

THE SUPREME COURT OF THE STATE OF NEVADA

JAIME ROBERTO SALAIS, AND TOM
MALLOY CORPORATION aka/dba
TRENCH SHORING COMPANY,

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT, COUNTY OF CLARK, STATE
OF NEVADA, AND THE HONORABLE
RONALD J. ISRAEL,

Respondents,

and

MAIKEL PEREZ-ACOSTA, AND
ROLANDO BESSU HERRERA,

Real Parties in Interest.

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Elizabeth A. Brown
Clerk of Supreme Court

Case No. _____

**APPENDIX TO PETITION FOR WRIT OF MANDAMUS, OR IN THE
ALTERNATIVE, PROHIBITION**

VOLUME 7

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CHRONOLOGICAL INDEX TO PETITIONER'S APPENDIX

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
1.	Complaint	4/4/18	1	1-10
2.	Answer to Complaint	5/8/18	1	11-21
3.	Plaintiff's Initial Designation of Expert Witnesses	10/29/18	1	22-48
	<u>Exhibit 1</u> : Stuart Kaplan, M.D., FAANS' CV, Testimony List, Fee Schedule/Invoice, & Expert Report		1	49-89
	<u>Exhibit 2</u> : David J. Oliveri, M.D.'s CV, Fee Schedule, Testimony List & Expert Report		1	90-146
	<u>Exhibit 3</u> : Lora White, RN-BC, BSN, CCM, CNLCP, LNCP-C's CV, Fee Schedule, Testimony List & Expert Report		1	147-207
	<u>Exhibit 4</u> : Dr. Andrew J. Mitchell's CV & Deposition Fees		1	208-212
	<u>Exhibit 5</u> : Jorg Rosler, M.D. s CV & Fee Schedule		1	213-220
4.	Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	5/4/20	1	221-241
	<u>Exhibit 1</u> : Defendant Tom Molloy Corporation dba Trench Shoring Company's Responses Plaintiff Rolando Bessu Herrera's First Set of Requests for Production of Documents		2	242-266
	<u>Exhibit 2</u> : Defendants' Seventh Supplement to Initial NRCP 16.1 List of Witnesses and Documents		2	267-284
	<u>Exhibit 3</u> : Defendants, Tom Malloy Corporation dba Trench Shoring C Company and Jaime Roberto Salais' Eighth Supplemental Early Case Conference List of Witnesses and Production of Documents Pursuant to NRCP 16.1(a)(1)		2	285-306

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont 4)	<u>Exhibit 4</u> : Deposition Transcript of Nancy Espinoza taken on April 22, 2020		2	307-324
	<u>Exhibit 5</u> : EDCR 2.34 Meeting Transcript on April 22, 2020		2	325-329
	<u>Exhibit 6</u> : Email authored by Nancy Espinoza dated April 28, 2019		2	330-333
	<u>Exhibit 7</u> : Plaintiff's Third Set of Requests for Production of Documents to Defendant Tom Mallory Corporation dba Trench Shoring Company e-served on April 24, 2019		2	334-341
	<u>Exhibit 8</u> : Email exchange between Drummond Law Firm and Mokri Vanis & Jones regarding Nancy Espinoza email		2	342-351
	<u>Exhibit 9</u> : Article "Practicing in Nevada's State and Federal Civil Court: What are the Differences?"		2	352-355
5.	Defendants' Opposition to Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	5/18/20	2	356-371
	<u>Exhibit A</u> : Email exchange between Todd Jones, Esq. and Nancy Espinoza		2	372-397
	<u>Exhibit B</u> : Deposition Transcript of Nancy Espinoza taken on April 22, 2020		2	398-464
	<u>Exhibit C</u> : Defendants, Tom Malloy Corporation dba Trench Shoring Company and Jaime Roberto Salais' Eighth Supplemental Early Case Conference List of Witnesses and Production of Documents Pursuant to NRCP 16.1(a)(1)		2	465-483

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
(Cont 5)	<u>Exhibit D</u> : Defendants, Tom Malloy Corporation dba Trench Shoring Company and Jaime Roberto Salais' Ninth Supplemental Early Case Conference List of Witnesses and Production of Documents Pursuant to NRCP 16.1(a)(1)		3	484-502
6.	Plaintiff Rolando Bessue Herrera's Reply to Defendants' Opposition to Motion to Strike Defendants Answer	6/2/20	3	503-512
	<u>Exhibit 10</u> : Defendants, Tom Malloy Corporation dba Trench Shoring Company and Jaime Roberto Salais Ninth Supplemental Early Case Conference List of Witnesses and Production of Documents Pursuant to NRCP 16.1(a)(1)		3	513-553
7.	Plaintiff Perez-Acosta's Joinder to Plaintiff Bessu Herrera's Motion to Strike Defendants' Answer	6/2/20	3	554-556
	<u>Exhibit 1</u> : Plaintiff Maikel Perez-Acosta's First Set of Requests for Production of Documents to Defendant Tom Malloy Corporation		3	557-567
8.	Plaintiff Rolando Bessu Herrera's Omnibus Motion in Limine	7/27/20	3	568-593
	<u>Exhibit 1</u> : Deposition Transcript of Jaime Roberto Salais taken on January 17, 2020		3	594-631
	<u>Exhibit 2</u> : Defendant Tom Malloy Corporation dba Trench Shoring Company's Responses Plaintiff Rolando Bessu Herrera's First Set of Requests for Production of Documents		3	632-656
	<u>Exhibit 3</u> : Jason E. Garber, M.D. F.A.C.S.'s Report		3	657-675
	<u>Exhibit 4</u> : Deposition Transcript of Brian K. Jones, MSBE, PE, ACTAR, CXLT, taken on March 3, 2020		3	676-702

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
9.	Defendants' Supplemental Opposition to Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	8/11/20	3	703-719
10.	Affidavit Pursuant to NRS 53.045 of Todd Alan Jones, Esq. in Support of Defendants' Supplemental Opposition To Plaintiff Rolando Bessue Herrera's Motion to Strike Answer	8/11/20	3	720-726
	<u>Exhibit A:</u> Email Correspondence from Nancy Espinoza dated April 28, 2019		3	727-730
	<u>Exhibit B:</u> Email Exchange between Nancy Espinoza and Todd Jones, Esq.		4	731-760
11.	Response to Defendants' Supplemental Opposition to Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	9/1/20	4	761-768
12.	Plaintiff Perez-Acosta's Joinder to Plaintiff Bessu Herrera's Response to Defendant's Supplemental Opposition to Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	9/1/20	4	769-771
13.	Court Minutes – Plaintiff Rolando Bessu Herrera's Motion to Strike Defendants' Answer	10/1/20	4	772-773
14.	Order to Turn Over Communication and Records in Camera	10/16/20	4	774-777
15.	Court Minutes – Minute Order	10/23/20	4	778
16.	Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records on Order Shortening Time	10/23/20	4	779-792
	<u>Exhibit A:</u> Transcript of Proceedings on Plaintiff Herrera's Motion to Strike Defendants' Answer; Hearing Regarding Motion to Strike Answer/ Sanctions on October 15, 2020		4	793-824

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
17.	Order on Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records on Order Shortening Time	10/26/20	4	825-872
18.	Response to Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records	11/4/20	4	873-880
19.	Reply in Support of Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records on Order Shortening Time	11/10/20	4	881-887
20.	Court Minutes – Defendants Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records on Order Shortening Time	11/17/20	4	888
21.	Court Minutes – Motion to Strike Plaintiff Rolando Bessu Herrera’s Motion to Strike Defendants’ Answers	11/19/20	4	889
22.	Defendants’ Supplemental Opposition to Plaintiff Rolando Bessu Herrera’s Motion to Strike Defendants’ Answer Pursuant to Court’s Order on November 17, 2020	12/1/20	4	890-897
	<u>Exhibit A</u> : Transcript of Proceedings on Defendants’ Motion for Production of Defense Correspondence and Billing Records on Shortening Time on November 17, 2020		4	898-921
23.	Response to Defendants’ Supplemental Opposition to Plaintiffs’ Motion to Strike Defendants’ Answer	12/30/20	4	922-931
24.	Court Minutes – Decision: Interim Decision Reconsideration of Defendants Production of Defense Correspondence and Billing Records	1/7/21	4	932

<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
25.	Decision and Order	2/10/21	4	933-943
26.	Notice of Entry of February 10, 2021 Decision and Order	2/19/21	4	944-956
27.	Plaintiff Roland Bessu Herrera's Supplemental Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	2/24/21	4	957-962
	<u>Exhibit 1</u> : Hours for Supplemental Memorandum of Attorney's Fees and Costs		4	963-965
	<u>Exhibit 2</u> : Drummond Law Firm Cost Worksheet		4	966-969
	<u>Exhibit 3</u> : Discovery Commissioner's Report and Recommendations		4	970-978
	<u>Exhibit 4</u> : Declaration of Joel D. Hernroid in Support of Plaintiff's Supplemental Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order		5	979-984
28.	Errata to Exhibit 4 of Plaintiff Rolando Bessu Herrera's Supplemental Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	2/24/21	5	985-996
29.	Court Minutes – Status Check	2/25/21	5	997
30.	Plaintiff Maikel Perez-Acosta's Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	3/4/21	5	998-1003
	<u>Exhibit 1</u> : Hours for Memorandum of Attorney's Fees and Costs		5	1004-1007
31.	Court Minute – Minute Order	3/9/21	5	1008

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<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
32.	Defendants' Opposition to Plaintiffs, Rolando Bessue Herrera amd Maikel Perez-Acosta's Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	3/10/21	5	1009-1023
	<u>Exhibit A:</u> Plaintiff Maikel Perez-Acosta's Sixteenth Supplement to the Early Case Conference Initial Disclosure of Documents and Witnesses Pursuant to NRCP 16.1		5	1024-1205
	<u>Exhibit B:</u> EDCR 2.34 Meeting Transcript on April 22, 2020		5	1206-1228
33.	Plaintiff Maikel Perez-Acosta's Reply to Defendants' Opposition to Plaintiff's Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	3/17/21	6	1229-1231
34.	Plaintiff Rolando Bessu Herrera's Reply to Opposition Regarding Memorandum of Fees and Costs Pursuant to February 10, 2021 Decision and Order	3/17/21	6	1232-1236
35.	Order on Attorney's Fee and Costs	5/17/21	6	1237-1241
36.	Notice of Entry of Order on Attorney's Fees and Costs	5/17/21	6	1242-1248
37.	Defendants' Motion to Stay February 10, 2021 and May 17, 2021 Orders Pending Decision on Petition for Writ Relief to Supreme Court of Nevada on Order Shortening Time	5/28/21	6	1249-1266
	<u>Exhibit A:</u> Deposition Transcript of Rolando Bessu Herrera taken on October 21, 2019		6	1267-1378
	<u>Exhibit B:</u> Deposition Transcript of Jaime Robert Salais taken on January 17, 2020		7	1379-1542

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<u>NO.</u>	<u>DOCUMENT</u>	<u>DATE</u>	<u>VOL.</u>	<u>PAGE NO.</u>
------------	-----------------	-------------	-------------	-----------------

TRANSCRIPTS

38.	<i>Transcript of Hearing Re:</i> Plaintiff Rolando Bessue Herrera's Motion to Strike Defendants' Answer dated July 14, 2020	7/17/20	7	1543-1552
39.	<i>Transcript of Proceedings Re:</i> Plaintiff Herrera's Motion to Strike Defendants' Answer; Hearing Regarding Motion to Strike to Answer/ Sanctions dated October 1, 2020	10/15/20	7	1553-1583
40.	<i>Transcript of Proceedings Re:</i> Defendants' Motion for Reconsideration of Order for Production of Defense Correspondence and Billing Records on Order Shortening Time dated November 17, 2020	11/19/20	7	1584-1606

EXHIBIT B

Deposition of:

Jaime Roberto Salais

Case:

Maikel Perez-Acosta, et al. v. Jaime Roberto Salais, et al.
A-18-772273-C

Date:

01/17/2020



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1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

MAIKEL PEREZ-ACOSTA, an) Case No. A-18-772273-C
 Individual, ROLANDO BESSU) Dept. No. 28
 HERRERA, Individually,)

5

Plaintiffs,

6

vs.

7

8

JAIME ROBERTO SALAIS, an)
 Individual, TOM MALLOY)
 CORPORATION aka/dba)

9

TRENCH SHORING COMPANY,)
 a foreign corporation,)

10

DOES I through V,)
 inclusive; and ROE)

11

CORPORATIONS I through)
 V, inclusive,)

12

Defendants.

13

14

15

16

DEPOSITION OF JAIME ROBERTO SALAIS

17

Taken on Friday, January 17, 2020

18

By a Certified Court Reporter and Legal Videographer

19

At 9:30 a.m.

20

At 400 South Seventh Street, Suite 400

21

Las Vegas, Nevada

22

23

24

Reported by: William C. LaBorde, CCR 673, RPR, CRR

25

Job No. 38489

1 APPEARANCES:

2

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16

Also Present:

17

JOHNNY D. RANDALL

Videographer

18

GRACIA FELDMAN

19

Spanish Interpreter

20

21

* * * * *

22

23

24

25

1 I N D E X

2 WITNESS PAGE

3 JAIME ROBERTO SALAIS

4 Examination by:

5 Mr. Barron 5

6 Mr. Drummond 101

7 Mr. Barron 134

8 Mr. Drummond 139

9

10

11

12 E X H I B I T S

13 NUMBER DESCRIPTION MARKED

14 Plaintiffs'

15 1 7-12-16 Accident Report, TMC001769 21

16 2 7-12-16 Handwritten Document, 21
TMC001770

17 3 Photograph, 1 page 61

18 4 Photographs, TMC000049-052 76

19

20

21

22

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25

1 P R O C E E D I N G S

2 THE VIDEOGRAPHER: Good morning. We are
3 going on the record.

4 Today is Friday, January 17th, 2020. The
5 time is approximately 9:30 a.m. Your court reporter
6 today is William LaBorde, and I am your
7 videographer, Johnny Randall. We are here on behalf
8 of Oasis Reporting Services.

9 The witness today is Jaime Roberto
10 Salais, and we are here in the case of Maikel
11 Perez-Acosta, et al. v. Jaime Roberto Salais, et al.

12 Will counsel please state your
13 appearances; then the court reporter will administer
14 the oath.

15 MR. BARRON: Yes, attorney Jason Barron
16 for Plaintiff Acosta.

17 MR. DRUMMOND: Craig Drummond with the
18 Drummond Law Firm for Rolando Bessu Herrera.

19 MR. JONES: Todd Jones for Defendants
20 Jaime Salais and Tom Malloy Corporation DBA Trench
21 Shoring Company.

22 (Interpreter sworn.)

23 (Witness sworn.)

24 JAIME ROBERTO SALAIS,
25 having been first duly sworn, was

1 examined and testified as follows:

2 EXAMINATION

3 BY MR. BARRON:

4 Q. Good morning.

5 A. Good morning.

6 Q. Mr. Salais? It's Jamie Salais; correct?

7 A. Jaime Salais.

8 Q. Jaime Salais. Okay.

9 If you notice, we have a court reporter
10 here in this room and an interpreter as well to your
11 right as well -- as well as your counsel.

12 Do you have any problem at all
13 understanding English?

14 A. As far as I know, no.

15 Q. Okay. Well, you said as far as you know;
16 so it's my inclination to dismiss the court reporter
17 based upon your counsel's representation that he
18 understands and is fluent in English.

19 MR. BARRON: Is that correct, Todd?

20 MR. JONES: Yes, that's my understanding.

21 MR. BARRON: We have a stipulation we do
22 not need the court reporter?

23 MR. JONES: We do not --

24 MR. BARRON: Or excuse me. The
25 interpreter.

1 MR. JONES: We do have a stipu- -- yeah,
2 we probably do need the court --

3 MR. BARRON: Right. Right, right.

4 MR. JONES: Yeah. We can stipulate that
5 we do not need an interpreter for this deposition.

6 MR. BARRON: Okay. All right.

7 MR. JONES: Do you feel comfortable
8 without an interpreter?

9 THE WITNESS: Yes.

10 BY MR. BARRON:

11 Q. Okay. Let me ask you a question.

12 In your -- you gave a couple statements
13 in this case. Do you recall that?

14 A. Some of it, yes.

15 Q. Okay. And those statements were -- you
16 gave them to a Jason Donnelly; is that right?

17 A. Yes.

18 Q. Okay. And he spoke to you in English;
19 correct?

20 A. Yes.

21 Q. And you understood what he said; correct?

22 A. Yes.

23 Q. Okay. And you gave your statements
24 obviously in English, and we'll go over that in a
25 little bit. Is that right?

1 A. Yes.

2 Q. Okay. You were educated here in the
3 United States?

4 A. Yes, sir.

5 Q. Okay. Where'd you go to school, high
6 school?

7 A. Jefferson High School.

8 Q. Okay. Took your classes in English?

9 A. English, yes.

10 Q. Understood English from your teachers;
11 correct?

12 A. Yes.

13 Q. Okay. People call for your utilities and
14 bills on the phone sometimes or you call to order a
15 fight on cable, right, sometimes? Yeah?

16 A. Sometimes, yes.

17 Q. Okay. You speak to them in English?

18 A. Yes.

19 Q. And understand English; right?

20 A. Yes.

21 Q. Okay. Where do you currently work, sir?

22 A. I work at the Golden Nugget.

23 Q. Okay. And what do you do there?

24 A. I work at the warehouse.

25 Q. All right. And you carry on your daily

1 affairs in English at work; right?

2 A. Yes.

3 Q. Understand English at work; right?

4 A. Yes.

5 Q. Okay.

6 MR. BARRON: Court Reporter, obviously --

7 THE INTERPRETER: Interpreter.

8 MR. BARRON: Interpreter, I will dismiss
9 you at this time.

10 THE INTERPRETER: Okay.

11 MR. BARRON: Okay? Thank you for being
12 here. I apologize. We tried to find out yesterday
13 if he needed an interpreter, but this -- this case
14 has gone through a lot to get this gentleman --

15 MR. JONES: It has, and I --

16 MR. BARRON: -- get this gentleman here.

17 MR. JONES: -- thank you for your time as
18 well.

19 THE INTERPRETER: Okay. You're welcome.

20 MR. BARRON: Okay. Thank you.

21 (The interpreter exits the
22 conference room.)

23 BY MR. BARRON:

24 Q. All right. Jaime, you understand the
25 oath you take is the same oath that you would take

1 in a court of law; correct?

2 A. Yes, sir.

3 Q. Okay. It carries with it the same
4 penalty of perjury to the extent that you violate
5 that oath. Do you understand that?

6 A. I'm sorry. What was that?

7 Q. It carries with it the same penalty of
8 perjury to the extent that you violate that oath.
9 Do you understand that?

10 A. Yes, sir.

11 Q. Okay. A fancy way of saying you need to
12 be honest with me here today.

13 A. Right.

14 Q. All right. Now, I do speak fast at
15 times. If I'm speaking too fast, just please ask me
16 to slow down. Okay?

17 A. Okay.

18 MR. JONES: You probably should slow down
19 a little bit.

20 MR. BARRON: Okay, all right.

21 BY MR. BARRON:

22 Q. If you don't understand a question, will
23 you let me know?

24 A. Sure.

25 Q. Okay. If you don't hear a question

1 clearly, will you let me know?

2 A. Yes.

3 Q. All right. If you don't tell me that you
4 did not understand the question or hear the question
5 clearly, then I'm going to assume at least for the
6 record that you heard and understood the question
7 and that your answer is in fact responsive to the
8 question I've asked.

9 Do you understand?

10 A. Yes, sir.

11 Q. Okay. You understand that we had a
12 couple prior depositions set in this case?

13 A. Yes, sir.

14 Q. Okay. Without going into substance of
15 anything you've talked about with your counsel, did
16 anyone make you aware of a deposition we had set in
17 the summer of last year in this case?

18 A. I -- I mean, they tried getting in touch
19 with me a couple times, yes.

20 Q. Okay, okay. Was like a voice message
21 left or what?

22 A. Yes.

23 Q. All right. Is there a reason why you did
24 not attend your first deposition?

25 A. Well, I had just started my new job and I

1 actually can't be missing work 'cause they do take
2 points off my -- my job, and then I end up losing my
3 job depending on how many times I miss work.

4 Q. Okay. And this is a job at the casino
5 you said?

6 A. Yes. Yes, sir.

7 Q. When did you start that job?

8 A. I want to say I'm going on nine months.
9 Nine months.

10 Q. Okay. And then did anyone tell you about
11 the second deposition we tried to set in this case?

12 A. No, I don't --

13 Q. Okay. Was there any investigator or
14 anyone outside your house that, you know, maybe a
15 neighbor told you about or something that your
16 attorney was trying to get ahold of you in this
17 matter?

18 A. I wasn't staying at -- at my house at the
19 moment.

20 Q. Okay.

21 MR. JONES: Vague as to time.

22 MR. BARRON: Okay. All right.

23 BY MR. BARRON:

24 Q. Have you ever seen -- have you heard of
25 the term "interrogatories"?

1 A. No.

2 Q. Okay. Has your attorney ever sent to
3 you -- again, I don't want any substance by and
4 between you and your counsel.

5 Has your attorney ever sent to you any
6 questions in this case that we sent to you or
7 Mr. Drummond sent to you asking what happened in
8 this case? That's called "interrogatories." Do you
9 recall ever seeing interrogatories in this case?

10 A. No, sir.

11 Q. Okay. Do you recall being sent any
12 documents in this case at all?

13 A. Not at the moment, no.

14 Q. Okay. Did you ever -- have you heard of
15 the term "answer," an "answer"?

16 A. An answer, no, sir.

17 Q. Okay. It's a pleading where you respond
18 to a complaint. A complaint is allegations or, as
19 it says, a complaint against you and your former
20 company for damages in this case.

21 Have you ever seen a document titled
22 "Answer"?

23 A. No.

24 Q. Okay. Have you ever seen any documents
25 at all in this case?

1 A. I want to say just the paper, some of
2 those papers that were sent. That's it.

3 Q. Okay. So any questions about what
4 happened in this case --

5 A. Well, what -- what I understand is at the
6 time that the company was going to take care of it
7 at the time when they said anything about it. As a
8 matter of fact, I think it was like a month before
9 I -- I stopped working for Trench Shoring.

10 After that, I didn't hear anything till
11 just recently.

12 Q. Okay. So what --

13 A. Which was like a week ago maybe.

14 Q. Sure.

15 Did the company -- you said -- what did
16 the company tell you about the case? What are you
17 referring to?

18 A. They didn't tell me anything. They -- I
19 just figured for that long period of time I thought
20 that thing was already taken care of at the time;
21 so --

22 Q. Okay, all right.

23 A. -- I didn't think anything of it.

24 Q. All right. So no one gave you any
25 documents in this case saying, "Hey, there's a

1 lawsuit. You need to answer these questions"?

2 A. Oh, no. No, no, no.

3 Q. Okay. Have you ever been deposed before?

4 A. Have I ever been what?

5 Q. Have you ever had your deposition taken
6 before?

7 A. No, sir.

8 Q. Okay. A deposition is what we're doing
9 today. Okay?

10 A. Okay.

11 Q. It's a question-and-answer session where
12 under oath I ask you questions. You're under oath,
13 and you are subject to the penalty of perjury
14 required to answer my questions to the best of your
15 knowledge and ability.

16 Do you understand that?

17 A. Yes.

18 Q. Okay. I may ask you for your -- for
19 estimates today, time, speed, that type of thing.
20 Do you understand?

21 A. Yes.

22 Q. Okay. I'm entitled to your best estimate
23 today and your best testimony. Okay?

24 A. Okay.

25 Q. All right. Nobody wants you to guess.

1 Okay? And the difference between a guess and an
2 estimate, I'll explain that to you.

3 A estimate would be if I asked you to
4 tell me the size of this table. Every attorney in
5 their depo since -- for a thousand years now have
6 used this same analogy. You'll tell me the size of
7 this table because you can look at it and give an
8 estimate. Correct?

9 A. I believe so.

10 Q. Okay. If I asked you to tell me the size
11 of the table downtown at the courthouse in
12 Department XII, unless you've been and seen it, that
13 would be a pure guess on your behalf; correct?

14 A. Yes.

15 Q. Okay. So we don't want you to guess at
16 anything, but estimates are fine to give. Okay?

17 A. Yes.

18 Q. All right. Are you aware there's a trial
19 set in this case?

20 A. No.

21 Q. Okay. Do you have any plans on leaving
22 town anytime soon?

23 A. No.

24 Q. Okay. If there is a trial, do you intend
25 to attend that trial?

1 A. Well, if I have to. I mean, if I have no
2 other --

3 Q. It makes a big difference in --

4 A. If I have no other choice, then I guess
5 I --

6 Q. All right. Okay. So you won't be
7 unavailable? It makes a big difference as to how
8 this deposition will go if you're going to be
9 unavailable or available.

10 So you will be at trial, correct, if it
11 goes to trial?

12 A. Yes.

13 Q. All right. Have you been paid in any
14 way, shape or form to be here today?

15 A. Paid, no.

16 Q. Paid money. Okay.

17 And without -- again, without going into
18 substance, have you had a chance to meet with
19 counsel prior to the deposition today?

20 A. I'm sorry. What's that?

21 Q. Did you have a chance to meet with your
22 attorney, be it Todd or Araba or any attorney
23 representing you, prior to your deposition today in
24 preparation for your deposition today?

25 A. Just him.

1 Q. Okay. And how long did you meet with
2 Todd?

3 A. I want to say maybe about an hour.

4 Q. About an hour. Okay. Is that -- that
5 would not have been today; correct?

6 A. No.

7 Q. Would that have been yesterday?

8 A. Yes.

9 Q. Okay. And what documents, if any, did
10 you review in preparation for your deposition?

11 A. Just the paperwork, the statement that I
12 wrote for the company, just to refresh my memory. I
13 mean, it was a while back --

14 Q. Okay.

15 A. -- when it happened; so -- and that's
16 about it.

17 Q. All right. Do you recall the date of the
18 accident?

19 A. The -- the exact date, no.

20 Q. Yeah.

21 A. It would have been -- like I said,
22 it's -- to me, it's probably going on three years.

23 Q. Okay. Do you recall the month?

24 A. No.

25 Q. Do you recall the day of week?

1 A. No, sir.

2 Q. Okay. Was it dark out or light out?

3 A. No, it was light. It was in the morning.

4 Q. It was in the morning. Okay.

5 A. Yes.

6 Q. And at the time of the accident, you were
7 on the job?

8 A. Yes, I was.

9 Q. Okay. You were in what we call the
10 course and scope of employment, meaning you were on
11 the clock, so to speak?

12 A. I'm sorry. What was that?

13 Q. You were within the course -- course and
14 scope of your employment, meaning you were on the
15 clock at the time of the accident; correct?

16 A. Yes, I was.

17 Q. Okay. You checked in or punched in?

18 A. Yes.

19 Q. Okay. Is there a process for checking or
20 punching in there at Trench Shoring back in 2016?

21 A. Yes. In the morning as soon as we get
22 there, we clock in. That's it for the day.

23 Q. Okay. What time do you start your shift
24 there on the -- I'll represent for the record the
25 accident happened July 12th, 2016. Refresh your

1 recollection?

2 A. Yes.

3 Q. All right. What time did you start your
4 job that day, your work?

5 A. From like at 5:00 in the morning, and
6 that delivery, I believe it was like around 8:00 or
7 so in the morning.

8 Q. Okay. What were your typical hours back
9 in July of 2016?

10 A. 5:00 to -- 5:00 to 5:00 or 5:00 to 3:00.

11 Q. Okay. All right. Let me give you just a
12 few more admonishments. You're doing a good job
13 now.

14 You're understanding my questions;
15 correct?

16 A. Yes.

17 Q. Okay. You're not under any medication?
18 You haven't drank in the last 24 hours?

19 A. No.

20 Q. I'm not saying you seem like you have. I
21 want to make sure. Okay?

22 A. Yeah.

23 Q. There's no reason why this deposition
24 can't proceed; correct?

25 A. No.

1 Q. Okay. If I ask you a question, go ahead
2 and give me a chance to get the question out. You
3 may know where I'm going with the question and think
4 that you know the answer --

5 A. Uh-huh.

6 Q. -- but in fact I may be going in a
7 different direction. More importantly, for your
8 attorney, it will give your attorney time to object
9 to the question, to the form of the question, if he
10 feels that that's necessary. Okay?

11 A. Okay.

12 Q. All right. Unless and until he tells you
13 not to answer a question, you are required to answer
14 the question I ask of you. Okay?

15 A. Okay.

16 Q. All right. Which -- which you're doing
17 now.

18 I may say, "Is that a yes? Is that a no?
19 Don't shrug your shoulders," et cetera. Now, this
20 is being video recorded; so --

21 A. Right.

22 Q. -- it's a little different. But if I
23 say, "Is that a yes? Is that a no? Don't say
24 uh-huh, nuh-hu" or "I'm not finished with my
25 question," I'm not trying to be rude to you. I just

1 want to make sure that we have a clean record, and
2 it will make the job a lot easier for the court
3 reporter. Okay?

4 A. Correct.

5 Q. All right. You seem like a fast
6 responder, and that's good. I've noticed when I'm
7 asking a question --

8 THE REPORTER: Slow down.

9 MR. BARRON: Okay. Sorry about that.

10 MR. JONES: You are fast.

11 BY MR. BARRON:

12 Q. You seem like a fast responder, and I
13 sometimes speak faster than that; so if I ask a
14 question, slow down a little bit. Let me finish;
15 then give your response. Okay?

16 A. Yes.

17 Q. All right. You talked about your
18 statement that you gave in this case. I'm going to
19 go ahead and mark in a couple exhibits really quick.

20 MR. BARRON: Mark that as 1.

21 And 2, please. I appreciate it. Thanks,
22 bud.

23 (Exhibits 1 and 2 were
24 marked for identification.)

25 \\\

1 BY MR. BARRON:

2 Q. I'm going to go out of order here real
3 fast. I'm showing you what's been marked as
4 Plaintiffs' Exhibit 2.

5 A. Okay.

6 Q. Just take your time and read that to
7 yourself. When you're done, please let me know.

8 (Witness reviews Exhibit 2.)

9 A. Okay.

10 BY MR. BARRON:

11 Q. Okay. Did you read it?

12 A. Yes.

13 Q. All right. And that exhibit that is
14 marked, Bates marked TMC001770, produced by your
15 counsel, that is your statement; correct?

16 A. Yes.

17 Q. All right. And it's written in your
18 hand; correct?

19 A. Correct.

20 Q. All right. I note that you didn't sign
21 the statement. Is there any reason for that?

22 A. "Didn't" -- "didn't sign the statement"
23 you said?

24 Q. Right.

25 A. No.

1 Q. Okay.

2 A. I didn't even know I had to sign.

3 Q. All right. When did you draft this
4 statement?

5 A. That very same day.

6 Q. Okay. Obviously it was the day of the
7 accident; right?

8 A. Yes.

9 Q. Okay. My question, though, was -- is a
10 little vague. I'll clear it up.

11 When did you draft it? Was it at the
12 scene? Was it back at the office? When?

13 A. Back at the office.

14 Q. How long approximately after the accident
15 did you draft this statement?

16 A. Maybe like 30 minutes after I got there.

17 Q. 30 minutes after you got there?

18 A. (Nodding head.)

19 Q. All right. Did you have any trouble
20 reading at all?

21 A. Breathing?

22 Q. Reading.

23 A. Oh, reading?

24 Q. Correct.

25 A. No.

1 Q. Okay. Why don't you go ahead and read
2 into the record what you wrote 30 minutes after the
3 accident.

4 A. Read the --

5 Q. Read your statement into --

6 A. Okay.

7 Q. -- the record, please.

8 A. [As read] I was coming north -- north on
9 Lamb Boulevard. There was a gold car cutting in
10 front of me. Then I tried changing lanes. After
11 the light on Lamb and Carey, this other car
12 turned -- there was this other car. I turned my
13 turn signals to -- to merge to the right lane. The
14 guy on the gold car sped up right next to me so I
15 stayed in the same lane. There I looked at my right
16 view mirror to merge to the right and --

17 Q. "Everybody" was it?

18 A. Yeah, "everybody." Everybody was still
19 moving fine there and another car was getting too
20 close and I didn't merge. Then the guy in the gold
21 car cut the -- cut the other cars on the left, then
22 cut them off. At the point --

23 MR. JONES: "At that point"?

24 A. At that point I glanced at my right
25 mirror. The guy -- I can't see that one.

1 BY MR. BARRON:

2 Q. "Hit his brakes"?

3 MR. JONES: Is that "hit his brakes"?

4 A. Hit his brakes in front of other cars.
5 The guy in -- in front hit his brakes. I was not
6 able to stop. The guy that I hit made his car --
7 moved his car like 40 yards from where I impact the
8 car. I call 3-1-1. I asked them if they needed
9 ambulance. All four of them said no, and the lady,
10 the operator from 3-1-1, asked -- asked me if
11 anybody else was hurt or if anybody needed -- needed
12 help, and the -- and that was it. And we just
13 swapped out informations on the insurance.

14 BY MR. BARRON:

15 Q. Okay. So I'm going to ask you a few
16 questions about what -- what you just read here.

17 This gold car that you're referring to in
18 your statement, that is not the car that you -- that
19 you drove into; correct?

20 A. Correct.

21 Q. Okay. That would be a third vehicle
22 involved in the accident?

23 A. Yes.

24 Q. When you wrote this statement, did Jason
25 Donnelly ask you -- strike that.

1 Do you know who Jason Donnelly is?

2 A. Yes.

3 Q. Okay. Who was Jason Donnelly back in
4 July of 2016?

5 A. He was the manager.

6 Q. Okay. Is he still with the company?

7 A. No.

8 Q. Okay. Do you know when he left the
9 company?

10 A. I want to say maybe two, three months --
11 may -- no, it couldn't be. Well, maybe two, three
12 months after that.

13 Q. After that. Is he the one that hired
14 you?

15 A. Yes.

16 Q. All right. So when you wrote this
17 statement, did he specifically ask you to write this
18 statement?

19 A. Well, he said I needed to write a
20 statement about the -- about the incident, and he
21 called Kengo and asked Kengo what's the -- the
22 safety guy, I believe.

23 Q. Okay. Did you at any time write anything
24 else aside from this statement you just read into
25 the record?

1 A. I didn't write anything else. This was
2 the only thing I wrote at that time.

3 Q. Okay. When you wrote this statement, did
4 you -- you gave it to Jason Donnelly; correct?

5 A. Yes.

6 Q. All right. Did he then read this
7 statement?

8 A. To be honest, I was not standing there.
9 If he did or not, I --

10 Q. All right. Did he --

11 A. I believe he was going to --

12 Q. Go ahead.

13 A. Sorry.

14 Q. No, go ahead.

15 A. He was going to transfer this to Kengo in
16 California because Kengo, he works at the company in
17 L.A. and he comes over and gives the safety --

18 Q. All right.

19 A. -- things.

20 Q. Go ahead.

21 A. And that was it. You know, after that I
22 really didn't know what happened after the -- the
23 accident from that point on.

24 He did take me to get a drug screen at
25 the time.

1 Q. Okay.

2 A. I left --

3 Q. It's -- it's my understanding you passed
4 the drug screen. Correct?

5 A. Yes.

6 Q. All right. Did Jason ask you to add
7 anything to this statement, any information?

8 A. Nothing at all, no.

9 Q. Okay. Did he specifically ask you to put
10 in the statement that nobody was hurt?

11 A. No. He didn't tell me anything. I just
12 wrote everything. When I called that lady, she said
13 that if anybody was hurt. I said, "No," and I
14 just -- I even asked the guy, "Hey, you guys want me
15 to call the police so they can do a police report?"
16 which they never showed up, or they said, "No. No,
17 we're fine."

18 So they shook my hand. I shook their
19 hands.

20 Q. Uh-huh.

21 A. And that was it. I said, "Hey, I live --
22 I work two, three minutes away from here if you guys
23 want to go there and talk to my manager." They
24 said, no, they were fine because --

25 Q. Okay.

1 A. -- they declined the --

2 MR. JONES: There's no question.

3 BY MR. BARRON:

4 Q. Yeah, you're --

5 MR. JONES: Wait -- wait for a question.

6 BY MR. BARRON:

7 Q. Yeah. Were you done?

8 A. Yeah. Sorry.

9 Q. Okay. Sorry.

10 I'm going to show you Exhibit 1, if you
11 could go ahead and take a look at that.

12 (Witness reviews Exhibit 1.)

13 BY MR. BARRON:

14 Q. Just please let me know when you're done
15 reading it.

16 (Witness reviews Exhibit 1.)

17 A. Okay.

18 BY MR. BARRON:

19 Q. All right. So you just said earlier that
20 nobody was injured; is that correct?

21 A. Yes.

22 Q. All right. So in this accident report --
23 this is Bates stamped TMC001769 -- when it says,
24 "DESCRIBE INJURY OR DAMAGE," I'm going to read into
25 the record, and then after I read it, I'm going to

1 ask you if -- if I read it correctly. Okay?

2 A. Okay.

3 Q. [As read] Ford Focus rear-ended 4 people
4 whiplash.

5 Did you write that?

6 A. Yes.

7 Q. Okay. And when you wrote this statement
8 in this accident report, was it at the same time or
9 contemporaneously with your written statement?

10 A. With my written statement.

11 Q. Okay. You wrote them, an estimate, how
12 close together? At -- at the same time or what?

13 A. I'm sorry. What was that?

14 Q. When you wrote the accident report, did
15 you write it before you gave your written statement?

16 A. Did I give it before?

17 Q. This accident report here that you're
18 looking at --

19 A. Uh-huh.

20 Q. -- did you fill this out after you gave
21 your written statement that you've already read or
22 did you fill it out before?

23 MR. JONES: Which did you fill out first
24 or --

25 THE WITNESS: Oh, this one. This one was

1 the first one.

2 BY MR. BARRON:

3 Q. The accident report?

4 A. This one, yes.

5 Q. All right. And for the record, you're
6 referring to Exhibit 1, correct, Bates stamped
7 TMC001769? Is that correct?

8 A. Yes.

9 Q. All right. So you reported to Jason
10 Donnelly that there was a whiplash; correct?

11 A. Yes.

12 Q. All right. Is there any reason why when
13 you did your written statement that you previously
14 read into the record you then said that there was no
15 injuries?

16 A. Why?

17 Q. Uh-huh.

18 A. Because when I asked the guys, that's
19 what they said, they were fine. They all got out of
20 the car, shook my hand. I was talking to them in
21 Spanish.

22 Q. Okay. So if they were fine, how come
23 you -- you put in the accident report four people
24 whiplash? What'd you mean by that?

25 A. Well, because, I mean, when it comes to

1 hitting somebody, you know, rear-ending somebody, I
2 guess that's what they -- that's what happens when
3 you hit somebody from behind.

4 Q. All right. And in your estimate, in
5 terms of you hitting them, did you hit them pretty
6 hard?

7 A. I really can't tell you how hard, I mean.

8 Q. Do you have an estimate for me in terms
9 of the speed that you struck their vehicle?

10 A. Oh, I think it's like 40, 45 maybe.

11 Q. You were going about 45 miles an hour?

12 A. Uh-huh.

13 Q. At the time of impact?

14 A. Well, not -- not at that point, no,
15 'cause everybody was slowing down at that time.

16 Q. Okay.

17 A. So, I mean, it could have been maybe 25.

18 Q. Okay. So your best estimate at -- and
19 I'm talking about at the time of impact, that --

20 A. Uh-huh.

21 Q. -- is, striking my client's vehicle --

22 A. Uh-huh.

23 Q. -- your best estimate in terms of your
24 speed was 25 miles an hour?

25 A. I would say, yes, 25.

1 Q. Okay. This -- going back to your written
2 statement that you read -- so that's Plaintiffs'
3 Exhibit 2 -- you talk about a gold car speeding past
4 you; correct?

5 A. Uh-huh.

6 Q. Okay. When it sped past you, what's your
7 best estimate in terms of the speed of that vehicle?

8 A. Oh, maybe 50.

9 Q. 50 miles an hour?

10 A. As soon as he saw me hit the people in
11 front of me, he just took off, 'cause first he was
12 driving real slow in front of me, cutting me off and
13 actually cutting people off, and then he just slowed
14 down in front of me. Then he would keep going.
15 Then he would just keep shifting lanes.

16 And then at that time when he saw me hit
17 the -- because I was able to see him because the
18 window in that truck is like very close. You know,
19 it's like a box truck type. You know, the
20 windshield's right in front of you. There's really
21 no dash --

22 Q. Okay.

23 A. -- in the front; so I was able to see
24 him.

25 Q. All right. Are you done?

1 A. Yes.

2 Q. All right. And then in your written
3 statement you talk about, you say that everybody was
4 still moving fine. That's the flow of the traffic,
5 correct, on Lamb?

6 A. Yes.

7 Q. All right. And the flow of the traffic
8 was going, what, about approximately the speed of
9 this gold vehicle, about 40 miles an hour?

10 A. Yes.

11 Q. All right. And you were moving with the
12 flow of the traffic; correct?

13 A. Yes.

14 Q. All right. So at some point just prior
15 to the accident, your speed was about 40 miles an
16 hour?

17 A. I would say, yes.

18 Q. All right. You then say in your written
19 statement that the guy hit his brakes in front of
20 other cars. The guy in front of hit his brakes. I
21 was not able to stop.

22 Is that correct?

23 A. Yes.

24 Q. Okay. What's your best estimate in terms
25 of how close you were behind the car that you struck

1 just prior to the accident occurring?

2 A. I would say like two to three cars.

3 Q. Two to three car lengths?

4 A. Uh-huh.

5 Q. Okay. And you were still not able to
6 stop?

7 A. No.

8 Q. Okay. Why is that?

9 A. 'Cause the other guy cut me off.

10 Q. Okay.

11 A. So I couldn't change lanes at that point.

12 You know, I just -- just he hit his brakes. I hit
13 my brakes. The other car in front of the guy hit
14 his brakes 'cause he actually went from one side to
15 the other, like cut him how -- the both two lanes.

16 Q. All right. Well, the gold car didn't cut
17 you off, correct, because in your statement you say
18 the gold car cut the other cars on the left, cut
19 them off at that point?

20 A. Well, he sped up right next to me; so I
21 couldn't change lanes at that point. And then he
22 cut me off right there. I kept going right behind
23 him.

24 And then he just started moving to the
25 other lane, to the left lane. Okay? And then

1 when -- when this other car moved to the -- to my
2 side, because they shifted, so once the other car
3 moved over to my side, there was this other car, and
4 he just cut him right in front.

5 Q. Okay.

6 A. So I couldn't change lanes at all.

7 Q. All right. Is it your testimony that the
8 car that you struck, that that -- that that car did
9 anything wrong that contributed to the accident?

10 A. Are we talking about the Mer- -- the
11 Mercury or the --

12 Q. I'm talking about the car you hit.

13 A. Oh. I don't know to be honest.

14 Q. Okay. So you have no -- you have no
15 knowledge --

16 A. No.

17 Q. -- no facts as to any- -- as to anything
18 the car hit -- the car that you hit, that they did
19 anything wrong; is that correct?

20 A. I was trying to figure out which way to
21 move so I wouldn't hit anybody; so I really
22 didn't --

23 Q. All right. All right. And in your
24 statement, is it true that just prior to you
25 striking the car that you hit in front of you, you

1 were looking in your right mirror? Is that right?

2 A. Well, that was before I hit the guy
3 because I was going to switch lanes.

4 Q. Was it right before you hit the guy?

5 A. Right before I hit the guy, yes.

6 Q. Okay. So just prior to impact -- by that
7 I mean striking my client's car -- your direction
8 was off the road; correct? It was looking in your
9 right mirror?

10 A. Well --

11 MR. JONES: Misstates testimony.

12 MR. BARRON: Okay. Well, I'm asking his
13 testimony.

14 BY MR. BARRON:

15 Q. Is that correct?

16 Let me read your statement here really
17 quick, just that -- that portion of it.

18 I glanced at my right mirror.

19 A. Uh-huh.

20 Q. The guy hit his brakes in front of other
21 cars. The guy in front hit his brakes. I was not
22 able to stop.

23 Did I read that correctly?

24 A. Yes.

25 Q. Okay. And when you gave this statement,

1 as you said, it was the day of the accident;
2 correct?

3 A. Yes.

4 Q. Okay. And it's safe to say at that time
5 your memory was better than it is today; right?

6 A. I won't say better because I was still
7 shaken from the accident because I've never had an
8 accident before and I never had to go through
9 anything like that.

10 Q. Right.

11 A. So --

12 Q. Okay. But in fact, you used this
13 statement today to refresh your recollection for
14 your testimony today; correct?

15 A. I tried to give as best as I could
16 remember, you know.

17 Q. All right. Listen to my question.

18 So you referenced this statement today to
19 prepare you for your deposition today; correct?

20 A. Yes.

21 Q. All right. So this statement is true and
22 correct; right?

23 A. Yes.

24 Q. It contains complete and accurate
25 information regarding the accident; correct?

1 A. Yes.

2 Q. And it forms the foundation of your
3 testimony today; right?

4 A. Yes.

5 Q. And you used it to refresh your
6 recollection today; correct?

7 A. Yes.

8 Q. Did you use anything else to refresh your
9 recollection today?

10 A. No.

11 Q. Okay. So you're relying on this written
12 statement today to provide your testimony; right?

13 A. Yes.

14 Q. All right. And you said in this
15 statement that you glanced in your right mirror just
16 prior to impact; correct?

17 A. Yes.

18 Q. So your focus was not in front of you.
19 It would have to be to your right; correct?

20 A. I guess, yes.

21 Q. Is that a yes?

22 A. Yes.

23 Q. Okay. So for at least some time, you
24 took your eyes off of the road; correct?

25 A. Not to the -- it's just like, you know,

1 when -- I mean, with -- when you're driving, it's
2 just like you take a quick glance. That's not going
3 to take your complete vision off the front of you
4 because you're just -- here's what you're doing, but
5 you can still see the cars in front of you.

6 MR. JONES: Objection, misstates
7 testimony because he's saying he's looking at the
8 road, just a different portion of it.

9 MR. BARRON: Okay.

10 BY MR. BARRON:

11 Q. Go -- you were saying?

12 A. And that's what I did. I mean, it's not
13 like I took a look just to my right-hand side and
14 not looking at the road in front of me.

15 Q. Okay.

16 A. Because, I mean, I saw the other cars in
17 front of me, including the guy that actually caused
18 the accident, you know; so I'm trying to keep an eye
19 on both sides.

20 Q. Okay. Well, you caused the accident;
21 correct?

22 MR. JONES: It calls for a legal
23 conclusion, argumentative.

24 MR. DRUMMOND: Please go ahead and
25 answer.

1 BY MR. BARRON:

2 Q. Yeah, you can answer.

3 A. I guess.

4 Q. Okay. When you took your eyes off of the
5 right mirror, you then looked at the road, correct,
6 in front of you?

7 A. I did. I had to.

8 Q. Okay.

9 A. There's no way for me to -- I mean, if I
10 see that this guy is acting crazy, I mean, I got to
11 have my eyes on the road either way.

12 Q. Okay. So if, as you just said, this guy
13 was acting crazy, is that the -- would that be the
14 gold car?

15 A. Yes.

16 Q. All right. If it was acting crazy, why
17 didn't you -- well, let me strike that.

18 If the car was acting crazy, why didn't
19 you adjust your driving under the circumstances --

20 A. I tried --

21 Q. -- or did you?

22 A. I did.

23 Q. In what way?

24 A. I slowed down just like everybody else.

25 Q. Okay. And when you slowed down like

1 everybody else, did every -- anyone else have an
2 accident that you saw?

3 A. No.

4 Q. You did, though; right?

5 A. Yes.

6 Q. Okay. Why?

7 A. Because there was more cars in front of
8 me.

9 Q. All right. Did you afford yourself safe
10 stopping distance in this case?

11 A. Could I what? I'm sorry.

12 Q. Did you afford yourself safe stopping
13 distance in this case, meaning giving yourself
14 enough time to safely brake to avoid the accident?

15 A. Yes, I did.

16 Q. Okay. So how did the accident happen?

17 A. They moved to the same lane I did.
18 The -- the guys who was in the silver car were --
19 were in front of me, and then when I tried to change
20 lanes, they did the same thing. The guy hit his
21 brakes. They hit their brakes and I hit my brakes,
22 but it was too late by that time.

23 Q. Okay. So the silver car would be my
24 client's car?

25 A. Yes. I believe so, yes.

1 Q. All right. Do you know the name of my
2 client by chance?

3 A. No.

4 Q. Do you know if they were driving or a
5 passenger? You don't know anything about them;
6 right?

7 A. I don't.

8 Q. So you don't know if they did anything
9 right, wrong or indifferent in this case; correct?

10 A. Yes.

11 Q. All right. Is it your testimony that the
12 silver car was at fault for this accident?

13 A. I'm not saying it was their fault, but --

14 Q. Because you told me earlier you didn't
15 know anything about them in terms of them causing
16 the accident; correct?

17 A. Yes.

18 Q. So I note in your accident report you'll
19 see it's blank where it says, "HOW COULD THIS
20 ACCIDENT BEEN AVOIDED?" Right -- right there. It's
21 your top page.

22 A. Oh, this one?

23 Q. Yeah. See where it says, "HOW COULD THIS
24 ACCIDENT BEEN AVOIDED?"

25 A. Oh, down here?

1 Q. Right.

2 A. Uh-huh.

3 Q. And it's blank; correct?

4 A. Right.

5 Q. Any reason for that?

6 A. No.

7 Q. As you sit here today, I'm going to ask
8 you this same question. How could this accident
9 have been avoided to your knowledge? I don't want
10 you to speculate.

11 To your knowledge, how could you have
12 avoided this accident?

13 MR. JONES: Calls for expert testimony.

14 You can answer if you can.

15 A. I -- I don't know. I mean, if this other
16 car's, you know, cutting people off, I mean, I -- I
17 have no answer for that.

18 BY MR. BARRON:

19 Q. Okay. Well, your attorney said it -- it
20 calls for expert testimony. You've been trained to
21 drive this flatbed truck; right?

22 A. Yes.

23 Q. All right. You were given training
24 courses with Trench Shoring?

25 A. No. Well, I mean, it depends on the

1 truck 'cause I had another truck that was in the
2 shop before that.

3 Q. What other truck?

4 A. There was another truck that I drove
5 before that.

6 Q. Okay. Well, you got training with Trench
7 Shoring to drive the flatbed; right?

8 A. I mean, a flatbed, it's basically like a
9 regular car.

10 Q. Okay. My -- listen to my question.
11 Did you get training to drive the flatbed
12 truck or not?

13 A. No.

14 MR. JONES: Are you referring to the box
15 truck?

16 BY MR. BARRON:

17 Q. The flatbed truck in this case, did you
18 get training to drive the flatbed truck?

19 A. I mean, there's really nothing to train
20 about, I mean; so --

21 Q. Okay. So your answer is no? Your answer
22 is no?

23 A. No, sir.

24 Q. You received no training to drive the
25 truck; correct?

1 A. No.

2 Q. When you first started with Trench
3 Shoring, it's my understanding you worked doing
4 labor in the yard. Right?

5 A. Yes.

6 Q. Okay. What did that job entail?

7 A. Making shores, rebuilding shores.

8 Q. Say it again.

9 A. Building shores.

10 Q. What's that?

11 MR. JONES: Building shelves?

12 THE WITNESS: Shores.

13 MR. JONES: Shores. Oh.

14 THE WITNESS: Trench shores, the shores
15 for -- that they use for the construction.

16 BY MR. BARRON:

17 Q. Okay. When you were first hired with
18 Trench Shoring, is that what you did?

19 A. Yes.

20 Q. Okay. At any time working for Trench
21 Shoring, did you do anything else aside from driving
22 the flatbed truck and prior to that working in
23 the -- the yard?

24 A. Forklifts.

25 Q. Forklifts?

1 A. Yes.

2 Q. Okay. How -- how long did you operate
3 the forklifts, or is that part of working in the
4 yard?

5 A. Part of working in the yard, yes.

6 Q. Did you take any other tests,
7 certifications, anything of that nature, while at
8 Trench Shoring --

9 A. Well, at that time --

10 Q. Hold on. Sorry, sorry. Let me finish my
11 question. You're jumping in. It will make a
12 cleaner response, keep the court reporter calm,
13 et cetera. Okay?

14 So did you apply for any other tests, do
15 anything else at Trench Shoring aside from -- strike
16 that.

17 Did you take any other tests at Trench
18 Shoring for any other jobs aside from working in the
19 yard and driving the flatbed truck?

20 A. Yes.

21 Q. Okay. What tests did you take? Tell me
22 everything.

23 A. It was for the crane operator.

24 Q. Okay. Did you pass it?

25 A. Well, I didn't -- I took it two times --

1 three times actually. I didn't pass it, but I
2 wasn't working at that time.

3 Q. Okay. Any other tests or certifications
4 while at Trench?

5 A. The forklifts, forklift operator.

6 Q. And you passed that?

7 A. Yes.

8 Q. All right. Do you recall any -- going to
9 any training sessions in 2016 for driver fatigue or
10 safe driving or defensive driving, anything of that
11 nature?

12 A. No.

13 Q. Okay. You don't recall or you didn't go?

14 A. I didn't go.

15 Q. Okay. So you received no training in
16 terms of driving safety, defensive driving, driver
17 fatigue, driver awareness? You received no training
18 for that; right?

19 A. No.

20 Q. Okay. And you were completely honest in
21 this statement, your handwritten statement; correct?

22 A. Yes.

23 Q. And you were completely honest in your
24 accident report; correct?

25 A. Yes.

1 Q. So there were injuries at the scene;
2 right?

3 A. Well, when they -- they said they were
4 okay. That's as far as I know. They declined the
5 ambulance and everything.

6 Q. Okay. My question is: There were
7 injuries at the scene because you testified you were
8 truthful in your statements and you indicate
9 whiplash; is that correct?

10 MR. JONES: Misstates statements.
11 Counsel, he's got a -- his more detailed statement
12 says otherwise.

13 BY MR. BARRON:

14 Q. You can answer.

15 MR. DRUMMOND: I would object as to
16 counsel directing him --

17 MR. BARRON: No.

18 MR. DRUMMOND: -- to any exhibit --

19 MR. BARRON: Yeah.

20 MR. DRUMMOND: -- also to coaching him --

21 MR. BARRON: Try to -- yeah.

22 MR. DRUMMOND: -- as to what the
23 statement --

24 MR. BARRON: Yeah.

25 MR. DRUMMOND: -- does or does not say --

1 MR. BARRON: Yeah. Let's try to --

2 MR. DRUMMOND: -- because that's
3 coaching.

4 MR. BARRON: I hear you.

5 Let's try to keep it just, Tom,
6 nonsuggestive, nonargumentative.

7 MR. JONES: Todd.

8 MR. BARRON: Todd.

9 A. Well, I called the operator, the
10 emergency operator. They said they were fine; they
11 declined.

12 BY MR. BARRON:

13 Q. Okay. And you testified earlier that the
14 accident report you wrote first in time; correct?
15 You wrote that first?

16 A. Yes.

17 Q. Okay. And when you wrote that report,
18 you had already talked to my clients at the scene.
19 You already talked to the people you hit at the
20 scene; correct?

21 A. Yes.

22 Q. So you already had the knowledge of
23 whatever they said to you in your head; right?

24 A. If that's what they claimed when I asked
25 them, yes.

1 Q. Okay. And then you write the accident
2 report after that; correct?

3 A. Yes.

4 Q. And you wrote the accident report before
5 your handwritten statement; correct?

6 A. Yes.

7 Q. All right. And when you wrote the
8 accident report, you noted whiplash; is that right?

9 A. Yes.

10 Q. Okay. So you at some point knew that
11 they were hurt, correct, unless you would not have
12 written whiplash; is that right?

13 A. Well, the -- the reason I wrote it down,
14 like I say, is that every time you rear-end
15 somebody, I believe that's how it happens. I mean,
16 I've been in accidents before, and that's what I've
17 gotten out of something like that; so --

18 Q. Had -- had you been in accidents before
19 while working for --

20 A. No.

21 Q. -- Trench Shoring?

22 A. Nope.

23 Q. Never?

24 A. Never. Well, yeah, before that one, yes.

25 Q. When?

1 A. A week before that.

2 Q. Tell me about it.

3 A. This lady ran the light. She just hit
4 me.

5 Q. Okay.

6 A. That was it.

7 Q. Was she at fault?

8 A. Yes.

9 Q. Okay. Did you fill out an incident
10 report?

11 A. To be honest, I don't remember that time,
12 but I think I did because I -- they asked me if I
13 wanted, you know, to go to a doctor or anything like
14 that. I said I was fine.

15 Q. Okay. Who asked? Who's "they"?

16 A. My manager.

17 Q. Jason?

18 A. Jason at the time.

19 Q. Okay. So it's your best testimony,
20 recollection at least, that you gave an incident
21 report for an accident you had a week prior to this
22 one?

23 A. Uh-huh.

24 Q. Is that a yes?

25 A. Yes.

1 Q. Okay. And you filled out an accident
2 report; is that correct?

3 A. Yes.

4 Q. Okay. And in that, if we were to get
5 that accident report, would you have noted whiplash
6 in that as well since you hit somebody?

7 MR. JONES: Calls for speculation.

8 BY MR. BARRON:

9 Q. To your knowledge.

10 A. I -- I mean, I didn't feel anything. I
11 mean, I was driving a bigger truck; so --

12 Q. Okay. Is it your testimony that anytime
13 that you strike somebody in an accident, based upon
14 your knowledge, that they would have whiplash?

15 A. Well, that's what I heard before from
16 accidents, that every time somebody gets rear-ended,
17 that's the first thing they tell you, that you get
18 whiplash. So --

19 Q. Right.

20 A. -- I'm guessing that's what it was; so
21 that's what I just wrote down.

22 Q. Okay. The day of the accident, where
23 were you going?

24 A. To -- to the company.

25 Q. What company?

1 A. Trench Shoring.

2 Q. You were showing up for work?

3 A. I was going back to the company. I had a
4 delivery. On my way back, that's when this
5 happened.

6 Q. Okay. You were going back to pick
7 something up?

8 A. Yes.

9 Q. Okay. And you had somewhere to be after
10 you picked up whatever you were going to pick up?

11 A. No, no. Before the -- well, during the
12 accident, I was on my way back to the Trench Shoring
13 Company.

14 Q. Okay. Where were you coming from?

15 A. I --

16 MR. JONES: If you remember.

17 A. Well, I went out and delivered something,
18 but I don't remember where it was at to be honest
19 with you.

20 BY MR. BARRON:

21 Q. Does your truck have a dashcam?

22 A. No.

23 Q. GPS, global positioning, something like
24 that?

25 A. Yes.

1 Q. It does?

2 A. GPS, yes.

3 Q. Would that be through your cell phone or
4 what?

5 A. Well, actually, no, it was -- it was
6 broken at that time 'cause somebody went into the
7 truck and broke the GPS on it.

8 Q. Okay. Did you keep an itinerary at that
9 time back in July of 2016?

10 A. I'm sorry. What's that, an itinerary?

11 Q. Where you're going, your location, what
12 you're supposed to pick up.

13 A. Oh, no.

14 Q. Any work tickets, anything of that
15 nature, so your company could see --

16 A. No.

17 Q. -- what you're doing?

18 A. Well, they -- they keep them in the
19 company.

20 Q. Okay. To your knowledge, do you know why
21 your -- your spokesperson, if you will, for Trench
22 Shoring said that you had an itinerary or work
23 ticket that day?

24 A. A work ticket like a delivery you mean?

25 Q. Uh-huh.

1 A. Yeah, I did my delivery. On my way back,
2 that's when that happened.

3 Q. Okay. When -- and you gave a statement
4 obviously regarding the accident; correct?

5 A. Uh-huh.

6 Q. All right. And did your -- did Jason
7 Donnelly ask you for your work ticket or itinerary
8 that day for before the accident?

9 A. Well, we just put them in a box there.
10 They just have a box there. Every time we'd come
11 back from a delivery, we'd just throw our paperwork
12 in that box, and I don't know what they do after
13 that.

14 Q. Okay. So after this accident happens,
15 you go back to the -- your office, or the yard;
16 correct?

17 A. Yes.

18 Q. All right. And you report what happened?

19 A. Uh-huh.

20 Q. Right?

21 A. (Nodding head.)

22 Q. You fill out --

23 A. Yes.

24 Q. -- this -- this accident report first;
25 correct?

1 A. Yes.

2 Q. Okay. You were fully and completely
3 truthful when you filled it out; correct?

4 A. Yes.

5 Q. And you gave your work ticket to Jason
6 Donnelly?

7 A. I just dropped it in the office as soon
8 as I walked in there.

9 Q. All right. And that would be right after
10 the accident?

11 A. As soon as I walk in the office, yeah.

12 Q. Okay. And that would be right after the
13 accident?

14 A. Yes.

15 Q. Okay. Did you work any more that day
16 after the accident occurred or did you go home?

17 A. I went home. Well, I went to take the
18 drug screen. After the drug screen, I went home.

19 Q. Okay. So no work -- no more work for
20 that day?

21 A. No.

22 Q. Okay. So when you went back to the
23 office to report the accident to Jason Donnelly, you
24 gave him your itinerary or what you guys termed
25 "work ticket" for that day; correct?

1 A. Yes.

2 Q. So he would have had it; right?

3 A. Yes.

4 Q. Okay. Were you hurt in the accident at
5 all?

6 A. I didn't feel anything.

7 Q. Was your truck damaged to your knowledge?

8 A. No. It just bent the hood on it. That's
9 it.

10 Q. It what?

11 A. It just smashed the hood in. Not that
12 bad. It's like really you couldn't tell.

13 Q. Okay. Did you ever drive that particular
14 flatbed truck again?

15 A. Yes.

16 Q. When?

17 A. That I don't remember. I mean, it wasn't
18 right away. I was off the truck for driving for
19 like -- I believe it was like 30 days.

20 Q. Say it again. I'm sorry.

21 A. I was off driving for 30 days after --
22 after the incident.

23 Q. After this accident?

24 A. Yes.

25 Q. Okay. So they did not let you drive for

1 30 days?

2 A. Yes. I stayed in the --

3 Q. You stayed in the yard?

4 A. -- yard. Yes.

5 Q. Okay. So just making sure the record's
6 clean, so after this accident happened, you were not
7 allowed to drive for 30 days; is that correct?

8 A. Correct.

9 Q. Okay. Was that -- were you disciplined
10 in any way as a result of this accident?

11 A. No.

12 Q. Okay. But you were reprimanded in that
13 you weren't allowed to drive for 30 days?

14 A. Well, I didn't -- I didn't take it that
15 way. I just felt that, you know, whatever they tell
16 me to do, I'm just there to do my job.

17 Q. Well, what did they tell you to do?

18 A. I didn't -- just work in the yard.

19 Q. Did they tell you why you couldn't drive
20 for 30 days after the accident?

21 A. No.

22 Q. Okay. Have you ever -- how long had you
23 been driving the flatbed truck before this accident
24 occurred?

25 A. I think it's -- I drove it for like

1 two -- two years 'cause I think I worked for them
2 for almost four years; so --

3 Q. Okay. Well, you were hired in 2015;
4 right?

5 A. Uh-huh. Yes, sir.

6 Q. And when did this accident happen?

7 A. July.

8 Q. Of what year?

9 A. 2016, I think.

10 Q. So how were you driving for four years
11 before this accident occurred?

12 A. Let me see. Let me -- okay. 2016.

13 So it was maybe two and a half years
14 then, that they got the new truck afterwards, and
15 that was the actual truck that had the crane.

16 Q. Okay. So you were driving the flat- --
17 the flatbed truck in this case is all I'm interested
18 in. Okay?

19 A. Uh-huh.

20 Q. So when I say "flatbed," I'm talking
21 about the --

22 A. The white truck there, yes.

23 MR. BARRON: Let's go ahead and mark that
24 as 3, please.

25 \\\

1 BY MR. BARRON:

2 Q. I'm going to show you the truck. Okay?

3 A. Okay.

4 (Exhibit 3 was marked for
5 identification.)

6 MR. BARRON: That's just the same
7 picture.

8 BY MR. BARRON:

9 Q. Sir, this is Plaintiffs' Exhibit 3. Just
10 take a look at that quickly.

11 Is that the truck you were driving that
12 day?

13 A. Yes.

14 Q. So this Trench Shoring Company truck that
15 we're looking at -- and the plates there, it speaks
16 for itself -- this particular vehicle was involved
17 in the accident; right?

18 A. Yes.

19 Q. And you did not drive this particular
20 vehicle or any other flatbed truck for 30 days after
21 the accident; correct?

22 A. Just about, yes.

23 Q. Okay. Just about?

24 A. Just about those 30 days, something.

25 Q. At any time before this accident happened

1 or after the accident occurred or, I should say,
2 since the accident occurred, were you ever not
3 allowed to drive the Trench Shoring truck for any
4 particular length of time?

5 A. No.

6 Q. It was only after this accident occurred;
7 correct?

8 A. Yes.

9 Q. Why don't you go ahead and tell me, this
10 Trench Shoring truck, what typically do you load
11 onto the truck or is loaded onto this flatbed?

12 A. Shores, trench plates.

13 Q. Okay. Anything else?

14 A. The water barriers. They really couldn't
15 carry much -- much weight on them; so --

16 Q. Okay. Well, let's start with the -- you
17 said the shores. What do those weigh typically to
18 your knowledge?

19 A. How much do they weight up? I'd say
20 about maybe 50, 60 pounds.

21 Q. Okay. And what -- what load can this
22 truck, to your knowledge, take in terms of loading?

23 MR. JONES: If you know.

24 A. I don't know to be honest.

25 \\\

1 BY MR. BARRON:

2 Q. Okay. Well, you would load the truck;
3 right? You worked in the --

4 A. Yes.

5 Q. Let me finish, please.

6 A. Well, at --

7 Q. Okay, okay. And I know you're trying to
8 do your best job; so just hear me out. Okay?

9 So you worked -- you worked in the yard,
10 right, doing labor? Correct?

11 A. Yes.

12 Q. And you would load these trucks?

13 A. Yes.

14 Q. As part of your job driving the Trench
15 Shoring truck, would you also have to load it
16 yourself?

17 A. Sometimes. Sometimes they'd be loaded.

18 Q. Okay. And do you know the time of the
19 accident, back in July 2016, how many flatbeds
20 Trench Shoring had for the Vegas Valley?

21 A. How many?

22 Q. How many trucks serviced the Vegas
23 Valley?

24 A. I -- flatbeds, only two. There was
25 another one just like this one.

1 Q. Okay. Did you drive both the trucks or
2 was there another driver?

3 A. Well, it was just me basically driving
4 the flatbed.

5 Q. Okay. When you were heading back to the
6 yard, you said prior -- after this accident -- or
7 before this accident occurred, you were heading back
8 to the yard; correct?

9 A. Yes.

10 Q. To pick up materials?

11 A. Actually, to deliver. On my way back, I
12 didn't have nothing on it.

13 Q. Okay. But you were heading back to the
14 yard to pick more material up --

15 A. Yes.

16 Q. -- to deliver?

17 A. Yes.

18 Q. Did you -- where were you going to
19 deliver that material?

20 A. Oh, I wouldn't know what I was carrying
21 until Jason or Gerald would give me the order.
22 Other than that, I wouldn't know what I'd be
23 carrying.

24 There was not a certain thing that I
25 carried every time. You know, it was just like

1 they'd call in, "Hey, we need two shores" or -- or
2 even the covers, the manhole covers, and stuff like
3 that. There wasn't really a particular thing that I
4 would carry all the time.

5 Q. Okay. How did you know to go back to the
6 yard to pick anything up?

7 A. Well, every time I'd deliver something,
8 they kind of had something small for me to deliver.

9 Q. Okay. Let me ask it this way: Did you
10 commun- -- how did you keep in communication with --
11 with Jason or Trench Shoring when you were in the
12 field?

13 A. We had walkie-talkie radios.

14 Q. Okay.

15 A. Those phones with walkie-talkie.

16 Q. Did you have a cell phone as well?

17 A. Yes.

18 Q. Was it a business cell phone or your own
19 cell phone?

20 A. No, it's my own cell phone.

21 Q. It was your personal cell phone?

22 A. Yes.

23 Q. Okay. Are you -- are you familiar with
24 the employment manual for Trench Shoring back in
25 2016?

1 A. To be honest, I don't remember any of
2 that. I mean, I do remember getting a manual from
3 them, but I don't remember what was in it.

4 Q. Okay. Do you recall reading it?

5 A. No.

6 Q. Was there any -- ever any classes
7 regarding your employment manual, any train- --

8 A. Well --

9 Q. Let me finish.
10 Any training related to that or anything
11 of that nature that you recall?

12 A. No.

13 Q. Is that a no?

14 A. No.

15 Q. How long would you -- what was your
16 typical day there at Trench Shoring? How many hours
17 would you work in a day?

18 A. Ten.

19 Q. Ten?

20 A. About ten-hour days.

21 Q. Okay. The day prior to this accident,
22 which would have been July 11th --

23 A. Uh-huh.

24 Q. -- a Monday, do you recall how many hours
25 you worked that day? Would it have been

1 approximately 10, 11 hours?

2 A. That day I only worked from 5:00 in the
3 morning till 9:00.

4 Q. Say that again.

5 A. From 9:00 -- 5:00 in the morning till
6 9:00.

7 Q. Okay.

8 A. Or 9:00, whenever this happened. I
9 didn't work after that.

10 Q. So this flatbed truck that you drive, the
11 loads that are -- that are put on the truck, you
12 don't know the weight of that; correct?

13 A. Well, the -- Gerald was the one in charge
14 of telling me what I could get on that truck and
15 what I couldn't. He was the actual manage- --
16 manager that would tell me what to carry on that
17 truck or what I couldn't carry.

18 Q. Okay.

19 A. They would actually do all the adding
20 on -- on what I could carry on that truck.

21 Q. All right. So the scope of your work in
22 terms of operating this vehicle would be -- on a
23 typical day while you worked for Trench would be
24 what? What would you do, just drive it around?

25 A. We didn't always have orders. I had to

1 help in the ware- -- in the warehouse, too, build --
2 especially when we had big orders, that's what I
3 would do, stay in the yard.

4 There was not like a eight- or six-hour
5 driving thing in that place, at least not for me.
6 The other guys they had driving semitrucks and stuff
7 like that, they were busy all day. Me, I just had a
8 couple hours here and there.

9 Q. Okay. So on a typical day, you would not
10 have a particular place to go or be; is that right?

11 A. Right.

12 Q. They would -- you would get your orders
13 as they -- as they come in? They would say, "Hey,
14 Jaime, go here, load this, and be there"?

15 A. Yes.

16 Q. Is that fair?

17 A. Yes.

18 Q. Okay. And that would be sporadic,
19 spur-of-the-moment-type thing?

20 A. Yes.

21 Q. Okay. Would you ever be in a rush?

22 A. There was no need. I get paid by the
23 hour.

24 Q. Okay. In terms of the truck itself
25 before -- for example -- I don't want to give you a

1 hypothetical.

2 In terms of this truck itself, when you
3 would load it and jump in it to do what you were
4 going to do, would there be anything else you would
5 do in terms of looking at this vehicle?

6 A. What would I have -- well, we had to do
7 the inspection on the truck before driving it out of
8 the yard.

9 Q. Tell me about that.

10 A. We check our lights, make -- it had the
11 proper air, the fluids, stuff like that.

12 Q. How about the brakes?

13 A. Brakes too. They would get
14 maintenance --

15 Q. What's that?

16 A. -- also.

17 The brakes would get maintenance through
18 the company too.

19 Q. Do you know when that was done?

20 A. I don't know personally. Gerald was the
21 one that actually would send the --

22 Q. Okay. Prior to this accident occurring,
23 do you know the last time this truck was serviced in
24 terms of its braking system?

25 A. No. No. I never kept anything like

1 that.

2 Q. Okay. Do you know if the braking system
3 was serviced, let's say, within 90 days of this
4 accident?

5 A. I wouldn't be able to tell you that.

6 Q. And at some point you left Trench
7 Shoring?

8 We're going to take a break here in about
9 five, ten minutes.

10 At some point you left Trench Shoring?

11 A. Yes.

12 Q. Okay. Do you know the -- the year?

13 A. I think it's going on a year maybe.

14 Q. When you appeared for this deposition
15 today, did you -- without going into the substance
16 with your attorney, did any investigator, did anyone
17 talk to you about your need to be here at this
18 deposition today?

19 A. Investigator?

20 Q. Anyone. Did anyone talk --

21 A. No.

22 Q. Aside from your attorney, did anyone talk
23 to you about your deposition today?

24 A. Yeah, him, Todd.

25 Q. Okay. Did any, for lack of a better

1 word, investigator, individual aside from your
2 attorney show up to your house and indicate that you
3 needed to be at your deposition here today?

4 A. No.

5 Q. Did anyone from risk management from
6 Trench Shoring or Malloy contact you in any way
7 prior to your deposition today and ask you anything
8 or tell you anything about this case?

9 A. No, no.

10 Q. Have you had any contact with Trench
11 Shoring regarding this case aside from when you left
12 in 2018?

13 A. No.

14 Q. Okay. And why did you leave in 2018? Or
15 did you leave or were you terminated?

16 A. I was terminated.

17 Q. Okay. And the reason for that is what?

18 A. The new manager, him, we weren't getting
19 along; so --

20 Q. All right. That's conclusionary. What
21 do you mean by that?

22 A. Just he was just riding me all day, and I
23 got tired of him and I'm -- I don't like dealing
24 with managers like that, you know, just look for
25 something else.

1 Q. Did it have anything to do with failure
2 to follow any of the Trench Shoring employment
3 manual rules or protocols --

4 A. Nothing like that.

5 Q. -- safety regulations, anything like
6 that?

7 A. No. No. It was just him. I -- we
8 didn't get along since he got hired; so I just dealt
9 for a couple months. After that, I decided to move
10 on, and there's other jobs out there, you know. I'm
11 not a person that sits there.

12 Q. And you've never had a CDL license, a
13 commercial driver's license; correct?

14 A. No. I wasn't required to --

15 Q. Why is that?

16 A. -- have one.

17 Because I'd never drive any vehicles that
18 needed a CDL.

19 Q. What type need a CDL?

20 A. I'm sorry?

21 Q. What type of vehicles require a CDL?

22 A. Semitrucks, I believe. When I started
23 with this, they never said I need a CDL; so I
24 didn't.

25 Q. Okay.

1 A. Or I wouldn't take the job if I needed
2 CDL.

3 Q. Okay. And the extent of your training,
4 CDL or not, in terms of driving this flatbed truck,
5 as you said, was -- was zero; correct? You received
6 no training?

7 A. No.

8 Q. Is that a no?

9 A. No.

10 Q. When you were first hired with Trench
11 Shoring, tell me about the interview process.
12 What -- take me through a little bit about what --
13 your intake, if you will, there.

14 A. They just said I was going to be working
15 at the yard, if I -- there was a lot of physical
16 work to do there, if I wanted the job, and that was
17 it.

18 Q. Where'd you work prior?

19 A. Budweiser.

20 Q. Okay. Doing what?

21 A. What do they call that? They have a --
22 not stocker, but merchandiser. They had -- I would
23 drive their vehicles too.

24 Q. Okay. And how long did you work there?

25 A. I worked 90 -- about 90 days, right

1 there.

2 Q. All right. Any particular reason you
3 left? Was it to work at Trench?

4 A. I wanted to work for Trench Shoring.

5 Q. It's my understanding your son worked
6 with Trench Shoring as well?

7 A. Yes.

8 Q. Did he get you into Trench Shoring?

9 A. Well, he talked to the manager about it
10 at that time.

11 Q. All right. So the interview process --
12 go ahead and continue -- was what? They brought you
13 in? You had an interview?

14 A. Yes.

15 Q. You gave them references?

16 A. Yes, and I -- he asked me to bring in a
17 driver's record, and that's what I did.

18 Q. Okay. Show your ID, that kind of thing?

19 A. Yes, yes, correct.

20 Q. All right. Fill out an application?

21 A. Filled out a whole application,
22 everything.

23 Q. Okay. They --

24 A. I went through the hiring process as any
25 other company.

1 Q. Okay. Well, what's the hiring process
2 for Trench Shoring specifically?

3 A. Well, you put in your application. They
4 ask you to come in. They ask for a driver's
5 license, social security, my background checks,
6 stuff like that.

7 Q. Okay. And you have no felonies?

8 A. No.

9 Q. Any misdemeanors involving truth and
10 veracity? By that I mean petty theft, stealing,
11 anything of that nature.

12 A. No, not at all.

13 Q. Okay. Ask everybody.

14 A. I understand.

15 MR. JONES: Counsel, we've been going an
16 hour and a half.

17 MR. BARRON: Yeah.

18 MR. JONES: Take a break?

19 MR. BARRON: Yeah.

20 MR. DRUMMOND: We've been going an hour.

21 We didn't start until 9:30.

22 MR. JONES: Oh, you're right. Sorry.

23 MR. BARRON: Yeah. We'll take --

24 MR. DRUMMOND: That's okay. Just for the
25 record, we didn't start till 9:30.

1 MR. BARRON: Yeah, there's no
2 limitations. We'll take ten.

3 THE VIDEOGRAPHER: The time is now 10:30
4 a.m. We are off the record.

5 (Recess taken.)

6 THE VIDEOGRAPHER: The time is now ten
7 forty -- I'm sorry.

8 The time is now 10:44 a.m. We are back
9 on the record.

10 BY MR. BARRON:

11 Q. All right. You're still under oath. Do
12 you understand that?

13 You're still under oath. Do you
14 understand that?

15 A. Yes.

16 Q. Okay.

17 MR. BARRON: Mark this next in order.
18 It's 4, please.

19 (Exhibit 4 was marked for
20 identification.)

21 BY MR. BARRON:

22 Q. Jaime, after the accident occurred, you
23 exited your vehicle; is that correct?

24 A. Yes.

25 Q. Okay. And you spoke to the occupants of

1 the silver vehicle; correct?

2 A. Yes.

3 Q. All right. And you -- as you sit here
4 today, do you have an independent recollection of
5 what you discussed with them aside from asking them
6 if they were hurt?

7 A. No.

8 Q. Okay. Is all that you discussed with
9 them whether or not they were injured?

10 A. Yes. That's all I asked, if they were
11 injured, and they said they were fine.

12 Q. Okay. Anything else?

13 A. No. Just swapped out our insurances, and
14 that was it.

15 Q. Okay. There was no discussion with the
16 occupants of the silver car regarding this third
17 car, correct, the gold car?

18 A. No, not at all, no.

19 Q. So you know nothing about the gold car in
20 relationship to the silver car; correct?

21 A. Correct.

22 Q. Okay. And tell me again everything you
23 observed about that gold car prior to the impact.

24 A. Well, that the guy was just switching
25 lanes, going back and forth, throwing fingers. I

1 don't know. He was just acting crazy.

2 Q. He was throwing fingers at you?

3 A. I don't know who he was at.

4 Q. Okay.

5 A. I -- to be honest, I don't know. I could
6 just see him because he's just like right in front
7 of me; so I could see him throwing fingers and I
8 guess talking to himself or whatever. I don't -- I
9 have no clue.

10 Q. Okay. Did he happen to brake in front of
11 you?

12 A. Yes. A couple times he slowed down and
13 then again he would speed up and then slow down.

14 Q. Okay.

15 A. And that's what he was doing during that
16 time.

17 Q. And how many times did that happen prior
18 to the accident with my client occurring?

19 A. I didn't count those things. I just saw
20 them, that he was like, you know --

21 Q. More than once?

22 A. Oh, yeah, yeah.

23 Q. More than twice?

24 A. I believe so, yes.

25 Q. Okay. What's your best estimate in terms

1 of how many times he slowed his vehicle down in
2 front of you prior to the accident occurring?

3 A. I -- I would say four times.

4 Q. Four times?

5 A. Yes.

6 Q. Okay. And this was on Lamb?

7 A. On Lamb, yes.

8 Q. Northbound?

9 A. Yes.

10 Q. Okay. Was it Lamb and what cross street?

11 A. Well, the cross street was Carey.

12 Q. Did the accident happen after Lamb and --

13 A. After --

14 Q. -- Carey?

15 A. -- we passed Carey.

16 Q. Okay.

17 A. Or I passed Carey.

18 Q. You're kind of jumping. Let me -- let me
19 finish real quick. Then I'm going to pass you to
20 the other attorney.

21 So how far was your best estimate how far
22 after Lamb and Carey did this accident occur?

23 A. I want to say about a hundred yards or
24 so.

25 Q. About the length of a football field?

1 A. Just about, yes.

2 Q. So for the length of a football field,
3 this gold car was swerving in and out of lanes?

4 A. Yes.

5 Q. And it would get in front of you?

6 A. Yes.

7 Q. And it would brake?

8 A. (Nodding head.)

9 Q. Okay. Approximately four times?

10 A. Not completely brake, but he would hit
11 his brakes like to slow down some.

12 Q. Okay.

13 A. Not fully brake.

14 Q. Okay. What was the traffic like on that
15 street at that time, on North Lamb?

16 A. Oh, moderate, I guess.

17 Q. How many times did you travel that
18 particular road before?

19 A. Like are we talking about a week, a day
20 or --

21 Q. Well --

22 MR. JONES: In his life?

23 BY MR. BARRON:

24 Q. In that week, let's take it.

25 A. In a week, well, I'd drive to work

1 through that street every day.

2 Q. That's my point. It's on the way to
3 work; correct?

4 A. Yeah. Every day, yes.

5 Q. Okay. And you worked at Trench Shoring
6 for about three years?

7 A. Yes.

8 Q. So typically how would you describe that
9 flow of traffic in the -- not your life, but the
10 three weeks [sic] that you worked at Trench Shoring?

11 A. Well, it's a kind of pretty busy street,
12 though, yes.

13 Q. Okay.

14 A. Especially in the morning.

15 Q. Okay. And this accident occurred in the
16 morning; right?

17 A. Yes.

18 Q. So on this particular day, July 12th,
19 2016, it wasn't -- you would call it moderate
20 traffic?

21 A. Yes.

22 Q. On a busy street; correct?

23 A. Well, yeah.

24 Q. That's what you just testified to?

25 A. Right.

1 Q. Okay. So it's safe to say that it was --
2 it was busy; right?

3 A. Yes.

4 Q. Okay. When the vehicle would slow in
5 front of you -- and I'm speaking about the gold
6 vehicle -- you would have to alter your speed;
7 correct?

8 A. Yes.

9 Q. And you would brake?

10 A. Yes.

11 Q. Okay. When you struck my client's car,
12 did you honk your horn?

13 A. When I -- when I what?

14 Q. When you struck my client's car, the Ford
15 Focus, the silver car --

16 A. Oh, no.

17 Q. -- did you honk your horn?

18 A. No.

19 Q. Did you take any evasive maneuvers, crank
20 your wheel to the left or right, brake, anything of
21 that nature?

22 A. I just went straight.

23 Q. You drove straight into them?

24 A. Yeah.

25 Q. Is that a yes?

1 A. Yes.

2 Q. Okay. You drove straight into their
3 vehicle; correct?

4 A. Yes.

5 Q. And your best estimate is about 20, 25
6 miles an hour?

7 A. I would say so.

8 Q. Okay. More like 25 or more like 20?

9 A. More like 25, I guess.

10 Q. 25 miles an hour. Okay.

11 A. Yes.

12 Q. With no braking?

13 A. Well, no -- how -- I --

14 Q. You braked when you struck their vehicle;
15 right?

16 A. Like slowly, you know, like in between
17 like depending on how fast the traffic was moving in
18 front of me, going based on that.

19 Q. Okay. Do you recall specifically
20 applying your brakes prior to hitting the silver
21 Ford Focus?

22 A. Yes.

23 Q. Okay.

24 A. Yes.

25 Q. Do you recall how long that you were

1 pressing on your brakes prior to impact?

2 A. Till I fully stopped.

3 Q. What's that?

4 A. Till I was fully stopped or --

5 Q. And at some point you --

6 A. -- completely stopped.

7 Q. And at some point you struck the car;
8 correct?

9 A. Yes.

10 Q. I'm showing you Plaintiffs' Exhibit 4.
11 Go ahead and flip through those, please.

12 (Witness reviews Exhibit 4.)

13 A. Okay.

14 BY MR. BARRON:

15 Q. Okay. Why don't you go ahead and
16 describe for me what -- what you see in those
17 photos.

18 A. The damage on the bumper, the -- the
19 trunk and the glass and the guy in the back.

20 Q. And realizing and noting you're not a
21 biomech or accident reconstructionist, just everyday
22 knowledge, how would you -- how would you describe
23 the damage to that vehicle? Would you say it was
24 moderate or major?

25 A. I would say moderate. These cars are so

1 cheap nowadays.

2 Q. It's a cheap car?

3 A. Yeah.

4 Q. Okay. You struck it pretty hard,
5 correct, 20 miles an hour?

6 A. I guess, yes. I mean, we were both
7 braking.

8 Q. I --

9 A. He stops completely. My car keeps
10 moving, strikes him. Of course it's going to --

11 Q. When you struck the car, did that car --
12 the Ford Focus, did it move forward?

13 A. Yeah.

14 Q. Okay. So you propelled the vehicle
15 forward?

16 A. Well, act- -- yeah. I followed him as to
17 where he was moving. I -- I moved the same way.

18 Q. Okay. Listen closely to my -- my
19 question.

20 You struck the vehicle; correct?

21 A. Uh-huh.

22 Q. Okay. And when you hit the vehicle, the
23 vehicle moved; right?

24 A. Yes.

25 Q. Okay. How far did the vehicle move, your

1 best estimate, after you struck it?

2 A. I'd say 30 to 40 yards away from the
3 impact.

4 Q. Okay. So we're not talking about him
5 driving off. We're talking about you hit it and
6 it -- you struck the vehicle and it moved 40 yards;
7 correct?

8 A. No, he moved. He was actually moving.

9 Q. Okay.

10 MR. JONES: Jaime, he's asking you at the
11 time you struck his vehicle --

12 MR. BARRON: Todd, I'll rephrase it. All
13 right?

14 MR. JONES: Yeah.

15 BY MR. BARRON:

16 Q. So at the time you struck the --

17 MR. BARRON: I appreciate it. I know
18 what you're trying to do.

19 BY MR. BARRON:

20 Q. At the time you struck my client's
21 vehicle, it moved, correct, from the impact?

22 A. No. It was moving while -- while that I
23 hit him. Even when I hit him, he was still moving.

24 Q. He was still moving?

25 A. Yes.

1 Q. Okay. That's interesting.

2 So when you drove into my client's
3 vehicle, he was moving?

4 A. He was still moving, yes.

5 Q. So you drove into -- you drove into a
6 moving vehicle; correct?

7 A. Well, first he hit his brakes. Then he
8 let his brakes go after I hit him, and then he just
9 moved to the middle. We moved into the middle lane
10 'cause that's -- I followed him.

11 Q. Okay.

12 A. Where he moved, I moved.

13 Q. At the time of you striking my client's
14 vehicle, was it stopped or moving?

15 A. At the time I struck him?

16 Q. Uh-huh.

17 A. I think he stopped.

18 Q. You think? Or was it stopped or moving,
19 his car, when you hit him?

20 A. Oh, he -- he stopped.

21 MR. JONES: If -- if you know.

22 A. He stopped.

23 BY MR. BARRON:

24 Q. He stopped his car?

25 A. He stopped his car.

1 Q. Okay. Just like the gold car in front of
2 you would stop, slow down; right?

3 A. No, he -- this -- the gold car was
4 actually just moving slowly, hitting his brakes
5 slowly, and then speeding up and then slowing down.
6 That's what --

7 Q. The gold car?

8 A. -- the gold car was.

9 Q. Okay. And the silver car when you struck
10 it was at a complete stop?

11 A. When I hit him, no.

12 Q. He was moving?

13 A. He was still moving.

14 Q. Okay. Well, you testified earlier that
15 he was at a stop. Was he at a stop or moving?

16 A. No, he was moving. He was moving at the
17 time I struck him.

18 Q. Okay. So you drove your car at 25 miles
19 an hour, is your best estimate, into my client's car
20 while it was still moving; correct? That's what you
21 just testified to under oath.

22 A. Yes.

23 Q. Okay. So you drove your car into another
24 moving vehicle; correct?

25 A. I guess, yeah.

1 Q. It's not you guess.

2 A. Yes.

3 Q. Okay. So to your knowledge, how in any
4 way, shape or form could my client's car be
5 responsible for this accident if it was still moving
6 when you struck it?

7 A. It wasn't moving like everybody else,
8 like the rest of the cars were moving.

9 Q. And you saw that?

10 A. Yeah.

11 Q. But you still drove into it?

12 A. There was no other way for me to stop
13 anyway.

14 Q. Because you were traveling too close to
15 it; correct?

16 A. No. After every- -- everybody slowed
17 down, we -- we all kind of slowed down. I mean,
18 it's hard to explain a --

19 MR. JONES: Argumentative.

20 A. -- a thing --

21 MR. BARRON: It's cross.

22 BY MR. BARRON:

23 Q. Go ahead.

24 A. -- like -- like how it actually happened
25 and -- and -- and the motion it happened at the

1 time.

2 Q. Right.

3 A. So, you know, you're trying to follow the
4 traffic, go with the flow.

5 Q. Okay. Let me ask you this to your
6 knowledge. I don't want you to guess; so to your
7 knowledge. How was it that you were able to avoid
8 the gold car, which would stop in front of you and
9 slow, yet you could not avoid the Ford Fusion that
10 was in front of you and never stopped?

11 A. That was after he sped up in front of
12 them. They hit their brakes. I had to hit my
13 brakes --

14 Q. Okay.

15 A. -- at that time.

16 Q. All right. So how did you avoid hitting
17 the gold car but yet not the silver Fusion?

18 A. 'Cause he took off and cut in front of
19 them --

20 Q. Uh-huh.

21 A. -- and they hit their brakes, and it
22 looked like they -- they were going to go as the
23 regular flow. When he sped up, I'm thinking he's
24 just going to keep going.

25 Q. Okay.

1 A. So he hit his brakes. They hit their
2 brakes. I -- I hit the guy.

3 Q. Okay. But you didn't see this right
4 before you struck him, correct, because you were
5 looking in your right mirror?

6 A. That was at the time he -- he was right
7 next to me.

8 Q. Uh-huh.

9 A. So he cut me off. He slowed down, and
10 then all of a sudden he took off. He cut in front
11 of them. He hit his brakes at that time.

12 Q. Okay. Is it safe to say when you were
13 looking in your right mirror -- just prior to
14 impact; right?

15 A. Uh-huh.

16 Q. Okay. Is it safe to say when you're
17 looking in your right mirror just prior to impact,
18 when you redirected your attention to the road in
19 front of you, that's when the accident occurred;
20 right?

21 A. No. It -- it couldn't have been that
22 way, no.

23 Q. Well, how was it?

24 A. It didn't happen at that point. It
25 happened when the guy moved in -- when he drove off,

1 he started accelerating; then he cut in front of
2 them. So he hit his brakes and these guys hit their
3 brakes.

4 At that time I was switching lanes.
5 Okay? And then at that time there was this guy that
6 was going to move over to the right lane.

7 Q. Uh-huh.

8 A. So I could move from that point.

9 Q. Okay. Can you please show me in your
10 written statement -- based upon what you just
11 testified to under oath, please point out and show
12 to me in your written statement where you say that
13 you switched lanes.

14 A. It says right view mirror to merge to the
15 right. Is that where you said?

16 Q. I want you to point out specifically the
17 language in your written statement, which you said
18 was full, complete and truthful and accurate --

19 MR. JONES: He just started reading on
20 line 11.

21 BY MR. BARRON:

22 Q. Go ahead and show me where you say you
23 switched lanes.

24 A. I couldn't switch lanes at that point.

25 Q. But you just testified to under oath that

1 you switched lanes.

2 MR. JONES: Misstates.

3 A. I --

4 MR. JONES: No, misstates testimony. He
5 said the gold car switched lanes.

6 A. Not -- not me. I --

7 BY MR. BARRON:

8 Q. You never switched lanes?

9 A. No.

10 Q. Okay. The gold car switched lanes?

11 A. Yes.

12 Q. Okay. And you were able to avoid hitting
13 the gold car; correct?

14 A. Yes.

15 Q. All right. So my original question was:
16 The silver car, which never came to a stop -- is
17 that right?

18 A. Uh-huh.

19 Q. Is that right?

20 A. Yes.

21 Q. Okay. And you drove into the silver car;
22 correct?

23 A. (Nodding head.)

24 Q. Why is it that you were not able to avoid
25 the silver car?

1 MR. JONES: Asked and answered.

2 A. The reason was because he -- after he
3 took off from -- from in front of me, he cut in
4 front of them.

5 BY MR. BARRON:

6 Q. Okay.

7 A. And then that's -- that's when the guy
8 hit his brakes, the silver car hit his brakes. It
9 was too late for me to -- when I hit my brakes, I
10 just rear-ended him.

11 Q. Okay. So the silver car hit his brakes;
12 so you mean it was slowing down? Because you just
13 said it never stopped. It was slowing down?

14 A. Yes.

15 Q. Okay. And you saw that?

16 A. Well, I couldn't see it like right there
17 at the moment because I'm still trying to keep an
18 eye on the road.

19 Q. But you --

20 A. It's just like you --

21 Q. Wait, hold on. There's no question
22 pending. Hold on.

23 You said you were trying to keep an eye
24 on the road, but the -- the car that was on the
25 road, the silver Fusion, was right in front of you;

1 correct? Or Focus, excuse me, was right in front of
2 you; correct?

3 A. Yes.

4 Q. Okay. And you saw it hit its brakes and
5 slow down; is that right?

6 A. I -- I didn't see him hit his brakes. He
7 just slowed down when he hit his brakes, and I hit
8 my brakes, but then I still wasn't able to stop.

9 Q. Okay. Because you were too close to the
10 vehicle; correct?

11 A. At that time when I hit the brakes, yeah,
12 because they all slowed down.

13 Q. Okay. So at the time that you saw the
14 silver car hit his brakes and start to slow, you
15 were too close to it to slow down; correct?

16 A. I couldn't slow down, yeah.

17 Q. You were too close to it to slow down;
18 correct?

19 A. I don't think it was that way. I think
20 when he hit his brakes in front of me, there was no
21 other way that I could stop. There's no possible
22 way for me to stop.

23 Q. Okay. Because you were too close to the
24 vehicle; correct?

25 A. I wasn't following the car too close.

1 Q. Okay.

2 A. They just hit their brakes, and that was
3 it.

4 Q. Okay. Why were you unable to stop if you
5 saw them hit their brakes, you noticed or
6 appreciated that, yet you drove into them? My
7 question is simply why. I'm not trying to fool you.
8 I just want to know why you drove into their vehicle
9 when you saw them apply their brakes.

10 A. There was no way of me stopping.

11 Q. It wasn't plausible or feasible?

12 A. I don't think it was.

13 Q. Okay. How is that different than when
14 the gold car was in front of you four times slowing
15 or braking --

16 A. It was the only car.

17 Q. Let me finish. Let me finish.

18 How is that plausible when the gold car
19 was in front of you slowing down and braking four
20 times and you were able to avoid impacting that car?
21 What's the difference?

22 A. There was only one car --

23 Q. Well, you only drove --

24 A. -- in front of me.

25 Q. -- into one car in this case; correct?

1 A. Yeah, but after he hit his brakes in
2 front of the other cars.

3 Q. Okay. But the gold car hit his brakes in
4 front of you prior to this accident occurring --

5 A. No, not --

6 Q. Hold on a second.

7 You testified under oath four times the
8 gold car hit his brakes in front of you; correct?

9 A. Yes.

10 Q. And you did not hit the gold car in any
11 way; correct?

12 A. Yes.

13 Q. Okay. Some point the silver car hit its
14 brakes or slowed down; correct?

15 A. Yes.

16 Q. Okay. And it did that because you've
17 testified the gold car was ahead of the silver car
18 and applied his brakes?

19 A. Okay. He's in front of me. There's only
20 one car. Right? I mean --

21 Q. Which -- let me stop you.

22 Which car would that be, the silver?

23 A. The gold -- the gold car --

24 Q. Okay.

25 A. -- at that point. I'm driving. He's in

1 front of me. He slows down, but he doesn't fully
2 hit his brakes. He's just like slowing down --

3 Q. Okay.

4 A. -- and then speeding up, slowing down,
5 speeding up. And then at that time when he actually
6 cut in front of the other guys, that's when the --
7 when I hit the silver car.

8 Q. Okay. If the gold car's in front of you
9 slowing down, speeding up, slowing down, you're able
10 to not hit that car; correct?

11 A. Yes.

12 Q. Okay. At some point that gold car, as
13 your attorney clarified, switches lanes; right?

14 A. Yes.

15 Q. Okay. So it would not occupy that space
16 anymore in front of you; correct?

17 A. Yes.

18 Q. So that would give you more space as
19 you're driving where there's not a car, right,
20 'cause the gold car left the lane?

21 A. Yes, yes.

22 Q. Correct?

23 A. Yes.

24 Q. All right. And then that would leave the
25 silver car; correct?

1 A. Yes.

2 Q. And you noticed the silver car was
3 braking; right?

4 A. Yes.

5 Q. You testified to that under oath.

6 A. Yes.

7 Q. But never stopped; correct?

8 A. Right.

9 Q. Okay. But yet you still hit that car;
10 correct?

11 A. Yes.

12 Q. So how is it that you were able to avoid
13 the gold car, which is closer to your vehicle, yet
14 not the silver car when the gold car left this lane,
15 leaving you more travel space, which is what you
16 just said? How --

17 MR. JONES: Asked --

18 MR. BARRON: Hold on.

19 BY MR. BARRON:

20 Q. How is it that you were able to -- not
21 able to strike my client's car?

22 MR. JONES: Asked and answered.

23 A. Because the guy cut in front of them.

24 BY MR. BARRON:

25 Q. Okay.

1 A. So at that time, I had no other way of --
2 it looked like everybody was going to start -- the
3 car flow was going to start going fine until that
4 guy actually hit his brakes in front of them.

5 Q. Okay.

6 A. See?

7 Q. So you misjudged, as you just testified,
8 the flow of traffic?

9 A. I'm just saying that he cut them off.
10 They hit their brakes. I hit my brakes.

11 Q. Okay. If you saw the gold car cut off
12 the silver car -- you saw that; correct? You just
13 testified to that?

14 A. Uh-huh.

15 Q. Okay. So if you saw --

16 A. Yes.

17 Q. -- that, yet why did you still have an
18 accident with the silver car?

19 A. 'Cause they all hit their brakes at the
20 same time.

21 Q. Okay. But you didn't; correct?

22 A. I did. I just didn't have time to stop.
23 That was it.

24 Q. And your brakes were fully functional at
25 the time; right?

1 A. Yes.

2 MR. BARRON: I'll review my notes. I'll
3 pass for now, Craig.

4 EXAMINATION

5 BY MR. DRUMMOND:

6 Q. Before you hit your brakes and before you
7 struck the silver car, how fast -- I think you said
8 you were going 60 or something like that. Is that
9 right? How fast were you going?

10 A. 60? No.

11 Q. How fast were you going before you hit
12 your brakes?

13 A. 25 to 30.

14 Q. You say you were going 25 to 30?

15 A. Yes.

16 Q. Before you hit your brakes?

17 A. Yeah.

18 Q. And you testified that you hit the car
19 and you were going 25 miles an hour?

20 A. 25. I'm saying estimate 25 to 30.

21 That's what I would say.

22 Q. So let me just clarify that.

23 Your testimony that I heard -- and if I'm
24 wrong, tell me, and the record will also, you know,
25 reflect what you said, but I thought you said

1 multiple times at the time you hit the car my client
2 was in, the silver car, you were going 25 miles an
3 hour. Is that correct?

4 A. Yes.

5 Q. Okay. Is that a yes?

6 A. Yes.

7 Q. Okay. What I'm asking is: Before you
8 started braking, how fast were you going?

9 A. Maybe 40.

10 Q. Okay. So when you're following this gold
11 car for at least, I think you said, a football
12 field, you're going 40 miles an hour; correct?

13 A. Yes.

14 Q. And you -- I think you described that
15 he's driving crazy, moving lanes, and I think you
16 even said giving fingers to people?

17 A. Yes.

18 Q. Is that what you said?

19 A. Yes.

20 Q. So you stay behind him and you keep going
21 forward at 40 miles an hour; correct?

22 A. Well, it depends on what it -- well, he
23 was moving at the same time. Like I said, he just
24 started cutting people off, cutting me off,
25 calling -- cutting them off, I mean.

1 Q. But you keep moving forward at 40 miles
2 an hour; is that correct?

3 A. No, just going with the flow. I'm just
4 going with the flow of the other cars, which we all
5 slowed down just the same way. I mean, I was -- I
6 wasn't staring at my mileage while I was driving.
7 You know, I -- I couldn't tell you a specific --

8 Q. You weren't --

9 A. -- speed.

10 Q. You weren't watching your speed, is that
11 what you're telling me, when you just said --

12 A. I was not --

13 Q. -- you weren't watching -- just a second.
14 Let's not talk over each other because it won't make
15 a good record.

16 When you said, "I wasn't watching my
17 mileage," do you mean you weren't watching your
18 speed?

19 A. I wasn't staring at my speedometer while
20 I was driving.

21 Q. So you were not -- okay.

22 You were not looking at your speedometer
23 while you were driving?

24 A. No.

25 Q. Okay.

1 A. When you --

2 Q. So --

3 A. Go ahead.

4 Q. You were going with the flow of
5 traffic --

6 A. Yes.

7 Q. -- behind this crazy gold driver;
8 correct?

9 A. Uh-huh.

10 Q. Is that a yes?

11 A. Yes.

12 Q. You keep going forward; correct?

13 A. Yes.

14 Q. Even though you believe you have this
15 crazy driver going in and out of lanes and giving
16 middle fingers to people, you keep moving forward in
17 this truck; correct?

18 A. Yes.

19 Q. You don't turn off to the side of the
20 road; correct?

21 A. Correct.

22 Q. You don't slow down slower than traffic;
23 correct?

24 A. Correct.

25 Q. You keep going forward; correct?

1 A. Yes.

2 Q. And then when the silver car hits its --
3 hits its brakes --

4 A. Uh-huh.

5 Q. -- you run into it at 25 miles an hour;
6 correct?

7 A. That's what I'm guessing.

8 Q. That's what you're guessing, but --

9 A. Yes.

10 Q. -- I mean, isn't that what happened?
11 You --

12 A. I can't say exactly that was the speed I
13 was going. That's what I'm saying. I'm just trying
14 to go with the flow of the cars that are in front of
15 me.

16 Q. Even though you've got a crazy driver --

17 A. And --

18 Q. -- in front of you?

19 A. And for me driving for a long time, it --
20 it just -- you just feel it and -- of how your speed
21 is going depending on the flow. I mean, for a
22 person that's been driving for a while, it doesn't
23 take a person to be staring at their speedometer --

24 Q. How much --

25 A. -- all the time.

1 Q. -- does the truck that you were
2 driving -- how much does it weigh?

3 A. How much does it weigh? I don't know.

4 Q. How much load can it carry?

5 A. Like -- I don't know.

6 MR. JONES: Asked and answered.

7 A. That's -- I don't know.

8 BY MR. DRUMMOND:

9 Q. And you stated you've loaded the truck
10 before?

11 A. Sometimes.

12 Q. Do you use a load sheet?

13 A. My manager would do that.

14 Q. Okay. So your manager uses a load sheet?

15 A. Yes.

16 Q. Have you ever loaded the truck without
17 the manager?

18 A. Yes.

19 Q. Okay. How do you know how much weight to
20 put on the truck?

21 A. It's not me. They would tell me what I
22 could carry in that truck and what I could not
23 carry.

24 Q. Okay.

25 A. They would always make sure that I was

1 able to carry the weight that I was supposed to or
2 that was for me to carry in that truck.

3 Q. Who was the person who was responsible
4 for that? What's their name?

5 A. Gerald.

6 Q. Gerald?

7 A. Yes.

8 Q. Okay. And so Gerald would tell you that
9 he's not -- that he's going to determine how much
10 weight to put on the truck?

11 A. Yes.

12 Q. And you as the operator don't even know
13 how much weight the truck can have; correct?

14 A. I would check it. I would go with what
15 they tell me.

16 Q. Okay. Well, did they ever tell you how
17 much weight it can have?

18 A. I wasn't going to drive the truck if they
19 didn't tell me. They -- they were the ones all in
20 charge of the weight on my truck. I --

21 Q. What do you mean? What would they tell
22 you? Would they tell you the weight?

23 A. Yes.

24 Q. Okay. So if they would tell you the
25 weight, what do you do with that information?

1 A. I mean, it's common sense. When you're
2 driving a truck, you should be able to tell the
3 weight on a car, on any vehicle that you're driving.
4 You should be.

5 Q. What -- what is common sense, sir?

6 A. I mean, it's not going to -- it's not
7 like I'm going to throw a 5,000-pound plate on the
8 truck knowing that I can't carry that. I mean,
9 that's -- that's not how it works.

10 Q. But you don't know if the weight on the
11 truck is --

12 A. We have --

13 Q. -- 100 pounds -- hang on one second -- or
14 10,000 pounds. You don't know, or do you?

15 A. We have a scale --

16 Q. Uh-huh.

17 A. -- that we use, a paper scale that tells
18 us what weight to carry on the truck. That's what
19 we --

20 Q. But what is the number, sir?

21 A. I don't know that --

22 MR. JONES: Asked and answered.

23 A. -- because it was different --

24 MR. JONES: Asked and answered.

25 A. -- weights, different weights every day,

1 different things. It's not a certain weight that I
2 carry on the truck. It's certain. They could tell
3 me, "Hey, go carry this bottle." I carry that
4 bottle.

5 BY MR. DRUMMOND:

6 Q. How do you know if you have too much
7 weight on the truck?

8 A. You can tell right away.

9 Q. How do you tell? If you don't know the
10 number, how do you tell?

11 A. If you have common sense, you can tell.

12 Q. Okay. You're --

13 A. Driving a forklift, I drive a forklift
14 for a very long time.

15 Q. Uh-huh.

16 A. I know what weight to carry, and it tells
17 you right there. It tells you the specs, and I'm
18 not going to do something they tell me not to do.

19 Q. Okay. I'm confused.

20 You don't know the actual number.

21 Instead you use just your common sense?

22 A. Different weights.

23 MR. JONES: Misstates testimony.

24 A. Different weights.

25 \\\

1 BY MR. DRUMMOND:

2 Q. Okay. So what is the weight?

3 A. Like I said, I go based on my manager
4 telling me what I can carry and what I cannot carry.

5 Q. So the manager, does he tell you the
6 actual weight or does he just tell you, "This is
7 good to go"?

8 A. Yes, yes, he actually would tell the
9 weight.

10 Q. He would actually tell you the weight?

11 A. Yeah.

12 Q. But as you sit here today, you have no
13 idea what the weight is?

14 A. Well, it's been a long time. I don't
15 even care. Be- -- believe me, I don't care.

16 Q. You don't care about the weight?

17 A. I -- I wouldn't care about something
18 where I don't -- a place where I don't work anymore,
19 how much was this weight or how much it didn't
20 weigh.

21 Q. So you don't care about the weight? Is
22 that what you just said?

23 MR. JONES: Misstates testimony.

24 MR. DRUMMOND: I'm not misstating
25 anything, sir. I'm asking the question because I

1 don't think I've gotten a straight answer.

2 BY MR. DRUMMOND:

3 Q. Is your testimony --

4 MR. JONES: Argumentative.

5 BY MR. DRUMMOND:

6 Q. -- about the weight that you don't care?

7 A. I -- I'm saying right now because I don't
8 work at that place I don't know the weights on any
9 of that stuff.

10 Q. Okay. If -- if you don't --

11 A. At the time when I was working, then you
12 know what? Hey, this -- I take a look at my stuff
13 and -- and I tie it down the way it's supposed to be
14 tied down.

15 Q. And this was -- you said tie down the way
16 it's supposed to be tied down; is that correct?

17 A. Yeah, use the proper equipment to fasten
18 whatever equipment I was carrying --

19 Q. When did you receive --

20 A. -- to deliver.

21 Q. When did you receive this training?

22 A. Every -- every Wednesday we had a -- a
23 meeting on that.

24 Q. Every Wednesday?

25 A. Every Wednesdays, yep.

1 Q. You had a meeting on what?

2 A. Every -- almost every week.

3 Q. On what?

4 A. On safety.

5 Q. On safety?

6 A. On how to tie down, how to carry our
7 loads, what to carry, what I couldn't carry.

8 Q. Okay. But you just don't recall today;
9 is that what you're saying?

10 A. Yeah, I don't recall because, I mean, I
11 don't work there. Why would I think about or stress
12 out over a company that I don't work for? How -- am
13 I supposed to carry 30,000 on this one or not? I
14 wouldn't worry about it because I don't work there
15 no more.

16 Q. Okay. And when did you --

17 A. Why would I want to remember stuff
18 that -- in a place that I don't work for?

19 Q. And when did you --

20 A. If I work at that place, then I --

21 MR. JONES: Jaime, there's no question.

22 MR. DRUMMOND: No, he can just -- let him
23 keep going.

24 BY MR. DRUMMOND:

25 Q. Go ahead, sir. Just keep talking.

1 MR. JONES: No. No.

2 MR. DRUMMOND: Sir, you don't get to tell
3 him to stop. So thank you very much. That's
4 coaching the witness. Please don't do that anymore.
5 Please --

6 MR. JONES: Ask a question.

7 MR. DRUMMOND: -- quit shaking your head
8 as well.

9 MR. JONES: Ask a question.

10 MR. DRUMMOND: Please quit shaking your
11 head and nodding it when he's talking.

12 MR. JONES: You're asking --

13 MR. DRUMMOND: You've been doing that the
14 whole time.

15 THE REPORTER: One at a time.

16 BY MR. DRUMMOND:

17 Q. Sir?

18 A. Yes.

19 Q. Do you have anything else to add in
20 response --

21 A. No --

22 Q. -- to that question?

23 A. -- that's it.

24 Q. Okay. When did you quit working there?

25 A. I don't remember.

1 Q. You don't remember when you quit working
2 there?

3 A. No, I don't, sir.

4 Q. Do you know the month and the year?

5 A. What are we talking, when -- like when I
6 quit?

7 Q. When you stopped working there at Trench
8 Shoring --

9 MR. JONES: Your best estimate.

10 BY MR. DRUMMOND:

11 Q. -- when was it?

12 A. I want to say about a year ago.

13 Q. About a year ago?

14 A. Yes, sir.

15 Q. So between a year and now --

16 A. Uh-huh.

17 Q. -- your memory about weights --

18 A. Uh-huh.

19 Q. -- you've lost all that memory?

20 A. Correct.

21 Q. Okay. And I didn't quite understand your
22 testimony as far as if you quit or were you
23 terminated. Which was it?

24 A. I was terminated.

25 Q. Okay. And I thought you said it was

1 because you had a disagreement with your new
2 manager. Is that correct?

3 A. Yes, it is.

4 Q. And what was that disagreement?

5 A. We didn't like each other, I guess.

6 Q. Okay. So your representation today under
7 oath is that you were terminated because you and
8 your manager don't like each other?

9 A. Well, as far -- I don't. I don't know
10 about him. I didn't --

11 Q. Did they tell you what --

12 A. I didn't -- I didn't like him, first of
13 all, from the beginning.

14 Q. So --

15 A. And when I -- when I don't like somebody,
16 I just move on.

17 Q. But didn't they have you move on, meaning
18 you didn't choose to move on; they chose to move you
19 on?

20 A. Not really 'cause I don't sit around
21 waiting for a company. You know, hey, you're firing
22 me or you're -- whatever you want to call it. I'm
23 not going to sit at home and say, "Oh, well, let's
24 see if they call me back." No. I move on. You
25 know, I don't --

1 Q. Okay.

2 A. I'm not a type of person that sits in one
3 place worrying about if they're going to hire me or
4 not or if I'm coming back to the company or not. I
5 don't worry about anything like that.

6 Q. So you asked them to fire you?

7 A. I didn't ask them.

8 Q. Okay.

9 A. We just didn't -- we weren't getting
10 along, and that's all I can tell you.

11 Q. Well, here's what I'm just trying to
12 understand --

13 A. Uh-huh.

14 Q. -- and a jury will be able to judge your
15 answer here; so I'm just trying to understand. My
16 understanding is that you were terminated, yet
17 you're saying -- when I'm asking you the specific
18 reason, you're saying, "Well, I just decided to move
19 along." But in fact, they terminated you; correct?

20 A. Yes.

21 Q. And you're not giving me the reason.

22 A. I told you the reason.

23 MR. JONES: Asked and answered.

24 BY MR. DRUMMOND:

25 Q. The reason was 'cause you didn't like

1 your boss?

2 A. I didn't like my boss.

3 Q. That's the reason?

4 A. My reason. I don't know about him, but
5 my reason is I didn't like --

6 Q. Did he --

7 A. -- my boss.

8 Q. So you don't -- you don't have any idea
9 what his reason was?

10 A. I didn't even care.

11 Q. They never told you?

12 A. (Shrugging shoulders.)

13 MR. JONES: Do you recall?

14 BY MR. DRUMMOND:

15 Q. Is that correct? They never told you why
16 you were being terminated?

17 A. Because he wanted me to work longer. I
18 didn't want to stay.

19 Q. Okay. So he wanted you to work longer?

20 A. Yeah.

21 Q. You didn't want to stay, and that's why
22 you were terminated?

23 A. Yeah.

24 Q. Is that correct, sir?

25 A. Yes, sir.

1 Q. Okay. Ever served in the Armed Forces?

2 A. Nope.

3 Q. What number did you call 3-1-1 from?

4 A. My -- my phone number.

5 Q. What's that number?

6 A. My phone.

7 Q. What's that number?

8 A. 702-205-7029.

9 Q. And your testimony, if I'm understanding
10 it -- I want to make sure that it's clear -- is when
11 you called 3-1-1, you said to them no one was
12 injured; is that your testimony?

13 A. Because that's what she asked, if anybody
14 was hurt, and I said -- I asked them, each one of
15 them, in Spanish. They said no, they were fine.

16 Q. And that -- is that your testimony? Is
17 that what you --

18 A. Yes, sir.

19 Q. -- told 3-1-1?

20 A. Yes, sir.

21 Q. Okay. Did you have a work phone on you?

22 A. Yes, I did.

23 Q. Okay. Do you know what that number was?

24 A. No, I don't.

25 Q. Was there a GPS system in the vehicle?

1 A. Not at that point. At that time, no.

2 Q. Was there a GPS on your work phone?

3 A. A GPS on my work phone?

4 Q. Correct.

5 A. Like you mean Navigator?

6 Q. Correct.

7 A. Yes.

8 Q. Is that what you used to go from point A
9 to point B as part of your job?

10 A. Not -- not at that -- not in that truck,
11 no.

12 Q. How did you know how to go from point A
13 to point B?

14 A. Because most of the places that I went to
15 were usually the same places that I'd been to
16 before.

17 Q. Okay. So was there any sort of vehicle
18 tracking system, to your knowledge, on that vehicle?

19 A. I've heard they had a GPS on it.

20 Q. Say again.

21 A. They had a GPS on it.

22 Q. On the vehicle?

23 A. Yes.

24 Q. Okay.

25 A. That would tell them when I would stop

1 the truck or start or whatever.

2 Q. So your knowledge is the vehicle itself
3 had a GPS?

4 A. Yes.

5 Q. Okay. And that would track where you
6 were going and where -- when you were --

7 A. Yes.

8 Q. -- at certain places, things of that
9 nature?

10 A. Correct.

11 Q. And just to be clear, this is the vehicle
12 you were driving on July 12th, 2016; correct?

13 A. Yes.

14 Q. Okay. Now, I want to understand
15 something just so that I'm clear.

16 Other plaintiff's counsel has asked you
17 if you thought that the silver vehicle did anything
18 wrong, and I don't recall what your answer was. Are
19 you alleging today that on July 12th, 2016, the
20 silver vehicle did something wrong?

21 A. Like I said, I can't tell you that
22 because I don't know --

23 Q. Okay.

24 A. -- what they were thinking.

25 Q. Then let me ask you this. Okay. I'm not

1 asking you what they were thinking. I'm asking your
2 perception.

3 At trial in this case, are you going to
4 tell ladies and gentlemen of the jury that the
5 silver car did anything wrong?

6 A. What if I can't tell you? Like I said, I
7 don't know.

8 Q. Okay. Because here's the deal: I'm
9 asking this question straight up because if you are
10 going to blame them, I want to know what that blame
11 is so I can ask you about it. But if you're not, I
12 don't want to be surprised at trial when you now
13 have some great story about what the silver car did
14 that you never said here today. So I'll ask it just
15 so we're clear.

16 Do you plan to testify at trial that the
17 silver car did something wrong on July 12th, 2016?

18 A. I said I don't know.

19 Q. Okay. Now, you --

20 MR. BARRON: Do you want to clarify that?
21 He doesn't know what he's going to say or --

22 MR. DRUMMOND: No.

23 BY MR. DRUMMOND:

24 Q. You're saying today you just don't know;
25 right?

1 A. I don't know. I didn't say I'm going to
2 blame anybody --

3 Q. We have your testimony.

4 A. -- or anything, I mean.

5 THE REPORTER: Wait, wait. Say what?

6 Sorry.

7 BY MR. DRUMMOND:

8 Q. Go ahead and say it, sir.

9 A. I'm not saying I'm blaming anybody. I'm
10 just saying I don't know at the time. That's all.

11 Q. Okay. Now, just so we're clear on this
12 whiplash, are you -- am I understanding this correct
13 that no one told you they were injured, but because
14 of the severity of the collision, you assumed the
15 other passengers suffered whiplash?

16 A. That's just, like I said, I assume
17 because that's what I hear from every accident that
18 I hear about.

19 Q. Right. I --

20 A. I don't mean me personally, but from
21 other people --

22 Q. You've been --

23 A. -- that's the first thing they say.

24 Q. You've been involved in a lot of
25 accidents; right?

1 A. I've been involved?

2 Q. Yeah.

3 A. No.

4 Q. Well, you were involved in one two weeks
5 before this; right?

6 A. Okay.

7 Q. Is that right?

8 A. That doesn't mean a lot; right?

9 Q. Hang on. Is that right, sir?

10 A. Yes.

11 Q. But I'm only going to ask you about this
12 one; so I'm not --

13 A. That's correct.

14 Q. -- asking about other accidents or what
15 you Googled as far as whiplash. I'm asking about
16 this case because you're the person who wrote
17 whiplash; correct?

18 A. Yes, I did.

19 Q. My clients didn't write whiplash to you;
20 correct?

21 A. Correct.

22 Q. My clients weren't there when you filled
23 out this form; correct?

24 A. Correct.

25 Q. And you're filling out this form on the

1 day of the collision itself; correct?

2 A. Yes.

3 Q. And you thought it was important to add
4 all the facts, all the information that would be
5 important for your boss to know; correct?

6 A. As far as I -- that I wrote, that's all I
7 know.

8 Q. Okay.

9 A. I mean, I cannot say that I -- I just
10 said like I assume because I've heard, not because
11 it happened or they said to me, "Hey, we got
12 whiplash." If that would have been the case, then I
13 would have stayed there and say, "You know what?"
14 That 3-1-1, I would have said, "Hey, you know what?
15 We need to get an ambulance out here to take care of
16 these guys."

17 Q. We're going to try and get that call; so
18 don't worry about that. We're not worried about
19 that.

20 What I'm -- what I'm trying to find out,
21 though, is you decided to put whiplash because you
22 assume, based upon some other cases, that my client
23 must have also suffered whiplash in this? Is that
24 what you're saying?

25 A. I just wrote it down, like I said.

1 Q. You just wrote it down?

2 A. Yeah.

3 Q. No one told you that?

4 A. No one told me.

5 Q. Okay. How far do you need to stay behind
6 the vehicle in front of you in order to safely stop?

7 MR. JONES: Calls for expert testimony,
8 incomplete hypothetical.

9 A. Well, it depends on the speed that you're
10 going.

11 BY MR. DRUMMOND:

12 Q. Let's say you're going 40 miles an hour.

13 A. Four cars.

14 Q. You need to be four car lengths behind?

15 A. I believe so.

16 Q. What about 30 miles an hour?

17 A. Three cars.

18 Q. How far were you behind the silver car
19 when it began to brake?

20 A. I don't know to be honest.

21 Q. So you could have been --

22 A. I don't know.

23 Q. -- much closer than three cars; you just
24 don't know. Correct?

25 A. Correct.

1 Q. Is it your testimony that you did not
2 have a load at the time of the collision?

3 A. Yes.

4 Q. The flatbed itself was empty?

5 A. Correct.

6 Q. And where were you coming from?

7 A. From the delivery.

8 Q. Where was that?

9 A. I don't --

10 MR. JONES: Asked and answered.

11 A. -- remember that.

12 MR. JONES: Asked and answered.

13 BY MR. DRUMMOND:

14 Q. Say that answer.

15 A. That I don't know.

16 Q. You don't remember?

17 A. I don't remember that.

18 Q. I think when the -- when the testimony
19 started, other plaintiff's counsel had asked you
20 about your knowledge of the earlier depositions, and
21 I -- I made a note here that you said you thought
22 the case was over or something like that. Is that
23 what you said?

24 A. I didn't say the case was over. I just
25 didn't know any knowledge -- I didn't have any

1 recollection of the -- of the incident at that time.

2 Q. Okay. You were notified of an earlier
3 deposition, though; right?

4 A. Like I just -- maybe a week ago.

5 Q. Okay. So you were never notified, let's
6 say, last year of any deposition?

7 A. No.

8 Q. Okay. No one ever called you; correct?

9 A. No.

10 Q. I mean, do you still have the
11 702-205-7029 number?

12 A. Yes.

13 Q. So you would have had the same number
14 last year; correct?

15 A. Yeah.

16 Q. And your testimony today is that other
17 than last week, no one has ever called you about
18 appearing for a deposition? Is that your testimony?

19 A. No. Deposition, no.

20 Q. Okay. No one ever told you, "You need to
21 show up, and the other side wants to ask you
22 questions"; correct?

23 A. Correct.

24 Q. No one; correct?

25 A. No.

1 Q. That's correct?

2 A. Correct.

3 Q. No one ever called you and said, "Hey,
4 there's written questions you need to respond to for
5 the other side in this case"; correct?

6 A. Well, when I was in 6300 Black Mesa
7 Court, I think somebody was trying to reach me at
8 that time.

9 Q. When was that?

10 A. I don't know exactly, but it's been --

11 Q. Nobody ever called you?

12 A. -- a while back.

13 Q. Nobody ever called the same number --

14 A. To be honest, I would never call --
15 answer the -- the phone call because I get so many
16 scam calls every day.

17 Q. Okay.

18 A. Every day. It's not a one thing. So I
19 just stopped answering. Numbers that I don't
20 recognize I do not answer.

21 Q. Okay. Do you listen to your voice mails?

22 A. No.

23 Q. You don't listen --

24 A. No.

25 Q. -- to your voice mails either?

1 Okay. So --

2 A. I'm not a phone person. I don't even --
3 I just delete everything that's --

4 Q. Well, and that's okay. I'm not knocking
5 you for not answering the phone. What I'm just
6 trying to make sure is that I can represent to the
7 judge that your testimony is you don't recall
8 anybody ever calling you, to your knowledge, and
9 saying before last week --

10 A. Uh-huh.

11 Q. -- that there was a deposition. Correct?

12 A. Well, to be honest, I didn't -- never
13 heard of a deposition. I never went through this
14 type of situation. So a deposition, I didn't even
15 know I was going to go through all this that I'm
16 going in right now, you know.

17 Q. And again, I'm not asking you to, you
18 know, define this legal process. What I'm just
19 making sure is that your testimony is that no one
20 ever called you and said, "Hey, there's a legal
21 proceeding, and there may be a hearing or a
22 deposition," whatever term they used --

23 A. Uh-huh.

24 Q. -- before last week; is that correct?

25 A. Yeah.

1 MR. JONES: Misstates testimony. He just
2 said he doesn't answer his phone and --

3 MR. DRUMMOND: Hang on. That's coaching
4 him. That's coaching him. You --

5 MR. JONES: I'm repeating --

6 MR. DRUMMOND: -- can say --

7 MR. JONES: -- his testimony.

8 THE REPORTER: One at a time.

9 MR. DRUMMOND: Misstates testimony is
10 your objection.

11 MR. JONES: Yeah.

12 MR. DRUMMOND: Anything else is coaching.

13 A. Like I said, I -- I just ignore
14 everything to be honest.

15 BY MR. DRUMMOND:

16 Q. So you could have been called and you
17 just ignored it?

18 A. Correct.

19 Q. Okay. You were served with this lawsuit,
20 weren't you?

21 A. Not that I know of.

22 Q. You --

23 A. I didn't get nothing. Like I say, I
24 wasn't staying at that address.

25 Q. When did you move?

1 A. About three months ago.

2 Q. Three months ago?

3 A. Yep.

4 Q. Before that, were you at the same
5 address?

6 A. No.

7 Q. Okay. So you moved three months ago, and
8 before that you were somewhere else?

9 A. Yes.

10 Q. And how long had you been at the other
11 place?

12 A. For a while.

13 Q. What's "a while"?

14 A. Maybe six months or so.

15 Q. You don't have a CDL; is that correct?

16 A. Yes.

17 Q. What's your training in medicine?

18 A. Medicine?

19 Q. Medicine.

20 Are you a doctor?

21 A. I wouldn't be here or working for Trench
22 Shoring if I would have been a doctor.

23 Q. Okay. Are you a nurse?

24 A. None of those.

25 Q. Do you have any medical training?

1 A. No.

2 Q. You never did a medical assessment of any
3 of the people in the silver vehicle; correct?

4 A. Correct.

5 Q. You testified today that you're not being
6 paid to be here today; correct?

7 A. Correct.

8 Q. You've not been paid to be somewhere in
9 the last week related to this case; is that correct?

10 A. Correct.

11 Q. And your testimony today is -- and I
12 don't get to know what you talked to your attorney
13 about, but that you met with him yesterday for an
14 hour?

15 A. Yes.

16 Q. And then you were 30 minutes late this
17 morning?

18 A. Well, 'cause I'm used to going to that
19 one court. I didn't know anything about this place.

20 Q. I'm just clarifying you were 30 minutes
21 late this morning. Correct?

22 A. Yes.

23 Q. Even though you met with your lawyer
24 yesterday for an hour; correct?

25 A. Yeah.

1 Q. And you're a hundred percent sure the
2 vehicle you were driving had a GPS that allowed them
3 to watch where you were at at certain points in
4 time?

5 A. Yes.

6 Q. Okay. And when you would get a load, for
7 example, a load sheet where you would be having
8 something on your truck and telling you where to go,
9 was that in written form or would that come across
10 in an email or a text?

11 A. They're all written.

12 Q. Say again.

13 A. They're all written forms.

14 Q. All written forms?

15 A. Yeah.

16 Q. And I think you said you've never been
17 convicted of a felony. Is that right?

18 A. Yes.

19 Q. You've never been convicted of a crime
20 involving dishonesty?

21 A. Correct.

22 MR. DRUMMOND: I don't have any further
23 questions, sir.

24 MR. BARRON: Do you have any?

25 MR. JONES: No.

1 EXAMINATION

2 BY MR. BARRON:

3 Q. Real quick, how did you find out about
4 today -- about today's deposition? Did they contact
5 you via phone or --

6 A. Kengo. Kengo went to my address.

7 Q. Went to your address?

8 A. Yeah.

9 Q. Okay. Was Kengo present when you met
10 with your attorney yesterday?

11 A. No.

12 Q. Okay. When Kengo went to your address,
13 you spoke to him?

14 A. Yeah.

15 Q. Okay. Do you have a recollection what
16 you talked about?

17 A. Just this. He just gave me this.

18 Q. Okay. Did he tell you I took his
19 deposition?

20 A. No.

21 Q. Okay. Did he tell you anything about the
22 case at all aside from --

23 A. No, sir. This is all he handed me. That
24 was it.

25 Q. Okay. In terms of the load -- and I

1 think we've hit on it enough, but I just want to
2 clarify -- so you don't know independently as you
3 sit here today one way or the other how much you
4 were loading onto this flatbed; correct?

5 A. Correct.

6 Q. Do you know the maximum amount you're
7 allowed to load on the flatbed based upon your
8 experience with Trench?

9 A. Not at this point. Like I said, I don't
10 think about that job anymore. I'm not there. I
11 don't --

12 Q. Okay.

13 A. If I -- when I worked there, it was
14 different because, you know, that was my
15 responsibility.

16 Q. Okay. But you do recall every Wednesday
17 you would have a meeting --

18 A. Yes.

19 Q. -- on safety?

20 A. We would have a meeting every Wednesday.

21 Q. Okay.

22 A. 5:00 in the morning.

23 Q. At 5:00 in the morning?

24 A. 5:00 in the morning.

25 Q. Okay. How long would those meetings

1 last?

2 A. About an hour to an hour and a half
3 depending on what the situation was.

4 Q. Okay. And what would be discussed at the
5 meetings?

6 A. Everything that happened like in other
7 incidents in Cali or someone fell off the truck
8 for -- or stuff like that or, you know, just how to
9 properly tie down and use every -- every cautions
10 that we could use.

11 Q. Is it your best testimony that those
12 meetings had to do with loading the vehicle?

13 A. Most of it, yes, and around the -- around
14 the place making sure that everything was, you know,
15 like organized, that they didn't have stuff all over
16 the place where someone could trip or stuff like
17 that.

18 Q. Were you required to sign any document as
19 a -- after any of these meetings?

20 A. Yes, we did.

21 Q. You signed documents?

22 A. Yeah.

23 Q. What'd you sign?

24 A. Well, a paperwork saying that we attended
25 the -- the meeting.

1 Q. Okay. Did you get a copy of that?

2 A. No. They -- we would just sign two
3 papers, and they would keep them.

4 Q. Okay. Do you know what the company
5 policy is in terms of keeping that paperwork?

6 A. No, I don't.

7 Q. Okay. I asked you earlier in your
8 deposition if you had any training regarding safety,
9 driver fatigue, anything of that nature in regards
10 to driving the flatbed truck, and you said no. Do
11 you recall that?

12 A. I'm sorry? What's the question again?

13 (The following record was
14 read by the court reporter:

15 "Question: Okay. I asked
16 you earlier in your
17 deposition if you had any
18 training regarding safety,
19 driver fatigue, anything of
20 that nature in regards to
21 driving the flatbed truck,
22 and you said no. Do you
23 recall that?")

24 A. Yes.

25 \\\

1 BY MR. BARRON:

2 Q. Okay. So did you have -- so is that your
3 testimony; you had no training?

4 A. Well, besides those meetings that we
5 would have on -- on Wednesdays, that was it.

6 Q. Okay. And who attended these meetings?

7 A. Everybody.

8 Q. Who's "everybody"?

9 A. They're mandatory. All the employees and
10 the person in charge.

11 Q. Okay. Who was the person in charge at
12 the time?

13 A. At that time, Kengo.

14 Q. All right. Is it your testimony that
15 Kengo trained you personally?

16 A. Yes.

17 Q. Okay. Is it only Kengo that trained you
18 personally?

19 A. And there was some other lady. I don't
20 remember her name 'cause she was from California.
21 She would come over and give us some training also.

22 Q. Okay. Every Wednesday?

23 A. Every Wednesday.

24 Q. Did Kengo live here in town at the --
25 back in July of 2016? Do you know?

1 A. I don't know to be honest.

2 Q. How much overtime did you tend to work in
3 2016?

4 A. I don't remember.

5 Q. Just one sec. I'm just checking
6 something.

7 And I just want to clarify what
8 Mr. Drummond was saying. You don't, to your
9 knowledge, blame my clients for this accident;
10 correct? You don't cast any blame on them; right?

11 A. Like I said, I don't know. I -- I can't
12 blame them or anybody. I mean, I'm not --

13 Q. Well, that's what I just asked you.

14 A. -- saying I blame anybody, I mean.

15 Q. You can't blame them; so you do not blame
16 them. Correct?

17 A. Correct.

18 Q. Correct?

19 A. Correct.

20 Q. Okay.

21 MR. BARRON: Do you have anything?

22 EXAMINATION

23 BY MR. DRUMMOND:

24 Q. Do you take responsibility for hitting
25 the silver car?

1 A. No. Like I said, no. I -- like I said,
2 I know that the accident was caused because of the
3 other guy, I mean, not because of me.

4 Q. But your vehicle drove into the silver
5 vehicle?

6 A. Well, of course.

7 Q. Correct?

8 A. That's -- yes.

9 Q. And the silver vehicle was not backing up
10 at the time you hit it; correct?

11 A. Correct.

12 Q. And just so we're clear, you believe
13 you've done nothing wrong; right?

14 A. I believe so.

15 Q. Okay. And that's what you're going to
16 tell the jury?

17 A. Yes.

18 MR. DRUMMOND: I don't have any further
19 questions, sir. Thank you.

20 THE WITNESS: Thank you.

21 THE VIDEOGRAPHER: This concludes the
22 digital videotaped deposition of Jaime Roberto
23 Salais, consisting of one media.

24 The time is now 11:34 a.m. We are off
25 the record.

1 (Deposition recessed at
2 11:34 a.m.)
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1	CERTIFICATE OF WITNESS			
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19	* * * * *			
20	I, JAIME ROBERTO SALAIS, witness herein, do			
21	hereby certify and declare under penalty of perjury			
22	the within and foregoing transcription to be my			
23	deposition in said action; that I have read,			
24	corrected and do hereby affix my signature to said			
25	deposition.			
	<div style="border-top: 1px solid black; width: 100%;"></div> JAIME ROBERTO SALAIS			<div style="border-top: 1px solid black; width: 100%;"></div> Date
	Witness			

1 REPORTER'S CERTIFICATE

2 STATE OF NEVADA)
3) ss
4 COUNTY OF CLARK)

5 I, William C. LaBorde, a duly certified court
6 reporter licensed in and for the State of Nevada, do
hereby certify:

7 That I reported the taking of the deposition
8 of the witness, JAIME ROBERTO SALAIS, at the time
and place aforesaid;

9 That prior to being examined, the witness was
10 by me duly sworn to testify to the truth, the whole
truth, and nothing but the truth;

11 That I thereafter transcribed my shorthand
12 notes into typewriting and that the typewritten
13 transcript of said deposition is a complete, true
and accurate record of testimony provided by the
witness at said time to the best of my ability.

14 I further certify (1) that I am not a
15 relative, employee or independent contractor of
16 counsel of any of the parties; nor a relative,
17 employee or independent contractor of the parties
18 involved in said action; nor a person financially
19 interested in the action; nor do I have any other
relationship with any of the parties or with counsel
of any of the parties involved in the action that
may reasonably cause my impartiality to be
questioned; and (2) that transcript review pursuant
to NRCF 30(e) was not requested.

20 IN WITNESS WHEREOF, I have hereunto set my
21 hand in the County of Clark, State of Nevada, this
19th day of January 2020.

22
23 _____
24 William C. LaBorde, CCR 673, RPR, CRR
25

WORD INDEX**< 1 >**

1 3:15, 16 21:20, 23 29:10, 12, 16 31:6 143:14

10 67:1

10,000 108:14

10:30 76:3

10:44 76:8

100 2:14 108:13

101 2:9 3:6

11 67:1 92:20

11:34 140:24

141:2

11th 66:22

12th 18:25 81:18

120:12, 19 121:17

134 3:7

139 3:8

17 1:17

17th 4:4

19th 143:21

< 2 >

2 3:16 21:21, 23

22:4, 8 33:3

143:18

20 83:5, 8 85:5

2015 60:3

2016 18:20, 25

19:9 26:4 48:9

55:9 60:9, 12

63:19 65:25

81:19 120:12, 19

121:17 138:25

139:3

2018 71:12, 14

2020 1:17 4:4

143:21

21 3:15, 16

2251 2:13

24 19:18

25 32:17, 24, 25

83:5, 8, 9, 10 88:18

101:13, 14, 19, 20,

20 102:2 105:5

28 1:4

< 3 >

3 3:16 60:24

61:4, 9

3:00 19:10

30 23:16, 17 24:2

58:19, 21 59:1, 7,

13, 20 61:20, 24

86:2 101:13, 14, 20

125:16 132:16, 20

143:19

30,000 112:13

3-1-1 25:8, 10

118:3, 11, 19

124:14

38489 1:25

< 4 >

4 3:16 30:3

76:18, 19 84:10, 12

40 25:7 32:10

34:9, 15 86:2, 6

102:9, 12, 21 103:1

125:12

400 1:20, 20 2:4, 5

45 32:10, 11

< 5 >

5 3:5

5,000-pound 108:7

5:00 19:5, 10, 10,

10, 10 67:2, 5

135:22, 23, 24

50 33:8, 9 62:20

< 6 >

60 62:20 101:8, 10

61 3:16

6300 128:6

673 1:24 143:23

< 7 >

702-205-7029

118:8 127:11

7-12-16 3:15, 16

76 3:16

< 8 >

8:00 19:6

810 2:9

89101 2:5, 10

< 9 >

9:00 67:3, 5, 6, 8

9:30 1:19 4:5

75:21, 25

90 70:3 73:25, 25

95825 2:14

< A >

a.m 1:19 4:5

76:4, 8 140:24

141:2

A-18-772273-C 1:2

ability 14:15

143:13

able 25:6 33:17,

23 34:21 35:5

37:22 70:5 90:7

93:12, 24 95:8

96:20 98:9 99:12,

20, 21 107:1 108:2

116:14

accelerating 92:1

Accident 3:15

17:18 18:6, 15, 25

23:7, 14 24:3

25:22 27:23

29:22 30:8, 14, 17

31:3, 23 34:15

35:1 36:9 38:1, 7,

8, 25 40:18, 20

42:2, 14, 16 43:12,

16, 18, 20, 24 44:8,

12 48:24 50:14

51:1, 4, 8 52:21

53:1, 5, 13, 22

54:12 56:4, 8, 14,

24 57:10, 13, 16, 23

58:4, 23 59:6, 10,

20, 23 60:6, 11

61:17, 21, 25 62:1,

2, 6 63:19 64:6, 7

66:21 69:22 70:4

76:22 78:18 79:2,

12, 22 81:15 84:21

89:5 91:19 97:4

100:18 122:17

139:9 140:2

accidents 51:16, 18

53:16 122:25

123:14

accurate 38:24

92:18 143:12

Acosta 4:16

act 85:16

acting 41:10, 13,

16, 18 78:1

action 142:21

143:16, 16, 17

actual 60:15

67:15 109:20

110:6

add 28:6 113:19

124:3

adding 67:19

address 130:24

131:5 134:6, 7, 12

adjust 41:19

administer 4:13

admonishments

19:12

affairs 8:1

affix 142:22

afford 42:9, 12

aforsaid 143:8

ago 13:13 114:12,

13 127:4 131:1, 2,

7

ahead 20:1 21:19

24:1 27:12, 14, 20

29:11 40:24

60:23 62:9 74:12

84:11, 15 89:23

92:22 97:17

104:3 112:25

122:8

ahold 11:16

air 69:11

aka 1:8

al 4:11, 11

allegations 12:18

alleging 120:19

allowed 59:7, 13

62:3 133:2 135:7

alter 82:6

ambulance 25:9

49:5 124:15

amount 135:6

analogy 15:6

answer 10:7

12:15, 16, 22 14:1,

14 20:4, 13, 13

40:25 41:2 44:14,
17 45:21, 21 49:14
111:1 116:15
120:18 126:14
128:15, 20 130:2
answer, 12:15
answered 94:1
99:22 106:6
108:22, 24 116:23
126:10, 12
answering 128:19
129:5
anybody 25:11, 11
28:13 36:21
118:13 122:2, 9
129:8 139:12, 14
anymore 98:16
110:18 113:4
135:10
anytime 15:22
53:12
anyway 89:13
apologize 8:12
APPEARANCES
2:1 4:13
appeared 70:14
appearing 127:18
application 74:20,
21 75:3
applied 97:18
apply 47:14 96:9
applying 83:20
appreciate 21:21
86:17
appreciated 96:6
approximately 4:5
23:14 34:8 67:1
80:9
Araba 16:22
argumentative
40:23 89:19 111:4
Armed 118:1
aside 26:24 46:21
47:15, 18 70:22
71:1, 11 77:5
134:22
asked 10:8 15:3,
10 25:8, 10, 10
26:21 28:14
31:18 50:24
52:12, 15 74:16

77:10 94:1 99:17,
22 106:6 108:22,
24 116:6, 23
118:13, 14 120:16
126:10, 12, 19
137:7, 15 139:13
asking 12:7 21:7
37:12 77:5 86:10
102:7 110:25
113:12 116:17
121:1, 1, 9 123:14,
15 129:17
assessment 132:2
assume 10:5
122:16 124:10, 22
assumed 122:14
attend 10:24 15:25
attended 136:24
138:6
attention 91:18
attorney 4:15
11:16 12:2, 5
15:4 16:22, 22
20:8, 8 44:19
70:16, 22 71:2
79:20 98:13
132:12 134:10
available 16:9
avoid 42:14 90:7,
9, 16 93:12, 24
96:20 99:12
AVOIDED 43:20,
24 44:9, 12
aware 10:16 15:18
awareness 48:17

< B >
back 17:13 18:20
19:8 23:12, 13
26:3 33:1 54:3, 4,
6, 12 55:9 56:1, 11,
15 57:22 63:19
64:5, 7, 11, 13 65:5,
24 76:8 77:25
84:19 115:24
116:4 128:12
138:25
background 75:5
backing 140:9
bad 58:12
barriers 62:14

BARRON 2:1 3:5,
7 4:15, 15 5:3, 19,
21, 24 6:3, 6, 10
8:6, 8, 11, 16, 20, 23
9:20, 21 11:22, 23
21:9, 11, 20 22:1,
10 25:1, 14 29:3, 6,
13, 18 31:2 37:12,
14 40:9, 10 41:1
44:18 45:16
46:16 49:13, 17, 19,
21, 24 50:1, 4, 8, 12
53:8 54:20 60:23
61:1, 6, 8 63:1
75:17, 19, 23 76:1,
10, 17, 21 80:23
84:14 86:12, 15, 17,
19 87:23 89:21, 22
92:21 93:7 94:5
99:18, 19, 24 101:2
121:20 133:24
134:2 138:1
139:21
based 5:17 53:13
83:18 92:10
110:3 124:22
135:7
basically 45:8 64:3
Bates 22:14 29:23
31:6
began 125:19
beginning 115:13
behalf 4:7 15:13
believe 15:9 19:6
26:22 27:11
42:25 51:15
58:19 72:22
78:24 104:14
110:15 125:15
140:12, 14
bent 58:8
BESSU 1:4 2:7
4:18
best 14:14, 22, 23
32:18, 23 33:7
34:24 38:15
52:19 63:8 78:25
79:21 83:5 86:1
88:19 114:9
136:11 143:13

better 38:5, 6
70:25
big 16:3, 7 68:2
bigger 53:11
bills 7:14
biomech 84:21
bit 6:25 9:19
21:14 73:12
Black 128:6
blame 121:10, 10
122:2 139:9, 10, 12,
14, 15, 15
blaming 122:9
blank 43:19 44:3
boss 117:1, 2, 7
124:5
bottle 109:3, 4
Boulevard 2:9, 13
24:9
box 33:19 45:14
56:9, 10, 12
brake 42:14 78:10
80:7, 10, 13 82:9,
20 125:19
braked 83:14
brakes 25:2, 3, 4, 5
34:19, 20 35:12, 13,
14 37:20, 21 42:21,
21, 21 69:12, 13, 17
80:11 83:20 84:1
87:7, 8 88:4
90:12, 13, 21 91:1,
2, 11 92:2, 3 94:8,
8, 9, 11 95:4, 6, 7, 8,
11, 14, 20 96:2, 5, 9
97:1, 3, 8, 14, 18
98:2 100:4, 10, 10,
19, 24 101:6, 12, 16
105:3
braking 69:24
70:2 83:12 85:7
96:15, 19 99:3
102:8
break 70:8 75:18
Breathing 23:21
bring 74:16
broke 55:7
broken 55:6
brought 74:12
bud 21:22

Budweiser 73:19 build 68:1 Building 46:9, 11 bumper 84:18 business 65:18 busy 68:7 81:11, 22 82:2 < C > cable 7:15 Cali 136:7 California 2:14 27:16 138:20 call 7:13, 14 18:9 25:8 28:15 65:1 73:21 81:19 115:22, 24 118:3 124:17 128:14, 15 called 12:8 26:21 28:12 50:9 118:11 127:8, 17 128:3, 11, 13 129:20 130:16 calling 102:25 129:8 calls 40:22 44:13, 20 53:7 125:7 128:16 calm 47:12 car 24:9, 11, 12, 14, 19, 21 25:6, 7, 8, 17, 18 31:20 33:3 34:25 35:3, 13, 16, 18 36:1, 2, 3, 8, 8, 12, 18, 18, 25 37:7 41:14, 18 42:18, 23, 24 43:12 45:9 77:16, 17, 17, 19, 20, 23 80:3 82:11, 14, 15 84:7 85:2, 9, 11, 11 87:19, 24, 25 88:1, 3, 7, 8, 9, 18, 19, 23 89:4 90:8, 17 93:5, 10, 13, 16, 21, 25 94:8, 11, 24 95:14, 25 96:14, 16, 18, 20, 22, 25 97:3, 8, 10, 13, 17, 17, 20, 22, 23 98:7, 10, 12, 19, 20, 25 99:2, 9, 13, 14, 14, 21 100:3,	11, 12, 18 101:7, 18 102:1, 2, 11 105:2 108:3 121:5, 13, 17 125:14, 18 139:25 care 13:6, 20 110:15, 15, 16, 17, 21 111:6 117:10 124:15 Carey 24:11 79:11, 14, 15, 17, 22 carried 64:25 carries 9:3, 7 carry 7:25 62:15 65:4 67:16, 17, 20 106:4, 22, 23 107:1, 2 108:8, 18 109:2, 3, 3, 16 110:4, 4 112:6, 7, 7, 13 carrying 64:20, 23 111:18 cars 24:21 25:4 34:20 35:2, 18 37:21 40:5, 16 42:7 84:25 89:8 97:2 103:4 105:14 125:13, 17, 23 car's 44:16 98:8 Case 1:2 4:10 6:13 8:13 10:12, 17 11:11 12:6, 8, 9, 12, 20, 25 13:4, 16, 25 15:19 21:18 42:10, 13 43:9 45:17 60:17 71:8, 11 96:25 121:3 123:16 124:12 126:22, 24 128:5 132:9 134:22 cases 124:22 Casino 2:9 11:4 cast 139:10 cause 11:1 32:15 33:11 35:9, 14 45:1 55:6 60:1 87:10 90:18 98:20 100:19 115:20 116:25 132:18 138:20 143:18	caused 40:17, 20 140:2 causing 43:15 cautions 136:9 CCR 1:24 143:23 CDL 72:12, 18, 19, 21, 23 73:2, 4 131:15 cell 55:3 65:16, 18, 19, 20, 21 Center 2:9 certain 64:24 109:1, 2 120:8 133:3 CERTIFICATE 142:1 143:1 certifications 47:7 48:3 Certified 1:18 143:5 certify 142:20 143:6, 14 cetera 20:19 47:13 chance 16:18, 21 20:2 43:2 change 35:11, 21 36:6 42:19 142:2 changing 24:10 charge 67:13 107:20 138:10, 11 cheap 85:1, 2 check 69:10 107:14 checked 18:17 checking 18:19 139:5 checks 75:5 choice 16:4 choose 115:18 chose 115:18 circumstances 41:19 claimed 50:24 clarified 98:13 clarify 101:22 121:20 135:2 139:7 clarifying 132:20 CLARK 1:2 143:3, 20	classes 7:8 66:6 clean 21:1 59:6 cleaner 47:12 clear 23:10 118:10 120:11, 15 121:15 122:11 140:12 clearly 10:1, 5 client 43:2 78:18 102:1 124:22 clients 50:18 123:19, 22 139:9 client's 32:21 37:7 42:24 82:11, 14 86:20 87:2, 13 88:19 89:4 99:21 clock 18:11, 15, 22 close 24:20 30:12 33:18 34:25 89:14 95:9, 15, 17, 23, 25 closely 85:18 closer 99:13 125:23 clue 78:9 coaching 49:20 50:3 113:4 130:3, 4, 12 collision 122:14 124:1 126:2 come 31:22 56:10 68:13 75:4 133:9 138:21 comes 27:17 31:25 comfortable 6:7 coming 24:8 54:14 116:4 126:6 commercial 72:13 common 108:1, 5 109:11, 21 commun 65:10 communication 65:10 COMPANY 1:9 4:21 12:20 13:6, 15, 16 17:12 26:6, 9 27:16 53:24, 25 54:3, 13 55:15, 19 61:14 69:18 74:25 112:12
---	---	---	---

115:21 116:4
137:4
complaint 12:18,
18, 19
complete 38:24
40:3 88:10 92:18
143:12
completely 48:20,
23 57:2 80:10
84:6 85:9
concludes 140:21
conclusion 40:23
conclusionary
71:20
conference 8:22
confused 109:19
consisting 140:23
construction 46:15
contact 71:6, 10
134:4
contains 38:24
contemporaneously
30:9
continue 74:12
contractor 143:14,
15
contributed 36:9
convicted 133:17,
19
copy 137:1
CORPORATION
1:8, 9 4:20
CORPORATIONS
1:11
correct 5:6, 19
6:19, 21 7:11 9:1
15:8, 13 16:10
17:5 18:15 19:15,
24 21:4 22:15, 18,
19 23:24 25:19, 20
27:4 28:4 29:20
31:6, 7, 10 33:4
34:5, 12, 22 35:17
36:19 37:8, 15
38:2, 14, 19, 22, 25
39:6, 16, 19, 24
40:21 41:5 43:9,
16 44:3 45:25
48:21, 24 49:9
50:14, 20 51:2, 5,
11 53:2 56:4, 16,

25 57:3, 25 59:7, 8
61:21 62:7 63:10
64:8 67:12 72:13
73:5 74:19 76:23
77:1, 17, 20, 21
81:3, 22 82:7
83:3 84:8 85:5,
20 86:7, 21 87:6
88:20, 24 89:15
91:4 93:13, 22
95:1, 2, 10, 15, 18,
24 96:25 97:8, 11,
14 98:10, 16, 22, 25
99:7, 10 100:12, 21
102:3, 12, 21 103:2
104:8, 12, 17, 20, 21,
23, 24, 25 105:6
107:13 111:16
114:20 115:2
116:19 117:15, 24
119:4, 6 120:10, 12
122:12 123:13, 17,
20, 21, 23, 24 124:1,
5 125:24, 25 126:5
127:8, 14, 22, 23, 24
128:1, 2, 5 129:11,
24 130:18 131:15
132:3, 4, 6, 7, 9, 10,
21, 24 133:21
135:4, 5 139:10, 16,
17, 18, 19 140:7, 10,
11
corrected 142:22
correctly 30:1
37:23
counsel 4:12 5:11
10:15 12:4 16:19
22:15 49:11, 16
75:15 120:16
126:19 143:15, 17
counsel's 5:17
count 78:19
COUNTY 1:2
143:3, 20
couple 6:12 10:12,
19 21:19 68:8
72:9 78:12
course 18:10, 13,
13 85:10 140:6
courses 44:24

COURT 1:1, 18
4:5, 13 5:9, 16, 22
6:2 8:6 9:1 21:2
47:12 128:7
132:19 137:14
143:5
courthouse 15:11
covers 65:2, 2
CRAIG 2:8 4:17
101:3
crane 47:23 60:15
crank 82:19
crazy 41:10, 13, 16,
18 78:1 102:15
104:7, 15 105:16
crime 133:19
cross 79:10, 11
89:21
CRR 1:24 143:23
currently 7:21
cut 24:21, 21, 22
35:9, 15, 16, 18, 18,
22 36:4 90:18
91:9, 10 92:1
94:3 98:6 99:23
100:9, 11
cutting 24:9 33:12,
13 44:16 102:24,
24, 25
< D >
daily 7:25
damage 84:18, 23
DAMAGE, 29:24
damaged 58:7
damages 12:20
dark 18:2
dash 33:21
dashcam 54:21
date 17:17, 19
142:25
day 17:25 18:22
19:4 23:5, 6 38:1
53:22 55:23 56:8
57:15, 20, 25 61:12
66:16, 17, 21, 25
67:2, 23 68:7, 9
71:22 80:19 81:1,
4, 18 108:25 124:1
128:16, 18 143:21

days 58:19, 21
59:1, 7, 13, 20
61:20, 24 66:20
70:3 73:25
dba 1:8 4:20
deal 121:8
dealing 71:23
dealt 72:8
decided 72:9
116:18 124:21
declare 142:20
declined 29:1
49:4 50:11
Defendants 1:12
2:10 4:19
defensive 48:10, 16
define 129:18
delete 129:3
deliver 64:11, 16,
19 65:7, 8 111:20
delivered 54:17
delivery 19:6 54:4
55:24 56:1, 11
126:7
Department 15:12
depending 11:3
83:17 105:21
136:3
depends 44:25
102:22 125:9
depo 15:5
deposed 14:3
DEPOSITION
1:16 6:5 10:16,
24 11:11 14:5, 8
16:8, 19, 23, 24
17:10 19:23
38:19 70:14, 18, 23
71:3, 7 127:3, 6, 18,
19 129:11, 13, 14
134:4, 19 137:8, 17
140:22 141:1
142:21, 22 143:7,
12
deposition, 129:22
depositions 10:12
126:20
Dept 1:4
DESCRIBE 29:24
81:8 84:16, 22
described 102:14

DESCRIPTION 3:13 detailed 49:11 determine 107:9 difference 15:1 16:3, 7 96:21 different 20:7, 22 40:8 96:13 108:23, 25 109:1, 22, 24 135:14 digital 140:22 directing 49:16 direction 20:7 37:7 disagreement 115:1, 4 disciplined 59:9 discussed 77:5, 8 136:4 discussion 77:15 dishonesty 133:20 dismiss 5:16 8:8 distance 42:10, 13 DISTRICT 1:1 doctor 52:13 131:20, 22 Document 3:16 12:21 136:18 documents 12:12, 24 13:25 17:9 136:21 doing 14:8 19:12 20:16 40:4 46:3 55:17 63:10 73:20 78:15 113:13 Donnelly 6:16 25:25 26:1, 3 27:4 31:10 56:7 57:6, 23 downtown 15:11 draft 23:3, 11, 15 drank 19:18 drive 44:21 45:7, 11, 18, 24 58:13, 25 59:7, 13, 19 61:19 62:3 64:1 67:10, 24 72:17 73:23 80:25 107:18 109:13	driver 48:9, 16, 17 64:2 104:7, 15 105:16 137:9, 19 driver's 72:13 74:17 75:4 driving 33:12 40:1 41:19 43:4 46:21 47:19 48:10, 10, 16, 16 53:11 58:18, 21 59:23 60:10, 16 61:11 63:14 64:3 68:5, 6 69:7 73:4 86:5 97:25 98:19 102:15 103:6, 20, 23 105:19, 22 106:2 108:2, 3 109:13 120:12 133:2 137:10, 21 dropped 57:7 drove 25:19 45:4 59:25 82:23 83:2 87:2, 5, 5 88:18, 23 89:11 91:25 93:21 96:6, 8, 23 140:4 drug 27:24 28:4 57:18, 18 Drummond 2:8, 8 3:6, 8 4:17, 17, 18 12:7 40:24 49:15, 18, 20, 22, 25 50:2 75:20, 24 101:5 106:8 109:5 110:1, 24 111:2, 5 112:22, 24 113:2, 7, 10, 13, 16 114:10 116:24 117:14 121:22, 23 122:7 125:11 126:13 130:3, 6, 9, 12, 15 133:22 139:8, 23 140:18 duly 4:25 143:5, 9 < E > earlier 29:19 43:14 50:13 88:14 126:20 127:2 137:7, 16	easier 21:2 educated 7:2 eight 68:4 either 41:11 128:25 email 133:10 emergency 50:10 employee 143:14, 15 employees 138:9 employment 18:10, 14 65:24 66:7 72:2 empty 126:4 English 5:13, 18 6:18, 24 7:8, 9, 10, 17, 19 8:1, 3 entail 46:6 entitled 14:22 equipment 111:17, 18 especially 68:2 81:14 ESQ 2:1, 8, 10 estimate 14:22 15:2, 3, 8 30:11 32:4, 8, 18, 23 33:7 34:24 78:25 79:21 83:5 86:1 88:19 101:20 114:9 estimates 14:19 15:16 et 4:11, 11 20:19 47:13 evasive 82:19 Everybody 24:17, 18, 18 32:15 34:3 41:24 42:1 75:13 89:7, 16 100:2 138:7, 8 everyday 84:21 exact 17:19 exactly 105:12 128:10 Examination 3:4 5:2 101:4 134:1 139:22 examined 5:1 143:9	example 68:25 133:7 excuse 5:24 95:1 Exhibit 22:4, 8, 13 29:10, 12, 16 31:6 33:3 49:18 61:4, 9 76:19 84:10, 12 exhibits 21:19, 23 exited 76:23 exits 8:21 experience 135:8 expert 44:13, 20 125:7 explain 15:2 89:18 extent 9:4, 8 73:3 eye 40:18 94:18, 23 eyes 39:24 41:4, 11 < F > fact 10:7 13:8 20:6 38:12 116:19 facts 36:17 124:4 failure 72:1 Fair 2:13 68:16 familiar 65:23 fancy 9:11 far 5:14, 15 49:4 79:21, 21 85:25 114:22 115:9 123:15 124:6 125:5, 18 fast 9:14, 15 21:5, 10, 12 22:3 83:17 101:7, 9, 11 102:8 fasten 111:17 faster 21:13 fatigue 48:9, 17 137:9, 19 fault 43:12, 13 52:7 feasible 96:11 feel 6:7 53:10 58:6 105:20 feels 20:10 FELDMAN 2:17 fell 136:7 felonies 75:7 felony 133:17 felt 59:15
---	---	--	--

field 65:12 79:25 80:2 102:12 fight 7:15 figure 36:20 figured 13:19 fill 30:20, 22, 23 52:9 56:22 74:20 filled 53:1 57:3 74:21 123:22 filling 123:25 financially 143:16 find 8:12 124:20 134:3 fine 15:16 24:19 28:17, 24 31:19, 22 34:4 50:10 52:14 77:11 100:3 118:15 fingers 77:25 78:2, 7 102:16 104:16 finish 21:14 47:10 63:5 66:9 79:19 96:17, 17 finished 20:24 fire 116:6 firing 115:21 Firm 2:8 4:18 first 4:25 10:24 30:23 31:1 33:11 46:2, 17 50:14, 15 53:17 56:24 73:10 87:7 115:12 122:23 five 70:9 flat 60:16 flatbed 44:21 45:7, 8, 11, 17, 18 46:22 47:19 58:14 59:23 60:17 61:20 62:11 64:4 67:10 73:4 126:4 135:4, 7 137:10, 21 flatbed, 60:20 flatbeds 63:19, 24 flip 84:11 flow 34:4, 7, 12 81:9 90:4, 23 100:3, 8 103:3, 4 104:4 105:14, 21 fluent 5:18 fluids 69:11	Focus 30:3 39:18 82:15 83:21 85:12 95:1 follow 72:2 90:3 followed 85:16 87:10 following 95:25 102:10 137:13 follows 5:1 fool 96:7 football 79:25 80:2 102:11 Forces 118:1 Ford 30:3 82:14 83:21 85:12 90:9 foregoing 142:21 foreign 1:9 forklift 48:5 109:13, 13 Forklifts 46:24, 25 47:3 48:5 form 16:14 20:9 89:4 123:23, 25 133:9 former 12:19 forms 39:2 133:13, 14 forth 77:25 forty 76:7 forward 85:12, 15 102:21 103:1 104:12, 16, 25 foundation 39:2 four 25:9 31:23 60:2, 10 79:3, 4 80:9 96:14, 19 97:7 125:13, 14 Friday 1:17 4:4 front 24:10 25:4, 5 33:11, 12, 14, 20, 23 34:19, 20 35:13 36:4, 25 37:20, 21 39:18 40:3, 5, 14, 17 41:6 42:7, 19 78:6, 10 79:2 80:5 82:5 83:18 88:1 90:8, 10, 11, 18 91:10, 19 92:1 94:3, 4, 25 95:1, 20 96:14, 19, 24 97:2, 4, 8, 19 98:1, 6, 8,	16 99:23 100:4 105:14, 18 125:6 full 92:18 fully 57:2 80:13 84:2, 4 98:1 100:24 functional 100:24 further 133:22 140:18 143:14 Fusion 90:9, 17 94:25 < G > gentleman 8:14, 16 gentlemen 121:4 Gerald 64:21 67:13 69:20 107:5, 6, 8 getting 10:18 24:19 66:2 71:18 116:9 give 15:7, 16 19:11 20:2, 8 21:15 30:16 38:15 64:21 68:25 98:18 138:21 given 44:23 gives 27:17 giving 42:13 102:16 104:15 116:21 glance 40:2 glanced 24:24 37:18 39:15 glass 84:19 global 54:23 go 6:24 7:5 16:8 20:1 21:19 22:2 24:1 27:12, 14, 20 28:23 29:11 38:8 40:11, 24 48:13, 14 52:13 56:15 57:16 60:23 62:9 65:5 68:10, 14 74:12 84:11, 15 87:8 89:23 90:4, 22 92:22 104:3 105:14 107:14 109:3 110:3, 7 112:25 119:8, 12	122:8 129:15 133:8 goes 16:11 going 4:3 10:5, 14 11:8 13:6 16:8, 17 17:22 20:3, 6 21:18 22:2 25:15 27:11, 15 29:10, 24, 25 32:11 33:1, 14 34:8 35:22 37:3 40:2 44:7 48:8 53:23 54:3, 6, 10 55:11 61:2 64:18 69:4 70:8, 13, 15 73:14 75:15, 20 77:25 79:19 83:18 85:10 90:22, 24, 24 92:6 100:2, 3, 3 101:8, 9, 11, 14, 19 102:2, 8, 12, 20 103:3, 4 104:4, 12, 15, 25 105:13, 21 107:9, 18 108:6, 7 109:18 112:23 115:23 116:3 120:6 121:3, 10, 21 122:1 123:11 124:17 125:10, 12 129:15, 16 132:18 140:15 gold 24:9, 14, 20 25:17 33:3 34:9 35:16, 18 41:14 77:17, 19, 23 80:3 82:5 88:1, 3, 7, 8 90:8, 17 93:5, 10, 13 96:14, 18 97:3, 8, 10, 17, 23, 23 98:8, 12, 20 99:13, 14 100:11 102:10 104:7 Golden 7:22 Good 4:2 5:4, 5 19:12 21:6 103:15 110:7 Googled 123:15 gotten 51:17 111:1 GPS 54:23 55:2, 7 118:25 119:2, 3, 19, 21 120:3 133:2
---	---	---	--

GRACIA 2:17 great 121:13 guess 14:25 15:1, 13, 15 16:4 32:2 39:20 41:3 78:8 80:16 83:9 85:6 88:25 89:1 90:6 115:5 guessing 53:20 105:7, 8 guy 24:14, 20, 25 25:5, 6 26:22 28:14 34:19, 20 35:9, 13 37:2, 4, 5, 20, 21 40:17 41:10, 12 42:20 77:24 84:19 91:2, 25 92:5 94:7 99:23 100:4 140:3 guys 28:14, 22 31:18 42:18 57:24 68:6 92:2 98:6 124:16 < H > half 60:13 75:16 136:2 hand 22:18 28:18 31:20 143:20 handed 134:23 hands 28:19 Handwritten 3:16 48:21 51:5 hang 108:13 123:9 130:3 happen 42:16 60:6 78:10, 17 79:12 91:24 happened 12:7 13:4 17:15 18:25 27:22 54:5 56:2, 18 59:6 61:25 67:8 89:24, 25 91:25 105:10 124:11 136:6 happens 32:2 51:15 56:14 hard 32:6, 7 85:4 89:18	head 23:18 50:23 56:21 80:8 93:23 113:7, 11 heading 64:5, 7, 13 hear 9:25 10:4 13:10 50:4 63:8 122:17, 18 heard 10:6 11:24 12:14 53:15 101:23 119:19 124:10 129:13 hearing 129:21 help 25:12 68:1 hereunto 143:20 HERRERA 1:4 2:7 4:18 Hey 13:25 28:14, 21 65:1 68:13 109:3 111:12 115:21 124:11, 14 128:3 129:20 high 7:5, 7 hire 116:3 hired 26:13 46:17 60:3 72:8 73:10 hiring 74:24 75:1 Hit 25:2, 3, 4, 5, 6 32:3, 5 33:10, 16 34:19, 20 35:12, 12, 13 36:12, 18, 18, 21, 25 37:2, 4, 5, 20, 21 42:20, 21, 21 50:19 52:3 53:6 80:10 85:22 86:5, 23, 23 87:7, 8, 19 88:11 90:12, 12, 21 91:1, 1, 2, 11 92:2, 2 94:8, 8, 9, 11 95:4, 6, 7, 7, 11, 14, 20 96:2, 5 97:1, 3, 8, 10, 13 98:2, 7, 10 99:9 100:4, 10, 10, 19 101:6, 11, 16, 18 102:1 135:1 140:10 hits 105:2, 3 hitting 32:1, 5 83:20 88:4 90:16 93:12 139:24 Hold 47:10 94:21, 22 97:6 99:18	home 57:16, 17, 18 115:23 honest 9:12 27:8 36:13 48:20, 23 52:11 54:18 62:24 66:1 78:5 125:20 128:14 129:12 130:14 139:1 honk 82:12, 17 hood 58:8, 11 horn 82:12, 17 hour 17:3, 4 32:11, 24 33:9 34:9, 16 68:23 75:16, 20 83:6, 10 85:5 88:19 101:19 102:3, 12, 21 103:2 105:5 125:12, 16 132:14, 24 136:2, 2 hours 19:8, 18 66:16, 24 67:1 68:8 house 11:14, 18 71:2 hundred 79:23 133:1 hurt 25:11 28:10, 13 51:11 58:4 77:6 118:14 hypothetical 69:1 125:8 < I > ID 74:18 idea 110:13 117:8 identification 21:24 61:5 76:20 ignore 130:13 ignored 130:17 impact 25:7 32:13, 19 37:6 39:16 77:23 84:1 86:3, 21 91:14, 17 impacting 96:20 impartiality 143:18 important 124:3, 5 importantly 20:7	incident 26:20 52:9, 20 58:22 127:1 incidents 136:7 inclination 5:16 including 40:17 inclusive 1:10, 11 incomplete 125:8 independent 77:4 143:14, 15 independently 135:2 indicate 49:8 71:2 indifferent 43:9 Individual 1:4, 8 71:1 Individually 1:4 information 28:7 38:25 107:25 124:4 informations 25:13 injured 29:20 77:9, 11 118:12 122:13 injuries 31:15 49:1, 7 INJURY 29:24 inspection 69:7 insurance 25:13 insurances 77:13 intake 73:13 intend 15:24 interested 60:17 143:16 interesting 87:1 Interpreter 2:19 4:22 5:10, 25 6:5, 8 8:7, 7, 8, 10, 13, 19, 21 interrogatories 11:25 12:8, 9 interview 73:11 74:11, 13 investigator 11:13 70:16, 19 71:1 involved 25:22 61:16 122:24 123:1, 4 143:16, 17 involving 75:9 133:20
---	---	---	---

itinerary 55:8, 10, 22 56:7 57:24 its 69:24 95:4 97:13 105:2, 3 < J > JAIME 1:7, 16 3:3 4:9, 11, 20, 24 5:7, 8 8:24 68:14 76:22 86:10 112:21 140:22 142:20, 24 143:7 Jamie 5:6 January 1:17 4:4 143:21 JASON 2:1 4:15 6:16 25:24 26:1, 3 27:4 28:6 31:9 52:17, 18 56:6 57:5, 23 64:21 65:11 Jefferson 7:7 Job 1:25 10:25 11:2, 3, 4, 7 18:7 19:4, 12 21:2 46:6 59:16 63:8, 14 73:1, 16 119:9 135:10 jobs 47:18 72:10 JOHNNY 2:17 4:7 JONES 2:10, 13 4:19, 19 5:20, 23 6:1, 4, 7 8:15, 17 9:18 11:21 21:10 24:23 25:3 29:2, 5 30:23 37:11 40:6, 22 44:13 45:14 46:11, 13 49:10 50:7 53:7 54:16 62:23 75:15, 18, 22 80:22 86:10, 14 87:21 89:19 92:19 93:2, 4 94:1 99:17, 22 106:6 108:22, 24 109:23 110:23 111:4 112:21 113:1, 6, 9, 12 114:9 116:23 117:13 125:7	126:10, 12 130:1, 5, 7, 11 133:25 judge 116:14 129:7 July 18:25 19:9 26:4 55:9 60:7 63:19 66:22 81:18 120:12, 19 121:17 138:25 jump 69:3 jumping 47:11 79:18 jury 116:14 121:4 140:16 < K > keep 33:14, 15 40:18 47:12 50:5 55:8, 18 65:10 90:24 94:17, 23 102:20 103:1 104:12, 16, 25 112:23, 25 137:3 keeping 137:5 keeps 85:9 Kengo 26:21, 21 27:15, 16 134:6, 6, 9, 12 138:13, 15, 17, 24 kept 35:22 69:25 kind 65:8 74:18 79:18 81:11 89:17 knew 51:10 knocking 129:4 know 5:14, 15 9:23 10:1 11:14 20:3, 4 22:7 23:2 26:1, 8 27:21, 22 29:14 32:1 33:18, 19 35:12 36:13 38:16 39:25 40:18 43:1, 4, 5, 8, 15 44:15, 16 49:4 52:13 55:20 56:12 59:15 62:23, 24 63:7, 18 64:20, 22, 25 65:5 67:12 69:19, 20, 23 70:2, 12 71:24 72:10 77:19 78:1, 3, 5, 20 83:16	86:17 87:21 90:3 96:8 101:24 103:7 106:3, 5, 7, 19 107:12 108:10, 14, 21 109:6, 9, 16, 20 111:8, 12 114:4 115:9, 21, 25 117:4 118:23 119:12 120:22 121:7, 10, 18, 21, 24 122:1, 10 124:5, 7, 13, 14 125:20, 22, 24 126:15, 25 128:10 129:15, 16, 18 130:21 132:12, 19 135:2, 6, 14 136:8, 14 137:4 138:25 139:1, 11 140:2 knowing 108:8 knowledge 14:15 36:15 44:9, 11 50:22 53:9, 14 55:20 58:7 62:18, 22 84:22 89:3 90:6, 7 119:18 120:2 126:20, 25 129:8 139:9 < L > L.A 27:17 labor 46:4 63:10 LaBorde 1:24 4:6 143:5, 23 lack 70:25 ladies 121:4 lady 25:9 28:12 52:3 138:19 Lamb 24:9, 11 34:5 79:6, 7, 10, 12, 22 80:15 lane 24:13, 15 35:25, 25 42:17 87:9 92:6 98:20 99:14 lanes 24:10 33:15 35:11, 15, 21 36:6 37:3 42:20 77:25 80:3 92:4, 13, 23, 24 93:1, 5, 8, 10 98:13 102:15	104:15 language 92:17 Las 1:21 2:5, 10 late 42:22 94:9 132:16, 21 Law 2:8 4:18 9:1 lawsuit 14:1 130:19 lawyer 132:23 leave 71:14, 15 98:24 leaving 15:21 99:15 left 10:21 24:21 26:8 28:2 35:18, 25 70:6, 10 71:11 74:3 82:20 98:20 99:14 Legal 1:18 40:22 129:18, 20 length 62:4 79:25 80:2 lengths 35:3 125:14 license 72:12, 13 75:5 licensed 143:5 life 80:22 81:9 light 18:2, 3 24:11 52:3 lights 69:10 limitations 76:2 line 92:20 142:2 Listen 38:17 45:10 85:18 128:21, 23 little 6:25 9:19 20:22 21:14 23:10 73:12 live 28:21 138:24 LLP 2:13 load 62:10, 21 63:2, 12, 15 68:14 69:3 106:4, 12, 14 126:2 133:6, 7 134:25 135:7 loaded 62:11 63:17 106:9, 16 loading 62:22 135:4 136:12
--	--	---	--

loads 67:11 112:7
location 55:11
long 13:19 17:1
 23:14 47:2 59:22
 66:15 73:24
 83:25 105:19
 109:14 110:14
 131:10 135:25
longer 117:17, 19
look 15:7 29:11
 40:13 61:10
 71:24 111:12
looked 24:15 41:5
 90:22 100:2
looking 30:18
 37:1, 8 40:7, 14
 61:15 69:5 91:5,
 13, 17 103:22
losing 11:2
lost 114:19
lot 8:14 21:2
 73:15 122:24
 123:8

< M >
MAIKEL 1:2 2:1
 4:10
mails 128:21, 25
maintenance 69:14,
 17
major 84:24
Making 46:7 59:5
 129:19 136:14
MALLOY 1:8
 4:20 71:6
manage 67:15
management 71:5
manager 26:5
 28:23 52:16
 67:16 71:18 74:9
 106:13, 14, 17
 110:3, 5 115:2, 8
managers 71:24
mandatory 138:9
maneuvers 82:19
manhole 65:2
manual 65:24
 66:2, 7 72:3
mark 21:19, 20
 60:23 76:17

MARKED 3:13
 21:24 22:3, 14, 14
 61:4 76:19
material 64:14, 19
materials 64:10
matter 11:17 13:8
maximum 135:6
mean 10:18 16:1
 17:13 31:24, 25
 32:7, 17 37:7
 40:1, 12, 16 41:9,
 10 44:15, 16, 25
 45:8, 19, 20 51:15
 53:10, 11 55:24
 58:17 66:2 71:21
 75:10 85:6 89:17
 94:12 97:20
 102:25 103:5, 17
 105:10, 21 107:21
 108:1, 6, 8 112:10
 119:5 122:4, 20
 123:8 124:9
 127:10 139:12, 14
 140:3
meaning 18:10, 14
 42:13 115:17
media 140:23
medical 131:25
 132:2
medication 19:17
medicine 131:17,
 18, 19
meet 16:18, 21
 17:1
meeting 111:23
 112:1 135:17, 20
 136:25
meetings 135:25
 136:5, 12, 19 138:4,
 6
memory 17:12
 38:5 114:17, 19
Mer 36:10
merchandiser
 73:22
Mercury 36:11
merge 24:13, 16,
 20 92:14
Mesa 128:6
message 10:20

met 132:13, 23
 134:9
middle 87:9, 9
 104:16
mileage 103:6
mileage, 103:17
miles 32:11, 24
 33:9 34:9, 15
 83:6, 10 85:5
 88:18 101:19
 102:2, 12, 21 103:1
 105:5 125:12, 16
minutes 23:16, 17
 24:2 28:22 70:9
 132:16, 20
mirror 24:16, 25
 37:1, 9, 18 39:15
 41:5 91:5, 13, 17
 92:14
misdemeanors 75:9
misjudged 100:7
missing 11:1
Misstates 37:11
 40:6 49:10 93:2,
 4 109:23 110:23
 130:1, 9
misstating 110:24
moderate 80:16
 81:19 84:24, 25
Mokri 2:13
moment 11:19
 12:13 94:17
Monday 66:24
money 16:16
month 13:8 17:23
 114:4
months 11:8, 9
 26:10, 12 72:9
 131:1, 2, 7, 14
morning 4:2 5:4,
 5 18:3, 4, 21 19:5,
 7 67:3, 5 81:14, 16
 132:17, 21 135:22,
 23, 24
motion 89:25
move 36:21 72:9
 85:12, 25 92:6, 8
 115:16, 17, 18, 18,
 24 116:18 130:25
moved 25:7 36:1,
 3 42:17 85:17, 23

86:6, 8, 21 87:9, 9,
 12, 12 91:25 131:7
moving 24:19
 34:4, 11 35:24
 83:17 85:10, 17
 86:8, 22, 23, 24
 87:3, 4, 6, 14, 18
 88:4, 12, 13, 15, 16,
 16, 20, 24 89:5, 7, 8
 102:15, 23 103:1
 104:16
multiple 102:1

< N >
name 43:1 107:4
 138:20
nature 47:7 48:11
 55:15 66:11
 75:11 82:21
 120:9 137:9, 20
Navigator 119:5
necessary 20:10
need 5:22 6:2, 5
 9:11 14:1 65:1
 68:22 70:17
 72:19, 23 124:15
 125:5, 14 127:20
 128:4
needed 8:13 25:8,
 11, 11 26:19 71:3
 72:18 73:1
neighbor 11:15
NEVADA 1:2, 21
 2:5, 10 143:1, 5, 20
never 28:16 38:7,
 8 51:23, 24 69:25
 72:12, 17, 23 90:10
 93:8, 16 94:13
 99:7 117:11, 15
 121:14 127:5
 128:14 129:12, 13
 132:2 133:16, 19
new 10:25 60:14
 71:18 115:1
nine 11:8, 9
No, 28:13
Nodding 23:18
 56:21 80:8 93:23
 113:11
nonargumentative

<p>50:6 nonsuggestive 50:6 Nope 51:22 118:2 north 24:8, 8 80:15 Northbound 79:8 note 22:20 43:18 126:21 noted 51:8 53:5 notes 101:2 143:11 notice 5:9 noticed 21:6 96:5 99:2 notified 127:2, 5 noting 84:20 nowadays 85:1 NRCP 143:19 Nugget 7:22 nuh-hu 20:24 NUMBER 3:13 108:20 109:10, 20 118:3, 4, 5, 7, 23 127:11, 13 128:13 Numbers 128:19 nurse 131:23</p> <p>< O > Oaks 2:13 Oasis 4:8 oath 4:14 8:25, 25 9:5, 8 14:12, 12 76:11, 13 88:21 92:11, 25 97:7 99:5 115:7 object 20:8 49:15 Objection 40:6 130:10 observed 77:23 obviously 6:24 8:6 23:6 56:4 occupants 76:25 77:16 occupy 98:15 occur 79:22 occurred 57:16 59:24 60:11 62:1, 2, 6 64:7 76:22 81:15 91:19 occurring 35:1 69:22 78:18 79:2 97:4</p>	<p>office 23:12, 13 56:15 57:7, 11, 23 Oh 14:2 23:23 30:25 32:10 33:8 36:13 43:22, 25 46:13 55:13 64:20 75:22 78:22 80:16 82:16 87:20 115:23 Okay 5:8, 15 6:6, 11, 15, 18, 23 7:2, 5, 8, 13, 17, 21, 23 8:5, 10, 11, 19, 20 9:3, 11, 16, 17, 20, 25 10:11, 14, 20, 20 11:4, 10, 13, 20, 22 12:2, 11, 14, 17, 24 13:3, 12, 22 14:3, 8, 9, 10, 18, 22, 23, 24 15:1, 10, 15, 16, 21, 24 16:6, 16 17:1, 4, 9, 14, 23 18:2, 4, 9, 17, 19, 23 19:8, 11, 17, 21 20:1, 10, 11, 14, 15 21:3, 9, 15 22:5, 9, 11 23:1, 6, 9 24:1, 6 25:15, 21 26:3, 6, 8, 23 27:3 28:1, 9, 25 29:9, 17 30:1, 2, 7, 11 31:22 32:16, 18 33:1, 6, 22 34:24 35:5, 8, 10, 25 36:5, 14 37:6, 12, 25 38:4, 12 39:11, 23 40:9, 15, 20 41:4, 8, 12, 25 42:6, 16, 23 44:19 45:6, 10, 21 46:6, 17, 20 47:2, 13, 21, 24 48:3, 13, 15, 20 49:4, 6 50:13, 17 51:1, 10 52:5, 9, 15, 19 53:1, 4, 12, 22 54:6, 9, 14 55:8, 20 56:3, 14 57:2, 12, 15, 19, 22 58:4, 13, 25 59:5, 9, 12, 22 60:3, 12, 16, 18 61:2, 3, 23 62:13, 16, 21 63:2,</p>	<p>7, 7, 8, 18 64:1, 5, 13 65:5, 9, 14, 23 66:4, 21 67:7, 18 68:9, 18, 21, 24 69:22 70:2, 12, 25 71:14, 17 72:25 73:3, 20, 24 74:18, 23 75:1, 7, 13, 24 76:16, 25 77:8, 12, 15, 22 78:4, 10, 14, 25 79:6, 10, 16 80:9, 12, 14 81:5, 13, 15 82:1, 4, 11 83:2, 8, 10, 19, 23 84:13, 15 85:4, 14, 18, 22, 25 86:4, 9 87:1, 11 88:1, 9, 14, 18, 23 89:3 90:5, 14, 25 91:3, 12, 16 92:5, 9 93:10, 12, 21 94:6, 11, 15 95:4, 9, 13, 23 96:1, 4, 13 97:3, 13, 16, 19, 24 98:3, 8, 12, 15 99:9, 25 100:5, 11, 15, 21 102:5, 7, 10 103:21, 25 106:14, 19, 24 107:8, 16, 24 109:12, 19 110:2 111:10 112:8, 16 113:24 114:21, 25 115:6 116:1, 8 117:19 118:1, 21, 23 119:17, 24 120:5, 14, 23, 25 121:8, 19 122:11 123:6 124:8 125:5 127:2, 5, 8, 20 128:17, 21 129:1, 4 130:19 131:7, 23 133:6 134:9, 12, 15, 18, 21, 25 135:12, 16, 21, 25 136:4 137:1, 4, 7, 15 138:2, 6, 11, 17, 22 139:20 140:15 once 36:2 78:21 ones 107:19</p>	<p>operate 47:2 operating 67:22 operator 25:10 47:23 48:5 50:9, 10 107:12 order 7:14 22:2 64:21 76:17 125:6 orders 67:25 68:2, 12 organized 136:15 original 93:15 outside 11:14 overtime 139:2</p> <p>< P > PAGE 3:2, 16 43:21 142:2 paid 16:13, 15, 16 68:22 132:6, 8 paper 13:1 108:17 papers 13:2 137:3 paperwork 17:11 56:11 136:24 137:5 part 47:3, 5 63:14 119:9 particular 58:13 61:16, 19 62:4 65:3 68:10 74:2 80:18 81:18 parties 143:15, 15, 17, 17 pass 47:24 48:1 79:19 101:3 passed 28:3 48:6 79:15, 17 passenger 43:5 passengers 122:15 penalty 9:4, 7 14:13 142:20 pending 94:22 People 7:13 30:3 31:23 33:10, 13 44:16 50:19 102:16, 24 104:16 122:21 132:3 percent 133:1 perception 121:2 PEREZ-ACOSTA 1:2 2:1 4:11 period 13:19</p>
---	--	---	---

<p>perjury 9:4, 8 14:13 142:20</p> <p>person 72:11 105:22, 23 107:3 116:2 123:16 129:2 138:10, 11 143:16</p> <p>personal 65:21</p> <p>personally 69:20 122:20 138:15, 18</p> <p>petty 75:10</p> <p>phone 7:14 55:3 65:16, 18, 19, 20, 21 118:4, 6, 21 119:2, 3 128:15 129:2, 5 130:2 134:5</p> <p>phones 65:15</p> <p>Photograph 3:16</p> <p>Photographs 3:16</p> <p>photos 84:17</p> <p>physical 73:15</p> <p>pick 54:6, 10 55:12 64:10, 14 65:6</p> <p>picked 54:10</p> <p>picture 61:7</p> <p>place 68:5, 10 110:18 111:8 112:18, 20 116:3 131:11 132:19 136:14, 16 143:8</p> <p>places 119:14, 15 120:8</p> <p>Plaintiff 2:1, 7 4:16</p> <p>Plaintiffs 1:5 3:14 22:4 33:2 61:9 84:10</p> <p>plaintiff's 120:16 126:19</p> <p>plan 121:16</p> <p>plans 15:21</p> <p>plate 108:7</p> <p>plates 61:15 62:12</p> <p>plausible 96:11, 18</p> <p>pleading 12:17</p> <p>please 4:12 9:15 21:21 22:7 24:7 29:14 40:24 60:24 63:5 76:18</p>	<p>84:11 92:9, 11 113:4, 5, 10</p> <p>point 24:22, 23, 24 27:23 32:14 34:14 35:11, 19, 21 51:10 70:6, 10 81:2 84:5, 7 91:24 92:8, 11, 16, 24 97:13, 25 98:12 119:1, 8, 9, 12, 13 135:9</p> <p>points 11:2 133:3</p> <p>police 28:15, 15</p> <p>policy 137:5</p> <p>portion 37:17 40:8</p> <p>positioning 54:23</p> <p>possible 95:21</p> <p>pounds 62:20 108:13, 14</p> <p>preparation 16:24 17:10</p> <p>prepare 38:19</p> <p>Present 2:16 134:9</p> <p>pressing 84:1</p> <p>pretty 32:5 81:11 85:4</p> <p>previously 31:13</p> <p>prior 10:12 16:19, 23 34:14 35:1 36:24 37:6 39:16 46:22 52:21 64:6 66:21 69:22 71:7 73:18 77:23 78:17 79:2 83:20 84:1 91:13, 17 97:4 143:9</p> <p>probably 6:2 9:18 17:22</p> <p>problem 5:12</p> <p>proceed 19:24</p> <p>proceeding 129:21</p> <p>process 18:19 73:11 74:11, 24 75:1 129:18</p> <p>produced 22:14</p> <p>propelled 85:14</p> <p>proper 69:11 111:17</p> <p>properly 136:9</p> <p>protocols 72:3</p>	<p>provide 39:12</p> <p>provided 143:12</p> <p>punched 18:17</p> <p>punching 18:20</p> <p>pure 15:13</p> <p>pursuant 143:18</p> <p>put 28:9 31:23 56:9 67:11 75:3 106:20 107:10 124:21</p> <p>< Q ></p> <p>question 6:11 9:22, 25 10:4, 4, 6, 8 20:1, 2, 3, 9, 9, 13, 14 21:7, 14 23:9 29:2, 5 38:17 44:8 45:10 47:11 49:6 85:19 93:15 94:21 96:7 110:25 112:21 113:6, 9, 22 121:9 137:12, 15</p> <p>question, 20:25</p> <p>question-and-answer 14:11</p> <p>questioned 143:18</p> <p>questions 12:6 13:3 14:1, 12, 14 19:14 25:16 127:22 128:4 133:23 140:19</p> <p>quick 21:19 37:17 40:2 79:19 134:3</p> <p>quickly 61:10</p> <p>quit 113:7, 10, 24 114:1, 6, 22</p> <p>quite 114:21</p> <p>< R ></p> <p>radios 65:13</p> <p>ran 52:3</p> <p>RANDALL 2:17 4:7</p> <p>reach 128:7</p> <p>read 22:6, 11 24:1, 4, 5, 8 25:16 26:24 27:6 29:24, 25 30:1, 3, 21 31:14 33:2 37:16, 23 137:14 142:21</p>	<p>reading 23:20, 22, 23 29:15 66:4 92:19</p> <p>real 22:2 33:12 79:19 134:3</p> <p>realizing 84:20</p> <p>really 21:19 27:22 32:7 33:20 36:21 37:16 45:19 58:12 62:14 65:3 115:20</p> <p>rear-end 51:14</p> <p>rear-ended 30:3 53:16 94:10</p> <p>rear-ending 32:1</p> <p>reason 10:23 19:23 22:21 31:12 44:5 51:13 71:17 74:2 94:2 116:18, 21, 22, 25 117:3, 4, 5, 9 142:2</p> <p>reasonably 143:18</p> <p>rebuilding 46:7</p> <p>recall 6:13 12:9, 11 17:17, 23, 25 48:8, 13 66:4, 11, 24 83:19, 25 112:8, 10 117:13 120:18 129:7 135:16 137:11, 23</p> <p>receive 111:19, 21</p> <p>received 45:24 48:15, 17 73:5</p> <p>Recess 76:5</p> <p>recessed 141:1</p> <p>recognize 128:20</p> <p>recollection 19:1 38:13 39:6, 9 52:20 77:4 127:1 134:15</p> <p>reconstructionist 84:21</p> <p>record 4:3 10:6 18:24 21:1 24:2, 7 26:25 29:25 31:5, 14 74:17 75:25 76:4, 9 101:24 103:15 137:13 140:25 143:12</p>
--	---	---	---

recorded 20:20 record's 59:5 redirected 91:18 referenced 38:18 references 74:15 referring 13:17 25:17 31:6 45:14 reflect 101:25 refresh 17:12 18:25 38:13 39:5, 8 regarding 38:25 56:4 66:7 71:11 77:16 137:8, 18 regards 137:9, 20 regular 45:9 90:23 regulations 72:5 related 66:10 132:9 relationship 77:20 143:17 relative 143:14, 15 relying 39:11 remember 38:16 52:11 54:16, 18 58:17 66:1, 2, 3 112:17 113:25 114:1 126:11, 16, 17 138:20 139:4 repeating 130:5 rephrase 86:12 Report 3:15 28:15 29:22 30:8, 14, 17 31:3, 23 43:18 48:24 50:14, 17 51:2, 4, 8 52:10, 21 53:2, 5 56:18, 24 57:23 Reported 1:24 31:9 143:7 Reporter 1:18 4:5, 13 5:9, 16, 22 8:6 21:3, 8 47:12 113:15 122:5 130:8 137:14 143:5 REPORTER'S 143:1 Reporting 4:8 represent 18:24 129:6	representation 5:17 115:6 representing 16:23 reprimanded 59:12 requested 143:19 require 72:21 required 14:14 20:13 72:14 136:18 respond 12:17 128:4 responder 21:6, 12 response 21:15 47:12 113:20 responsibility 135:15 139:24 responsible 89:5 107:3 responsive 10:7 rest 89:8 result 59:10 review 17:10 101:2 143:18 reviews 22:8 29:12, 16 84:12 riding 71:22 right 5:11 6:3, 3, 3, 6, 16, 25 7:15, 19, 25 8:1, 3, 24 9:13, 14, 20 10:3, 23 11:22 13:22, 24 14:25 15:18 16:6, 13 17:17 19:3, 11 20:12, 16, 21 21:5, 17 22:13, 17, 20, 24 23:3, 7, 19 24:13, 14, 15, 16, 24 26:16 27:6, 10, 18 28:6 29:19, 22 31:5, 9, 12 32:4 33:20, 25 34:2, 7, 11, 14, 18 35:16, 20, 22, 22 36:4, 7, 23, 23 37:1, 1, 4, 5, 9, 18 38:5, 10, 17, 21, 22 39:3, 12, 14, 15, 19 41:5, 16 42:4, 9 43:1, 6, 9, 11, 20, 20 44:1, 4, 21, 23 45:7 46:4 48:8, 18 49:2 50:23 51:7, 8, 12	53:19 56:6, 18, 20 57:9, 9, 12 58:2, 18 60:4 61:17 63:3, 10 67:21 68:10, 11 71:20 73:25 74:2, 11, 20 75:22 76:11 77:3 78:6 81:16, 25 82:2, 20 83:15 85:23 86:13 88:2 90:2, 16 91:3, 5, 6, 13, 14, 17, 20 92:6, 14, 15 93:15, 17, 19 94:16, 25 95:1, 5 97:20 98:13, 19, 24 99:3, 8 100:25 101:9 109:8, 17 111:7 121:25 122:19, 25 123:5, 7, 8, 9 127:3 129:16 133:17 138:14 139:10 140:13 right-hand 40:13 risk 71:5 road 37:8 39:24 40:8, 14 41:5, 11 80:18 91:18 94:18, 24, 25 104:20 ROBERTO 1:7, 16 3:3 4:9, 11, 24 140:22 142:20, 24 143:7 ROE 1:10 ROLANDO 1:4 2:7 4:18 room 5:10 8:22 RPR 1:24 143:23 rude 20:25 rules 72:3 run 105:5 rush 68:21 < S > Sacramento 2:14 safe 38:4 42:9, 12 48:10 82:1 91:12, 16 safely 42:14 125:6 safety 26:22 27:17 48:16 72:5 112:4, 5 135:19 137:8, 18	SALAI 1:7, 16 3:3 4:10, 11, 20, 24 5:6, 6, 7, 8 140:23 142:20, 24 143:7 saw 33:10, 16 40:16 42:2 78:19 89:9 94:15 95:4, 13 96:5, 9 100:11, 12, 15 saying 9:11 13:25 19:20 40:7, 11 43:13 100:9 101:20 105:13 111:7 112:9 116:17, 18 121:24 122:9, 10 124:24 129:9 136:24 139:8, 14 says 12:19 29:23 43:19, 23 49:12 92:14 scale 108:15, 17 scam 128:16 scene 23:12 49:1, 7 50:18, 20 school 7:5, 6, 7 scope 18:10, 14 67:21 screen 27:24 28:4 57:18, 18 sec 139:5 second 11:11 97:6 103:13 108:13 security 75:5 see 24:25 33:17, 23 40:5 41:10 43:19, 23 55:15 60:12 78:6, 7 84:16 91:3 94:16 95:6 100:6 115:24 seeing 12:9 seen 11:24 12:21, 24 15:12 semitrucks 68:6 72:22 send 69:21 sense 108:1, 5 109:11, 21 sent 12:2, 5, 6, 7, 11 13:2
--	--	--	--

<p>served 118:1 130:19</p> <p>serviced 63:22 69:23 70:3</p> <p>Services 4:8</p> <p>session 14:11</p> <p>sessions 48:9</p> <p>set 10:12, 16 11:11 15:19 143:20</p> <p>Seventh 1:20 2:4</p> <p>severity 122:14</p> <p>shaken 38:7</p> <p>shaking 113:7, 10</p> <p>shape 16:14 89:4</p> <p>sheet 106:12, 14 133:7</p> <p>shelves 46:11</p> <p>shift 18:23</p> <p>shifted 36:2</p> <p>shifting 33:15</p> <p>shook 28:18, 18 31:20</p> <p>shop 45:2</p> <p>shores 46:7, 7, 9, 12, 13, 14, 14 62:12, 17 65:1</p> <p>SHORING 1:9 4:21 13:9 18:20 44:24 45:7 46:3, 18, 21 47:8, 15, 18 51:21 54:1, 12 55:22 61:14 62:3, 10 63:15, 20 65:11, 24 66:16 70:7, 10 71:6, 11 72:2 73:11 74:4, 6, 8 75:2 81:5, 10 114:8 131:22</p> <p>shorthand 143:11</p> <p>shoulders 117:12</p> <p>shoulders, 20:19</p> <p>show 29:10 61:2 71:2 74:18 92:9, 11, 22 127:21</p> <p>showed 28:16</p> <p>showing 22:3 54:2 84:10</p> <p>shrug 20:19</p> <p>Shrugging 117:12</p> <p>sic 81:10</p>	<p>side 35:14 36:2, 3 40:13 104:19 127:21 128:5</p> <p>sides 40:19</p> <p>sign 22:20, 22 23:2 136:18, 23 137:2</p> <p>signals 24:13</p> <p>signature 142:22</p> <p>signed 136:21</p> <p>silver 42:18, 23 43:12 77:1, 16, 20 82:15 83:20 88:9 90:17 93:16, 21, 25 94:8, 11, 25 95:14 97:13, 17, 22 98:7, 25 99:2, 14 100:12, 18 101:7 102:2 105:2 120:17, 20 121:5, 13, 17 125:18 132:3 139:25 140:4, 9</p> <p>simply 96:7</p> <p>sir 7:4, 21 9:2, 10 10:10, 13 11:6 12:10, 16 14:7 18:1 45:23 60:5 61:9 108:5, 20 110:25 112:25 113:2, 17 114:3, 14 117:24, 25 118:18, 20 122:8 123:9 133:23 134:23 140:19</p> <p>sit 44:7 77:3 110:12 115:20, 23 135:3</p> <p>sits 72:11 116:2</p> <p>situation 129:14 136:3</p> <p>six 131:14</p> <p>six-hour 68:4</p> <p>size 15:4, 6, 10</p> <p>slow 9:16, 18 21:8, 14 33:12 78:13 80:11 82:4 88:2 90:9 95:5, 14, 15, 16, 17 104:22</p> <p>slowed 33:13 41:24, 25 78:12 79:1 89:16, 17</p>	<p>91:9 95:7, 12 97:14 103:5</p> <p>slower 104:22</p> <p>slowing 32:15 88:5 94:12, 13 96:14, 19 98:2, 4, 9, 9</p> <p>slowly 83:16 88:4, 5</p> <p>slows 98:1</p> <p>small 65:8</p> <p>smashed 58:11</p> <p>social 75:5</p> <p>somebody 32:1, 1, 3 51:15 53:6, 13, 16 55:6 115:15 128:7</p> <p>son 74:5</p> <p>soon 15:22 18:21 33:10 57:7, 11</p> <p>sorry 9:6 16:20 18:12 21:9 27:13 29:8, 9 30:13 42:11 47:10, 10 55:10 58:20 72:20 75:22 76:7 122:6 137:12</p> <p>sort 119:17</p> <p>South 1:20 2:4, 9</p> <p>space 98:15, 18 99:15</p> <p>Spanish 2:19 31:21 118:15</p> <p>speak 7:17 9:14 18:11 21:13</p> <p>speaking 9:15 82:5</p> <p>speaks 61:15</p> <p>specific 103:7 116:17</p> <p>specifically 26:17 28:9 75:2 83:19 92:16</p> <p>specs 109:17</p> <p>speculate 44:10</p> <p>speculation 53:7</p> <p>sped 24:14 33:6 35:20 90:11, 23</p> <p>speed 14:19 32:9, 24 33:7 34:8, 15 78:13 82:6 103:9,</p>	<p>10, 18 105:12, 20 125:9</p> <p>speeding 33:3 88:5 98:4, 5, 9</p> <p>speedometer 103:19, 22 105:23</p> <p>spoke 6:18 76:25 134:13</p> <p>spokesperson 55:21</p> <p>sporadic 68:18</p> <p>spur-of-the-moment -type 68:19</p> <p>ss 143:3</p> <p>stamped 29:23 31:6</p> <p>standing 27:8</p> <p>staring 103:6, 19 105:23</p> <p>start 11:7 18:23 19:3 62:16 75:21, 25 95:14 100:2, 3 120:1</p> <p>started 10:25 35:24 46:2 72:22 92:1, 19 102:8, 24 126:19</p> <p>state 4:12 143:1, 5, 20</p> <p>stated 106:9</p> <p>statement 17:11 21:18 22:15, 21, 22 23:4, 15 24:5 25:18, 24 26:17, 18, 20, 24 27:3, 7 28:7, 10 30:7, 9, 10, 15, 21 31:13 33:2 34:3, 19 35:17 36:24 37:16, 25 38:13, 18, 21 39:12, 15 48:21, 21 49:11, 23 51:5 56:3 92:10, 12, 17</p> <p>statements 6:12, 15, 23 49:8, 10</p> <p>States 7:3</p> <p>stay 68:3 102:20 117:18, 21 125:5</p> <p>stayed 24:15 59:2, 3 124:13</p> <p>staying 11:18</p>
---	---	---	--

130:24 stealing 75:10 stipu 6:1 stipulate 6:4 stipulation 5:21 stocker 73:22 stop 25:6 34:21 35:6 37:22 88:2, 10, 15, 15 89:12 90:8 93:16 95:8, 21, 22 96:4 97:21 100:22 113:3 119:25 125:6 stopped 13:9 84:2, 4, 6 87:14, 17, 18, 20, 22, 24, 25 90:10 94:13 99:7 114:7 128:19 stopping 42:10, 12 96:10 stops 85:9 story 121:13 straight 82:22, 23 83:2 111:1 121:9 Street 1:20 2:4 79:10, 11 80:15 81:1, 11, 22 stress 112:11 strike 25:25 41:17 47:15 53:13 99:21 strikes 85:10 striking 32:21 36:25 37:7 87:13 struck 32:9 34:25 36:8 82:11, 14 83:14 84:7 85:4, 11, 20 86:1, 6, 11, 16, 20 87:15 88:9, 17 89:6 91:4 101:7 stuff 65:2 68:6 69:11 75:6 111:9, 12 112:17 136:8, 15, 16 subject 14:13 substance 10:14 12:3 16:18 70:15 sudden 91:10 suffered 122:15 124:23	Suite 1:20 2:5, 9, 14 summer 10:17 supposed 55:12 107:1 111:13, 16 112:13 Sure 9:24 13:14 19:21 21:1 59:5 106:25 118:10 129:6, 19 133:1 136:14 surprised 121:12 swapped 25:13 77:13 swerving 80:3 switch 37:3 92:24 switched 92:13, 23 93:1, 5, 8, 10 switches 98:13 switching 77:24 92:4 sworn 4:22, 23, 25 143:9 system 69:24 70:2 118:25 119:18 < T > table 15:4, 7, 11 take 8:25, 25 11:1 13:6 22:6 27:24 29:11 40:2, 3 47:6, 17, 21 57:17 59:14 61:10 62:22 70:8 73:1, 12 75:18, 23 76:2 80:24 82:19 105:23 111:12 124:15 139:24 Taken 1:17 13:20 14:5 76:5 talk 28:23 33:3 34:3 70:17, 20, 22 103:14 talked 10:15 21:17 50:18, 19 74:9 132:12 134:16 talking 31:20 32:19 36:10, 12 60:20 78:8 80:19	86:4, 5 112:25 113:11 114:5 teachers 7:10 tell 10:3 11:10 13:16, 18 15:4, 6, 10 28:11 32:7 47:21 52:2 53:17 58:12 59:15, 17, 19 62:9 67:16 69:9 70:5 71:8 73:11 77:22 101:24 103:7 106:21 107:8, 15, 16, 19, 21, 22, 24 108:2 109:2, 8, 9, 10, 11, 18 110:5, 6, 8, 10 113:2 115:11 116:10 119:25 120:21 121:4, 6 134:18, 21 140:16 telling 67:14 103:11 110:4 133:8 tells 20:12 108:17 109:16, 17 Ten 66:18, 19 70:9 76:2, 6 tend 139:2 ten-hour 66:20 term 11:25 12:15 129:22 termed 57:24 terminated 71:15, 16 114:23, 24 115:7 116:16, 19 117:16, 22 terms 32:5, 8, 23 33:7 34:24 43:15 48:16 62:22 67:22 68:24 69:2, 5, 24 73:4 78:25 134:25 137:5 testified 5:1 49:7 50:13 81:24 88:14, 21 92:11, 25 97:7, 17 99:5 100:7, 13 101:18 132:5 testify 121:16 143:9	testimony 14:23 36:7 37:11, 13 38:14 39:3, 12 40:7 43:11 44:13, 20 52:19 53:12 93:4 101:23 109:23 110:23 111:3 114:22 118:9, 12, 16 122:3 125:7 126:1, 18 127:16, 18 129:7, 19 130:1, 7, 9 132:11 136:11 138:3, 14 143:12 tests 47:6, 14, 17, 21 48:3 text 133:10 Thank 8:11, 17, 20 113:3 140:19, 20 Thanks 21:21 THE702FIRM 2:4 theft 75:10 thing 13:20 14:19 27:2 42:20 53:17 64:24 65:3 68:5, 19 74:18 89:20 122:23 128:18 things 27:19 78:19 109:1 120:8 think 13:8, 23 20:3 32:10 52:12 59:25 60:1, 9 70:13 87:17, 18 95:19, 19 96:12 101:7 102:11, 14, 15 111:1 112:11 126:18 128:7 133:16 135:1, 10 thinking 90:23 120:24 121:1 third 25:21 77:16 thought 13:19 101:25 114:25 120:17 124:3 126:21 thousand 15:5 three 17:22 26:10, 11 28:22 35:2, 3 48:1 81:6, 10 125:17, 23 131:1, 2,
--	--	---	--

<p>7 throw 56:11 108:7 throwing 77:25 78:2, 7 ticket 55:23, 24 56:7 57:5, 25 tickets 55:14 tie 111:13, 15 112:6 136:9 tied 111:14, 16 till 13:10 67:3, 5 75:25 84:2, 4 time 4:5 8:9, 17 11:21 13:6, 7, 19, 20 14:19 18:6, 15, 23 19:3 20:8 22:6 26:23 27:2, 25 30:8, 12 32:13, 15, 19 33:16 38:4 39:23 42:14, 22 46:20 47:9 48:2 50:14 51:14 52:11, 18 53:16 55:6, 9 56:10 61:25 62:4 63:18 64:25 65:4, 7 69:23 74:10 76:3, 6, 8 78:16 80:15 86:11, 16, 20 87:13, 15 88:17 90:1, 15 91:6, 11 92:4, 5 95:11, 13 98:5 100:1, 20, 22, 25 102:1, 23 105:19, 25 109:14 110:14 111:11 113:14, 15 119:1 122:10 126:2 127:1 128:8 130:8 133:4 138:12, 13 140:10, 24 143:7, 13 times 9:15 10:19 11:3 47:25 48:1 78:12, 17 79:1, 3, 4 80:9, 17 96:14, 20 97:7 102:1 tired 71:23 titled 12:21 TMC000049-052 3:16</p>	<p>TMC001769 3:15 29:23 31:7 TMC001770 3:16 22:14 Today 4:4, 6, 9 9:12 14:9, 19, 23 16:14, 19, 23, 24 17:5 38:5, 13, 14, 18, 19 39:3, 6, 9, 12 44:7 70:15, 18, 23 71:3, 7 77:4 110:12 112:8 115:6 120:19 121:14, 24 127:16 132:5, 6, 11 134:4 135:3 today's 134:4 TODD 2:10 4:19 5:19 16:22 17:2 50:7, 8 70:24 86:12 told 11:15 43:14 116:22 117:11, 15 118:19 122:13 125:3, 4 127:20 TOM 1:8 4:20 50:5 top 43:21 touch 10:18 town 15:22 138:24 track 120:5 tracking 119:18 traffic 34:4, 7, 12 80:14 81:9, 20 83:17 90:4 100:8 104:5, 22 train 45:19 66:7 trained 44:20 138:15, 17 training 44:23 45:6, 11, 18, 24 48:9, 15, 17 66:10 73:3, 6 111:21 131:17, 25 137:8, 18 138:3, 21 transcribed 143:11 transcript 143:12, 18 transcription 142:21</p>	<p>transfer 27:15 travel 80:17 99:15 traveling 89:14 TRENCH 1:9 4:20 13:9 18:20 44:24 45:6 46:2, 14, 18, 20 47:8, 15, 17 48:4 51:21 54:1, 12 55:21 61:14 62:3, 10, 12 63:14, 20 65:11, 24 66:16 67:23 70:6, 10 71:6, 10 72:2 73:10 74:3, 4, 6, 8 75:2 81:5, 10 114:7 131:21 135:8 trial 15:18, 24, 25 16:10, 11 121:3, 12, 16 tried 8:12 10:18 11:11 24:10 38:15 41:20 42:19 trip 136:16 trouble 23:19 truck 33:18, 19 44:21 45:1, 1, 3, 4, 12, 15, 17, 18, 25 46:22 47:19 53:11 54:21 55:7 58:7, 14, 18 59:23 60:14, 15, 17, 22 61:2, 11, 14, 20 62:3, 10, 11, 22 63:2, 15 67:10, 11, 14, 17, 20 68:24 69:2, 7, 23 73:4 104:17 106:1, 9, 16, 20, 22 107:2, 10, 13, 18, 20 108:2, 8, 11, 18 109:2, 7 119:10 120:1 133:8 136:7 137:10, 21 trucks 63:12, 22 64:1 true 36:24 38:21 143:12 trunk 84:19 truth 75:9 143:9, 10, 10</p>	<p>truthful 49:8 57:3 92:18 Try 49:21 50:1, 5 124:17 trying 11:16 20:25 36:20 40:18 63:7 86:18 90:3 94:17, 23 96:7 105:13 116:11, 15 124:20 128:7 129:6 turn 24:13 104:19 turned 24:12, 12 twice 78:23 two 26:10, 11 28:22 35:2, 3, 15 47:25 60:1, 1, 13 63:24 65:1 123:4 137:2 type 14:19 33:19 72:19, 21 116:2 129:14 typewriting 143:11 typewritten 143:11 typical 19:8 66:16 67:23 68:9 typically 62:10, 17 81:8 < U > Uh-huh 20:5, 24 28:20 30:19 31:17 32:12, 20, 22 33:5 35:4 37:19 44:2 52:23 55:25 56:5, 19 60:5, 19 66:23 85:21 87:16 90:20 91:8, 15 92:7 93:18 100:14 104:9 105:4 108:16 109:15 114:16, 18 116:13 129:10, 23 unable 96:4 unavailable 16:7, 9 understand 7:19 8:3, 24 9:5, 9, 22 10:4, 9, 11 13:5 14:16, 20 75:14 76:12, 14 114:21 116:12, 15 120:14</p>
---	--	---	---

<p>understanding 5:13, 20 19:14 28:3 46:3 74:5 116:16 118:9 122:12</p> <p>understands 5:18</p> <p>understood 6:21 7:10 10:6</p> <p>United 7:3</p> <p>use 39:8 46:15 106:12 108:17 109:21 111:17 136:9, 10</p> <p>uses 106:14</p> <p>usually 119:15</p> <p>utilities 7:13</p> <p>< V ></p> <p>Vague 11:21 23:10</p> <p>Valley 63:20, 23</p> <p>Vanis 2:13</p> <p>Vegas 1:21 2:5, 10 63:20, 22</p> <p>vehicle 25:21 32:9, 21 33:7 34:9 61:16, 20 67:22 69:5 76:23 77:1 79:1 82:4, 6 83:3, 14 84:23 85:14, 20, 22, 23, 25 86:6, 11, 21 87:3, 6, 14 88:24 95:10, 24 96:8 99:13 108:3 118:25 119:17, 18, 22 120:2, 11, 17, 20 125:6 132:3 133:2 136:12 140:4, 5, 9</p> <p>vehicles 72:17, 21 73:23</p> <p>veracity 75:10</p> <p>video 20:20</p> <p>Videographer 1:18 2:17 4:2, 7 76:3, 6 140:21</p> <p>videotaped 140:22</p> <p>view 24:16 92:14</p> <p>violate 9:4, 8</p> <p>vision 40:3</p> <p>voice 10:20</p>	<p>128:21, 25</p> <p>vs 1:6</p> <p>< W ></p> <p>wait 29:5, 5 94:21 122:5, 5</p> <p>waiting 115:21</p> <p>walk 57:11</p> <p>walked 57:8</p> <p>walkie-talkie 65:13, 15</p> <p>want 11:8 12:3 13:1 15:15 17:3 19:21 21:1 26:10 28:14, 23 44:9 68:25 79:23 90:6 92:16 96:8 112:17 114:12 115:22 117:18, 21 118:10 120:14 121:10, 12, 20 135:1 139:7</p> <p>wanted 52:13 73:16 74:4 117:17, 19</p> <p>wants 14:25 127:21</p> <p>ware 68:1</p> <p>warehouse 7:24 68:1</p> <p>watch 133:3</p> <p>watching 103:10, 13, 16, 17</p> <p>water 62:14</p> <p>way 9:11 16:14 36:20 41:9, 11, 23 54:4, 12 56:1 59:10, 15 64:11 65:9 71:6 81:2 85:17 89:4, 12 91:22 95:19, 21, 22 96:10 97:11 100:1 103:5 111:13, 15 135:3</p> <p>Wednesday 111:22, 24 135:16, 20 138:22, 23</p> <p>Wednesdays 111:25 138:5</p> <p>week 13:13 17:25 52:1, 21 80:19, 24,</p>	<p>25 112:2 127:4, 17 129:9, 24 132:9</p> <p>weeks 81:10 123:4</p> <p>weigh 62:17 106:2, 3 110:20</p> <p>weight 62:15, 19 67:12 106:19 107:1, 10, 13, 17, 20, 22, 25 108:3, 10, 18 109:1, 7, 16 110:2, 6, 9, 10, 13, 16, 19, 21 111:6</p> <p>weights 108:25, 25 109:22, 24 111:8 114:17</p> <p>welcome 8:19</p> <p>well 5:10, 11, 11, 15 8:18 10:25 13:5 16:1 26:11, 19 31:25 32:14 35:16, 20 37:2, 10, 12 40:20 41:17 44:19, 25 45:6 47:9, 25 49:3 50:9 51:13, 24 53:6, 15 54:11, 17 55:5, 18 56:9 57:17 59:14, 17 60:3 62:16 63:2, 6 64:3 65:7, 16 66:8 67:13 69:6 74:6, 9 75:1, 3 77:24 79:11 80:21, 25 81:11, 23 83:13 85:16 87:7 88:14 91:23 94:16 96:23 102:22, 22 107:16 110:14 113:8 115:9, 23 116:11, 18 123:4 125:9 128:6 129:4, 12 132:18 136:24 138:4 139:13 140:6</p> <p>went 35:14 54:17 55:6 57:17, 17, 18, 22 74:24 82:22 119:14 129:13 134:6, 7, 12</p>	<p>we're 14:8 28:17 61:15 70:8 86:4, 5 121:15 122:11 124:17, 18 140:12</p> <p>we've 75:15, 20 135:1</p> <p>What'd 31:24 136:23</p> <p>wheel 82:20</p> <p>Where'd 7:5 73:18</p> <p>WHEREOF 143:20</p> <p>whiplash 30:4 31:10, 24 49:9 51:8, 12 53:5, 14, 18 122:12, 15 123:15, 17, 19 124:12, 21, 23</p> <p>white 60:22</p> <p>William 1:24 4:6 143:5, 23</p> <p>window 33:18</p> <p>windshield's 33:20</p> <p>WITNESS 3:2 4:9, 23 6:9 22:8 29:12, 16 30:25 46:12, 14 84:12 113:4 140:20 142:1, 20, 25 143:7, 9, 13, 20</p> <p>word 71:1</p> <p>work 7:21, 22, 24 8:1, 3 11:1, 3 19:4 28:22 54:2 55:14, 22, 24 56:7 57:5, 15, 19, 19, 25 59:18 66:17 67:9, 21 73:16, 18, 24 74:3, 4 80:25 81:3 110:18 111:8 112:11, 12, 14, 18, 20 117:17, 19 118:21 119:2, 3 139:2</p> <p>worked 46:3 60:1 63:3, 9, 9 66:25 67:2, 23 73:25 74:5 81:5, 10 135:13</p> <p>working 13:9 46:20, 22 47:3, 5, 18 48:2 51:19</p>
---	--	---	--

73:14 111:11
 113:24 114:1, 7
 131:21
works 27:16 108:9
worried 124:18
worry 112:14
 116:5 124:18
worrying 116:3
write 26:17, 19, 23
 27:1 30:5, 15
 51:1 123:19
written 22:17
 30:9, 10, 15, 21
 31:13 33:1 34:2,
 18 39:11 51:12
 92:10, 12, 17 128:4
 133:9, 11, 13, 14
wrong 36:9, 19
 43:9 101:24
 120:18, 20 121:5,
 17 140:13
wrote 17:12 24:2
 25:24 26:16 27:2,
 3 28:12 30:7, 11,
 14 50:14, 15, 17
 51:4, 7, 13 53:21
 123:16 124:6, 25
 125:1

< X >

XII 15:12

< Y >

yard 46:4, 23 47:4,
 5, 19 56:15 59:3, 4,
 18 63:9 64:6, 8, 14
 65:6 68:3 69:8
 73:15
yards 25:7 79:23
 86:2, 6
yeah 6:1, 4 7:15
 17:20 19:22
 24:18 29:4, 7, 8
 41:2 43:23 49:19,
 21, 24 50:1 51:24
 56:1 57:11 70:24
 75:17, 19, 23 76:1
 78:22, 22 81:4, 23
 82:24 85:3, 13, 16
 86:14 88:25
 89:10 95:11, 16

97:1 101:17
 110:11 111:17
 112:10 117:20, 23
 123:2 125:2
 127:15 129:25
 130:11 132:25
 133:15 134:8, 14
 136:22
year 10:17 60:8
 70:12, 13 114:4, 12,
 13, 15 127:6, 14
years 15:5 17:22
 60:1, 2, 10, 13 81:6
yep 111:25 131:3
yesterday 8:12
 17:7 132:13, 24
 134:10

< Z >

zero 73:5

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Maikel Perez-Acosta, Plaintiff(s) | CASE NO: A-18-772273-C
7 vs. | DEPT. NO. Department 28
8 Jaime Salais, Defendant(s)

9
10 **AUTOMATED CERTIFICATE OF SERVICE**

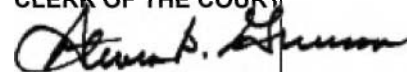
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12 Court. The foregoing Order Shortening Time was served via the court's electronic eFile
13 system to all recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 5/28/2021

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CLERK OF THE COURT



1 **RTRAN**

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5 **DISTRICT COURT**
6 **CLARK COUNTY, NEVADA**

7
8 **MAIKEL PEREZ-ACOSTA,**

9 **Plaintiff,**

CASE#: A-18-772273-C

DEPT. XXVIII

10 **vs.**

11 **JAIME SALAIS,**

12 **Defendant.**

13
14 **BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE**
15 **TUESDAY, JULY 14, 2020**

16 ***RECORDER'S TRANSCRIPT OF HEARING***
17 **PLAINTIFF ROLANDO BESSU HERRERA'S**
18 **MOTION TO STRIKE DEFENDANTS' ANSWER**

19
20 **APPEARANCES (see page 2)**

21
22
23
24
25 **RECORDED BY: JUDY CHAPPELL, COURT RECORDER**

1 APPEARANCES:

2 For the Plaintiff,
3 Maikel Perez-Acosta:

JASON C. BARRON, ESQ.
(via Bluejeans)

4 Rolando Bessu Herrera:

CRAIG W. DRUMMOND, ESQ.

5
6 For the Defendant:

JOEL D. ODOU, ESQ.
TODD A. JONES, ESQ.
(via Bluejeans)

1 Las Vegas, Nevada, Tuesday, July 14, 2020

2
3 [Case called at 10:05 a.m.]

4
5 THE COURT: Good morning.

6 MR. ODOU: Good morning, Your Honor.

7 MR. DRUMMOND: Good morning, Your Honor.

8 THE CLERK: Good morning. This is Case Number A772273,
9 Perez-Acosta versus Salais.

10 THE COURT: First of all, Counsel here state your appearance.

11 MR. DRUMMOND: Good morning, Your Honor.
12 Craig Drummond on behalf of plaintiff Rolando Bessu Herrera.

13 MR. ODOU: Good morning, Your Honor. Joel Odou on behalf
14 of the defendants.

15 THE COURT: And we have Counsel on JAVS, who are they?

16 MR. BARRON: Yes. Yes, Your Honor, thank you.
17 Jason Barron for plaintiff Perez-Acosta.

18 MR. JONES: And, good morning, Your Honor. Todd Jones for
19 defendants.

20 THE COURT: Okay. So let me get this straight so I can -- who
21 was former counsel and who is current counsel? Isn't that what -- there
22 was counsel for, I don't know, nine, ten months.

23 MR. ODOU: Your Honor --

24 MR. JONES: Your Honor, Todd -- Your Honor, Todd Jones
25 here. I was counsel from the inception of the case and Mr. Odou's firm

1 was brought in several months ago to take over the case.

2 THE COURT: Okay. So I've reviewed all of this and the
3 reason we're here today, as everybody's aware, certainly this is a motion
4 to strike the defendant's answer or that certainly includes, similar to
5 criminal, lesser or included sanctions regarding the Discovery. Now I had
6 a somewhat, if you will, similar related type case and when these type or
7 this type of an allegation, especially when it doesn't appear that the
8 defendants are arguing that their action by not providing the documents
9 was intentional, it was -- it is their position that it is work product. I -- and,
10 by the way, since those type sanctions potentially basically anything from
11 start to the end, I am going to give Mr. Jones, who was the former,
12 correct? I'm getting -- I only marked it. I didn't mark former. This is, and
13 believe me it was a first time that I became aware, this potentially is
14 what's called reputational sanctions. And although I think in this other
15 case, it may have been raised for the first time in front of the Supreme
16 Court, the State Supreme Court, I had given and I am going to give the
17 old counsel, if you will, the opportunity to file written opposition to this
18 because if in fact I find any of the -- any sanctions, it would certainly
19 potentially be reputational in nature, if in fact that exists in Nevada, and it
20 was very dubious whether the Supreme Court acknowledged that. But in
21 any event, that was a claim made.

22 And second of all, before I resolve this, I think there clearly,
23 and I did this again in that case, there is an issue for defendant to, and
24 this is certainly up to you guys, but I cautioned counsel and -- that cumis
25 counsel potentially should be provided and the clients of the defense

1 counsel, those being both the insurance company and the individual, need
2 to understand that there has clearly been the -- I don't think there's any
3 issue that the actual defendant would be relying on advice of counsel
4 when they signed the both, you know, the answers to interrogatories,
5 et cetera, et cetera.

6 And so therefore, and I don't know what the policy limits are, I
7 don't know what the meds are, I don't know any of that, but in the interest
8 of whatever, you need to at least consider and discuss whether that
9 is -- should be done. That's up to you guys but I'm going to give you time
10 to do that. I'm going to give Mr. Jones two weeks to file his brief on behalf
11 of the prior defense firm. It's my understanding, and this may be an issue
12 for an evidentiary hearing, that when it -- when this email initially came in,
13 it was a decision by prior counsel that it was work product and therefore
14 that carried over for, what was it, 11 months?

15 And then when did you take over?

16 MR. ODOU: Approximately March or late March, Your Honor.
17 Once the COVID situation broke, so late March.

18 THE COURT: Okay. But that was after the depo or before the
19 depo?

20 MR. ODOU: It was two weeks before the deposition,
21 approximately.

22 THE COURT: And who took the depo?

23 MR. ODOU: I took the deposition, Your Honor.

24 THE COURT: Okay. So those are issues that need to be
25 addressed. I can tell you preliminarily, and I haven't seen anybody

1 provide a case where this would be remotely considered work product.
2 So I am interested in whatever opposition Mr. Jones files and certainly
3 the, you know, I assume -- everybody seems to be saying, no, it wasn't an
4 accident, it wasn't inadvertent, that we had made that decision. So you
5 can address all of that. But any sanctions from striking down to simple
6 attorney's fees for the motion would be, I think the word is ascribed,
7 anyway, would be attributed to both defendant and defense counsel. So
8 that is exactly why Mr. Jones needs to file a separate brief so he is
9 represented here, the firm is represented. If you want to get outside
10 counsel, whatever, but those potential costs, whatever it might be, I,
11 again, clearly the defendant isn't the individual or individuals who, unless
12 I'm somehow wrong, who decided -- well, maybe wasn't even informed
13 that this email was transmitted. I don't know, but I assume it is clearly or
14 was clearly a legal decision and had nothing to do with the actual
15 defendant and/or the insurance carrier. And as you know, in Nevada, you
16 have a dual responsibility so you have two clients in fact. And so, and
17 again, if there's, you know, under whatever circumstances an issue that
18 coverage would not be adequate, then you may be suggesting cumis
19 counsel.

20 In any event, which is also why I'm going to give, as I said,
21 Mr. Jones two weeks to file an opposition. I'll give the plaintiff a week to
22 file a reply and this is just from their firm. It isn't an opportunity to
23 supplement. And I'll give the plaintiff a week after that. If in fact there's
24 going to be outside representation, and I can tell you that was the case, in
25 a tangential case somewhat similar to this, and -- well, corporate counsel

1 so, and I see this is, there is a corporation, I guess.

2 So anyway, I didn't -- I don't recall if we had a Rule 16. What
3 are the medical bills on this?

4 MR. DRUMMOND: They're --

5 THE COURT: Just approximately.

6 MR. DRUMMOND: -- think past are several hundred thousand
7 dollars in each with both having significant futures.

8 THE COURT: All right. So we potentially and I don't -- this is a
9 corporation so who knows what their coverage is. But in any event, it's
10 something that needs to be addressed. So if in fact new, whatever, other
11 counsel is going to be, they definitely should be contacting my chambers
12 because, as I said, two weeks, one week, and we'll have the hearing, and
13 if necessary, potentially even an evidentiary hearing, who knew what and
14 when.

15 But, again, I'll allow defense counsel to at least tell me if you
16 found any cases that would support your theory that this is somehow work
17 product. Work product if you had talked to them on the telephone and you
18 wrote down your own notes. But my understanding, and again, you know,
19 we have it in writing, is this was email from a potential or from a witness
20 with information regarding the case. That's discoverable. For, you know,
21 years and years now, that's -- not even a close call. So having said that,
22 does anybody have a case they want to direct me to at this point? All
23 right, I haven't seen any. I didn't see any.

24 So, Kathy, give us the dates?

25 THE CLERK: Okay. Mr. Jones, two weeks will be July 28th.

1 Plaintiff, and I'm not sure, there's two different plaintiffs and one has a
2 joinder, August 4th, will be there's. And then the hearing would be
3 August 18th.

4 And do you want that at 10?

5 THE COURT: Sure.

6 THE CLERK: Okay.

7 THE COURT: And -- okay, we will see or hear from you at that
8 point.

9 MR. DRUMMOND: Your Honor, there is one housekeeping
10 matter. And this is Craig Drummond, if I may address the Court?

11 THE COURT: What's that?

12 MR. DRUMMOND: We had a motion -- we requested to
13 depose Mr. Jones prior to engaging in this litigation to kind of find out who
14 knew what when, and kind of find out what the communication was.
15 There's a hearing set, I think, later this week with the Discovery
16 Commissioner. I plan to just write a letter asking to withdraw that without
17 prejudice at this time, given that there may be an evidentiary hearing
18 which I think would be a more appropriate vehicle to address this with
19 Mr. Jones, especially in front of Your Honor who's going to be making the
20 ultimate decision.

21 So I do just want to let everybody know that I do plan to notify
22 Discovery today to ask it be taken off calendar, unless somebody has an
23 objection, so that we could let Judge Israel review the briefing and then
24 make the decision on who's going to testify and, you know, what the
25 scope of that would be.

1 MR. BARRON: Yeah, this is Jason Barron for the plaintiff. I
2 would join that. I would ask that they withdraw their motion for the
3 protective order pending the formal opposition, et cetera. It's Todd Jones'
4 protective order motion, without any legal support, of course.

5 THE COURT: At this point, as I said, I'll let Mr. Jones file an
6 opposition. We'll go to all that. If Discovery is necessary, then I probably
7 will do a minute order prior to whatever the 30 days was, we'll put that off.

8 And, again, I'll tell you, because certainly it's a rarity but in
9 that other case, there was the deposition of several of the attorneys was
10 conducted. And of course we will have to get whether or not the actual
11 defendant is going to be relying on advice of counsel which would require
12 him or her, or actually them, to waive attorney-client privilege as to this
13 only. Meaning, just the what happened, why, et cetera, when, and not
14 anything to do with the -- well, anything else regarding the liability or
15 damages of the case, but only about this.

16 So those are things, and I can tell you certainly we are
17 not -- would not and could not be doing a trial in a long time anyway. Not
18 that that's a reason, but the similar type case, there was Discovery in that
19 regard. So we'll wait and see. Okay?

20 THE CLERK: How long do we estimate this hearing to be
21 then?

22 THE COURT: Well it really is going to depend, I guess, on
23 whether or not we're going to do -- whether or not an evidentiary hearing
24 is needed. Nobody seems to be contesting the fact that the email was
25 sent and received and addressed. It's just the issue as to whether or not

1 it remotely could be considered work product. Or it was an intentional
2 failure to disclose and we'll address that when we, again, when things
3 become -- well, certainly, as I said, we'll let Mr. Jones file an opposition
4 and go from there.

5 THE CLERK: Okay.

6 THE COURT: So, I don't know. Okay? All right. You've got
7 the dates. We're done.

8 MR. DRUMMOND: Thank you, Your Honor.

9 MR. JONES: Thank you, Your Honor.

10 THE COURT: All right.

11 MR. ODOU: Thank you, Your Honor.

12 THE COURT: Have a good day.

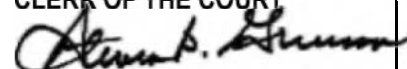
13
14 [Hearing concluded at 10:25 a.m.]

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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

MAIKEL PEREZ-ACOSTA, ROLANDO)
BESSU HERRERA,)

CASE NO. A-18-772273

Plaintiffs,)

DEPT. NO. XXVIII

vs.)

JAIME ROBERTO SALAIS, TOM)
MALLOY COPORATION,)

Transcript of Proceedings

Defendants.)

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

PLAINTIFF HERRERA'S MOTION TO STRIKE DEFENDANTS' ANSWER;

HEARING REGARDING MOTION TO STRIKE ANSWER/SANCTIONS

THURSDAY, OCTOBER 1, 2020

APPEARANCES:

For the Plaintiffs: CRAIG W. DRUMMOND, ESQ.
JOEL D. HENRIOD, ESQ.
MICHAEL KANE, ESQ.
(Live in court)

For the Defendants: TODD A. JONES, ESQ.
JOEL D. ODOU, ESQ.
DAVID LEE, ESQ.
(Via Bluejeans)

RECORDED BY: JUDY CHAPPELL, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 THURSDAY, OCTOBER 1, 2020 AT 9:59 A.M.

2

3 THE CLERK: Case number A772273, *Perez-Acosta*
4 *versus Salais*.

5 THE COURT: All right, counsel. State your
6 appearances. Start with the plaintiff.

7 MR. DRUMMOND: Good morning, Your Honor. Craig
8 Drummond and Joel Henriod on behalf of plaintiff, Bessu
9 Herrera. Mr. Michael Kane is here on behalf -- as well
10 with Mr. Henriod, on behalf of plaintiff Perez-Acosta.

11 MR. HENRIOD: Good morning, Your Honor.

12 MR. KANE: Good morning, Your Honor.

13 THE COURT: Defendants, let's start off with
14 counsel -- the original counsel.

15 MR. JONES: Good morning, Your Honor. Todd Jones
16 of Mokri, Vanis, and Jones appearing for defendants Tom
17 Malloy Corporation DBA Trench Shoring Company and Jaime
18 Roberto Salais.

19 THE COURT: Then the current counsel.

20 MR. ODOU: Good morning, Your Honor. Joel Odou
21 from Wood Smith on behalf of all of the defendants.

22 THE COURT: And is corporate counsel also here?

23 MR. LEE: Your Honor, David Lee is here from Lee
24 Law Firm on behalf of Mr. Jones and his firm at your
25 suggestion in the last hearing.

1 THE COURT: Okay. So, you're representing the
2 corporation now but my question -- the original corporate
3 counsel who attended the deposition, at least that's my
4 understanding, that corporate counsel attended the
5 deposition that we're talking about or -- is he or she
6 present?

7 MR. ODOU: Your Honor, Joel Odou on behalf of the
8 defendants. I took the deposition of Nancy Espinoza
9 [phonetic]. There wasn't a corporate --

10 THE COURT: Oh, I thought the plaintiffs --
11 somewhere, I thought that they said that corporate counsel
12 actually appeared.

13 MR. DRUMMOND: Your Honor, this is Craig Drummond.
14 We did in one of our -- actually in the most recent
15 briefing, mention that they had their -- I believe it would
16 be the Risk Manager present at some of the depositions of
17 the parties. So, there was a corporate representative,
18 which we did state, and that's what -- there was a question
19 about what the company knew --

20 THE COURT: Oh, okay. Not --

21 MR. DRUMMOND: -- we stated they were actively
22 present at some of these depositions.

23 THE COURT: All right. That's where I must have
24 gotten it. Okay. Although we went through some of this
25 already, let's -- plaintiff, it's your Motion to --

1 MR. DRUMMOND: Thank you, Your Honor.

2 Related to this matter, I think everyone in this
3 case are all litigators and Your Honor is obviously a very
4 experienced litigator. We all know that you can have trial
5 strategies and tactics. For example, some sort of
6 argument, some sort of question that you reserve for trial
7 and then you use that at trial and hope the other side
8 hasn't figured it out so they're not able to either defend
9 or prosecute against it. That's fine. What is not fine
10 is, during litigation, hiding evidence. In this case,
11 hiding witness statements.

12 Now, we know this was a tactical decision. How do
13 we know it? We know it because there are changing stories
14 as to why this was never timely or properly disclosed as a
15 16.1, in response to Request for Production from both
16 plaintiffs where we were asking for witness statements, as
17 well as during the deposition of Ms. Espinoza where they
18 are talking about an e-mail that, one, they've never
19 previously produced and, two, wouldn't even produce during
20 the deposition so that plaintiffs' counsel on both sides
21 could ask her about it.

22 We also know that there is a changing story about
23 why this was done. At the 234 conference, we hear this was
24 done for the safety of Ms. Espinoza. Some sort of issue
25 about -- that she needs to be protected. We asked: Is

1 there a protective order in place? Did you do anything?

2 No, we didn't.

3 Then, the EDCR 2.34 goes into: Well, we didn't
4 give this to you because it was work product. Okay. Fine.
5 We then have a hearing in front of Your Honor where Your
6 Honor very clearly said: I don't see this as work product.
7 Can anybody give me a case? And no one has ever given you
8 a case. There has been no briefing at the motion hearing,
9 there's been no briefing at -- subsequent to that that
10 gives you a case.

11 Now, we have the argument: Well, we were vetting
12 Ms. Espinoza. We were vetting her for a year and 27 e-
13 mails and we needed to vet her before we could provide her
14 information to the plaintiff. Well, we respectfully don't
15 think that is a credible argument. Here is why. What they
16 were actually doing was building a defense for a year
17 behind the scenes without properly giving the name of this
18 one witness who was the stalwart behind it. They're not
19 vetting her. They're building a defense without knowledge
20 to the plaintiffs. That is what's going on and that is the
21 egregiousness of the actions in this case. Now, we know
22 that -- that they knew about that because if you look
23 through our -- and it's -- in our original pleadings --
24 well, actually in the Reply that we filed, there is an e-
25 mail from Mr. Jones. And I'll -- just so everybody knows,

1 I'm looking at bate stamp TMC002823, dated April 29th, 2019,
2 where Mr. Jones tells Ms. Espinoza, quote:

3 Thank you very much for your e-mail and for
4 reaching out to my office. We suspected that this
5 accident may have been a setup. This type of scam has
6 been ongoing in the Las Vegas area in recent years.
7 But, until now, we have not had any proof this was the
8 case here.

9 That statement shows that this individual, Ms.
10 Espinoza, has factual information and that is confirmed by
11 the counsel for both defendants in this case, Mr. Jones.
12 And that is dated April 29th, 2019.

13 Now, we also know that later, jump forward a year,
14 27 e-mails forward, we have Mr. Jones on March 11th. And
15 this is TMC002814, all of these are our exhibits that are
16 among the record. We have Mr. Jones stating that Ms.
17 Espinoza has personal knowledge, quote:

18 You have personal knowledge of them discussing the
19 accident and I'm not aware of any other way to
20 introduce evidence of this setup without your help, end
21 quote.

22 His words: Personal knowledge. Now, clear
23 admission that this was a witness with information.

24 We go on to the next paragraph of the same e-mail:
25 Also, unrelated to the actual incident, I

1 understand that you have personal knowledge that Maikel
2 and Rolando were in the same physical condition before
3 the accident as they were after the accident, end
4 quote.

5 Well, this personal knowledge is exactly what Ms.
6 Espinoza said to them back in April. It's the same facts.
7 They chose to sit on it. They chose to build this defense.
8 They chose to hide this evidence. They chose to not
9 respond when we requested a Request for Production with
10 this. They chose not to file a privilege log.

11 Your Honor, we've never seen something egregious
12 like this and to spring it a year later, thousands -- in
13 fact, tens of thousands of dollars in costs, expert
14 witnesses, expert depositions, witness depositions, party
15 depositions, all of this occurred in this year of the 27 e-
16 mails as they're building their secret defense. We ask for
17 the most egregious sanctions possible. If Your Honor does
18 have any questions about what we believe would be the
19 appropriate sanction, I will defer that to Mr. Henriod.
20 He's much more experienced in the area of sanctions and
21 what the courts look at and the analysis, and he's here and
22 able to assist and hopefully guide the Court on that issue.
23 Thank you, Your Honor.

24 THE COURT: All right. Let's -- well, current
25 counsel has already made their argument regarding work

1 product and although -- maybe they didn't understand that
2 they could supplement, there has been none. I'm not aware
3 of any and, quite frankly, the argument that it's work
4 product doesn't hold any water. They didn't go out and
5 discuss -- if there were notes that they went out and found
6 somebody, that's work product. This is an e-mail -- I
7 don't think there's any contention, an e-mail, an
8 unsolicited e-mail from a prospective witness. So, there
9 are absolutely no legal grounds that this should have been
10 withheld as work product. And I think we addressed that
11 sufficiently last time. If you have any cases, if there is
12 something that -- somehow, even though I gave you time, you
13 can address that.

14 So, we're going to go to prior counsel whose --
15 and I've read all this, whose argument is that somehow you
16 thought it was appropriate to vet this information.

17 Go ahead.

18 MR. JONES: Thank you, Your Honor. Todd Jones for
19 the defendants.

20 As the word -- you know, use of work product may
21 be a little bit inartful, but I did view this as an
22 investigation period because of the unique nature of this
23 contact by an unknown person who was demanding money in
24 exchange for information in this case, which I've never
25 encountered in my 22 years of lawyering. And, after

1 getting this initial e-mail from Ms. Espinoza, I reached
2 out to her to try to verify this information, who she was,
3 and what she had to say, and she gave me very limited
4 information on who she was. She demanded payment for the
5 information and in the one and only phone call I had with
6 her, following those -- that initial e-mail, she -- I told
7 her that we could not pay her, the clients could not pay
8 her, and she cut off all further contact -- any substantive
9 contact with me for nine months because my whole point was
10 I didn't know what type of witness this was, whether she
11 was even a witness. I had never met her in person.

12 And, as you see from the e-mail exchange, and the
13 documents produced, this was a situation where we had no
14 idea who she was or the reason for sending us this
15 information, other than she wanted money, which is not a --
16 it's not appropriate. That's not -- say what you will, as
17 far as what kind of conduct that is, but that gave pause to
18 me, as counsel, as to whether anything she was providing
19 was like -- would allow us to even -- allow to use her as a
20 witness. You can't predicate, you know, payment -- you
21 can't predicate witness testimony in exchange for payment,
22 which is exactly what she was proffering. And once I told
23 her no, nine months she bailed, which led me to believe,
24 yes, she isn't an actual witness in this case because she
25 was looking for money.

1 And, in fact, I gave up trying to contact her
2 after October of 2019, at which point she then reached out
3 to me a second time unsolicited in January 2020. And the
4 argument I -- we have made in the arguments is that was
5 work product because we didn't know if this, under 16.1, if
6 this was a witness that was likely to lead to discoverable
7 or admissible evidence and that, you know, -- plaintiffs'
8 counsel talks about building a case for a year. There was
9 no communications for nine months, for almost a year.
10 There was nothing to build. We -- despite my efforts to
11 contact this witness to verify who she was and what
12 information she actually had, and I had never met with the
13 witness. She never received any payments from my client or
14 from my office or anyone, for that matter.

15 And, for nine months, trying to actually confirm
16 who this person was and what they had to say, and, as I
17 said in my papers, we were basically ghosted. And I
18 essentially gave up in trying to hunt down Ms. Espinoza at
19 that point. And, then, she reached out, again, a second
20 time, unsolicited in January of 2020.

21 And, for the record, I think -- I'm sorry, Your
22 Honor.

23 THE COURT: Nobody disclosed even in January or
24 April, until the depo.

25 MR. JONES: Yes, but --

1 THE COURT: It hadn't --

2 MR. JONES: The disclosure -- well, the disclosure
3 of the witness took place before the depo.

4 THE COURT: I understand --

5 MR. JONES: And --

6 THE COURT: -- that the disclosure -- you know,
7 obviously, you set a depo, you have to tell them who it is.
8 But I'm talking about the apparently 27 e-mails back and
9 forth that weren't disclosed until, I guess, the middle of
10 the depo or after the depo.

11 MR. JONES: And Mr. Odou can answer that as far as
12 the timing of that, but, again, we ended up producing all
13 of those documents -- the initial document, I believe,
14 during the depo and the rest of the e-mails, which are --
15 the vast majority are just nonsubstantive. It's me trying
16 to get into contact with Ms. Espinoza and her basically
17 ignoring me.

18 THE COURT: Anything else?

19 MR. JONES: I don't think Mr. Odou had an
20 opportunity to speak as to the substance of the Motion at
21 the last hearing, Your Honor.

22 THE COURT: I'm going to get to him now. Anything
23 else from you?

24 MR. JONES: Unless Your Honor had -- not unless
25 Your Honor had any questions specifically for me.

1 THE COURT: I don't necessarily. I am, if you
2 will, saddened because I know you're a reputable and good
3 lawyer. I think this was a huge mistake. You can't decide
4 in -- and in your papers, you said it was -- and
5 plaintiffs' counsel used vetting, you used a different
6 word. You can't make a determination as to the credibility
7 of a witness before you disclose it. That's not your job
8 and certainly -- let's -- I always use examples. If you're
9 representing a manufacturer and you have a letter from an
10 employee saying this -- our product kills people and you
11 don't turn it over because you want to investigate whether
12 he has mental issues, it's not -- that's just not
13 appropriate, to make it to be as tactful as I can. That's
14 pretty outrageous.

15 And I can't understand or -- and, for over almost
16 10 years now, Nevada has been very much disclose everything
17 and we don't do -- and the Supreme Court has said multiple
18 times, we don't do trials by ambush. We don't withhold
19 evidence. And 16.1 says: Turn it over at the beginning.
20 Everything, if it's not attorney-client privilege, and this
21 clearly wasn't attorney-client privilege.

22 All right. Mr. Odou -- is it Odou?

23 MR. ODOU: Odou.

24 THE COURT: Odou. Mr. Odou.

25 MR. ODOU: Thank you, Your Honor. It's easier

1 than it looks.

2 THE COURT: I know you've been in front of me, but
3 I don't recall. So, go ahead.

4 MR. ODOU: No, no, no. I -- no offense at all,
5 Your Honor. I appreciate the effort to get it right.

6 There's not 27 e-mails, Your Honor. They're
7 counting e-mails from the paralegal who printed the
8 documents that were produced for discovery and, you know,
9 they made a big deal out of: Who is this Sarah Doering
10 [phonetic] and what contact did she have with the
11 plaintiff? Well, none. She is a paralegal that works at
12 my law office that printed the e-mails that were produced.

13 To go back to the timeline, Your Honor, because I
14 think that's very critical, Mr. Jones gets an unsolicited
15 e-mail from a person identifying themselves as the ex-
16 girlfriend of the plaintiff. We have no way of knowing who
17 this person is. We get unsolicited e-mails from people
18 trying to get money all the time. There are numerous
19 scams.

20 Now, to get an e-mail from somebody that you don't
21 know who it is and try to figure out who they are takes
22 time and, in fact, if we look at the affidavit and the --
23 all of the e-mails were filed on August 8th -- August 11th.
24 From Mr. Jones in his Supplemental Declaration, if we look
25 at it, what we see is we have an e-mail from the plaintiff

1 -- or, I'm sorry, from Ms. Espinoza, who is reaching out
2 and asking for money. She is told she is not going to get
3 money for her testimony. And, then, we have three
4 subsequent e-mails asking to talk to her that she ignores.
5 And this goes on for May, June, July. There's no contact
6 from her. And, in fact, it appears that this is a person
7 that does not have personal knowledge and then goes away.

8 And, so, that first piece of information that is
9 provided is: This accident is a setup. Okay. Who are you
10 and what proof do you have that there's a setup? There has
11 never, even as of this day in taking her deposition, been
12 any verified information provided to that. And, so, off we
13 go to move forward on discovery and then, in January,
14 there's another unsolicited e-mail that the plaintiff was
15 lying to you and he's playing baseball. Okay. Well, that
16 information was disclosed. And, in fact, the videos from
17 plaintiff playing baseball was disclosed. And his
18 deposition was taken and we acknowledge now that he was
19 playing baseball and he's not as injured as he claimed.

20 So, if we look at exactly what happens is there's
21 this information, it's a setup. That's never verified. No
22 information is ever provided confirming that she has any
23 knowledge or personal knowledge of that until we finally
24 get her deposition in April. And counsel's mistaken. That
25 e-mail was produced at her deposition. That's where my

1 paralegal's name came from because she was the one who
2 printed it. And, so, it had her name on it and then they
3 made a big deal: Oh, look, they redacted something. We
4 redacted the name of the person who printed it because it
5 wasn't relevant and this exhibit was attached to her
6 deposition. All sides were given the opportunity to cross-
7 examine Ms. Espinoza about the contents of her e-mail.

8 If we looked at every single case that talks about
9 misconduct and sanctions, every single case talks about the
10 evidence is hidden from the plaintiff, that the plaintiff
11 cannot get. And this is the ex-girlfriend of the
12 plaintiff. We have no -- we still, even as of today, have
13 no ability to vet whether or not she is working with him,
14 working against him. All we know is what she put in her e-
15 mails. And when we took her deposition, she admitted in
16 cross-examination that she's mad at him and that's why she
17 sent this e-mail.

18 In fact, all of this came out in her deposition.
19 They were given an opportunity to cross-examine her at the
20 deposition. It was taken via Zoom because of Covid, but I
21 e-mailed around the copy of the e-mail that Mr. Jones had
22 received from her. And, moreover, the remedy, if they
23 claim that there's some prejudice here, they certainly
24 haven't shown it in their papers from their experts because
25 the experts go to other issues. There's no expert, there's

1 no doctor, there's no accident reconstructionist that talks
2 about the fact that he was playing baseball or that this
3 accident was a setup. So, the prejudice claim doesn't
4 happen.

5 If we go to the cases that talk about sanctions,
6 those cases are where counsel has regrettably lied to this
7 Court, as this Court is very well familiar with. The
8 *Valley Healthcare Systems* case is an example where the
9 party and the attorneys misrepresented themselves to the
10 Court. We don't have that here. Here, what we have, is
11 evidence that is not harmful to the defendants. It's
12 evidence that's potentially harmful to the plaintiff that
13 was never able to be verified, that was produced in
14 discovery. They were given this evidence at the deposition
15 and afterwards. And their argument is: Well, that's too
16 late. Well, we tried -- Mr. Jones tried to get some
17 verification for this, who this person was, what they know,
18 and how they know it, and we never got it.

19 And, then, finally, Your Honor, none of the cases
20 talk about the fact that this is a witness known to Mr.
21 Herrera. This is his ex-girlfriend, who he never listed in
22 discovery or disclosures. And why he never listed this
23 person that he lived with as having knowledge of his
24 injuries, at a minimum, is an issue.

25 And, so, yes, the criticism of the plaintiff is:

1 Well, you took too long to investigate who this person was
2 and disclose her. And the reason why they took too long is
3 because she refused to cooperate. It's really
4 [indiscernible] of a witness saying: I'm not going to talk
5 to you if you're not going to pay me. We can't pay her.
6 So, she disappears. And, then, out of the blue, she comes
7 back and says: Well, go on YouTube. And, yeah, we went on
8 YouTube. We found the videos. Those videos were disclosed
9 timely. Those videos were testified by Mr. Herrera, and
10 discovery went forward, and there is no prejudice.

11 So, if we look at all of the factors here, this is
12 not a case where the defendant was hiding something or
13 building a case. There is absolutely no evidence of that,
14 or hiding something that is harmful to the defense to
15 prejudice the plaintiff. This is information that was
16 potentially beneficial to the defense that just was never
17 panned out and there are -- certainly if this Court
18 believes that it took too long to disclose it, the remedy
19 for that is Ms. Espinoza can be re-deposed or, perhaps, the
20 Court even goes so far to say: Yeah, the defense can't use
21 Ms. Espinoza as a witness. But that's the appropriate
22 remedy here, not striking the Answer, not sanctioning
23 counsel for not being able to get somebody to cooperate,
24 who was refusing to cooperate.

25 And, in fact, I even e-mailed Ms. Espinoza the day

1 before her deposition to see if she was going to show up
2 and she never responded. And that's been produced. So,
3 again, we had no idea that she was even going to show up
4 for her deposition until we were on Zoom and she logged in.

5 THE COURT: I -- I'll certainly --

6 MR. JONES: Your Honor?

7 THE COURT: Yes.

8 MR. JONES: Todd Jones. One or two more points on
9 that is, you know, I tried to do this vetting process and
10 it was my judgment call after getting that initial
11 information and her on -- her unresponsiveness that she was
12 not likely to provide -- be a likely witness in this case.
13 And, if that judgment call was wrong, that's on me. But it
14 was made in good faith.

15 And, to back that up, prior to her deposition,
16 trying to set her up for a deposition, if you look in the
17 exhibits, she sent out e-mails saying everything I told you
18 before is false. She then turned around, which was my
19 worst fear the whole time is trying to confirm what she had
20 to say was true or was she simply after money? And the e-
21 mails from Ms. Espinoza show she tried to recant everything
22 she had said previously, which was one of the fears I had
23 in trying to investigate this potential witness.

24 THE COURT: I understand that, but defense
25 counsel, and I use that in all three, aren't getting the

1 point. And that is: It's not up to you to investigate or
2 determine whether or not these individuals or an individual
3 is a psychotic witness. You disclose when you get a
4 potential witness, somebody comes up to you after a car
5 accident and says, I saw the accident, you disclose.
6 That's the rules. Not: Oh, I need to find out what their
7 relationship is, whether they're credible, whether they're
8 psychotic, whatever it might be. That is not the rule.

9 And that is -- you guys all know you disclose and,
10 if you don't get that, then I just -- you have to know that
11 that's the rule. And I use the example of the -- in a
12 manufacturing company. You can't decide: Well, let me
13 investigate whether or not my employee was smoking
14 marijuana when he sent the letter saying our product kills
15 people. You have to disclose it when you get it, not six
16 months, not nine months. Thirty days I could see, but this
17 is -- it's just inexcusable. I'm sorry. That's not how we
18 do trials, that's not how we do discovery, that's not how
19 we do production of documents. It's totally unacceptable.

20 You have to disclose it. Let them decide. You
21 can do your investigation for nine months after you
22 disclose it. They can do their investigation for nine
23 months after they -- or you disclose it. But you don't
24 hold on to a document, a letter, a whatever it might be.
25 It's not your call. I can't make that more clear and I

1 know all of you either know or should know that that's
2 wrong.

3 And the fact that this woman is clearly a
4 disgruntled or current or -- I see that every -- well,
5 almost every day where, in my criminal stack, when they're
6 claiming assault and then, of course, they fail to show up
7 because now they're back together. All of that happens.
8 Of course. But it is not for one side or the other to make
9 a determination as to the credibility, viability, whatever
10 of the witness. And we wouldn't be here spending all this
11 time.

12 I do agree that none of the expert witnesses
13 regarding liability are affected at all. Well, actually
14 even that could be because now the -- her testimony, oh,
15 he's not as hurt, but he's already testified he played
16 baseball. In any event, I'm getting off track.

17 Clearly, 16.1 has -- we're -- this isn't new
18 stuff. This has been around. Nevada has supported,
19 endorsed, whatever adjectives you could use, disclosure of
20 all information up front, at the early 16.1 case conference
21 and to be supplemented thereafter. And, so, I am extremely
22 distressed that, first, the argument would be: Oh, well,
23 it's work product, and that was clearly fallacious, and,
24 quite frankly, frivolous. And, then, now: Well, I decided
25 -- and I appreciate your falling on your sword, but I am

1 more concerned or as concerned -- your argument is that the
2 defendant, and this being the corporate defendant, and, by
3 the way, and/or the insurance carrier, which, as all of
4 you, I'm sure, know, is under Nevada law the secondary
5 defendant, if you will; that both the insurance carrier and
6 the defendant themselves are considered under similar
7 circumstances in Nevada.

8 All I'm seeing is the affidavit and I am, as I
9 said, concerned as to what, if any, participation the
10 defendant and/or knowledge because after the initial --
11 after you got this, there were interogs, there were
12 depositions, there were times when you certainly could have
13 disclosed this. And I think it's appropriate to know what
14 knowledge -- because the entirety -- or, not the entirety,
15 a substantial part of the defendants' Opposition is that
16 the client, the defendant, would be prejudiced by the
17 conduct of the attorney, which is why I suggested corporate
18 counsel needs to be available, if you will. If I do strike
19 the Answer, certainly one of the issues is: Did the
20 corporation know what was going on? And either take an
21 active role or knowingly -- and, again, assuming
22 potentially this was approved by corporate counsel, that
23 would change the playing field.

24 So, I will let the plaintiffs, because this is
25 their Motion, have the last argument, but I think it's

1 appropriate to get communications by both counsel with the
2 corporation to be turned over in-camera so there is a --
3 there is information one way or the other as to their total
4 lack of participation versus active participation in this
5 decision. So, I'm going to order defense counsel, and
6 that's all of them, to turn over all communication between
7 counsel, and the corporation, and/or the carrier regarding
8 -- or starting from when this letter came in until the
9 deposition of the Espinoza. You -- I -- there is no
10 problem with attorney-client privilege, since you're only
11 turning it over to me in-chambers and I will review it as
12 to what was communicated.

13 I did insurance defense. I know that there are
14 reporting requirements. And, so, I am -- as the plaintiffs
15 suggested, that is a huge part of a significant sanction,
16 whether it's appropriate or not, as far as potential lesser
17 sanctions. So, that will be today. I'll give you 30 days
18 to do that and, so, plaintiff, I'll give you the last word
19 -- well, almost the last word because I'm going to ask --
20 you offered somebody to address alternative sanctions,
21 which are always -- and defendants mentioned some
22 alternative sanctions. I'll let you address that and I'll
23 let the defendants briefly address that.

24 So, go ahead.

25 MR. DRUMMOND: Thank you, Your Honor.

1 I would note one thing. Mr. Jones is still an
2 active defense attorney on this case. My understanding is
3 they have this company and this carrier, even with all of
4 this pending, has kept Mr. Jones as an active defense
5 attorney. Now they just also brought in, you know, Mr.
6 Odou, as well, but he's still one of their attorneys. So,
7 there is also, for what it's worth, a position that they
8 have acquiesced and agreed to keep him on, even with
9 knowledge of this.

10 Nonetheless, we really do appreciate your analysis
11 of this. We would just ask that in addition to the
12 correspondence that the billing records be provided to Your
13 Honor in-camera, to include from the paralegal, as they
14 made mention who they were talking to and when. And that
15 would certainly put this carrier and/or the company,
16 depending on their detailed involvement, on more notice of
17 what exactly was going on.

18 And, with that, Your Honor, I'll turn it over to
19 Mr. Henriod, who can answer any questions you may have on
20 alternative sanctions. Thank you, Your Honor.

21 MR. HENRIOD: Yes, Your Honor. And thank you for
22 allowing us to divide it up this way.

23 We don't need to get into too much detail because
24 I imagine that the Court envisions having further
25 discussion about this after the Court has had an

1 opportunity to review those billing records and the
2 correspondence, in light of what appears to be an advice of
3 counsel defense.

4 My concern on the alternative sanction -- and I
5 think there are, a lot of times, a default to the *Goodyear*
6 *Bahena* type model where instead of striking an Answer, just
7 the liability is stricken and then -- or the liability is
8 established and then there's a full trial on damages. I
9 generally think that works. Here, the problem is that the
10 -- I think the sanctionable conduct and conduct that needs
11 to be sanctioned in order to prevent it in the future,
12 since we keep hearing this argument that they didn't really
13 think it was wrong since they don't find a case precisely
14 on point. Until some court says this rule too must be
15 obeyed, I don't know why we would see an end to this type
16 of conduct. So, I do think that, unfortunately, an example
17 needs to be set.

18 But, here, the conduct also affects the damages
19 issues. What they were attempting to do is not just
20 withhold this particular person, but that they were trying
21 to corroborate for a year, to build up this fraud defense,
22 in general, to try to corroborate it.

23 It reminds me of a criminal investigator who get
24 something, recognize they got it without a warrant. They
25 can't use it because it's fruit from poisonous tree, but

1 then don't even disclose it to the defense so that they can
2 spend the entire time of investigation trying to build up
3 the prosecution by some other means. And, then, the
4 defendant doesn't know either about the thing itself that
5 should have been turned over or that that thing that was
6 never turned over led them to be investigating some other
7 theory.

8 Here, a big part of the defense to the damages is
9 this idea that the defendant -- or the plaintiffs are just
10 making it up, that this is all fraud. And, so, here, I
11 think that even the defense on damages needs to be
12 stricken, that we need to go to a prove-up hearing. But,
13 if it's not, at the very least, I think that the fraud
14 defense, as it relates to both liability and damages, would
15 have to be out. It's certainly not enough to just say this
16 witness, who everybody now knows is crazy, can't be allowed
17 to testify. It's that this entire theory that they were
18 trying to spend this year developing, as it relates to both
19 liability and damages, has to be out.

20 But, again, I think under the circumstances, the
21 Court would be well within its discretion to strike the
22 Answer entirely. Thank you, Your Honor.

23 THE COURT: Thank you.

24 Briefly from the defense, one of you. If you have
25 any comments, although all they did was talk about

1 potential alternatives, but --

2 MR. ODOU: Your Honor, Joel Odou on behalf of the
3 defendants. Just very briefly and then I have a question
4 for the Court.

5 The *Bahena* case, the *Kelly Broadcasting* case, the
6 *Valley Healthcare Systems* case, all of those cases involve
7 defendants violating an order of the Court to do something.
8 And that is not the situation that we have here. This case
9 is vastly distinguishable from that.

10 Moreover, all of those cases involve information
11 that was not available to the plaintiffs. This information
12 and this witness was known to the plaintiff. And, in fact,
13 the Court's example of a person or an employee of the
14 defendants who has information, and you don't confer with
15 that employee, that is a much different case. We don't
16 know, and never did know until we took her deposition, who
17 this person was and the fact that she was the ex-
18 girlfriend. All we know was what she claims.

19 So, I think there is a distinction there, but I
20 appreciate the Court's argument. I just wanted to note
21 there's a distinction there and I'm not trying to second-
22 guess the Court --

23 THE COURT: I don't disagree with you. It isn't
24 the best analogy. It was just an example or a whatever off
25 the top of my head.

1 I had thought about, and I'll let you -- I had
2 thought about also the billing records in order to confirm
3 who is -- who has knowledge on this. So, I certainly think
4 in order to verify what -- who knew what and when, that you
5 should be turning over, and that's both, -- well, actually
6 it really doesn't -- I'm trying to think of it, it needs to
7 be the new counsel because, I hate to say it, but it goes
8 back. The first -- Mr. Jones, that this is, as I said, the
9 most troubling, although taking over and seeing this,
10 again, you collectively either are intentionally ignoring
11 16.1 or have a totally inappropriate version of what
12 turning over all information means. And I am shocked that
13 you could take the position that it should be delayed until
14 you investigate. And, so, anyway, I will require the
15 billing records also and, so, I'll give you 30 days to turn
16 that over to me. I don't see any new argument that needs
17 to be made. So, -- and I will do a written decision and
18 order.

19 I can tell you at the very least that Ms.
20 Espinoza, her depo, her testimony is all going to be
21 stricken. Any reference to her, she's out. It's -- that's
22 the most minimal and I don't know if that's helpful.
23 Actually, I think it doesn't -- it -- neither side would be
24 beneficial in using her testimony, but she is clearly out.
25 She has clearly tried to profit and whether she has

1 committed a crime or not is not a decision I need to make
2 at this time, but her testimony and anything -- any
3 reference to her testimony is all going to be stricken.

4 Again, I will review all of the options once I get
5 the information. So, unless there's anything else -- and
6 that will be -- we'll have to do a written order. I'm
7 guessing two weeks after I receive the information.

8 MR. ODOU: Your Honor, Joel Odou for the
9 defendants.

10 I had a question about the scope of what we are
11 required to produce, with the Court's indulgence. Just
12 bear with me.

13 THE COURT: Go ahead.

14 MR. ODOU: The Court said communications from the
15 date of Ms. Espinoza's e-mail until the date of her
16 deposition and I wanted to make sure I understood that. Is
17 that all communications that the Court is asking for? In
18 other words, if there is a report that says: Hey, the
19 trial date has been moved. Do you still want that as part
20 of this review?

21 THE COURT: I -- again, I don't think it's
22 appropriate for counsel go through that and, yes, if -- I
23 can't imagine that it would be that voluminous. So, all
24 communications of any kind, e-mail, etcetera, a report,
25 whatever. You know, yes.

1 MR. ODOU: Okay. Thank you, Your Honor.

2 THE COURT: It's going to be there, but I'm not
3 going to read it because it's not important, but I cannot
4 imagine that we're talking an incredible amount of
5 paperwork, but it -- whatever it is and then -- and, as I
6 said, communications from the defendant and from the
7 carrier to any counsel. And, of course, those are
8 confidential and only to be turned over to me in-camera.

9 MR. ODOU: Thank you, Your Honor. I wasn't trying
10 to argue, I just wanted to make sure --

11 THE COURT: No. I get it. I get it that there's
12 going to be some absolute superfluous, unimportant
13 communications in this regard, but it certainly -- this way
14 I will be the one filtering and, should there be something
15 of consequence, we'll have to worry about sealing that or
16 whatever, as a Court's Exhibit.

17 THE CLERK: Okay. Thirty days would be -- oh,
18 Judge. Thirty days will be November 2nd. That's going to
19 fall on a Monday because of holidays and things coming up.
20 And, then, it will be set in-chambers for November 19th for
21 a decision.

22 THE COURT: All right. Thank you.

23 MR. DRUMMOND: Thank you, Your Honor.

24 MR. KANE: Thank you, Your Honor.

25 MR. ODOU: Thank you, Your Honor.

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THE COURT: All right. Have a good day.

PROCEEDING CONCLUDED AT 10:49 A.M.

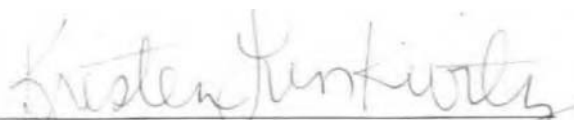
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

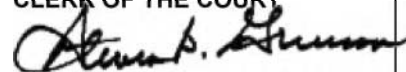
AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



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DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

MAIKEL PEREZ-ACOSTA, ROLANDO)
BESSU HERRERA,)

CASE NO. A-18-772273

Plaintiffs,)

DEPT. NO. XXVIII

vs.)

JAIME ROBERTO SALAIS, TOM)
MALLOY CORPORATION,)

Transcript of Proceedings

Defendants.)

BEFORE THE HONORABLE RONALD J. ISRAEL, DISTRICT COURT JUDGE

**DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER FOR
PRODUCTION OF DEFENSE CORRESPONDENCE AND BILLING RECORDS ON
ORDER SHORTENING TIME**

TUESDAY, NOVEMBER 17, 2020

SEE APPEARANCES ON PAGE 2

RECORDED BY: JUDY CHAPPELL, DISTRICT COURT
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording; transcript
produced by transcription service.

1 APPEARANCES:

2 (ALL VIA VIDEOCONFERENCE)

3
4 For the Plaintiffs: CRAIG W. DRUMMOND, ESQ.
5 JOEL D. HENRIOD, ESQ.
6 MICHAEL KANE, ESQ.

7 For the Defendants: TODD A. JONES, ESQ.
8 JOEL D. ODOU, ESQ.
9 NICHOLAS ADAMS, ESQ.

10 For Mr. Jones: DAVID LEE, ESQ.

1 TUESDAY, NOVEMBER 17, 2020 AT 11:01 A.M.

2

3 THE CLERK: We have everyone present and ready to
4 go on BlueJeans.

5 THE COURT: Okay. A772273, *Maikel Perez-Acosta*
6 *versus Jaime Salais*. Counsel, state your appearance.

7 MR. DRUMMOND: Craig Drummond for the plaintiff.

8 MR. HENRIOD: Joel Henriod for plaintiffs.

9 MR. KANE: Michael Kane for plaintiffs.

10 MR. ODOU: Good morning, Your Honor. Joel Odou
11 for all of the defendants.

12 MR. JONES: Good morning, Your Honor. Todd Jones
13 for all of the defendants.

14 MR. ADAMS: Good morning, Your Honor. Nicholas
15 Adams for all of the defendants.

16 THE COURT: Okay. So, this is on yet again. They
17 -- and I need to figure out who -- for the defendant, the -
18 - who is the current defense counsel and is corporate
19 counsel on? Has there been a Cumis counsel appointed?
20 What's -- who are -- what's the difference?

21 MR. ODOU: Yes, Your Honor. Joel Odou from Wood
22 Smith. We are insurance appointed defense counsel. We
23 have taken over the case from Mr. Jones. Mr. Jones was --
24 he is still part of the case and representing the
25 defendants while we resolve this issue. There is no Cumis

1 or corporate counsel. David Lee is present as well in
2 court today on behalf of Mr. Jones.

3 THE COURT: No one's present in court.

4 MR. ODOU: Online. Sorry, Your Honor.

5 THE COURT: Oh, okay. I'm sorry. He is here for
6 who?

7 MR. ODOU: David Lee is here on behalf of Mr.
8 Jones, due to the reputational nature of the issue being
9 considered.

10 THE COURT: Oh, okay. All right. So it's clear,
11 back in March or April, I -- the first hearing on this, I
12 suggested, if you will, that because there was an issue
13 brought up in a similar type occurrence, that corporate
14 counsel should be at least apprised of this. Potentially
15 there was a conflict, so Cumis counsel should be
16 considered. And, at our last hearing, -- well, actually,
17 in the pleadings, defendant objected to the striking of the
18 Answer, specifically based on the fact that defendant, not
19 defense counsel, was not aware of defense counsel's
20 actions.

21 Now, that -- unless I -- and I've had this before.
22 That's the defense of advice of counsel. If defendant is
23 seeking to do this, and in our last meeting it was clear
24 defendants -- defense counsel argued that the defendant was
25 not aware of these actions and, therefore, as one of the

1 major considerations in the -- and, actually, I forget
2 which -- in the cases from the State Supreme Court that if
3 defendant is not aware of any of these irregularities, then
4 they shouldn't be held responsible. That is -- and I'm
5 looking for the case, but I can't remember offhand.
6 Anyway, we're all aware of the cases on sanctions,
7 etcetera.

8 So, that was a major point brought out at the
9 last. I said: Okay. If that's the case, then you need to
10 prove that. My -- and when I say that, I'm talking about
11 that if you're using advice of counsel, then you have to
12 waive the attorney-client privilege. I'm not sure I spoke
13 those words at that hearing, but I believe at the very
14 first hearing we -- I mentioned that. So, we're here and,
15 on the Motion for Rehearing, now defense counsel has raised
16 the issue that attorney-client privilege. If that is the
17 case, and that's fine, then they are -- the defendant is
18 assumed to have knowledge and/or agreed to defense
19 counsel's actions.

20 This took place over, I believe it's 10 months,
21 but it's something in that area. So, I need to know now,
22 today, on the record: Is defense counsel on behalf of the
23 defendant raising the attorney-client privilege, which will
24 take out/void, I -- several other synonyms I could use.
25 You will not be able to raise the defense, the objection,

1 for the defendant that they were not aware of these
2 actions.

3 So, counsel.

4 MR. ODOU: Thank you, Your Honor. Joel Odou on
5 behalf of the defendants.

6 The issue, as set forth in Mr. Jones's affidavit,
7 filed with the Court back in August, was that the
8 defendants were unaware of any communications that he had
9 or didn't have with Ms. Espinoza. And, under the *Upjohn*
10 *versus United States* case, United States Supreme Court, it
11 talks about the attorney-client privilege and the attorney-
12 client privilege not being waived when there is an absence
13 of a communication. And, so, there has been no waiver of
14 the attorney-client privilege.

15 And our Supreme Court clarified, on November 5th,
16 the standard for sanctions in the *MDC* case, in particular
17 addressed the issue of intent. And, in this particular
18 instance, there has been no communication because the
19 client was not aware of the nondisclosure, wasn't their
20 intent, and there can be no intent to harm, which is what
21 the *MDC* case says.

22 And to answer Your Honor's request very directly,
23 it's not advice of counsel. It is the actual absence of
24 communication from the client to the attorney ratifying or
25 attempting to take advantage of, which is what the Court

1 was asking about last time, the nondisclosure of
2 plaintiff's girlfriend. In particular, Your Honor, the *MDC*
3 case, --

4 THE COURT: I read the *MDC* -- I read it and, yes,
5 it's barely -- there are some issues that are point here,
6 but it's not a case that -- it talks about sanctions. The
7 one issue that it does talk about is the intentional, and
8 whether it benefits the defendant, the actions taken by the
9 counsel. And, on that, I certainly think, and I'll put
10 that in my Findings of Fact, that this action was taken
11 absolutely to benefit the defendant in the deposition.
12 There's no doubt that it was done to basically -- you know,
13 void all the discovery in order to -- and I can't even
14 think of the word, but to basically surprise the witness
15 and defense counsel and -- ambush. So, that issue is from
16 the new case, important, because that's exactly -- that's
17 the only purpose of this.

18 But to get back to where I was, I believe you're
19 asking me that if defense counsel says they weren't aware,
20 that's it. So, you don't have to prove that, you don't
21 have to show any evidence of that other than defense
22 counsel's affidavit? And, in every discovery motion, we
23 would have to take counsel's, plaintiff or defendant's,
24 word for it and that's it. Is that what you're arguing?

25 MR. ODOU: In theory, Your Honor. What I'm saying

1 is advice to counsel defense would be that the counsel
2 received -- that the counsel provided the client some
3 advice and they acted upon that advice. Here, there was no
4 action because they were unaware.

5 And, so, -- and, then, to answer Your Honor's
6 second question about whether I'm asking the Court to rely
7 upon Mr. Jones's affidavit, yes. But I recognize the Court
8 has the ability, if the Court is unsatisfied with that
9 affidavit, to ask for an additional affidavit from the --
10 in this case, the insured, clarifying that, yes, they had
11 no knowledge. And, if that's what the Court would like, we
12 can certainly provide that.

13 THE COURT: So, once again, the -- if one side
14 says it's so, I'm supposed to and they're supposed to,
15 meaning the plaintiffs, take your word for it. I can tell
16 you, and I'll give you -- I believe I referred to the case
17 I had where I -- the plaintiffs requested discovery and
18 depositions under very similar facts where defense counsel
19 and the defendant -- there was an issue as to what they
20 knew and when. And that's the case that went to the
21 Supreme Court and was upheld. I don't think they published
22 it, but it had to do with very similar facts where the
23 plaintiff argued defendant actually not only was aware of
24 and -- but participated in some of the discovery abuses.
25 And it was only because of discovery that a lot of the

1 information was available.

2 So, yet again, I have to ask you, you're saying we
3 have to take your word. I'm going to ask the plaintiffs
4 what they -- but I don't get it.

5 MR. ODOU: Well, Your Honor, again, the -- if the
6 Court is asking for an affidavit saying Mr. Jones is not
7 lying and that there was no communication, that could be
8 provided. I am -- I took over this case in April of 2020
9 and I am unaware of any communication from the insured as
10 to this issue. I -- what the Court has asked was us to
11 produce every status report from the time that that e-mail
12 back in April of 2019 up and through her deposition,
13 regardless of what was in that status report, and those
14 attorney-client communications we had argued are privileged
15 and actually not responsive. So, if the Court is asking
16 for a less intrusive way to confirm what Mr. Jones put in
17 his affidavit in August, we could get an affidavit from
18 Trent Shoring [phonetic] saying they did not communicate
19 with Ms. Espinoza, etcetera.

20 Moreover, again, this case is distinguishable from
21 either of the other cases and the information that was
22 withheld was potentially beneficial to the defense and this
23 witness was known to plaintiff and should have been
24 identified by the plaintiff.

25 THE COURT: Well, for the record, and I don't know

1 all of the details and the facts of the deposition, but I
2 think your argument is, and I tend to use examples that are
3 somewhat extreme, but you're saying that if I was in a car
4 accident I have to disclose all my girlfriends for the
5 last, I don't know, five years? And, quite frankly, that
6 seems -- well, I have to say ridiculous. I don't know what
7 their relationship -- and I guess there is some difference
8 in the fact that they may have been together at the time of
9 the accident, but, again, I certainly don't know that.

10 My Order was that these documents would be turned
11 over in-camera. So how does that violate attorney-client
12 privilege?

13 MR. ODOU: It does, Your Honor. The cases that we
14 cited discuss that and the fact that it is basically a
15 waiver of the attorney-client privilege by turning over
16 these reports, these are our reports from the attorney to
17 the client discussing all aspects of the case. And they
18 are highly confidential. They are exactly why you hire an
19 attorney. You hire an attorney to tell you about the case
20 and what they knew about the case and what investigation
21 they're going to do, what their trial strategies are. You
22 ask them about the jury panel they're going to get. These
23 are comprehensive documents that address everything but the
24 issue at hand, which is whether or not there was an
25 intentional, strategic decision to withhold this witness to

1 gain some sort of litigation advantage that was ratified by
2 the client.

3 And, again, that has been covered by Mr. Jones's
4 affidavit and it could be covered by a supplemental
5 affidavit if the Court found that Mr. Jones's affidavit was
6 insufficient.

7 THE COURT: All right. Let's hear from the
8 plaintiff.

9 MR. HENRIOD: Joel Henriod on behalf of
10 plaintiffs.

11 Judge, I think you're right. I think they have an
12 election to make. I am concerned about the notion that
13 defendants have been cleared here. I think when you
14 actually -- when you read what's actually been filed, there
15 is very particular verbiage use. Frequently, the
16 adjective, personal, comes up: personal knowledge. They
17 didn't have personal knowledge of the e-mails. They never
18 personally communicated with Ms. Espinoza. I don't know
19 what exactly that's supposed to mean. I'm afraid that what
20 it means is that they were aware that somebody -- some
21 purported whistleblower had called Mr. Jones, had reached
22 out to Mr. Jones, that she had this explosive knowledge
23 about a staged accident and that defendants were
24 exaggerating their symptoms. And that defense counsel was
25 working to corroborate, working to find other evidence that

1 would go to this fraud theory while they were also
2 developing a way to bring her into the case.

3 And my big concern about this is it's not just
4 her, it's that they were using that time to do their
5 investigation, build up their fraud case, depriving us of
6 the time during discovery to rebut. I do find it
7 inconceivable that they would not have passed that on to
8 the carrier and to a sophisticated client.

9 And, today, I also hear that the issue is
10 communications from the client. Well, the issue wouldn't
11 just be communications from the client. It would also be
12 from the attorney to the client. If the attorneys inform
13 the client that they have this potential whistleblower or
14 that they were working to develop a testimony from her and
15 a case fraud defense to build up around her and they knew
16 about that, then they were complicit. At the very least,
17 they were complicit. And I think if they knew and were
18 complicit, then, that alone would be enough for the
19 mitigating *Young versus Ribeiro* factor to not apply.

20 I am concerned that while there is this particular
21 language being used, there is an intent to imply a broader
22 notion. And this actually goes to the way that the Court
23 characterized it. I think what they want to do is imply
24 that the carrier and the client weren't even in the loop on
25 this. And, now, I think it's a request to supplement yet

1 again with declarations from the carrier and from the
2 client. But, again, what I hear being offered there is
3 that they didn't have personal knowledge or personal
4 contact with Espinoza. What I don't hear, even now, is any
5 denial that they were apprised of Ms. Espinoza's
6 allegations, of Ms. Espinoza's offer, of Ms. Espinoza's --
7 of the gravamen of Espinoza's potential testimony.

8 And without that, I don't even know what we're
9 talking about because if they're not denying that the
10 carrier and the client were at least apprised of that, then
11 that means they were complicit in it. But I think there is
12 an election to make because I take the privilege as
13 seriously as anyone and I recognize that the language
14 they've used has been a little wheezily, in my opinion.
15 Right? The personal knowledge. I'm not sure exactly what
16 it means; but if they don't want to corroborate that there
17 was the absence of communication, then they are electing to
18 do that. They are electing to remain silent on that. And,
19 if they are electing to not corroborate that absence of
20 communication, then they are foregoing the mitigating
21 factor under *Young versus Ribeiro*.

22 And that's only a factor. It wouldn't be
23 dispositive for them, even if there weren't this
24 communication. But they can't have it both ways.

25 THE COURT: And there's another plaintiffs'

1 counsel?

2 MR. HENRIOD: So, I'm speaking on behalf of all of
3 them.

4 THE COURT: Oh, okay.

5 MR. HENRIOD: I've associated into the case with
6 Mr. Drummond for Rolando Bessu Herrera and also with Mr.
7 Kane for Maikel Perez-Acosta.

8 THE COURT: All right. Fine. Mr. Odou, response.

9 MR. ODOU: Your Honor, that's why the *MDC* case is
10 important because I'm not conceding they were complicit,
11 I'm just taking Mr. Henriod's argument further, which is he
12 says: Well, they're complicit. Well, the *MDC* case uses
13 that exact language to say that's not enough. There must
14 be an intent to harm. And, yes, the *MDC* case is a
15 destruction of evidence case, but that's really what
16 they're arguing to the Court. They're saying that this
17 evidence was lost because her e-mails were not timely
18 turned over to the Court and, therefore, they've been
19 prejudiced. Well, complicity is not enough under *MDC* and
20 that's why that case is important. It's also important for
21 a number of other reasons and it's -- it sets them forth.

22 In addition, maintaining the attorney-client
23 privilege is not waiving a defense. It's not: You're
24 going to have to make an election here. That is not the
25 case and that is not what we're doing. What we're saying

1 is --

2 THE COURT: I think that is the caselaw, that you
3 can't have it both ways. And I think -- I'll let you
4 supplement your brief, but I think that absolutely is the
5 caselaw, that if you're saying your client wasn't aware and
6 you're -- and, thank you, for *Young versus Ribeiro*. That's
7 a -- it's a main factor. It's not exclusive. I mean, they
8 go through, I think, 10, but it is one factor and certainly
9 it's important not to sanction a defendant if the actions
10 were, if you will, perpetrated by counsel. So -- but, in
11 all the cases, including the one as I said, it was: You
12 have to make a choice. And saying, I didn't get anything,
13 without -- you know, it does seem suspicious. You answered
14 -- or not you, the prior counsel, I believe my recollection
15 is there was updates of discovery and this was never
16 mentioned. So, there is that issue of concealment. We
17 discussed that, I think, twice now.

18 And, so, you're, I guess, arguing, well, if we say
19 it's so, it's so. Well, that's exactly what the argument
20 you made was, well, we wanted to -- and not you, sorry.
21 Prior counsel: We wanted to make sure this woman was real
22 or truthful or whatever, and so that's why we didn't say
23 anything.

24 So, I am -- you know, there is -- credibility is
25 important and just saying -- what about his argument that

1 you're saying, basically, well, we -- the -- I forgot the
2 words that were alleged -- that were supposedly used in the
3 affidavit. But, anyway, go on. Address that.

4 MR. ODOU: Yes, Your Honor.

5 THE COURT: We weren't personally aware or
6 something to that effect.

7 MR. ODOU: Yeah, so Mr. Henriod was critical
8 because there's no personal knowledge of the clients of Ms.
9 Espinoza. But that's not the only thing that was in Mr.
10 Jones's affidavit. Mr. Jones's affidavit, as the Court
11 noted the last time, he fell on his sword and he said:
12 Yeah. I blew it. In paragraph 22, he said -- I don't know
13 if the Court has it front of him, but, in paragraph 22: I
14 did not disclose the e-mails that I received. Because, in
15 his professional judgment, he wanted to investigate the
16 validity of them.

17 And, again, the plaintiffs' theory here is that
18 this was an intent to harm. Mr. Jones has laid forth the
19 facts that show this was an intent, wrongly, the Court's
20 already ruled on that, to figure out what does this mean
21 and how does this fit in the case. Moreover, there was no
22 communication from Ms. Espinoza from April through
23 December, where she dropped off the planet after Mr. Jones
24 refused to pay her for her testimony. So, they can't do
25 that. That was the very first communication to her.

1 And, so, again, under the *Ribeiro* factors and
2 under the *MDC* case, there has to be an intent to harm. It
3 has to be more than negligent failure to disclose. It has
4 to be a --

5 THE COURT: I believe it says an intent to take
6 advantage that would be harmful to the other side, and
7 that's exactly what took place. The defense counsel, by
8 waiting until the depo to bring this out, was clearly
9 attempting to sandbag, if you will, or ambush, whatever,
10 the plaintiffs' counsel in this deposition; that, oh, well,
11 if she doesn't testify the way we -- she talked about it
12 first, then we're going to use this. And that's exactly
13 what the new case says: If it was done to take advantage
14 of their position in detriment to the opposing side.

15 And there is no doubt in my mind that this was
16 done to sit there and put the document in front of her and
17 say, you know: Well, didn't you do this? That's exactly
18 what took place. So, we -- I'll certainly discuss that,
19 but I still have not seen and I'll let you -- I'll give you
20 one week to supplement where the -- our Supreme Court -- I
21 think you have to make a choice. As I've said, that's what
22 happened in the unpublished case I had. They had to make a
23 choice, that they decided to do the reliance, if you will,
24 and I allowed, and the Supreme Court upheld the discovery,
25 including, so you understand, taking the deposition of

1 defense counsel. So, the Supreme Court was well aware
2 because they heard it and there's a written opinion. So, I
3 can't imagine that if they thought that was -- well, sure
4 that was raised. So, anyway, I think it's one way or the
5 other. You can't have it both ways.

6 Now, again, it's only one of the probably 10 or a
7 dozen factors in *Young*, but it is an important factor. I
8 agree you cannot, should not be sanctioning a defendant for
9 actions of defense counsel.

10 So, anyway, all right. I'll give defendants one
11 week to supplement on that issue, otherwise -- and I'll
12 rule on that in chambers. I'll give the plaintiffs a week
13 to respond. So, three weeks in chambers, I'll do a
14 decision on this issue. It's only interim because it
15 doesn't resolve all of that, but I want to -- again, and by
16 the way, that other case, it took well over a year to go
17 through all of this. But I think it has to be documented
18 and done properly and hopefully -- well, I guess I did
19 because they agreed, but that's exactly what I want to do
20 on this issue.

21 All right. One week, Kathy.

22 MR. ODOU: Your Honor, --

23 THE COURT: What's that?

24 MR. ODOU: Your Honor, can we have two weeks since
25 next week is Thanksgiving?

1 THE COURT: Oh, yes. That's fine. Two weeks and
2 --

3 MR. ODOU: Thank you.

4 THE COURT: All right. Two weeks, because you're
5 not going to get a trial for quite some time because of
6 Covid, so there's really no hurry.

7 MR. DRUMMOND: Your Honor, this is Craig Drummond
8 for the plaintiff. I just have one question. Is -- and
9 it's up to Your Honor to clarify this or not to clarify
10 this, but is Mr. Odou representing that he's reviewed all
11 the previous correspondence in this case, because I know he
12 is new to the case? He came on in April, but is he
13 representing that he's reviewed all of it and this is his
14 representation to the Court or has he not reviewed it?

15 THE COURT: Well, I don't know. Again, as I said,
16 my understanding of all the caselaw is it's one way or the
17 other and that's the, I guess, preliminary issue. If that
18 is, in fact, the case, then they need to make a choice and
19 we'll go from there.

20 MR. DRUMMOND: Yes, Your Honor. I just would -- I
21 just wasn't clear from the previous representations on it
22 if he'd actually reviewed it or if he's relying upon Mr.
23 Todd Jones's affidavit.

24 THE COURT: Well, all right. What's the answer to
25 that question?

1 MR. ODOU: Our argument was relying upon Mr.
2 Jones's affidavit. I can say I've seen no communications
3 from Trent Shoring to anyone on this topic.

4 MR. DRUMMOND: As well as the carrier? Sir, as
5 well as the carrier? Just so that we're representing
6 things honestly to the Court, to the carrier as well?

7 MR. ODOU: I don't want to get into communications
8 that are attorney-client privilege. I just was --

9 MR. DRUMMOND: Your Honor, --

10 MR. ODOU: -- trying to answer your question.

11 MR. DRUMMOND: Okay.

12 THE COURT: All right. All right. Two weeks.

13 THE CLERK: Okay. Two weeks for defendants would
14 be December 1st. Did the plaintiff want two weeks or one --

15 THE COURT: Yeah. Give them two weeks.

16 THE CLERK: -- week after that?

17 THE COURT: We're in no --

18 THE CLERK: Two weeks? That would be December
19 15th. And, then, --

20 THE COURT: Probably --

21 THE CLERK: -- I could --

22 THE COURT: -- a week after that, at least, --

23 THE CLERK: It will be January.

24 THE COURT: I'll -- in chambers.

25 THE CLERK: That is the dark weeks.

1 THE COURT: Oh, whatever. What do you mean the
2 dark weeks? All right. Then two weeks after that.

3 THE CLERK: Christmas. Yes.

4 THE COURT: Whatever.

5 THE CLERK: Yeah. It would be January. January
6 7th.

7 THE COURT: It's only going to be an interim on
8 that issue and we'll deal with that. Okay. Thank you.

9 THE CLERK: Okay. So, it's just for decision and
10 then, if it's only part of it, is that part of the motion
11 or is that decision on the entire motion?

12 THE COURT: Part of the original motion. Yes.

13 THE CLERK: So, what should I do with the motion?
14 Should I just --

15 THE COURT: What, this Motion for Reconsideration?

16 THE CLERK: Right.

17 THE COURT: It's granted in part and denied in
18 part.

19 THE CLERK: Okay. Okay.

20 THE COURT: All right. Thank you.

21 THE CLERK: And then we'll put a decision. Okay.
22 Thank you.

23 THE COURT: All right. Have a good day.

24 MR. ODOU: Thank you.

25 MR. HENRIOD: Thank you, Your Honor.

1 MR. DRUMMOND: Thank you, Your Honor.

2 MR. JONES: Thank you, Your Honor.

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4 PROCEEDING CONCLUDED AT 11:36 A.M.

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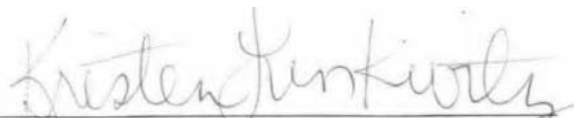
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CERTIFICATION

I certify that the foregoing is a correct transcript from the audio-visual recording of the proceedings in the above-entitled matter.

AFFIRMATION

I affirm that this transcript does not contain the social security or tax identification number of any person or entity.



KRISTEN LUNKWITZ
INDEPENDENT TRANSCRIBER