  
FEE SCHEDULES & POLICIES**

TAX ID #88-0293830

**EFFECTIVE JUNE 1, 2019 PRICE CHANGE**

Deposits are due with the case work

**INDEPENDENT MEDICAL EXAMINATION:**

Minimum Charge	\$ 1000.00	1 <sup>st</sup> Hour
Additional Hr.	\$ 800.00	Hour
Cancellation Fee	\$ 1600.00	Non refundable if cancellation less than 5 Business days prior to the scheduled appt.
<b>Deposit</b>	<b>\$ 1900.00</b>	<b>Due prior to the appointment.</b>

**OFFICE POLICY DOES NOT ALLOW ANY THIRD PARTIES AFFILIATED WITH DEFENSE OR APPLICANT TO BE PRESENT DURING THE EXAM.**

**MEDICAL RECORDS REVIEW:**

Hourly Rate	\$ 900.00	1 Hour Minimum
Deposit	\$ 1800.00	<b>Due with records under 3 inches</b>
Deposit	\$ 2700.00	<b>Due with records up to 5 inches</b>
Deposit	\$ 3600.00	<b>Due with records over 5 inches</b>
Chart Prep	\$ 35.00	Per Hr. Sorting, removing dups, prepping in date order
<b><u>Stat Report Fee:</u></b>	<b>\$ 1200.00</b>	<b>Requesting any report in 5 days or less</b>

**DEPOSITION:**

First Hour	\$ 1300.00	1 Hour Minimum
Additional Hr.	\$ 850.00	
Pre-Depo/Trial Meeting	\$ 700.00	Per Hour 1 Hour Minimum
Video Deposition	\$ 2500.00	Per Hour
Deposit	\$ 1300.00	<b>Due 1 week prior to Deposition</b>
Cancellation		Payment is <b><u>Non- Refundable</u></b> if less than 1 week

**TELEPHONE CONFERENCE:**

1 Hour	\$600.00	1 Hour Minimum
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**COURT APPEARANCE:**

Half Day	\$ 5,000.00	
Full Day	\$10,000.00	
Out of City Court	\$15,000.00	Plus travel expenses
Deposit	\$ 5,000.00	Due 2 weeks prior to Court appearance
Cancellation Fee	\$ 5,000.00	Non-refundable 10 days prior to appearance

**DELIVERY OF REPORTS REQUIRES PAYMENT IN FULL**

I UNDERSTAND THE POLICIES & THE FEES SCHEDULE FOR BONE & JOINT SPECIALIST.

---

Attorney's /Insurance Representative's Signature

Date

**Please Sign & fax back to me at 702-228-4499**

All records need to be sent to our office in paper form. Only X-rays are accepted on a disk.

**Send Records to :**

Bone & Joint Specialist

**Attn: Debra Cosgrove**

2680 Crimson Canyon Drive

Las Vegas NV 89128

Thank you

Debra Cosgrove

Legal Assist to Dr. Rosen

LEE 0274

# **EXHIBIT D**

**PLAINTIFF'S ANSWERS TO DEFENDANT'S  
INTERROGATORIES AND  
REQUESTS FOR ADMISSIONS**

# **EXHIBIT D**

1 **RESP**

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2 Nevada Bar No. 8557

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3 Nevada Bar No. 15025

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7 *Attorneys for Plaintiff Alberto Eduardo Cario*

8  
9  
10 **DISTRICT COURT**

11 **CLARK COUNTY, NEVADA**

12  
13 ALBERTO EDUARDO CARIO, an individual,

14 Plaintiff,

15 vs.

16 YEONHEE LEE; an individual; DOES I through  
17 X; and ROE CORPORATIONS I through X,  
inclusive,

18 Defendants.

Case No.: A-19-803446-C

Dept. No.: XXIX

**PLAINTIFF'S RESPONSES TO  
DEFENDANT'S INTERROGATORIES**

19 Pursuant to Rule 33 of the Nevada Rules of Civil Procedure, plaintiff ALBERTO EDUARDO  
20 CARIO ("Plaintiff"), by and through his attorneys of record, the law firm MAIER GUTIERREZ &  
21 ASSOCIATES hereby responds to defendant YEONHEE LEE's interrogatories.

22 These responses are made solely for the purpose of, and in relation to, this action. Each  
23 response is given subject to all appropriate objections (including, but not limited to, objections  
24 concerning competency, relevancy, materiality, propriety and admissibility) which would require the  
25 exclusion of any statement contained herein if the interrogatory were asked of, or any statements  
26 contained herein were made by, a witness present and testifying in court. All such objections and  
27 grounds therefore are reserved and may be interposed at the time of trial.  
28

1 The party on whose behalf the responses are given has not yet completed their investigation  
2 of the facts relating to this action, has not yet completed their discovery in this action, and has not yet  
3 completed their preparation for trial. Consequently, the following responses are given without  
4 prejudice to the responding party's right to produce, at the time of trial, subsequently-discovered  
5 material.

6 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to be  
7 implied or inferred. The fact that any interrogatory herein has been answered should not be taken as  
8 an admission, or a concession, of the existence of any facts set forth or assumed by such interrogatory,  
9 or that such answer constitutes evidence of any facts set forth or assumed. All responses must be  
10 construed as given on the basis of present recollection.

11 **RESPONSES TO INTERROGATORIES**

12 **INTERROGATORY NO. 1:**

13 Please state your full name, any aliases, current residence address, date of birth, marital status,  
14 and social security number.

15 **RESPONSE TO INTERROGATORY NO. 1:**

16 Objection. The request for Plaintiff's social security number as an improper request for  
17 confidential information, an invasion of privacy, not reasonably calculated to lead to the discovery of  
18 admissible information and precluded by NRS 239B.030. Furthermore, this interrogatory is overbroad  
19 and compound, and appears to constitute at least six distinct interrogatories. Subject to and without  
20 waiver of the foregoing objection, plaintiff responds as follows:

21 Full legal name: Alberto Eduardo Cario;

22 Aliases: None;

23 Date of birth: [REDACTED]

24 Marital Status: [REDACTED]

25 Address: [REDACTED]

26 SSN: [REDACTED]

27 As discovery is ongoing, plaintiff reserves the right to amend or supplement this response as  
28 necessary.



1 **INTERROGATORY NO. 2:**

2 If you have ever been convicted of a felony and/or convicted of any crime involving deceit or  
3 lying, state the original charge made against you, the court and the case number and the disposition  
4 of the charges.

5 **RESPONSE TO INTERROGATORY NO. 2:**

6 Objection. NRCP 26(b) allows parties to "obtain discovery regarding any nonprivileged  
7 matter that is relevant to any party's claims or defenses and proportional to the needs of the case."  
8 This information requested is not relevant to any claim or defense of any of the parties hereto. Subject  
9 to and without waiver of the foregoing objections, plaintiff responds as follows:

10 No, I have never been convicted of a felony and/or convicted of any crime involving deceit or  
11 lying.

12 **INTERROGATORY NO. 3:**

13 If you have ever served in the Armed Forces, please set forth the details of your military  
14 history, such as the branch of service, the date and place of induction, the highest rank obtained, the  
15 type, date and place of discharge, etc.

16 **RESPONSE TO INTERROGATORY NO. 3:**

17 I have never served in the Armed Forces.

18 **INTERROGATORY NO. 4:**

19 List your complete educational history including in your response the highest level of  
20 education you have obtained.

21 **RESPONSE TO INTERROGATORY NO. 4:**

22 Objection. NRCP 26(b) allows parties to "obtain discovery regarding any nonprivileged  
23 matter that is relevant to any party's claims or defenses and proportional to the needs of the case."  
24 This information requested is not relevant to any claim or defense of any of the parties hereto. Subject  
25 to and without waiver of the foregoing objections, plaintiff responds as follows:

26 I am currently working on my associates degree at College of Southern Nevada for business  
27 management, my highest level completed is a high school diploma at this time.

28 ///

1 **INTERROGATORY NO. 5:**

2 If you have ever had your driver's license suspended or revoked, please state all details  
3 regarding such suspension or revocation including the agency taking such action and the date and  
4 reason for such action.

5 **RESPONSE TO INTERROGATORY NO. 5:**

6 Objection. This request is overly broad as to its timing and scope. Subject to and without  
7 waiver of the foregoing objection, plaintiff responds as follows:

8 I had my driver's license suspended when I was 18 years-old in California due to an unpaid  
9 speeding ticket, I paid it and got my license reinstated before I received my Nevada driver's License  
10 around 2012.

11 **INTERROGATORY NO. 6:**

12 Please provide your employment history for the period of five (5) years before the Subject  
13 Incident date until present including in your response: (a) name of employer; (b) city and state where  
14 employed; (c) your stated title or position and accompanying duties and responsibilities; and (d) the  
15 length of your employment.

16 **RESPONSE TO INTERROGATORY NO. 6:**

17 a. Lowe's Home Improvement

18 b. Las Vegas, Nevada

19 c. Store Manager (recent promotion);

20 a. Assistant Store Manager (previous position past 4 years) – over sees daily  
21 operations; employment; manage existing employees; opening closing store;  
22 shipping receiving; day to day retail operations.

23 d. 11 years

24 **INTERROGATORY NO. 7:**

25 With respect to the Subject Accident, describe the details of the accident or incident in your  
26 own words, describing factually (without legal conclusion) what caused it to happen.

27 **RESPONSE TO INTERROGATORY NO. 7:**

28 I was driving north on Buffalo Drive, I came to a red light on Buffalo Drive and Sahara

1 Avenue, when my light turned green I drove through the intersection, when I was a 3/4 through the  
2 intersection I was struck by a vehicle traveling west on Sahara Avenue. I saw the white Audi coming  
3 towards me and I slammed on my brakes and tried to turn left away from the vehicle but it was too  
4 late, the vehicle hit me and everything in the car exploded around me.

5 **INTERROGATORY NO. 8:**

6 Describe in detail any conversations you had with anyone at the scene of the accident during  
7 the ten (10)-minute period immediately before and the ten (10)-minute period immediately after the  
8 accident in question.

9 **RESPONSE TO INTERROGATORY NO. 8:**

10 I had no conversations in the ten (10) minutes prior to the accident. In the ten (10) minutes  
11 after the accident, I spoke to a few witnesses and borrowed one of their phones to call my fiancé, I  
12 also spoke to the driver of the white Audi to see if she was okay. The people at the accident had  
13 already called the police.

14 As discovery is ongoing, Plaintiff reserves the right to amend or supplement this response as  
15 necessary.

16 **INTERROGATORY NO. 9:**

17 Describe in detail the physical layout of the area of the Subject Accident, including in your  
18 answer the locations and types of any traffic control devices, the number of travel lanes for the  
19 direction in which you were traveling, and the locations and types of any traffic barriers (including  
20 but not limited to concrete barriers, traffic cones, traffic barrels, etc.).

21 **RESPONSE TO INTERROGATORY NO. 9:**

22 Objection. This request is vague and ambiguous in regards to the use and meaning of the terms:  
23 “physical layout”, “locations”, “types”, and “traffic barriers”. The interrogatory is also overly broad  
24 in its request to “describe in detail” as such a threshold is subjective. Subject to and without waiving  
25 said objection, Plaintiff responds as follows:

26 Sahara and Buffalo is a four-way intersection, there were two lanes of travel in the direction I  
27 was going, there are four (4) traffic lights. There was no traffic at the time of the accident.

28 ///

1 **INTERROGATORY NO. 10:**

2 What was your place of departure and intended destination immediately prior to the Subject  
3 Accident?

4 **RESPONSE TO INTERROGATORY NO. 10:**

5 I left home from [REDACTED] and was traveling to  
6 work at Lowe's located at 7550 W. Washington, Las Vegas, Nevada 89128.

7 **INTERROGATORY NO. 11:**

8 Describe in detail the manner in which your body moved as a result of Subject Accident.  
9 Include in your answer a description of any parts of your body which struck any part of your vehicle  
10 or any other foreign object during the accident and the object(s) which was (were) struck.

11 **RESPONSE TO INTERROGATORY NO. 11:**

12 Objection. This request is vague and ambiguous in regards to the use and meaning of the terms:  
13 "manner", "body", "moved", "parts", "struck", and "foreign object". The interrogatory is also overly  
14 broad in its request to "describe in detail" as such a threshold is subjective. Subject to and without  
15 waiving said objection, Plaintiff responds as follows:

16 To the best of my recollection, I remember my body jerked forward, my wrist hit the door  
17 when the air bag went off, my face struck the airbag and my body slammed back into my seat where  
18 my head hit the seat. I do not remember how every part of my body moved and in what ways what  
19 parts struck what parts of the inside of the vehicle. The accident was loud, fast and violent with enough  
20 force to cause every part of my body to move, only inhibited to the extent of my seatbelt, and the  
21 impact caused parts of my body to hit the inside of the car and the airbags that were simultaneously  
22 deploying. I do not remember if items in my car that were thrown about.

23 **INTERROGATORY NO. 12:**

24 If you have ever been involved in any claim or any lawsuit with any person, group, or  
25 organization, corporation, or industrial commission, or any other entity, either as a plaintiff or a  
26 defendant, in the five years prior to the Subject Incident, or at any time subsequent to the Subject  
27 Incident, please describe in detail the nature of the claim or lawsuit, when it was made and how it was  
28 resolved.

1 **RESPONSE TO INTERROGATORY NO. 12:**

2       Objection. NRC 26(b) allows parties to “obtain discovery regarding any nonprivileged  
3 matter that is relevant to any party’s claims or defenses and proportional to the needs of the case.”  
4 This information requested is not relevant to any claim or defense of any of the parties hereto. Further,  
5 this request is improperly overbroad as to its timing and scope and will be limited to five years before  
6 the November 24, 2018, collision. Subject to and without waiver of the foregoing objection, plaintiff  
7 responds as follows:

8       I have not made any claims or lawsuits other than this case.

9 **INTERROGATORY NO. 13:**

10       How fast were you traveling immediately prior to the collision?

11 **RESPONSE TO INTERROGATORY NO. 13:**

12       I do not recall my speed, I had just left from a full stop.

13 **INTERROGATORY NO. 14:**

14       If, during the three-minute period immediately before impact, you were engaged in any  
15 activity which required the use of one or both hands, such as smoking, drinking, talking on a cellular  
16 phone, eating, adjusting equipment, or touching some person or object, please describe such conduct  
17 or activity in detail, setting forth a complete description of each activity, the duration of each activity,  
18 and how long in seconds before the occurrence such activity ended.

19 **RESPONSE TO INTERROGATORY NO. 14:**

20       None. I also forgot my phone at home, which is why I used the cell phone of one of the  
21 witnesses to call my fiancé.

22 **INTERROGATORY NO. 15:**

23       Were you suffering from physical infirmity, disability, or sickness at the time of the Subject  
24 Incident? If so, what was the nature of the infirmity, disability, or sickness?

25 **RESPONSE TO INTERROGATORY NO. 15:**

26       No, I was not suffering from physical infirmity, disability, or sickness at the time of the  
27 accident.

28       ///

1 **INTERROGATORY NO. 16:**

2 Did you consume any alcoholic beverages or take any drugs or medications within 12 hours  
3 before the Subject Incident? If so, state the type and amount of alcoholic beverages, drugs, or  
4 medication which were consumed, and when and where you consumed them.

5 **RESPONSE TO INTERROGATORY NO. 16:**

6 I did not consume alcohol, medications and/or drugs 12 hours prior to the collision.

7 **INTERROGATORY NO. 17:**

8 Did any mechanical defects in the motor vehicle in which you were operating/riding at the  
9 time of the Subject Accident contribute to the accident? If so, describe the nature of the defect and  
10 how it contributed to the accident.

11 **RESPONSE TO INTERROGATORY NO. 17:**

12 No, my vehicle did not have any mechanical defects that contributed to the accident.

13 **INTERROGATORY NO. 18:**

14 Did you do anything to cause or to contribute to cause Subject Accident? If so, please describe  
15 fully, and not by way of conclusions, how you caused or contributed to the said accident.

16 **RESPONSE TO INTERROGATORY NO. 18:**

17 No, I did not cause or contribute to the accident.

18 **INTERROGATORY NO. 19:**

19 Please state if the vehicle you were operating or riding in at the time of the Subject Accident  
20 was equipped with a dash cam, a "Nexar" system, an "On Star" system, or another in-vehicle  
21 camera/video, security, communications, and detection system. If so, please state: (a) the company  
22 providing such service; and (b) whether you were contacted by the company following the accident.

23 **RESPONSE TO INTERROGATORY NO. 19:**

24 No, my vehicle did not have any of the above.

25 **INTERROGATORY NO. 20:**

26 If you received any injuries of any kind whatsoever (whether objective or subjective) as a  
27 result of this accident or incident of which you, your attorney, or your health care providers are aware  
28 of or suspect, please list and describe each in specific detail, giving the exact location within or upon

1 your body of all your injuries, and the nature of your complaint, whether physical, dental, emotional,  
2 nervous, mental, or psychological.

3 **RESPONSE TO INTERROGATORY NO. 20:**

4 Objection. This request is cumulative, duplicative and in violation of NRCP 26(g)(1)(B)(ii).  
5 Furthermore this request requires an expert medical opinion for which Plaintiff is not qualified to give.  
6 Subject to and without waiving stated objections, Plaintiff responds as follows:

7 I injured my wrist, I had pain in my neck and the middle of my back, and I hurt my lower  
8 back significantly. I also was very nervous for a few weeks after the accident when going through an  
9 intersection.

10 **INTERROGATORY NO. 21:**

11 If any of the injuries which you claim were caused by the Defendant are an aggravation of a  
12 pre-existing condition, please state the nature of the pre-existing conditions and the nature of the  
13 aggravation claimed.

14 **RESPONSE TO INTERROGATORY NO. 21:**

15 Objection. This interrogatory requires an expert medical opinion. Subject to and without  
16 waiver of the foregoing objection, plaintiff responds as follows:

17 I did not have any prior existing conditions prior to the subject collision.

18 **INTERROGATORY NO. 22:**

19 If you claim that any of your injuries are permanent, state which of your injuries you claim to  
20 be permanent and what, if any, disabilities you contend such injuries will cause.

21 **RESPONSE TO INTERROGATORY NO. 22:**

22 Objection. This interrogatory is compound and comprised of at least two distinct interrogatory  
23 requests. Further, the interrogatory is vague and ambiguous regarding the meaning and scope of the  
24 terms "permanent" and "disabilities". The interrogatory is also overbroad in regards to the term "any".  
25 Most importantly, the interrogatory calls for expert medical opinions, which Plaintiff is not qualified  
26 to provide. Subject to and without waiver of the foregoing objections, plaintiff responds as follows:

27 I am unsure if my injuries are permanent.

28 As discovery is ongoing, Plaintiff reserves the right to amend or supplement this response as

1 necessary.

2 **INTERROGATORY NO. 23:**

3 If, in the five (5) years *prior* to the Subject Accident, you suffered any injuries, caused  
4 accidentally, intentionally, or otherwise, that required medical care, please state the nature of the  
5 injuries sustained, the date and place it was sustained and the name and address of the medical provider  
6 giving such medical care.

7 **RESPONSE TO INTERROGATORY NO. 23:**

8 Objection. This request is vague and ambiguous in regards to the term "injuries". Subject to  
9 and without waiving the foregoing objection, Plaintiff responds as follows:

10 None, five (5) years prior to the accident, I did not suffer from any injuries or accidents.

11 **INTERROGATORY NO. 24:**

12 List the name, address, and specialty of each health care provider who has examined or treated  
13 you for any of the injuries *resulting from* the Subject Accident and list the date of each examination  
14 or treatment.

15 **RESPONSE TO INTERROGATORY NO. 24:**

16 Objection. This interrogatory is cumulative, duplicative and in direct violation of NRCP  
17 26(g)(1)(B)(ii). Plaintiff previously disclosed complete names of medical providers, addresses, and  
18 phone numbers and produced supporting medical/billing records with dates of treatment in Plaintiff's  
19 NRCP 16.1 disclosures and supplements thereto.

20 **INTERROGATORY NO. 25:**

21 List the name and address of each pharmacy and/or pharmaceutical provider, where you have  
22 obtained prescription pain medication for the *period of five (5) years prior to the Subject Accident*  
23 *until present*.

24 **RESPONSE TO INTERROGATORY NO. 25:**

25 Prescriptions from Interventional Pain & Spine Institute have been filled at CVS Pharmacy:  
26 CVS Pharmacy  
27 9405 West Russell Road  
28 Las Vegas, Nevada 89148  
(702) 262-7854



1 **INTERROGATORY NO. 26:**

2 If, in the time period *subsequent* to the Subject Accident, you suffered any injuries, caused  
3 accidentally, intentionally, or otherwise, that required medical care, please state the nature of the  
4 injuries sustained, the date and place it was sustained and the name and address of the health care  
5 provider giving such medical care.

6 **RESPONSE TO INTERROGATORY NO. 26:**

7 None, subsequently to the accident, I did not suffer from any injuries or accidents.

8 **INTERROGATORY NO. 27:**

9 State the name and location of any hospital in which you have been admitted since the time of  
10 the Subject Accident, the inclusive dates of admission and the purpose for such admission.

11 **RESPONSE TO INTERROGATORY NO. 27:**

12 None.

13 **INTERROGATORY NO. 28:**

14 If you claim that any medical treatment or expense will be necessary in the future as a result  
15 of the incident in question, please state the nature of the treatment and/or expense and the name of the  
16 person advising of such necessity.

17 **RESPONSE TO INTERROGATORY NO. 28:**

18 Objection. This interrogatory is overbroad as the term "any" and the interrogatory calls for  
19 expert medical opinions. Subject to and without waiver of the foregoing objections, Plaintiff responds  
20 as follows:

21 I was advised by Dr. Rosler I would need injections in the future. Injections were scheduled  
22 for March 19, 2020, but my procedure did not move forward as the surgery center was delayed.

23 As discovery is ongoing, Plaintiff reserves the right to amend or supplement this response as  
24 necessary.

25 **INTERROGATORY NO. 29:**

26 If any of your health care providers has recommended you undergo any specific course of  
27 medical treatment (including but not limited to injection treatments, physical therapy or surgical  
28 intervention) to treat any of the injuries you claim to have received in the Subject Accident, *which*

1 *treatment you have not undergone*, describe in detail the nature of the treatment in question, the  
2 medical provider recommending such treatment, the date such treatment was first recommended, and  
3 the reason(s) why you have not undergone such treatment.

4 **RESPONSE TO INTERROGATORY NO. 29:**

5 Objection. This interrogatory is compound, vague and ambiguous, overbroad, and calls for  
6 expert medical opinions. Subject to and without waiver of the foregoing objections, plaintiff responds  
7 as follows:

8 *See plaintiff's response to Interrogatory No. 28.*

9 **INTERROGATORY NO. 30:**

10 If you claim that any of your injuries has resulted in restrictions on your ability to work or  
11 perform activities of daily living, state which of your body parts you claim to suffer such restrictions,  
12 the specific nature of such restrictions and the medical provider(s) who imposed such restrictions on  
13 your activities.

14 **RESPONSE TO INTERROGATORY NO. 30:**

15 I cannot carry heavy objects or stand or sit for long periods of time. The doctors at  
16 Interventional Pain & Spine Institute advised against these activities.

17 **INTERROGATORY NO. 31:**

18 If you are making a claim for lost wages as a result of the Subject Incident, please set forth the  
19 specific injury, symptom or disability which you claim caused the loss of time, the amount of time  
20 and wages lost, the name and address of your employer, and your current rate of wages or salary with  
21 said employer has testified as an expert at trial or by deposition within the preceding four years.

22 **RESPONSE TO INTERROGATORY NO. 31:**

23 Plaintiff is not making a wage loss claim at this time. Plaintiff reserves the right to amend or  
24 supplement this interrogatory response.

25 **INTERROGATORY NO. 32:**

26 If you are making a claim for property damage as a result of the Subject Incident, please set  
27 describe the property damaged, the amount to repair, and any individuals or companies who estimated  
28 the repair cost.

1 **RESPONSE TO INTERROGATORY NO. 32:**

2 Plaintiff is not making a property damage claim.

3 **INTERROGATORY NO. 33:**

4 Identify all person(s) who you to your knowledge have or may have any relevant information  
5 regarding the Subject Incident.

6 **RESPONSE TO INTERROGATORY NO. 33:**

7 A witness by the name of Frank, I do not know his last name and responding Las Vegas  
8 Metropolitan officers.

9 **INTERROGATORY NO. 34:**

10 If you provided a written or recorded statement to anyone regarding the subject accident,  
11 please state:(a)whether the statement was written or recorded,(b)the name and address of the person  
12 or company who requested the statement.

13 **RESPONSE TO INTERROGATORY NO. 34:**

14 My written statement to Las Vegas Metropolitan Police Department. I gave a verbal statement  
15 I gave to GEICO, but it was not recorded.

16 **INTERROGATORY NO. 35:**

17 Were you a Medicare or Medicaid insured, or otherwise eligible for or entitled to benefits of  
18 Medicare or Medicaid? If so, please identify by which entity you were insured/entitled and state the  
19 nature and amount of any existing or anticipated lien(s) on any past, present or future payments from  
20 any source for any and all claims, medical expenses/damages as they may relate to the facts and  
21 allegations of this suit. Include in your answer to this interrogatory whether this lawsuit and/or claim  
22 has been self-reported to the Centers for Medicare and Medicaid Services, and whether you, or anyone  
23 on your behalf, intends to self-report to the Centers for Medicare and Medicaid Services.

24 **RESPONSE TO INTERROGATORY NO. 35:**

25 Plaintiff does not have Medicare and/or Medicaid.

26 **INTERROGATORY NO. 36:**

27 Other than your attorneys or your attorneys' staff, identify all persons who assisted you in  
28 responding to the Interrogatories, Request for Production of Documents, and Requests for

1 Admissions.

2 **RESPONSE TO INTERROGATORY NO. 36:**

3 None.

4 DATED this 2nd day of April, 2020.

5 Respectfully submitted,

6 **MAIER GUTIERREZ & ASSOCIATES**

7 /s/ Julia M. Chumbler

8 JASON R. MAIER, ESQ.

9 Nevada Bar No. 8557

JULIA M. CHUMBLER, ESQ.

10 Nevada Bar No. 15025

8816 Spanish Ridge Avenue

11 Las Vegas, Nevada 89148


*Attorneys for Plaintiff Alberto Eduardo Cario*

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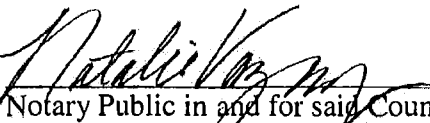
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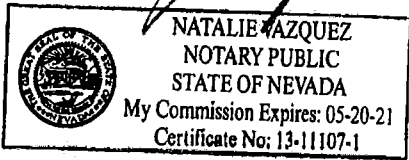
STATE OF NEVADA       )  
                                      )ss:  
COUNTY OF CLARK       )

I, ALBERTO EDUARDO CARIO, declare, under penalty of perjury, that the following statement is true: I am the plaintiff in the above-entitled action. The entitled document **PLAINTIFF'S RESPONSES TO DEFENDANT'S INTERROGATORIES** and know the contents therein. The same is true of my knowledge, except as to those matter therein stated on information and belief, and as to those matters, I believe them to be true.

  
\_\_\_\_\_  
ALBERTO EDUARDO CARIO

SUBSCRIBED and SWORN to before  
me this 27<sup>th</sup> day of March, 2020.

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



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*Attorneys for Defendant Yeonhee Lee*

An employee of MAIER GUTIERREZ & ASSOCIATES

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*Attorneys for Plaintiff Alberto Eduardo Cario*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALBERTO EDUARDO CARIO, an individual,  
  
Plaintiff,

vs.

YEONHEE LEE; an individual; DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No.: A-19-803446-C  
Dept. No.: XXIX

**PLAINTIFF'S RESPONSES TO  
DEFENDANT'S REQUEST FOR  
ADMISSIONS**

Pursuant to Rule 33 of the Nevada Rules of Civil Procedure, plaintiff ALBERTO EDUARDO CARIO ("Plaintiff"), by and through his attorneys of record, the law firm MAIER GUTIERREZ & ASSOCIATES, hereby responds to defendant YEONHEE LEE's requests for admissions.

These responses are made solely for the purpose of, and in relation to, this action. Each response is given subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any statement contained herein if the interrogatory were asked of, or any statement contained herein were made by, a witness present and testifying in court. All such objections and grounds therefore are reserved and may be interposed at the time of trial.

1 The party on whose behalf the responses are given has not yet completed their investigation  
2 of the facts relating to this action, has not yet completed their discovery in this action, and has not yet  
3 completed their preparation for trial. Consequently, the following responses are given without  
4 prejudice to the responding party's right to produce, at the time of trial, subsequently-discovered  
5 material.

6 Except for the facts explicitly admitted herein, no admission of any nature whatsoever is to be  
7 implied or inferred. The fact that any interrogatory herein has been answered should not be taken as  
8 an admission, or a concession, of the existence of any facts set forth or assumed by such interrogatory,  
9 or that such answer constitutes evidence of any facts set forth or assumed. All responses must be  
10 construed as given on the basis of present recollection.

11 **RESPONSES TO REQUEST FOR ADMISSIONS**

12 **REQUEST FOR ADMISSION NO. 1:**

13 Admit that you are not claiming property damages in this lawsuit.

14 **RESPONSE TO REQUEST FOR ADMISSION NO. 1:**

15 Admit.

16 **REQUEST FOR ADMISSION NO. 2:**

17 Admit that you are not claiming damages for lost wages or income in this lawsuit.

18 **RESPONSE TO REQUEST FOR ADMISSION NO. 2:**

19 Deny.

20 **REQUEST FOR ADMISSION NO. 3:**

21 Admit that you are not claiming damages for lost earning capacity in this lawsuit.

22 **RESPONSE TO REQUEST FOR ADMISSION NO. 3:**

23 Deny.

24 **REQUEST FOR ADMISSION NO. 4:**

25 Admit that you are not claiming damages for travel expenses in this lawsuit.

26 **RESPONSE TO REQUEST FOR ADMISSION NO. 4:**

27 Admit.

28 ///



1 **REQUEST FOR ADMISSION NO. 5:**

2 Admit that you did not break any bones as a result of the Subject Accident.

3 **RESPONSE TO REQUEST FOR ADMISSION NO. 5:**

4 Objection. This request calls for a medical expert opinion. Subject to and without waiver of  
5 the foregoing objection, Plaintiff responds as follows:

6 Admit.

7 **REQUEST FOR ADMISSION NO. 6:**

8 Admit that the back injuries that you are claiming resulted from the Subject Accident are soft  
9 tissue injuries.

10 **RESPONSE TO REQUEST FOR ADMISSION NO. 6:**

11 Objection. This request calls for a medical expert opinion. Further, this request is vague and  
12 ambiguous in regards to the term "soft tissue injuries". Moreover, this request does not comply with  
13 the purpose of NRCP 36, which is to obtain admission of facts that are in no real dispute and that the  
14 adverse party can admit cleanly, without qualifications. *See Morgan v. Demille*, 106 Nev. 671, 799  
15 P.2d 561 (1990). Subject to and without waiver of the foregoing objection, Plaintiff responds as  
16 follows:

17 Deny.

18 **REQUEST FOR ADMISSION NO. 7:**

19 Admit that you were not transported from the Subject Accident scene by ambulance.

20 **RESPONSE TO REQUEST FOR ADMISSION NO. 7:**

21 Admit.

22 **REQUEST FOR ADMISSION NO. 8:**

23 Admit that you were able to get out of your car, unassisted, at the scene of the accident.

24 **RESPONSE TO REQUEST FOR ADMISSION NO. 8:**

25 Admit.

26 **REQUEST FOR ADMISSION NO. 9:**

27 Admit that you were able to walk into the emergency room at the ER at the Lakes (Southern  
28 Hills Hospital).

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 9:**

2 Admit.

3 **REQUEST FOR ADMISSION NO. 10:**

4 Admit that you were able to walk out of the emergency room at the ER at the Lakes (Southern  
5 Hills Hospital) with no apparent pain or distress.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 10:**

7 Objection. This request does not comply with the purpose of NRCP 36, which is to obtain  
8 admission of facts that are in no real dispute and that the adverse party can admit cleanly, without  
9 qualifications. *See Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). Subject to and without  
10 waiver of the foregoing objection, Plaintiff responds as follows:

11 Deny.

12 **REQUEST FOR ADMISSION NO. 11:**

13 Admit that no health care provider has told you that any injury or damages alleged from the  
14 Subject Accident are permanent.

15 **RESPONSE TO REQUEST FOR ADMISSION NO. 11:**

16 Objection. This request is not reasonably calculated to lead to the discovery of relevant or  
17 admissible evidence. Moreover, this request does not comply with the purpose of NRCP 36, which  
18 is to obtain admission of facts that are in no real dispute and that the adverse party can admit cleanly,  
19 without qualifications. *See Morgan v. Demille*, 106 Nev. 671, 799 P.2d 561 (1990). Subject to and  
20 without waiver of the foregoing objections, Plaintiff responds as follows:

21 Deny.

22 **REQUEST FOR ADMISSION NO. 12:**

23 Admit that your body did not strike anything inside the cab of your vehicle at the time of the  
24 Subject Accident.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 12:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 13:**

28 Admit that you have provided a written or recorded statement to an insurance company

1 providing your account of what occurred during the Subject Accident.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 13:**

3 Deny.

4 **REQUEST FOR ADMISSION NO. 14:**

5 Admit that, to date, no health care provider has recommended future surgery related to  
6 injuries you alleged to have sustained in the Subject Accident.

7 **RESPONSE TO REQUEST FOR ADMISSION NO. 14:**

8 Deny.

9 **REQUEST FOR ADMISSION NO. 15:**

10 Admit that, to date, no health care provider has recommended future injections related  
11 to injuries you alleged to have sustained in the Subject Accident.

12 **RESPONSE TO REQUEST FOR ADMISSION NO. 15:**

13 Deny

14 **REQUEST FOR ADMISSION NO. 16:**

15 Admit that your home life activities have not been limited as a result of the Subject Accident.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 16:**

17 Deny.

18 **REQUEST FOR ADMISSION NO. 17:**

19 Admit that you have no personal knowledge of any persons who witnessed the Subject  
20 Accident except for those persons occupying the vehicles involved in the Subject Accident.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 17:**

22 Deny.

23 **REQUEST FOR ADMISSION NO. 18:**

24 Admit that the medical expenses you incurred in this incident were unnecessary.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 18:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 19:**

28 Admit that the medical expenses you incurred in this incident were unreasonable.

1 **RESPONSE TO REQUEST FOR ADMISSION NO. 19:**

2 Deny.

3 **REQUEST FOR ADMISSION NO. 20:**

4 Admit that the medical treatment you sought for injuries you relate to this Subject Accident  
5 was excessive.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 20:**

7 Deny.

8 **REQUEST FOR ADMISSION NO. 21:**

9 Admit that you have delayed treatment recommended by health care providers which would  
10 have promoted recovery for injuries you claim arise from the Subject Accident.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 21:**

12 Deny.

13 **REQUEST FOR ADMISSION NO. 22:**

14 Admit that you failed to keep proper lookout of the road ahead of you which resulted in the  
15 collision that caused the Subject Accident.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 22:**

17 Deny.

18 **REQUEST FOR ADMISSION NO. 23:**

19 Admit that you could have taken evasive action to avoid the collision which resulted in the  
20 Subject Accident.

21 **RESPONSE TO REQUEST FOR ADMISSION NO. 23:**

22 Deny.

23 **REQUEST FOR ADMISSION NO. 24:**

24 Admit that were going above the posted speed limit at the time of the Subject Accident.

25 **RESPONSE TO REQUEST FOR ADMISSION NO. 24:**

26 Deny.

27 **REQUEST FOR ADMISSION NO. 25:**

28 Admit that there was nothing that Defendant could have done to avoid or minimize the

1 collision between the vehicles which resulted in the Subject Accident.

2 **RESPONSE TO REQUEST FOR ADMISSION NO. 25:**

3 Deny.

4 **REQUEST FOR ADMISSION NO. 26:**

5 Admit that Defendant did not cause the Subject Accident.

6 **RESPONSE TO REQUEST FOR ADMISSION NO. 26:**

7 Deny.

8 **REQUEST FOR ADMISSION NO. 27:**

9 Admit that your operation of the vehicle you were driving was the actual cause of the Subject  
10 Accident.

11 **RESPONSE TO REQUEST FOR ADMISSION NO. 27:**

12 Deny.

13 **REQUEST FOR ADMISSION NO. 28:**

14 Admit that your operation of the vehicle you were driving was the proximate cause of the  
15 Subject Accident.

16 **RESPONSE TO REQUEST FOR ADMISSION NO. 28:**

17 Deny.

18 DATED this 18<sup>th</sup> day of March, 2020.

19 Respectfully submitted,

20 **MAIER GUTIERREZ & ASSOCIATES**

21 /s/ Julia M. Chumbler

22 JASON R. MAIER, ESQ.

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# **EXHIBIT 2**

# **EXHIBIT 2**



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7 *Attorneys for Plaintiff Alberto Eduardo Cario*

8  
9  
10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

12 ALBERTO EDUARDO CARIO, an individual,  
13  
14 Plaintiff,

15 vs.

16 YEONHEE LEE; an individual; DOES I through  
17 X; and ROE CORPORATIONS I through X,  
inclusive,

18 Defendants.

Case No.: A-19-803446-C  
Dept. No.: XXIX

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT'S MOTION TO COMPEL  
RULE 35 EXAM – ORDER SHORTENING  
TIME**

**[DISCOVERY COMMISSIONER]**

19 Plaintiff Alberto Eduardo Cario, by and through his attorneys, the law firm MAIER GUTIERREZ  
20 & ASSOCIATES, hereby submits this opposition to defendant Yeonhee Lee's motion to compel Rule  
21 35 examination on order shortening time. This opposition is made and based on the following  
22 memorandum of points and authorities, the pleadings and papers on file in this matter, and any oral  
23 argument the Discovery Commissioner may allow at the hearing on this matter.

24 **MEMORANDUM OF POINTS AND AUTHORITIES**

25 Plaintiff does not oppose defendant's request to perform a Rule 35 examination. In fact, it  
26 was plaintiff's counsel who actually took the time to prepare and provide defendant with the draft  
27 stipulation and order for Rule 35 examination that is now at issue, which is based on the same template  
28 that has been used and approved in numerous other cases. *See Ex. B. to defendant's motion.*



1 In response, defendant insisted on striking the entirety of item nos. 9 (audio recording), 10  
2 (observer) and 20 (preservation of files) without providing any basis in law or fact for such strikes.  
3 **See Ex. B. to defendant's motion.** Defendant also insisted on striking the 30-day report deadlines  
4 within item nos. 18-19.

5 During the EDCR 2.34 conference, it was explained to defendant that plaintiff's draft  
6 stipulation and order is consistent with both NRCP 35 and NRS 52.380, as well as consistent with  
7 prior discovery dispute conferences and rulings by the Discovery Commissioner in numerous other  
8 cases.<sup>1</sup>

9 Despite these representations by plaintiff's counsel during the EDCR 2.34 conference,  
10 defendant could not reference any authority whatsoever to substantiate defendant's requested strikes,  
11 preferring instead to skip straight to the instant motion to compel.

12 As outlined below, each of defendant's proposed strikes are contrary to Nevada law and  
13 inconsistent with the Discovery Commissioner's prior rulings.

14 **Item Nos. 9 (audio recording) and 10 (observer) are as follows:**

15 9. The Rule 35 examination will be audio recorded by LYNN BELCHER LNC ASSOCIATES,  
16 in which Mr. Cario's counsel will arrange and pay for the recording. Mr. Cario's  
17 counsel shall disclose a copy of the recording within 30 days of receipt of the same.  
The doctor and all persons present must be notified that the examination will be  
recorded before the examination begins.

18 10. Mr. Cario will have a nurse observer present at the Rule 35 examination from LYNN  
19 BELCHER LNC ASSOCIATES. The nurse observer must not in any way interfere,  
obstruct, or participate in the examination.

20 Defendant requests that the Discovery Commissioner disregard NRS 52.380, which provides  
21 Mr. Cario with the substantive right to have an observer attend and make an audio or stenographic  
22 recording of an examination.

23 The Nevada Legislature enacted NRS 52.380 in 2019 to provide individuals, such as Mr.  
24 Cario, with the substantive right to record examinations and have observers present:

25 Contrary to opponents of this bill who want to say this is a  
26 \_\_\_\_\_

27 <sup>1</sup> Plaintiff's counsel acknowledges that on September 9, 2020, the Discovery Commissioner  
28 recently modified item no. 12 in another case. In the other case, the Discovery Commissioner added  
that the doctor "may ask how the incident occurred and how Plaintiff was injured" to the end of item  
no. 12.

1 procedural matter, this is not a procedural matter; it is a substantive  
2 right. It is the right to protect and control your own body.

3 The reason we are before you today is because this bill protects  
4 substantive rights. This is not a procedural rule, which you would  
5 usually find within our NRCP. Our *Nevada Rules of Civil Procedure*  
6 involve things such as how many years someone has to file a lawsuit  
7 and how many days someone has to file a motion or an opposition  
8 to a motion. This bill does not involve those types of issues but,  
9 instead, involves a substantive right of a person during an  
10 examination by a doctor whom he did not chose, does not know, and  
11 has no relationship with whatsoever, a doctor who was chosen by an  
12 insurance defense attorney. This is a doctor who is going to handle  
13 this patient. It is not really a patient because there is no doctor-  
14 patient relationship. This examinee is going to be touched and  
15 handled by this doctor with whom he has zero relationship. It is  
16 before forced upon him as part of this examination. That is why this  
17 is a substantive right, and this is why we are before you here today.

18 The procedural part of Rule 35 is, how do you get there? You agree  
19 to it or you file a motion. That stays with NRCP 35. The mechanics  
20 of the actual examination is a whole other issue. That is a person  
21 being handled and touched by a doctor who is not chosen by them  
22 but selected by an insurance defense attorney. That is why that is a  
23 substantive right.

24 Assembly Committee on Judiciary Hearing on AB 285, March 27, 2019.

25 Also considered during the Judiciary Hearing on AB 285 was that having someone present at  
26 an examination and audio recording the examination were already substantive rights individuals have  
27 in California, Utah and Arizona, as well as in Nevada worker compensation cases. *See id.*  
28 Additionally, recording of the examination promotes openness and transparency during the  
examinations. *See id.*

Mr. Cario has the substantive rights<sup>2</sup> to an audio recording and observer, which will serve to  
minimize future disputes over what occurred during the examination, eliminate disputes over what  
was said at the examination, and ensure the report is consistent with the examination. In other words,  
an audio recording and observer will ensure the integrity of the process, which one would think both

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<sup>2</sup> To the extent defendant argues these are not substantive rights, such argument is contrary to  
the above Legislative History as well as the law on substantive rights. A statute is substantive when  
it concerns matters that are based upon subjects other than court administration. *See Muci v. State*  
*Farm Mut. Auto Ins.*, 732 N.W.2d 88, 96 (Mich. 2007). And the enactment of substantive rules is  
well within the powers conferred upon the Legislature by the Nevada Constitution and courts must  
defer to the Legislature regarding the statute's validity. *See Zamora v. Price*, 125 Nev. 388, 392  
(2009).

1 plaintiff *and defendant* would want.

2 Accordingly, defendant's motion to compel Mr. Cario to submit to a Rule 35 examination  
3 without the protections afforded by item nos. 9 (audio recording) and 10 (observer) should be denied.

4 **Item Nos. 18-19 (report deadline) are as follows:**

- 5 18. Dr. Rosen must prepare and disclose a written report **within 30 days** of the Rule 35  
6 examination that accurately sets out in detail his findings, including diagnosis,  
7 conclusions, and the results of any tests, as required by Rule 35(b)(2). Dr. Rosen's  
8 written report must include a complete statement of all opinions he will express, and  
9 the basis and reasons for them, as well as all of the facts or data he considered in  
10 forming said opinions, as required by Rule 16.1(a)(2)(B).
- 11 19. Defense counsel shall disclose a copy of Dr. Rosen's written report **within 30 days** of  
12 the Rule 35 examination or by the Rule 16.1(a)(2) initial expert disclosure deadline,  
13 whichever occurs first.

14 For some unknown reason, defendant is asking the Discovery Commissioner to ignore and  
15 strike the 30-day report requirement contained in NRCP 35.

16 Specifically, NRCP 35(b)(1) provides:

17 Unless otherwise ordered by the court or discovery commissioner  
18 for good cause, the party who moved for the examination must, upon  
19 a request by the party against whom the examination order was  
20 issued, provide a copy of the examiner's report within 30 days of  
21 the examination or by the date of the applicable expert disclosure  
22 deadline, whichever occurs first.

23 Despite the express procedural requirements of NRCP 35, which were incorporated directly  
24 into item nos. 18-19, defendant did not bother to explain during the EDCR 2.34 conference any reason,  
25 never mind good cause, to deviate from the 30-day report requirement. Nor has defendant put forth  
26 any reason or good cause in the motion presently before the Discovery Commissioner to deviate from  
27 the 30-day report requirement.

28 Accordingly, defendant's motion to compel Mr. Cario to submit to a Rule 35 examination  
without the protections afforded by item nos. 18-19 (report deadline) should be denied.

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**Item No. 20 (preservation of files) is as follows:**

20. Dr. Rosen shall retain a complete copy of the entire file pertaining to the Rule 35 examination, including but not limited to draft reports, handwritten notes, e-mails or other communications sent and received, and all documents generated or received, including draft reports shared with defense counsel, defendants or an agent of defendants, communications regarding draft reports with defense counsel, defendants or an agent of defendants, redlines of draft reports shared with defense counsel, defendants or an agent of defendants, and test materials and/or raw data related to the Rule 35 examination. Following the disclosure of the Rule 35 examination report, counsel for plaintiff may serve Dr. Rosen with a subpoena and/or serve defendants with a request for production to produce these materials.

Although not discussed during the EDCR 2.34 conference, defendant argues item no. 20 (preservation of files) is inappropriate because plaintiff is not permitted to compel draft reports of an expert. Had a meaningful EDCR 2.34 conference actually taken place, plaintiff's counsel would have explained to defendant that item no. 20 does not automatically mean plaintiff *will or shall* serve a subpoena or request for production, but rather that plaintiff *may* do so if preservation issues arise.

Additionally, the purpose of item no. 20 is to place the doctor on notice *before* the Rule 35 examination that he or she is not to destroy any documents that may be subject to production or subpoena *after* the Rule 35 examination. This is because plaintiff's counsel has had problems in the past with examiners not retaining a complete copy of their files *after* Rule 35 examinations, so including item no. 20 has been an attempt to head off any potential problems in advance, and plaintiff's counsel has not encountered any such problems since including this type of language in Rule 35 examination stipulations and orders in other cases.

Further, to the extent defendant has objections about a future subpoena or request for production that has not yet been drafted or served, such objections are premature at this time. Nothing in item no. 20 waives any substantive objections regarding a future subpoena or request for production.

Next, plaintiff's counsel also would have explained that the "draft reports" language of item no. 20 is only triggered if such draft reports are actually *shared with defense counsel*, and that the Discovery Commissioner has previously reviewed item no. 20 on multiple occasions and it was the Discovery Commissioner who added the limiting language used in plaintiff counsel's templates regarding communications or sharing such documents with defense counsel: "draft reports *shared*

1 *with defense counsel, defendants or an agent of defendants, communications regarding draft reports*  
2 *with defense counsel, defendants or an agent of defendants, redlines of draft reports shared with*  
3 *defense counsel, defendants or an agent of defendants.”*

4 Finally, it is unclear from the motion why defendant objects to an expert witness preserving  
5 test materials and/or raw data related to a Rule 35 examination. The disclosure of such items are  
6 specifically contemplated and required by NRCP 16.1(a)(2)(B), and such items should not destroyed  
7 by an expert witness.

8 **CONCLUSION**

9 Based upon the foregoing, Mr. Cario respectfully requests that the Discovery Commissioner  
10 deny defendant’s motion to compel Mr. Cario to submit to a Rule 35 examination without the  
11 protections afforded by item nos. 9 (audio recording), 10 (observer), 18-19 (report deadline) and 20  
12 (preservation of files).

13 DATED this 15th day of September, 2020.

14 **MAIER GUTIERREZ & ASSOCIATES**

15  
16 /s/ Jason R. Maier  
17 JASON R. MAIER, ESQ.  
18 Nevada Bar No. 8557  
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# **EXHIBIT 3**

# **EXHIBIT 3**



1 **ARPLY**  
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9 Attorney for Defendant  
10 YEONHEE LEE

11 **DISTRICT COURT**  
12  
13 **CLARK COUNTY, NEVADA**

14 ALBERTO EDUARDO CARIO, an individual,

15 Plaintiff,

16 vs.

17 YEONHEE LEE, an individual; DOES I  
18 through X and ROE CORPORATIONS I  
19 through X, inclusive,

20 Defendants.

Case No.: A-19-803446-C

Dept. No.: 29

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

**DATE: 9/17/2020**

**TIME: 9:00 a.m.**

21 COME NOW Defendant YEONHEE LEE, by and through her attorney of record,  
22 Rhonda Long, Esq., of the LAW OFFICE OF LEE J. GRANT, II, and hereby submits  
23 Defendant's Reply in Support of Motion to Compel a Rule 35 Exam of Plaintiff Alberto Cario.  
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1 Defendant's Reply is made and based upon the papers and pleadings on file herein, the  
2 exhibits attached hereto, and the following points and authorities submitted in support hereof.

3 DATED this 16th day of September 2020.

4 **LAW OFFICES OF LEE J. GRANT, II**

5 By: /s/ Rhonda Long

6 Rhonda Long, Esq.

7 Nevada Bar No. 10921

8 8345 West Sunset Road, Suite 250

9 Las Vegas, Nevada 89113

Attorney for Defendant

YEONHEE LEE

10  
11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I.**

13 **INTRODUCTION**

14  
15 Defendant Yeonhee Lee ("Defendant LEE") has requested an order compelling Plaintiff  
16 Alberto Cario ("Plaintiff CARIO") to submit to a Nevada Rule of Civil Procedure Rule 35  
17 medical examination. While Plaintiff consents to an independent medical exam, a dispute arose  
18 as to the parameters of such exam. Plaintiff seeks parameters outside of the scope of Rule 35.  
19 Specifically, Plaintiff requests that his nursing expert and/or consultant be permitted to observe  
20 and record the exam. In addition, Plaintiff has asked that the independent medical exam doctor  
21 keep all drafts of his expert report so that they may be subpoenaed by Plaintiff's counsel.  
22

23 Plaintiff relies upon NRS 52.380 which provides, in part, that observers may attend and  
24 that audio recordings may take place subject to certain conditions. However, this language is  
25 inconsistent with the older rule NRCP 35, promulgated by the Nevada Supreme Court, which  
26 contains different criteria for the presence of observers and a good cause requirement for audio  
27 recording. As will be detailed in Defendant's pleadings and in any arguments at hearing,  
28

1 NRCP 35 should govern the parties' dispute as an independent medical exam relates to the  
2 court's procedures rather than any substantive right of Plaintiff. With respect to the issue of  
3 draft expert reports, NRCP 26(b)(4)(B) specifically prohibits any disclosure of the same. In  
4 light of the parties' dispute, Defendant requests that the Discovery Commissioner issue an  
5 order: (1) compelling Plaintiff Albert Lee Cario to submit to a Rule 35 Exam; (2) precluding  
6 audio recording; (3) precluding the presence of any observer who is an attorney, attorney  
7 representative, or paid for expert/consultant; and (4) finding that expert drafts and notes are  
8 protected from disclosure.  
9

## 10 II.

### 11 LEGAL ARGUMENT

#### 12 A.

### 13 LEGAL STANDARD

14 Nevada Rule of Civil Procedure 35 provides in pertinent part as follows:

15 "Rule 35. Physical and Mental Examinations

16 (a) Order for Examination.

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

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

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

26 (B) The order must specify the time, place, manner, conditions, and  
27 scope of the examination, as well as the person or persons who  
28 will perform it. The examination must take place in an  
appropriate professional setting in the judicial district in which

1 the action is pending, unless otherwise agreed by the parties or  
2 ordered by the court.

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

9 (4) Observers at the Examination. The party against whom an examination is  
10 sought may request as a condition of the examination to have an observer present  
11 at the examination. When making the request, the party must identify the observer  
12 and state his or her relationship to the party being examined. The observer may  
13 not be the party's attorney or anyone employed by the party or the party's  
14 attorney.

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

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

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

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

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

25 **B.**

26 **NRCP 35 CONTROLS PARAMETERS OF INDEPENDENT MEDICAL EXAMS IN**  
27 **NEVADA COURTS NOT NRS 52.380 BECAUSE NRS 52.380 VIOLATES THE**  
28 **SEPARATION OF POWERS CLAUSE OF THE NEVADA CONSTITUTION**

In Defendant's Motion to Compel, Defendant cited Berkson v. LePome, 126 Nev. 492,  
498, 245 P.3d 560, 564 (2010) for its essential premise that "[t]he separation of powers doctrine  
is the most important foundation for preserving and protecting liberty by preventing the  
accumulation of power in any one branch of government." Berkson v. LePome, 126 Nev. 492,

1 498, 245 P.3d 560, 564 (2010). To this end and pursuant to Article 3, Section 1(1) of the  
2 Nevada Constitution, governmental power of the State of Nevada is divided into three separate,  
3 coequal departments: legislative, executive, and judicial. The powers specific to each  
4 department, or branch, are set forth within Articles 4, 5, and 6. Each branch has “inherent  
5 power to administer its own affairs and perform its duties, so as not to become a subordinate  
6 branch of government.” *Id.* The judicial branch is entrusted with “rule-making and other  
7 incidental powers reasonable and necessary to carry out the duties required for the  
8 administration of justice and to economically and fairly manage litigation.” *Id.* at  
9 499 (internal quotations omitted).

10  
11 On December 31, 2018, the Nevada Supreme Court adopted revisions to NRCP 35  
12 which specifically addressed audio recording and the presence of observers during Rule 35  
13 exams. The changes were made effective on March 1, 2019. The current Rule 35 permits, for  
14 “good cause” shown, audio recording of an independent examination under the Rule. See,  
15 NRCP 35(a)(3). Further, any observer to such examination may not be the party’s attorney or  
16 anyone employed by the party or the party’s attorney. See, NRCP 35(a)(4).

17  
18 The 2019 Advisory Committee Notes Subsection (a) provides the rationale for the  
19 changes to the observer and recording language as follows:  
20

21 “ADVISORY COMMITTEE NOTES 2019 Amendment

22 Subsection (a). Rule 35(a) expressly addresses audio recording and  
23 attendance by an observer at court-ordered physical and mental  
24 examinations. A court may for good cause shown direct that an  
25 examination be audio recorded. **A generalized fear that the examiner**  
26 **might distort or inaccurately report what occurs at the examination is**  
27 **not sufficient to establish good cause to audio record the**  
28 **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 order for the  
examination. Psychological and neuropsychological examinations raise

1        subtler questions of influence and confidential and proprietary testing  
2        materials that make it appropriate to condition the attendance of an  
3        observer on court permission, to be granted for good cause shown. **In**  
4        **either event, the observer should not be the attorney or employed by**  
5        **the attorney for the party against whom the request for examination**  
6        **is made**, and the observer may not disrupt or participate in the  
7        examination. A party requesting an audio recording or an observer should  
8        request such a condition when making or opposing a motion for an  
9        examination or at a hearing on the motion.”

10        On or about May 29, 2019, after the recent Nevada Supreme Court Rule changes to  
11        NRCP 35, the Nevada legislature passed NRS 52.380. This statutory language allows attorney  
12        and attorney employee observers at a Rule 35 exam. In addition, the language does not  
13        expressly contain any good cause requirements for recording.

14        The Nevada Supreme Court, which has promulgated the Nevada Rules of Civil  
15        Procedure, and the Nevada Legislature, which issues the Nevada Revised Statutes, serve  
16        separate and distinct purposes. Obviously, both NRCP 35 and NRS 52.380 cannot both govern  
17        this issue as they conflict. The issues of audio recording and the presence of observers during  
18        an independent medical examinations are procedural in nature, and therefore, the Nevada Rules  
19        of Civil Procedure Rule 35 governs.

20        Plaintiff’s counsel argues that NRS 52.380 supersedes any language in NRCP 35.  
21        Plaintiff’s position in this regard is without merit as the Nevada Supreme  
22        Court’s exclusive authority to regulate the procedural discovery rules regarding Nevada Rules  
23        of Civil Procedure and specifically Rule 35 exams. The Nevada Supreme Court is tasked with  
24        the authority to administer its own rules governing court procedure. As such, NRS 52.380  
25        unconstitutional, unenforceable, and inapplicable to the case at bar.  
26  
27  
28

Moreover, Plaintiff's request for his own nurse consultant to be present at the Rule 35 exam and record is an issue of procedure which is within the Discovery Commissioner's domain. The proposed consultant is Lynn Belcher Legal Nurse Consulting & Life Care Planning Associates. The consultant's website is [www.lynnbelcherlnc.com](http://www.lynnbelcherlnc.com). This firm represents itself as a legal consultant that provides "professional, evidence based opinion[s]" regarding medical issues. The website also provides that their representatives "can collaborate with plaintiff or defendant attorneys, healthcare organizations, insurance providers, or any organization needing medical record review, interpretation, analysis or summary." It is obvious that Plaintiff seeks to have a 2<sup>nd</sup> medical expert in the Rule 35 exam, an expert who is a nurse and not a doctor, not just to observe, but to also render an opinion regarding what was right or wrong about the way the exam was conducted. According to the NRCP 35 2019 Advisory Committee Notes, the drafters of the current NRCP 35 rules did not envision having competing medical professional observers in the room during the exam. Moreover, the rule explicitly states that such observer may not be an attorney or an attorney representative. Instead, the drafters envisioned an observer being a family friend or trusted companion; not a paid legal medical consultant.

In addition, Plaintiff has not provided good cause for having the Rule 35 exam be recorded. As provided in the above 2019 Advisory Committee Notes, a Plaintiff has not established good cause simply because they state a general fear of the integrity of the exam process. Plaintiff has not provided any specific reason necessitating the recording of this exam. Accordingly, Defendant asks that Plaintiff's request for a recording be denied.

///

/ //

D.

**NRCP 26 PROVIDES THAT THE MEDICAL EXPERT'S DRAFT REPORTS ARE  
PROTECTED FROM DISCLOSURE**

NRCP26(b)(3) provides as follows:

“(3) Trial Preparation: Materials.

(A) Documents and Tangible Things. Ordinarily, a party may not discover documents and tangible things that are prepared in anticipation of litigation or for trial by or for another party or its representative (including the other party’s attorney, consultant, surety, indemnitor, insurer, or agent). But, subject to Rule 26(b)(4), those materials may be discovered if:

(i) they are otherwise discoverable under Rule 26(b)(1); and

(ii) the party shows that it has substantial need for the materials to prepare its case and cannot, without undue hardship, obtain their substantial equivalent by other means.

(B) Protection Against Disclosure. If the court orders discovery of those materials, it must protect against disclosure of the mental impressions, conclusions, opinions, or legal theories of a party’s attorney or other representative concerning the litigation.

(C) Previous Statement. Any party or other person may, on request and without the required showing, obtain the person’s own previous statement about the action or its subject matter. If the request is refused, the person may move for a court order, and Rule 37(a)(5) applies to the award of expenses. A previous statement is either:

(i) a written statement that the person has signed or otherwise adopted or approved; or

(ii) a contemporaneous stenographic, mechanical, electrical, or other recording — or a transcription of it — that recites substantially verbatim the person’s oral statement.”

1 NRCP26(b)(4)(B) provides as follows:

2 “Trial Preparation: Experts.

3 ...

4 (B) Trial-Preparation Protection for Draft Reports or Disclosures.

5 **Rule 26(b)(3) protects drafts of any report or disclosure**  
6 **required under Rule 16.1(a), 16.2(d) or (e), 16.205(d) or (e)**  
7 **26(b)(1), regardless of the form in which the draft is**  
8 **recorded.” (emphasis added).**

9 As with the previous rules discussed in these pleadings, NRCP 26 was also revised on  
10 March 1, 2019. The revisions specifically included protection of disclosure of draft reports  
11 made by experts. Here, Plaintiff wants to include a provision in the Rule 35 examination order  
12 which states that the medical expert must maintain all drafts and that Plaintiff has the right to  
13 subpoena such drafts.

14 Plaintiff is wrong when he states that this issue was not discussed at the EDCR 2.34  
15 conference. Defendant’s counsel and Plaintiff did discuss the same. Plaintiff stated that he was  
16 entitled to subpoena any draft reports which were redlined by defense counsel. Defendant’s  
17 counsel stated that she had never redlined or edited an expert report. Defendant’s counsel is not  
18 a medical expert and does not interfere with the expert’s opinion. Still, NRCP 26 provides that  
19 an expert’s drafts are protected under a work product privilege protection. As such, Defendant  
20 can not agree to that stipulated provision that the expert must keep all drafts and that Plaintiff  
21 may subpoena such drafts.  
22

23 ///

24 ///

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26 ///

27 ///



## CONCLUSION

DATED this 16th day of September 2020.

By: /s/ Rhonda Long  
Rhonda Long, Esq.  
Nevada Bar No. 10921  
8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
*Attorney for Defendant,*  
**YEONHEE LEE**

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that I am an employee of LAW OFFICE OF LEE J. GRANT, II,  
3 and that on this 16<sup>th</sup> day of September 2020, I caused a true and correct copy of the foregoing  
4 document **REPLY IN SUPPORT OF DEFENDANT'S MOTION TO COMPEL RULE 35**

5 **EXAM** to be served as follows:

6   X   VIA ECF: by electronic filing with the Court delivering the document(s)  
7 listed above via the Court's e-filing and service system, upon each party in this  
8 case who is registered as an electronic case filing user with the Clerk.

9        VIA U.S. POSTAL MAIL: by placing a true and correct copy thereof  
10 enclosed in a sealed envelope with the postage thereon fully prepaid, addresses  
11 as indicated on the attached service list in the United States Mail.

12        VIA ELECTRONIC MAIL: by causing a true and correct copy thereof to  
13 be mailed electronically to the email addressee(s) at the attached email  
14 addresses set forth in the service list.

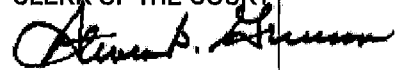
15 Jason R. Maier, Esq.  
16 Julia M. Chumbler, Esq.  
17 MAIER GUTIERREZ & ASSOCIATES  
18 8816 Spanish Ridge Avenue  
19 Las Vegas, Nevada 89148  
20 Attorneys for Plaintiff

21 /s/ Jackie De La Paz  
22 EMPLOYEE OF LAW OFFICE OF LEE J.  
23 GRANT, II

24 DATED: 9/16/2020

# **EXHIBIT 4**

# **EXHIBIT 4**



1 DCCR  
2 RHONDA LONG, ESQ.  
3 Nevada Bar No.: 10921  
4 LAW OFFICE OF LEE J. GRANT, II  
5 8345 West Sunset Road, Suite 250  
6 Las Vegas, Nevada 89113  
7 Telephone: 702-233-9303  
8 E-mail: rhlong@geico.com  
9 Attorney for Defendant  
10 YEONHEE LEE

11 DISTRICT COURT

12 CLARK COUNTY, NEVADA

13 ALBERTO EDUARDO CARIO, an individual,

14 Plaintiff,

15 vs.

16 YEONHEE LEE, an individual; DOES I through  
17 X and ROE CORPORATIONS I through X,  
18 inclusive,

19 Defendants.

Case No.: A-19-803446-C

Dept. No.: 29

20 DISCOVERY COMMISSIONER'S  
21 REPORT AND RECOMMENDATIONS

22 Date of Hearing: September 17, 2020

23 Time of Hearing: 9:30 a.m.

24 Attorney for Plaintiff: Jason R. Maier, Esq. of MAIER GUTIERREZ & ASSOCIATES

25 Attorney for Defendant: Rhonda Long, Esq. of the LAW OFFICE OF LEE J. GRANT, II

26 I.

27 FINDINGS

28 Defendant's Motion to Compel the Rule 35 Examination of Plaintiff Alberto Eduardo  
Cario came on for hearing before the Honorable Discovery Commissioner Erin Truman on  
September 17, 2020 at 9:30 A.M.

1           The Discovery Commissioner finds that the issue of good cause for a Rule 35 examination  
2 was not disputed by parties. The Commissioner further finds that the parties only disputes are  
3 regarding 5 of the 21 proposed conditions and parameters for the Rule 35 examination, those  
4 being the presence of a legal nurse consultant observer Lynn Belcher LNC Associates (no. 9), an  
5 audio recording (no. 10), the deadline for the examiner to prepare and disclose a written report  
6 (nos. 18-19), and the medical examination doctor retaining his notes (no. 20). The Commissioner  
7 also heard constitutionality arguments by Defendant concerning the separation of powers between  
8 the state legislative functions and the rule making functions of the Nevada Supreme Court  
9 regarding medical examinations, over Plaintiff's objection pursuant to NRS 30.130. The  
10 Commissioner also heard arguments about NRCP 26 applicability to the disclosure of draft expert  
11 reports.  
12

13  
14           The Commissioner acknowledged that there is a conflict between NRCP 35 and NRS  
15 52.380. The Commissioner finds that NRS 52.380 is applicable to Rule 35 exams and that such  
16 statute is controlling in this matter. The Commissioner further finds that a Rule 35 exam is  
17 substantive in nature, <sup>(Conf)</sup> and involves a substantive right of privacy that is covered by NRS 52.380.  
18

19           The Commissioner finds there is no good cause to deviate from the 30-day report  
20 requirement within NRCP 35.  
21

22           Finally, the Commissioner finds that the examination doctor shall keep and maintain all  
23 notes and draft reports in his or her file and the examination doctor may not destroy any  
24 documents related to the examination. The Commissioner further finds that the following  
25 language is to be added to the end of item no. 20: "Any party has the right to file an objection to  
26 the subpoena pursuant to Rule 34, Rule 45 or Rule 26."  
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II.

**RECOMMENDATIONS**

IT IS THEREFORE RECOMMENDED that Defendant's Motion to Compel a Rule 35 Exam is GRANTED in part and DENIED in part, as follows:

- The examination will be subject to the parameters set forth in NRS 52.380.
- Plaintiff will be permitted to select the observer to be present at the examination, an audio recording is allowed, and Plaintiff's proposed item nos. 9 and 10 are approved.
- The Rule 35 examination report requirements concerning disclosure time will apply and Plaintiff's proposed item nos. 18 and 19 are approved.
- The Rule 35 examination doctor is instructed to maintain all notes in his file as Plaintiff may subpoena such information and Plaintiff's proposed item no. 20 is approved with the following addition: "Any party has the right to file an objection to the subpoena *served on the Rule 35 examiner* pursuant to Rule 34, Rule 45 or Rule 26."
- The remaining 16 proposed conditions and parameters that have been agreed to and stipulated by the parties are approved.
- Accordingly, the examination shall be governed by the following conditions and parameters:
  1. The Rule 35 examination shall be conducted pursuant to Nevada Rule of Civil Procedure 35 and Nevada Revised Statute 52.380.
  2. Defendants have selected Mark J. Rosen, M.D. to conduct the Rule 35 examination of Mr. Cario
  3. The scope of the Rule 35 examination is as follows: Dr. Rosen's evaluation of Mr. Cario's injuries and treatment.
  4. The date, time and location of the Rule 35 examination is to be a mutually agreeable date, time and location.

- 1 5. The Rule 35 examination shall be held in a medical office in compliance with  
2 HIPAA.
- 3 6. Dr. Rosen will not require Mr. Cario to sign any paperwork at the time of the Rule  
4 35 examination other than a "sign-in" sheet limited to his name, date and time of  
5 arrival.
- 6 7. The intake forms to be completed by Mr. Cario shall be provided to plaintiff's  
7 counsel at least ten business days prior to the Rule 35 examination and will be  
8 returned to defense counsel prior to the examination.
- 9 8. Mr. Cario shall not be required to wait in the waiting room for longer than 30  
10 minutes before the commencement of the Rule 35 examination.
- 11 9. The Rule 35 examination will be audio recorded by LYNN BELCHER LNC  
12 ASSOCIATES, in which Mr. Cario's counsel will arrange and pay for the recording.  
13 Mr. Cario's counsel shall disclose a copy of the recording within 30 days of receipt  
14 of the same. The doctor and all persons present must be notified that the  
15 examination will be recorded before the examination begins.
- 16 10. Mr. Cario will have a nurse observer present at the Rule 35 examination from  
17 LYNN BELCHER LNC ASSOCIATES. The nurse observer must not in any way  
18 interfere, obstruct, or participate in the examination.
- 19 11. Defense counsel, or any other representatives of defendants, will not attend the  
20 Rule 35 examination.
- 21 12. Liability questions may not be asked by Dr. Rosen or any of his agents or  
22 representatives during the Rule 35 examination.
- 23 13. No x-rays or radiographs may be obtained during the Rule 35 examination. Dr.  
24 Rosen can rely upon the same film studies relied upon by the treating physicians  
25 in this case. If additional film studies are necessary for the Rule 35 examination,  
26 this must be detailed in writing by Dr. Rosen at least 30 days prior to the  
27 examination and this issue may be revisited.
- 28 14. No invasive procedures shall be allowed during the Rule 35 examination.
15. Mr. Cario shall not be required to disrobe during the Rule 35 examination.
16. If Dr. Rosen subjects Mr. Cario to physically painful or invasive procedures, Mr.  
Cario reserves the right to immediately terminate the examination in his sole  
discretion.
17. Dr. Rosen shall not engage in *ex parte* contact with Mr. Cario's treating health  
care providers.





A-19-803446-C

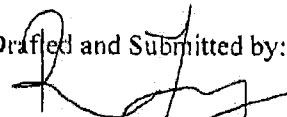
CARIO v. LEE

1 The Discovery Commissioner, met with counsel for the parties, having discussed the  
2 issues noted above and having reviewed any materials proposed in support thereof, hereby  
3 submits the above recommendations.

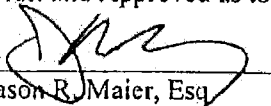
4 DATED this 30th day of September, 2020

5   
6 DISCOVERY COMMISSIONER

7  
8  
9 Drafted and Submitted by:

10   
11 RHONDA LONG, ESQ.  
12 Nevada Bar No.: T0921  
13 LAW OFFICE OF LEE J. GRANT, II  
14 8345 West Sunset Road, Suite 250  
15 Las Vegas, Nevada 89113  
16 Attorney for Defendant  
17 YEONHEE LEE

18 Draft and Approved as to form and content by:

19   
20 Jason R. Maier, Esq.  
21 Julia M. Chumley, Esq.  
22 MAIER GUTIERREZ & ASSOCIATES  
23 8816 Spanish Ridge Avenue  
24 Las Vegas, Nevada 89148  
25 Attorneys for Plaintiff  
26  
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**NOTICE**

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

Objection time will expire on October 22 2020.

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

\_\_\_\_\_ Mailed to Plaintiff/Defendant at the following address on the \_\_\_\_\_ day of \_\_\_\_\_ 2020:

✓ Electronically filed and served counsel on October 8, 2020, Pursuant to N.E.F.C.R. Rule 9.

By: Natilie Simonetti  
COMMISSIONER DESIGNEE

A-19-803446-C

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

**Negligence - Auto**

**COURT MINUTES**

**April 05, 2021**

---

A-19-803446-C      Alberto Cario, Plaintiff(s)  
vs.  
Yeonhee Lee, Defendant(s)

---

**April 05, 2021      3:00 AM      Minute Order**

**HEARD BY:** Jones, David M      **COURTROOM:** Chambers

**COURT CLERK:** Michaela Tapia

**JOURNAL ENTRIES**

- Defendant's Objection to the Discovery Commissioner's Report and Recommendation

The Court agrees with the Discovery Commissioner that a Rule 35 examination is substantive in nature and thus NRS 52.380 is applicable to Rule 35 exams. Thus the objection to the Discovery Commissioner's Report and Recommendation is DENIED.

Plaintiff counsel to prepare order.

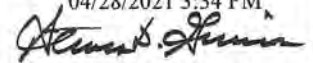
CLERK'S NOTE: This Minute Order was electronically served to all registered parties for Odyssey File & Serve. /mt

PRINT DATE: 04/05/2021

Page 1 of 1

Minutes Date: April 05, 2021

LEE 0328

  
CLERK OF THE COURT

**ORDR**

JASON R. MAIER, ESQ.

Nevada Bar No. 8557

STEPHEN G. CLOUGH, ESQ.

Nevada Bar No. 10549

**MAIER GUTIERREZ & ASSOCIATES**

8816 Spanish Ridge Avenue

Las Vegas, Nevada 89148

Telephone: 702.629.7900

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E-mail: [jrm@mgalaw.com](mailto:jrm@mgalaw.com)

[sgc@mgalaw.com](mailto:sgc@mgalaw.com)

*Attorneys for Plaintiff Alberto Eduardo Cario*

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

ALBERTO EDUARDO CARIO, an individual,

Plaintiff,

vs.

YEONHEE LEE; an individual; DOES I through  
X; and ROE CORPORATIONS I through X,  
inclusive,

Defendants.

Case No.: A-19-803446-C

Dept. No.: XXIX

**ORDER**

This matter came on for hearing before the Court in Chambers on April 5, 2021, on defendant, Yeonhee Lee's objection to the Discovery Commissioner's Report and Recommendations filed on October 21, 2020.

The Court, having reviewed the pleadings and papers on file herein relative to the Discovery Commissioner's Report and Recommendations filed on October 8, 2020, and good cause appearing, makes the following rulings:

THE COURT FINDS and agrees with the Discovery Commissioner that a Rule 35 examination is substantive in nature and thus NRS 52.380 is applicable to Rule 35 exams. Thus the objection to the Discovery Commissioner's Report and Recommendation is DENIED.

1 Therefore:

2 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's objection to the  
3 Discovery Commissioner's Report and Recommendations filed on October 21, 2020, is DENIED.

4 Dated this 28th day of April, 2021

5 

6  
7  
8 Respectfully submitted,

9 MAIER GUTIERREZ & ASSOCIATES

5AB 9DE 9C1B F319  
Approved as to form and content:  
David M. Jones  
District Court Judge  
LAW OFFICE OF LEE J. GRANT, II

10 /s/ Stephen G. Clough

11 JASON R. MAIER, ESQ.  
Nevada Bar No. 8557  
12 STEPHEN G. CLOUGH, ESQ.  
Nevada Bar No. 10549  
13 8816 Spanish Ridge Avenue  
Las Vegas, Nevada 89148  
14 Attorneys for Plaintiff Alberto Eduardo Cario

/s/ Rhonda Long

15 RHONDA LONG, ESQ.  
Nevada Bar No. 10921  
16 8345 West Sunset Road, Suite 250  
Las Vegas, Nevada 89113  
17 Attorneys for Defendant Yeonhee Lee