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

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NATIONAL CASUALTY COMPANY, a  
Foreign Corporation,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT  
FOR THE STATE OF NEVADA IN  
AND FOR THE COUNTY OF CLARK;  
THE HONORABLE MARK RALPH  
DENTON, DISTRICT COURT JUDGE,

Respondents,

and

PHILIP BOUCHARD

Real Party in Interest.

Supreme Court Case No.: 83501

District Court Case: A-20-813355-C

Electronically Filed  
Nov 15 2021 07:52 p.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

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**REAL PARTIES IN INTEREST PHILIP BOUCHARD'S APPENDIX TO  
RESPONSE TO PETITION FOR WRIT OF PROHIBITION OR MANDAMUS**

---

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Nevada Bar #10744

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**THE SCHNITZER LAW FIRM**

9205 West Russell Road, Suite 240

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Phone: (702) 960-4050

**Attorney for Real Party in Interest**

**APPENDIX TO RESPONSE TO PETITION FOR WRIT OF  
PROHIBITION OR MANDAMUS**

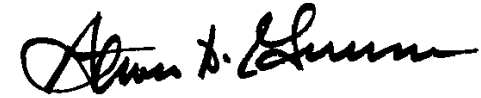
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## **CERTIFICATE OF SERVICE**

I hereby certify and affirm that this document was filed electronically with the Nevada Supreme Court on the 15<sup>th</sup> day of November 2021. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

Robert W. Freeman, Esq.  
Nevada Bar No. 3062  
Priscilla L. O'Briant, Esq.  
Nevada Bar No. 10171  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6835 S. Rainbow Blvd., Suite 600  
Las Vegas, NV 89118  
Telephone: 702-893-3383  
Facsimile: 702-893-3789  
*Attorneys for Petitioner*

By: /s/ Melisa A. Gabhart  
An Employee of  
THE SCHNITZER LAW FIRM



CLERK OF THE COURT

**COMP**  
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
KRAVITZ, SCHNITZER,  
& JOHNSON, CHTD.  
8985 So. Eastern Avenue, Suite 200  
Las Vegas, Nevada 89123  
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[jschnitzer@kssattorneys.com](mailto:jschnitzer@kssattorneys.com)  
*Attorneys for Plaintiff,*  
PHILIP MICHAEL BOUCHARD

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

PHILIP MICHAEL BOUCHARD, an individual,

Plaintiff,

vs.

CASE NO. A- 16 - 740711 - C

DEPT. NO. XXXI

**COMPLAINT**

EFREN ISAAC SOTELO, an individual; JUAN SOTELO, an individual; NOW SERVICES OF NEVADA, LLC, dba COOL AIR NOW, a Nevada limited liability company; DOES I through X, inclusive; ROE CORPORATIONS I through X, inclusive,

COMES NOW, Plaintiff, PHILIP MICHAEL BOUCHARD, by and through his attorney of record, the law firm of KRAVITZ, SCHNITZER, & JOHNSON, CHTD., prays and alleges against Defendants, EFREN ISAAC SOTELO, JUAN SOTELO and NOW SERVICES OF NEVADA, LLC dba COOL AIR NOW (collectively "Defendants"), as follows:

**JURISDICTIONAL ALLEGATIONS**

1. Plaintiff, PHILIP MICHAEL BOUCHARD, (hereinafter "BOUCHARD") is, and at all times mentioned herein was, a resident of the State of Nevada.

1           2.       Defendant, EFREN ISAAC SOTELO, (hereinafter "SOTELO") is, and at all  
2 times mentioned herein was, a resident of the County of Clark, State of Nevada.

3           3.       Defendant, JUAN SOTELO, (hereinafter "J. SOTELO") is, and at all times  
4 mentioned herein was, a resident of the County of Clark, State of Nevada.

5           4.       Defendant, NOW SERVICES OF NEVADA, LLC dba COOL AIR NOW,  
6 (hereinafter "COOL AIR NOW") is, and at all times mentioned herein was, a Nevada limited  
7 liability company licensed to, and actually doing, business in County of Clark, State of Nevada.  
8

9           5.       The true names or capacities, whether individual, corporate, associate or  
10 otherwise of Defendants DOES I - X and/or ROES CORPORATIONS I - X, inclusive, are  
11 unknown to Plaintiff who, therefore, sues said Defendants by such fictitious names. Plaintiff is  
12 informed, believe and allege that Defendants designated herein as a DOE and/or ROE  
13 CORPORATION are any one of the following:  
14

- 15           a.       A party responsible in some manner for the events and happenings  
16 hereunder referred to, and in some manner proximately caused injuries  
17 and damages to the Plaintiff as herein alleged including, but not limited to,  
18 responsible for the vehicle at issue.
- 19           b.       Parties that were the agents, servants, authorities and contractors of the  
20 Defendants, each of them acting within the course and scope of their  
21 agency, employment, or contract;
- 22           c.       Parties that own, lease, manage, operate, secure, inspect, repair, maintain  
23 and/or are responsible for the vehicle driven by SOTELO or for SOTELO,  
24 himself, at the time of this incident; and/or
- 25           d.       Parties that have assumed or retained the liabilities of any of the  
26 Defendants by virtue of an agreement, sale, transfer or otherwise.  
27  
28

**GENERAL ALLEGATIONS**

6. Plaintiff repeats and realleges each and every allegation contained in paragraph 1 through 5 and incorporates herein by reference as fully set forth herein.

7. At all relevant times, BOUCHARD was the owner of a 2013 Ford Pick-Up Truck, (“Pick-Up Truck”).

8. At all relevant times, SOTELO was the driver of a 2005 Chevrolet Pick-Up Truck, (“Pick-Up Truck”).

9. At all relevant times, J. SOTELO and DOE I were the parents and guardians of SOTELO.

10. At all relevant times, COOL AIR NOW was the registered owner of a 2005 Chevrolet Pick-Up Truck, (“Pick-Up Truck”).

11. At all relevant times, J. SOTELO was the manager of COOL AIR NOW.

12. Upon information and belief, SOTELO was employed by COOL AIR NOW and, at all relevant times, SOTELO was operating the Pick-Up Truck with the express or implied permission of his employer.

13. On or about December 12, 2014 at 9:44 a.m., Plaintiff, BOUCHARD, was driving his Pick-Up Truck in Travel Lane No. 3 eastbound on Lake Mead Boulevard and stopped for traffic, in Las Vegas, Clark County, State of Nevada.

14. At the same time and place, SOTELO was behind BOUCHARD, driving the Pick-Up Truck, SOTELO caused his vehicle to strike the rear of BOUCHARD’s vehicle.

15. BOUCHARD was not at fault for causing the subject accident.

16. BOUCHARD suffered severe bodily injury and extensive property damage to his Pick-Up Truck.

**FIRST CAUSE OF ACTION**

**(Negligence Against All Defendants)**

17. Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1 through 16 above and incorporates herein by reference as though fully set forth herein.

18. Defendants owed a duty of care to BOUCHARD to ensure that the vehicle was operated in a reasonably safe manner.

19. Defendants breached their duty to BOUCHARD by failing to safely operate, or allowing SOTELO to unsafely operate, the vehicle as alleged above.

20. Defendants' negligence was the actual and proximate cause of the injuries and damages to BOUCHARD.

21. That prior to the injuries complained of herein, BOUCHARD was an able bodied person who was readily and gainfully employed and physically capable of engaging in all activities for which he was otherwise suited.

22. As a direct and proximate result of the negligence of Defendants, BOUCHARD has lost time from his employment, and was limited in his activities and occupations which caused BOUCHARD a loss of earnings.

23. That as a direct and proximate result of the aforesaid negligence of Defendants, BOUCHARD has suffered a loss of enjoyment of life, having been prevented from attending to his usual activities.

24. That as a direct and proximate result of the aforesaid negligence of Defendants, BOUCHARD sustained injuries to his body which caused general damage in the form of physical and mental pain and suffering.

25. That as a direct and proximate result of the aforesaid negligence of Defendants, BOUCHARD was required to incur medical and related expenses.

1           26.   BOUCHARD's damages as a direct and proximate result of the aforesaid  
2 negligence of Defendants, is in excess of \$10,000.00.

3           27.   It has become necessary for BOUCHARD to engage the services of an attorney to  
4 commence this action, and therefore, BOUCHARD is entitled to reasonable attorneys' fees,  
5 costs, interest and damage in this action pursuant to Nevada law.  
6

7                                   **SECOND CAUSE OF ACTION**

8                   **(Negligent Entrustment Against COOL AIR NOW, J. SOTELO and DOE I)**

9           28.   Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1  
10 though 27 above and incorporates herein by reference as though fully set forth herein.

11           29.   COOL AIR NOW, J. SOTELO and DOE I owed a duty of care to BOUCHARD  
12 to not entrust a dangerous vehicle to another whom they knew of should have known was likely  
13 to use in a manner involving unreasonable risk of harm to others.  
14

15           30.   COOL AIR NOW, J. SOTELO and DOE I breached that duty by knowing  
16 entrusting their dangerous vehicle to another whom they knew or should have known was likely  
17 to use it in a manner involving unreasonable risk of harm to others.

18           31.   COOL AIR NOW, J. SOTELO and DOE I's breach is the actual and proximate  
19 cause of BOUCHARD's injuries.

20           32.   That prior to the injuries complained of herein, BOUCHARD was an able bodied  
21 person who was readily and gainfully employed and physically capable of engaging in all  
22 activities for which he was otherwise suited.  
23

24           33.   As a direct and proximate result of the negligence of COOL AIR NOW, J.  
25 SOTELO and DOE I, BOUCHARD has lost time from his employment, and was limited in his  
26 activities and occupations which caused BOUCHARD a loss of earnings.  
27  
28



1           34.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
2 NOW, J. SOTELO and DOE I, BOUCHARD has suffered a loss of enjoyment of life, having  
3 been prevented from attending to his usual activities.

4           35.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
5 NOW, J. SOTELO and DOE I, BOUCHARD sustained injuries to his body which caused  
6 general damage in the form of physical and mental pain and suffering.  
7

8           36.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
9 NOW, J. SOTELO and DOE I, BOUCHARD was required to incur medical and related  
10 expenses.

11           37.     BOUCHARD's damages as a direct and proximate result of the aforesaid  
12 negligence of COOL AIR NOW, J. SOTELO and DOE I, is in excess of \$10,000.00.  
13

14           38.     It has become necessary for BOUCHARD to engage the services of an attorney to  
15 commence this action, and therefore, BOUCHARD is entitled to reasonable attorneys' fees,  
16 costs, interest and damage in this action pursuant to Nevada law.

17                   **THIRD CAUSE OF ACTION**

18                   **(Negligent Supervision)**

19           39.     Plaintiff repeats and realleges each and every allegation contained in Paragraphs 1  
20 through 38 above and incorporates herein by reference as though fully set forth herein.  
21

22           40.     COOL AIR NOW, J. SOTELO and DOE I owed a duty of care to BOUCHARD to  
23 properly supervise SOTELO.

24           41.     COOL AIR NOW, J. SOTELO and DOE I breached that duty by failing to properly  
25 supervise SOTELO by allowing him to operate the vehicle and do so in the manner described  
26 above.  
27  
28

1           42.     COOL AIR NOW, J. SOTELO and DOE I's negligence was the actual and  
2 proximate cause of the injuries and damages to BOUCHARD.

3           43.     That prior to the injuries complained of herein, BOUCHARD was an able bodied  
4 person who was readily and gainfully employed and physically capable of engaging in all  
5 activities for which he was otherwise suited.

6           44.     As a direct and proximate result of the negligence of COOL AIR NOW, J.  
7 SOTELO and DOE I, BOUCHARD has lost time from his employment, and was limited in his  
8 activities and occupations which caused BOUCHARD a loss of earnings.

9           45.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
10 NOW, J. SOTELO and DOE I, BOUCHARD has suffered a loss of enjoyment of life, having  
11 been prevented from attending to his usual activities.

12           46.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
13 NOW, J. SOTELO and DOE I, BOUCHARD sustained injuries to his body which caused  
14 general damage in the form of physical and mental pain and suffering.

15           47.     That as a direct and proximate result of the aforesaid negligence of COOL AIR  
16 NOW, J. SOTELO and DOE I, BOUCHARD was required to incur medical and related  
17 expenses.

18           48.     BOUCHARD's damages as a direct and proximate result of the aforesaid  
19 negligence of SOTELO and COOL AIR NOW, is in excess of \$10,000.00.

20           49.     It has become necessary for BOUCHARD to engage the service of an attorney to  
21 commence this action and therefore BOUCHARD is entitled to reasonable attorneys' fees, costs  
22 and interest as damage in this action pursuant to Nevada law.

23           ///

24           ///

25

**KRAVITZ, SCHNITZER, & JOHNSON, CHTD.**  
8985 SO. EASTERN AVENUE, SUITE 200  
LAS VEGAS, NEVADA 89123  
TEL - (702) 362.2203; FAX - (702) 362.2203


**PRAYER FOR RELIEF**

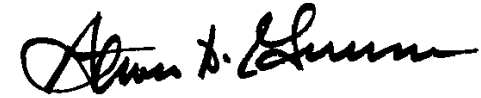
WHEREFORE, Plaintiff, prays for judgment against Defendants, as follows:

1. General and emotional damages in the amount in excess of \$10,000.00;
2. For medical expenses, wage losses, and other special damages in an amount in excess of \$10,000.00;
3. For special damages in an amount to be proven at trial;
4. For reasonable attorney's fees and costs of suit;
5. For prejudgment and post-judgment interest, and
6. For such other and further relief as this Court may deem just and proper under the circumstances.

DATED this 25 day of June, 2016.

KRAVITZ, SCHNITZER, SLOANE  
& JOHNSON, CHTD.

BY:   
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
KRAVITZ, SCHNITZER,  
& JOHNSON, CHTD.  
8985 So. Eastern Avenue, Suite 200  
Las Vegas, Nevada 89123  
*Attorney for Plaintiff,*  
PHILIP MICHAEL BOUCHARD



CLERK OF THE COURT

1 **TDN**  
2 JORDAN P. SCHNITZER, ESQ.  
3 Nevada Bar No. 10744  
4 KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
5 8985 S. Eastern Avenue, Suite 200  
6 Las Vegas, Nevada 89123  
7 Telephone: (702) 362-6666  
8 Facsimile: (702) 362-2203  
9 [jschnitzer@kssattorneys.com](mailto:jschnitzer@kssattorneys.com)  
10 *Attorneys for Plaintiff,*  
11 **PHILIP MICHAEL BOUCHARD**

8 **EIGHTH JUDICIAL DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 PHILIP MICHAEL BOUCHARD, an individual,  
11  
12 Plaintiff,

CASE NO.: A-16-740711-C

DEPT. NO.: XXXI

13 vs.

14  
15 EFREN ISAAC SOTELO, an individual; JUAN  
16 SOTELO, an individual; and, NOW SERVICES  
17 OF NEVADA, LLC, dba COOL AIR NOW, a  
18 Nevada limited liability company, and DOES I  
through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

19  
20 **THREE DAY NOTICE OF INTENT TO TAKE DEFAULT**

21 TO: DEFENDANT, EFREN ISAAC SOTELO,


22 YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that pursuant to NRCP  
23 55(b)(2), unless you answer or otherwise plead to Plaintiff, Philip Michael Bouchard's  
24 Complaint on file herein within three (3) days of your receipt of this Three Day Notice of Intent  
25 to Take Default, Plaintiff, Philip Michael Bouchard, will enter default against Defendant, Efren

**KRAVITZ, SCHNITZER & JOHNSON, CHTD.**  
8985 So. Eastern Avenue, Suite 200  
Las Vegas, Nevada 89123  
TEL - (702) 362.2203; FAX - (702) 362.2203

1 Issac Sotelo, and request that the Court enter Judgment against Defendant, Efren Isaac Sotelo, by  
2 Default.

3 DATED this 9 day of September, 2016.  
4

5 KRAVITZ, SCHNITZER  
6 & JOHNSON, CHTD.

7 BY:   
8 JORDAN P. SCHNITZER, ESQ.  
9 Nevada Bar No. 10744  
10 8985 So. Eastern Avenue, Suite 200  
11 Las Vegas, Nevada 89123  
12 *Attorney for Plaintiff,*  
13 PHILIP MICHAEL BOUCHARD  
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KRAVITZ, SCHNITZER & JOHNSON, CHTD.  
8985 SO. EASTERN AVENUE, SUITE 200  
LAS VEGAS, NEVADA 89123  
TEL - (702) 362.2203; FAX - (702) 362.2203

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 9<sup>th</sup> day of September, 2016, I served a copy of the foregoing **THREE DAY NOTICE OF INTENT TO TAKE DEFAULT** by fax and by placing same in the United States Mail, postage pre-paid, and addressed as follows:

Efren Issac Sotelo  
5915 Musketeer Lane  
Las Vegas, NV 89130  
*Defendant*

**Fax: (480) 483-6752**  
clmsrpts@scottsdaleins.com  
National Casualty Company  
Attn: Tara L. Smith  
P.O. Box 4120  
Scottsdale, AZ 85261-4120  
*Defendant's Insurance Carrier*

**Fax: (866) 595-3371**  
Justin S. Gourley, Esq.  
Law Office of Kenneth E. Goates  
3993 Howard Hughes Parkway, Suite 270  
Las Vegas, NV 89169

  
An employee of  
KRAVITZ, SCHNITZER & JOHNSON

DISTRICT COURT  
CLARK COUNTY, NEVADA

\* \* \* \* \*

PHILIP MICHAEL BOUCHARD, an	)	
individual,	)	
	)	
Plaintiff,	)	Case No. A-16-740711-C
	)	Dept. XXXI
vs.	)	
	)	
EFREN ISAAC SOTELO, an	)	
individual; JUAN SOTELO, an	)	
individual; and NOW	)	
SERVICES OF NEVADA, LLC,	)	
dba COOL AIR NOW, a Nevada	)	
limited liability company,	)	
and DOES I through X,	)	
inclusive; and ROE	)	
CORPORATIONS I through X,	)	
inclusive,	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF JUAN SOTELO

Taken on Wednesday, January 18, 2017

At 10:16 a.m.

Taken at Kravitz, Schnitzer & Johnson, Chtd.

At 8985 South Eastern Avenue

Suite 200

Las Vegas, Nevada

Reported by: Sarah Safier, CCR No. 808

Page 2

1 DEPOSITION OF JUAN SOTELO, taken at Kravitz,  
2 Schnitzer & Johnson, Chtd., 8985 South Eastern  
3 Avenue, Suite 200, Las Vegas, Nevada, on Wednesday,  
4 January 18, 2017, at 10:16 a.m., before Sarah Safier,  
5 Certified Court Reporter, in and for the State of  
6 Nevada.  
7 APPEARANCES:  
8 For the Plaintiff:  
9 JORDAN P. SCHNITZER, ESQ.  
10 Kravitz, Schnitzer & Johnson, Chtd.  
11 8985 South Eastern Avenue  
12 Suite 200  
13 Las Vegas, Nevada 89123  
14 For the Defendants Now Services of Nevada, LLC dba  
15 Cool Air Now and Juan Sotelo:  
16 JUSTIN S. GOURLEY, ESQ.  
17 Law Offices of Kenneth E. Goates  
18 3993 Howard Hughes Parkway  
19 Suite 270  
20 Las Vegas, Nevada 89169  
21  
22  
23  
24  
25

Page 3

1 I N D E X  
2  
3 Witness: JUAN SOTELO  
4  
5 Examination Further Examination  
6  
7 By Mr. Schnitzer 4  
8  
9 E X H I B I T S  
10 Plaintiff Page  
11 Exhibit 1 - Crime Report 36  
12 Exhibit 2 - Voluntary Statement 45  
13 Exhibit 3 - Stolen Automobile Report 61  
14  
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Page 4

1 (In an off-the-record discussion held prior to the  
2 commencement of the deposition proceedings, counsel  
3 agreed to waive the court reporter requirements under  
4 Rule 30(b)(4) of the Nevada Rules of Civil  
5 Procedure.)  
6 Whereupon --  
7 JUAN SOTELO  
8 being first duly sworn to tell the truth, the whole  
9 truth, and nothing but the truth, was examined and  
10 testified as follows:  
11 EXAMINATION  
12 BY MR. SCHNITZER:  
13 Q Would you please state your name and spell  
14 your last name.  
15 A Juan, last name S-o-t-e-l-o.  
16 Q Is it okay if I call you Juan?  
17 A Yeah, that's fine. That's what everybody  
18 calls me.  
19 Q Have you ever had your deposition taken  
20 before?  
21 A Yes, I have.  
22 Q How many times?  
23 A Twice.  
24 Q When were those occasions?  
25 A Couple years ago. Yeah, a couple years ago.

Page 5

1 Q Both of them were a couple years ago?  
2 A One was -- I don't recall, but the last one  
3 was probably like a year and a half ago.  
4 Q What kind of case was that?  
5 A A labor dispute.  
6 Q Involving Cool Air Now?  
7 A Correct.  
8 Q And then what about the one before that?  
9 A Same, same case.  
10 Q You were deposed twice in the same case?  
11 A Correct. It's different entities.  
12 Q Did it involve the same employee or  
13 employees?  
14 A Yeah, exact same. It was not employees, by  
15 the way.  
16 Q What's that?  
17 A It was not employees. It was union.  
18 Q Well, it's been a year and a half, I'm going  
19 to go over some of the ground rules for you, just to  
20 make sure it goes as smoothly as possible, I guess.  
21 If, at any point today, you want to take a  
22 break for any reason, just let me know, I'll be happy  
23 to do so. The only thing I ask is that if I've got a  
24 question pending, so if I've asked you a question,  
25 you go ahead and answer that before we take a break.



<p style="text-align: right;">Page 6</p> <p>1 Is that fair?</p> <p>2 A Yes.</p> <p>3 Q You understand that the oath you have taken</p> <p>4 today carries with it the same penalties of perjury</p> <p>5 as if we were in a court of law?</p> <p>6 A Yes.</p> <p>7 Q The court reporter is taking down everything</p> <p>8 we say. I don't know if this happened to you in the</p> <p>9 other case, but you'll be given the opportunity to</p> <p>10 review your deposition transcript when this is all</p> <p>11 done. The court reporter types it all up, my</p> <p>12 question, your answer. You can look at it, make any</p> <p>13 changes to it that you want.</p> <p>14 I caution you, if you make any substantive</p> <p>15 changes, like if you say -- if you were the driver of</p> <p>16 the car in this case and you said the light was green</p> <p>17 and you write no, the light was red, that's a big</p> <p>18 change and I can comment upon it or any other</p> <p>19 attorney in this case.</p> <p>20 Do you understand that?</p> <p>21 A Yes.</p> <p>22 Q For the same thing, to make sure that we</p> <p>23 have a clear record in that booklet, we have to do</p> <p>24 things a little bit differently than we do in</p> <p>25 everyday conversation.</p>	<p style="text-align: right;">Page 8</p> <p>1 for embezzlement from, you know, that one.</p> <p>2 Q Just the embezzlement ones?</p> <p>3 A Yeah.</p> <p>4 Q Did you look at the ones related to this</p> <p>5 accident?</p> <p>6 A Briefly.</p> <p>7 Q Any other documents you looked at?</p> <p>8 A No.</p> <p>9 Q What's your current address?</p> <p>10 A 5915 Musketeer Lane.</p> <p>11 Q Musketeer?</p> <p>12 A Yeah, like the Three Musketeers, Las Vegas,</p> <p>13 89130.</p> <p>14 Q And date and place of birth?</p> <p>15 A 6/24/71. Mexico.</p> <p>16 Q Where in Mexico?</p> <p>17 A Jerez, J-e-r-e-z.</p> <p>18 Q Is that -- in Mexico, what is it close to, I</p> <p>19 guess?</p> <p>20 A Guadalajara.</p> <p>21 Q When did you come to the United States?</p> <p>22 A I think it was '78.</p> <p>23 Q What brought you to the United States?</p> <p>24 A My parents.</p> <p>25 Q You came with your parents?</p>
<p style="text-align: right;">Page 7</p> <p>1 So if you answer a question and say "uh-huh"</p> <p>2 or "uhm-um" that's probably going to look exactly the</p> <p>3 same in the transcript. So if you do that, I may ask</p> <p>4 you to clarify, "Is that a yes or is that a no?" I'm</p> <p>5 not trying to be rude. I'm just trying to make sure</p> <p>6 the record is clear.</p> <p>7 Do you understand?</p> <p>8 A (Witness nods head.)</p> <p>9 Q Same reason if you nod your head, shrug your</p> <p>10 shoulders, things like that, that's not going to show</p> <p>11 up. So, again, I may ask you to verbalize your</p> <p>12 answer, okay?</p> <p>13 A Correct.</p> <p>14 Q Have you had any drugs or alcohol or any</p> <p>15 other reason why you can't understand my questions or</p> <p>16 answer truthfully today?</p> <p>17 A No.</p> <p>18 Q Did you do anything to prepare for your</p> <p>19 deposition today?</p> <p>20 A No.</p> <p>21 Q You didn't look at any documents or</p> <p>22 anything?</p> <p>23 A Police records.</p> <p>24 Q Which police records did you look at?</p> <p>25 A The arrest records for the ones that I filed</p>	<p style="text-align: right;">Page 9</p> <p>1 A Uh-huh. Yes.</p> <p>2 Q Are you a U.S. citizen?</p> <p>3 A No.</p> <p>4 Q Do you have a Green Card or what's your</p> <p>5 status?</p> <p>6 A Let me see. Green Card. Permanent</p> <p>7 resident.</p> <p>8 Q Okay. How long have you lived at your</p> <p>9 current address?</p> <p>10 A Five years.</p> <p>11 Q And who lives with you?</p> <p>12 A My family.</p> <p>13 Q Who's in your family?</p> <p>14 A Dee Dee, my wife.</p> <p>15 Q Dee Dee is your wife?</p> <p>16 A Yes. Gabriel, Elijah, Mandy, my parents.</p> <p>17 Q Anybody else?</p> <p>18 A No.</p> <p>19 Q At the time of the accident, who lived with</p> <p>20 you?</p> <p>21 A Same people.</p> <p>22 Q Did Efren live with you at the time?</p> <p>23 A I don't recall. I know he had been evicted</p> <p>24 by my wife, but I don't recall 100 percent. I can't</p> <p>25 give you a straight answer.</p>

1 Q Okay. Would there be any way to find out  
2 for sure whether Efren was living with you at the  
3 time?  
4 A If there is, you would have to tell me.  
5 Q Well, I mean, I'm asking, would there be any  
6 photos that you would have taken, any documents,  
7 anything that we could go back and find to figure out  
8 whether he had been living with you at the time?  
9 A It's possible.  
10 Q What types of things would we look at?  
11 A I don't know. I don't keep -- we don't take  
12 much pictures or anything like that. So what you're  
13 asking is for pictures, I don't know.  
14 Q What I'm asking you is, from your personal  
15 knowledge, do you know of anything -- if I said you  
16 need to tell me exactly if he was living with you or  
17 not, what would you look for to figure that out?  
18 A I don't know.  
19 Q Do you think your wife knows?  
20 A There's no specific things I can tell you.  
21 I don't know.  
22 Q Does your wife know?  
23 A It's possible, but I know on the police  
24 report it said that she evicted him, so you might  
25 want to get the police report.

1 Q Well, I've got the police report.  
2 A Did you read under where it says evicted?  
3 So that's a piece of evidence.  
4 Q What the purpose of today is for me to find  
5 out what you know.  
6 A And I've already told you what I know.  
7 Q I understand. And I can read everything  
8 I've got here, everything that's been disclosed.  
9 A Okay.  
10 Q My job today is to find out what you know  
11 and what you're going to come testify to at trial,  
12 right, and so if I ask you today, was Efren living  
13 with you? And you say, I don't know, what I don't  
14 want is for you to come in to trial and say -- give  
15 me an answer one way or another and say, oh, well, I  
16 just went and looked at this document that was so  
17 easy for me to look at. And so I'm just trying to  
18 find out --  
19 A Correct. And at this point, I don't know  
20 what answer to give you, but if I came to trial, then  
21 I have enough time to go and research.  
22 Q Okay. So if I give you enough time to  
23 research, you think you can find out the answer to  
24 that question?  
25 A It's possible.

1 Q Okay. You said Efren was evicted?  
2 A That's what the police report says.  
3 Q I'm not asking what the police report says.  
4 A I said that right now to you that that's  
5 what the police report says.  
6 Q Is that the truth?  
7 A Yes.  
8 Q Okay. You seem to be making a distinction  
9 between the police report and --  
10 A I understand. The thing is that there are  
11 things already that are documented and that's what's  
12 documented is what's there.  
13 Q As I'm sure you're aware, documents aren't  
14 always accurate.  
15 A We wouldn't lie to the police department.  
16 Q I'm not saying that. People take things  
17 down wrong. People write the wrong things down.  
18 A We're going to find that police officer and  
19 make sure they took it down right.  
20 Q Let me, I guess, give you some friendly  
21 advice. Today will go a lot quicker if I ask the  
22 questions and you give me the answers instead of  
23 saying, well, it's in here, it's in here, it's in  
24 here.  
25 MR. GOURLEY: Just let him ask the

1 questions.  
2 THE WITNESS: No, that's fine. The thing is  
3 you're trying to push me to give you answers I don't  
4 know.  
5 BY MR. SCHNITZER:  
6 Q And that's fine and I should have clarified  
7 that at the beginning. If you don't know or you  
8 don't remember, those are perfectly fair answers, but  
9 if you give me one of those answers, I may follow up  
10 to try to poke and prod and see what --  
11 A My answer is going to be the same one, I  
12 don't know.  
13 Q You'll be surprised. Sometimes I can get  
14 people to remember things.  
15 But what I'm asking you is, in general, at  
16 some point in time, Efren was evicted from your  
17 house?  
18 A Yes.  
19 Q Do you remember those circumstances?  
20 A No.  
21 Q You don't remember how he was evicted?  
22 A No.  
23 Q You don't know if it was you or your wife?  
24 A Mainly my wife.  
25 Q It was mainly your wife?

Page 14

1 A Yes.

2 Q Were you present when he was evicted?

3 A Yes.

4 Q What do you remember about that?

5 A Him getting evicted.

6 Q What do you remember about the conversation?

7 A I don't remember the conversation.

8 Q You don't remember any of the conversation?

9 A No.

10 Q Do you remember why he was evicted?

11 A Not listening, probably one of those things.

12 Q Okay. What wasn't he listening to?

13 A Not doing his chores probably.

14 Q What else?

15 A That's it, that I remember.

16 Q Approximately how old was he when he was

17 evicted?

18 A I don't recall, man. I don't keep track of

19 that, I'm sorry. I have many other things in my mind

20 than keeping track of dates.

21 Q Okay. Do you have an estimate?

22 A No.

23 Q How old is Efren today?

24 A I think he's 25 or 26.

25 Q Do you think he was older than 20 when he

Page 15

1 was evicted?

2 A Probably.

3 Q So some time in the last five years that

4 he's been evicted, is that a fair estimate?

5 A Yeah, it could be.

6 Q Yes, it could be or, yes, it's a fair

7 estimate?

8 A Could be. Could be a fair estimate.

9 Q I'm asking you, is it or is it not a fair

10 estimate?

11 A I guess it's a fair estimate.

12 Q Did you take any part in the decision to

13 evict him?

14 A I support my wife.

15 Q I understand.

16 A So, in other words, yes.

17 Q And I understand there's different

18 husband/wife dynamics, depending on the marriage. So

19 was this something where she came to you and said,

20 I'm evicting Efren, and you said, okay, or was this,

21 hey, I think we should evict him, and you said, yeah,

22 I agree with you?

23 A I would have evicted him way sooner than she

24 did, put it that way.

25 Q Okay. So the mom kind of tried to protect

Page 16

1 him a little bit longer?

2 A Uh-huh.

3 Q Is that a "yes"?

4 A Yes.

5 Q Why did you want to evict him earlier?

6 A Just I don't like to hear him arguing with

7 his mom, okay.

8 Q That's it, just because he would argue with

9 his mom?

10 A Yeah, that's disrespectful.

11 Q Okay. What would they argue about?

12 A I don't remember, man. Come on. I don't

13 remember.

14 Q I mean, any examples? Anything come to

15 mind?

16 A I don't remember.

17 Q How old is Gabriel?

18 A Gabriel is 15.

19 Q Okay. How old is Elijah?

20 A He's four.

21 Q And Mandy?

22 A 18. She's 17 actually. She's going to be

23 18.

24 Q And you said Efren you think is about 25?

25 A Yes.

Page 17

1 Q Is Dee Dee the mother, the natural mother of

2 all four?

3 A Yes.

4 Q Have you had any other marriages?

5 A No.

6 Q Any other kids?

7 A Not that I know of. No, no, I don't.

8 Q Okay. Before Efren was evicted, all four

9 kids lived in the house with you, correct?

10 A Yes.

11 Q And how long have your parents lived with

12 you?

13 A Approximately about four years.

14 Q Okay. Do you know if your parents lived

15 with you when Efren was evicted?

16 A They were probably in Mexico.

17 Q Living in Mexico or just on vacation?

18 A Vacation.

19 Q But they were living with you, just not home

20 at the time?

21 A Correct.

22 Q And what are your parents' names?

23 A Manuel Sotelo.

24 Q Okay.

25 A And Celia.

Page 18

1 Q C-e-l-i-a?

2 A Uh-huh.

3 Q And I apologize, I have to ask everyone

4 this. Have you ever been convicted of a felony?

5 A Negative.

6 Q Any military service?

7 A No.

8 Q What's the highest level of education you

9 have?

10 A Eleventh grade.

11 Q So did you get a GED?

12 A No.

13 Q Have you taken any courses? You know,

14 sometimes people go to --

15 A HVAC, HVAC.

16 Q Do you need a license for that or is that

17 just classes?

18 A It's just EPA certification.

19 Q Other than your HVAC certification and I

20 assume driver's license, any other certifications or

21 licenses?

22 A Driver's license.

23 Q Anything else?

24 A No.

25 Q Okay. And I understand you are the owner of

Page 19

1 Now Services of Nevada, LLC?

2 A Correct.

3 Q How long have you had that business?

4 A Since 2006.

5 Q Are you the sole owner?

6 A Yes.

7 Q No other family is on the LLC with you?

8 A No.

9 Q What does the business do?

10 A Air conditioning. Heating, air

11 conditioning.

12 Q Repair?

13 A Service, repair, installations.

14 Q Do you have any employees?

15 A Yes.

16 Q How many employees do you have today?

17 A Right around 20, between 20 and 24.

18 Q When you started the business in '06, did

19 you buy an existing business or did you start it from

20 scratch?

21 A I started it from scratch.

22 Q So you've come quite a ways since '06 then,

23 correct?

24 A Yes.

25 Q Anyone else in your family work for the

Page 20

1 business other than you?

2 A Just Delia, my wife. She's an employee.

3 Q Earlier you called her Dee Dee.

4 A Well, Dee Dee. Her proper name is Delia.

5 Q So her legal name is Delia, but you call her

6 Dee Dee?

7 A Everybody calls her Dee Dee. I started

8 calling her Dee Dee after -- you know, her family all

9 calls her Dee Dee, so.

10 And my nephew, yeah, Jose Sotelo also works

11 there.

12 Q And how long has Jose worked there?

13 A Since 2009 probably.

14 Q How old is he?

15 A I'm not sure, but if I have to guess about

16 29.

17 Q He is older than Efren?

18 A Yes.

19 Q What does Jose do for the business?

20 A He is an installer.

21 Q Other than the labor dispute you talked

22 about earlier, has the business ever been involved in

23 any other lawsuits?

24 A No.

25 Q What about you, personally?

Page 21

1 A No.

2 Q What do you do for -- I mean, I understand

3 you're the owner of the business. Is that -- do you

4 do anything more specific, do you just kind of

5 oversee anything or are you hands-on with the repairs

6 still?

7 A I support the technicians, I support the

8 installers. We do morning trainings, we train them.

9 Q Okay.

10 A Customer service and how to troubleshoot,

11 you know, how to diagnose.

12 Q So I guess you're more overseeing everything

13 than being out in the field and the hands-on?

14 A No, I do my share of going out and making

15 sure that everything is done right, you know. I do

16 that also.

17 Q Okay. All right. Now, at some point in

18 time, Efren worked for you, correct?

19 A Correct.

20 Q What did he do?

21 A He is a delivery driver.

22 Q What are you delivering or does your company

23 deliver?

24 A Well, it's just material that the installers

25 or the technicians might need.

<p style="text-align: right;">Page 22</p> <p>1 Q So if I understand you correctly, an 2 installer would go out to a job and they may figure, 3 hey, I need this, this or that and Efren's job was to 4 deliver that? 5 A Yeah, let's say they pick up the equipment 6 and they're missing, you know, a p-trap. You know, 7 rather than them going out of their way to pick up 8 the part, you know, we have somebody that can 9 actually bring it to them so they can finish the job 10 and move on to the next. 11 Q Efren no longer works for your company, 12 correct? 13 A Absolutely not. 14 Q Do you still have delivery drivers or was 15 that position created just specifically for him? 16 A No, that position has always been there. 17 Right now we're a little slow, so we don't have one. 18 Q Slow just because it's winter? 19 A It's seasonal, yeah. 20 Q What did you do, I guess what was your 21 hiring process for Efren? Did you -- I mean, I know 22 he's your son, so it's probably a little different. 23 A It's all the same. 24 Q So what do you do when you're hiring someone 25 new?</p>	<p style="text-align: right;">Page 24</p> <p>1 A They should, yes. 2 Q When someone submits an application, you 3 hire them, do you keep an employee file? 4 A Yes. 5 Q And then obviously if you have to write them 6 up or something, that goes in the employee file and 7 you keep those records? 8 A Correct. 9 Q And you said you send the driver's 10 license -- for a delivery driver, you send the 11 driver's license to the insurance company? 12 A Every employee. 13 Q Can you explain that to me? 14 A Every employee that we hire, we take the 15 driver's license, send it to our insurance, the 16 policy for the vehicles, and have them do all their 17 research and they make the decision whether, you 18 know, they'll -- 19 Q Insure them or not? 20 A Insure them or not, yeah. That's their 21 department. 22 Q Okay. So are you actually adding drivers to 23 your insurance policy or are they just saying, yes, 24 he's okay, no, he's not? 25 A We're adding them.</p>
<p style="text-align: right;">Page 23</p> <p>1 A We interview and make sure that they have 2 the qualifications. We get the driver's license, 3 send it over to the insurance, which, you know, to 4 our insurance policy, and let them make the decision 5 whether, you know, they're going to accept them as a 6 driver or not. 7 Q Okay. So what qualifications do you look 8 for in a delivery driver? 9 A As long as they could find addresses, but 10 now with GPS, you know, and obviously they got to be 11 punctual, they have to be there every day, they got 12 to listen to, you know, instructions. 13 Q Okay. Did you actually conduct an interview 14 with Efren or he's your son, I assume -- 15 A The process is all the same, okay. In 16 business, there is no such thing as son or father. 17 You're an employee. 18 Q Okay. Do you have like an HR department or 19 is it you who does the hiring? 20 A There's several people that will interview. 21 Q So several people would have interviewed 22 Efren? 23 A Correct. 24 Q You keep -- do all applicants have to submit 25 an application?</p>	<p style="text-align: right;">Page 25</p> <p>1 Q You're what? 2 A We -- well, we don't add them, the insurance 3 adds them. 4 Q Right. I mean, is your intent for them to 5 be added as additional insureds onto your policy? 6 A I don't know how the insurance does it, I 7 don't. 8 Q That's fair. Do you have an insurance agent 9 that you work with or do you just send it -- 10 A No. Our insurance, our policy, that's who 11 we send it to. We're a policyholder. I'm not going 12 to go to a third party. Yeah, that's it. That's the 13 insurance policy. 14 Q Do you have someone at the insurance company 15 that you contact directly or do you just send it to 16 like a general number? 17 A There's somebody who we contact. 18 Q And who is that? 19 A I don't recall, man. I don't recall. 20 Q Okay. Is that something, some information 21 that you could get for me? 22 A Yes. 23 Q Has that been the same person for the last 24 five years? 25 A Yes.</p>

<p style="text-align: right;">Page 26</p> <p>1 Q And you don't believe that person is an 2 agent, you believe they're inhouse with the insurance 3 company? 4 A Well, I believe it was the agent and then 5 she sends it to the insurance company. 6 Q Okay. That's my question. When you're 7 sending the driver's license to the insurance 8 company, do you believe you're sending that to your 9 agent? 10 A Yes. 11 Q When you're trying to get someone, I guess, 12 qualified to be a delivery driver, I assume the 13 process is the same for a service person, right, 14 because they're driving too? 15 A There's not -- I mean, a technician is way 16 different than a delivery driver. 17 Q Well, and I'm talking about in terms of 18 getting them qualified through the insurance to make 19 sure that -- this process is the same? 20 A Yes, that's the same process. 21 Q So when you're trying to get someone 22 qualified with their driver's license through the 23 insurance, is there paperwork you submit or do you 24 just send the driver's license over or how does that 25 work?</p>	<p style="text-align: right;">Page 28</p> <p>1 Q So if anyone would know, it would be her; is 2 that fair? 3 A Yes. 4 Q If you are trying to hire a delivery driver 5 and they get approved from the insurance company, 6 have you ever seen what their approval looks like, is 7 it a phone call, is it a letter, something in 8 writing? 9 A No, but I know if they don't approve, 10 they're going to send a letter saying we cannot -- 11 this driver is not allowed to drive. You know, we've 12 had some where they get rejected, they get rejected. 13 Q And that's something you've gotten in 14 writing? 15 A Once again, yes, yes, I believe so. 16 Q But you don't -- 17 A I mean, you know, nothing is ever a phone 18 call. It has to be in writing. 19 Q And so you believe even the approval -- 20 A It's not what I believe, it's facts. Okay, 21 you're asking me if I believe, I believe, I believe. 22 I need you to ask me specific questions. I don't 23 want to go off of what I believe. I want to go off 24 of facts. 25 Q Okay. Well, I appreciate that. I get to</p>
<p style="text-align: right;">Page 27</p> <p>1 A I know the driver's license for sure and -- 2 I'm not sure. 3 Q I mean, is there a form you have to fill 4 out? 5 A That's not my department, but I make sure 6 that it gets done. 7 Q Whose department is that? 8 A That's Delia's and there's a few people. 9 Q So Delia is the one that sets that up? 10 A Yes. 11 Q What is Delia's job title? 12 A Accounting. 13 Q Is it your assumption that if there's a form 14 that has to go to the insurance company, that that 15 would also end up in the employee's file? 16 A I can't answer that. You want to make an 17 assumption, I don't go off of assumptions, I go off 18 of facts, so. 19 Q Do you know? 20 A No. 21 Q Would Delia know that? 22 A It's possible. 23 Q Who's in charge of maintaining the employee 24 files at your company? 25 A Delia.</p>	<p style="text-align: right;">Page 29</p> <p>1 ask the questions I want and your attorney -- 2 A I understand that. 3 Q If your attorney doesn't like the questions 4 I ask, he can ask them differently. 5 A I'm not going to answer anything that's 6 going to go off of assumptions. 7 MR. GOURLEY: Just, again, let him ask and 8 give your best response. 9 THE WITNESS: Okay. 10 BY MR. SCHNITZER: 11 Q And if your attorney thinks I'm asking an 12 unfair question, he can object and the court will 13 decide later. So I'm trying to start with facts and 14 if you're not sure, I'm asking what you believe, and 15 so factually do you know whether you get approval 16 letters for drivers that are approved by the 17 insurance company? 18 A Factually, I don't. 19 Q Do you think that's the case? 20 A I think that's the case. 21 Q Okay. Do you conduct background checks on 22 any employees before they're hired? 23 A If we feel the need to, yes. 24 Q So it's not consistently applied? 25 A No.</p>

1 Q Okay. For anybody who's going to be  
 2 driving, do you ever pull their DMV records?  
 3 A The insurance does.  
 4 Q Is that something they've communicated to  
 5 you that they do that?  
 6 A No, we know that they do.  
 7 Q Because they've told you that?  
 8 A That's why we send them our information and  
 9 they make the decision whether they can drive or not.  
 10 So, you know, it's apparent that they're going to  
 11 pull the DMV printout to get the record to make sure  
 12 that they're -- you know how insurances work, you go  
 13 to get any insurance, they're going to go, let's look  
 14 at his driving record, okay. I assume that's what  
 15 they do.  
 16 Q Is it a requirement of your insurance policy  
 17 that you let them know everybody who's going to be  
 18 driving one of your work trucks?  
 19 A 100 percent.  
 20 Q In other words, I just want to be clear,  
 21 it's not something you're asking them to do because  
 22 it's helpful, it's a requirement on their end?  
 23 A It's a requirement on their part, it's a  
 24 requirement on our part, so we don't put a driver out  
 25 there and he may not have a driver's license.

1 Q What I'm saying is there are other ways to  
 2 find out besides having the insurance company do it,  
 3 but the insurance company requires that they do it?  
 4 A Since they're the ones going to be covering  
 5 it, we'd rather let them make that decision.  
 6 Q Okay. All right. Now, before this  
 7 accident, when Efren was working for you -- and I  
 8 understand there's a police report about him using a  
 9 credit card improperly, correct?  
 10 A Correct.  
 11 Q Before that incident, how was he as an  
 12 employee?  
 13 A He was good.  
 14 Q No issues?  
 15 A No issues.  
 16 Q There's going to be no write-ups in his  
 17 file? Because I think I've requested his file.  
 18 A Correct.  
 19 Q There's going to be no write-ups in his file  
 20 before that incident?  
 21 A He had a few parking tickets and he paid for  
 22 them. We deduct it from his paycheck. If he's an  
 23 employee, he is not -- there's no family. In  
 24 business, there's no family. You're an employee and  
 25 that's the bottom line.

1 Q And I understand that. I'm trying to ask  
 2 your opinion of him as the boss before the  
 3 embezzlement issue. No issues?  
 4 A Not that I was aware of, no.  
 5 Q Then the embezzlement issue happens,  
 6 correct?  
 7 A Correct.  
 8 Q Tell me about that. Tell me what you  
 9 remember.  
 10 A It was brought to my attention that there  
 11 was quite a bit of charges from the Lowe's account,  
 12 okay. And the red flag was that they were all, you  
 13 know, they were all \$50, \$50. So why, you know, why  
 14 are we spending \$50, you know, every time. I know  
 15 we're not getting the same material every time.  
 16 That's what brought up a red flag and a lady that  
 17 was -- I forget her name -- was working on the  
 18 account at that time brought it to my attention and  
 19 then I had her investigate it and we found out that  
 20 they were, you know, gift cards.  
 21 Q Did Efren have his own company card?  
 22 A (Witness nods head.)  
 23 Q Is that a "yes"?  
 24 A Yes.  
 25 Q So there was a card that said Efren Sotelo,

1 Now Services of Nevada, LLC?  
 2 A Correct.  
 3 Q Do all employees get company cards?  
 4 A A few of them did. Yeah, about 3 or 4 of  
 5 them have them.  
 6 Q Do all delivery drivers get credit cards?  
 7 A It's important for them to have one. You  
 8 know, they're going to be buying material for them.  
 9 Q And just obviously I don't know your  
 10 business, so some of the questions may sound silly or  
 11 stupid to you. I'm asking because I don't know.  
 12 And so all delivery drivers in your company  
 13 have credit cards?  
 14 A Even some of the installers.  
 15 Q Okay. So what happened when you realized  
 16 that he was buying gift cards?  
 17 A I approached him and I fired him.  
 18 Q Okay. Tell me about the conversation when  
 19 you approached him.  
 20 A Pretty much I asked him why he was doing it,  
 21 why was he purchasing \$50 gift cards. He had no  
 22 answer and my answer was, you're fired. There's zero  
 23 tolerance for any misconduct.  
 24 Q Okay. What did he say when you told him he  
 25 was fired?

<p style="text-align: right;">Page 34</p> <p>1 A He accepted it.</p> <p>2 Q At the time of the embezzlement, was he</p> <p>3 living with you?</p> <p>4 A We already had this conversation.</p> <p>5 Q I don't think I asked this question.</p> <p>6 A Okay. I don't recall, because it was within</p> <p>7 the same time you asked earlier, so I don't recall.</p> <p>8 Q Do you have like -- I assume you've got an</p> <p>9 office location or do you work out of your house?</p> <p>10 A No, we have an office location.</p> <p>11 Q I assume you have work vehicles?</p> <p>12 A Yes.</p> <p>13 Q In 2014, approximately how many work</p> <p>14 vehicles did you have?</p> <p>15 A Right around the same. About 15.</p> <p>16 Q Where would these work vehicles be stored?</p> <p>17 A They're allowed to take them home.</p> <p>18 Q All the employees are allowed to take them</p> <p>19 home?</p> <p>20 A Yes.</p> <p>21 Q So the employees have a set of keys and I</p> <p>22 assume you keep a set for yourself?</p> <p>23 A Correct.</p> <p>24 Q So do you have more than two sets or is it</p> <p>25 just the employee and --</p>	<p style="text-align: right;">Page 36</p> <p>1 A No.</p> <p>2 Q Did he ever pay you back?</p> <p>3 A No. There was a restitution where he needs</p> <p>4 to pay back.</p> <p>5 Q An order from the court, you mean?</p> <p>6 A Uh-huh.</p> <p>7 Q How did that come about?</p> <p>8 A What?</p> <p>9 Q The restitution order.</p> <p>10 A There's a restitution. I haven't seen any</p> <p>11 money, but there's a restitution.</p> <p>12 Q How did it get to that point? Did you go to</p> <p>13 the police, I guess?</p> <p>14 A I think the judge -- well, yeah, I make a</p> <p>15 police report, they arrested him and it was ordered</p> <p>16 for him to pay restitution.</p> <p>17 Q When did you go to the police, the same day,</p> <p>18 a week later?</p> <p>19 A No. The next day after.</p> <p>20 Q The next day after you found out?</p> <p>21 A I believe so.</p> <p>22 Q Okay. So I'm going to show you what we'll</p> <p>23 mark as Exhibit 1.</p> <p>24 (Plaintiff's Exhibit 1 was marked for</p> <p>25 identification.)</p>
<p style="text-align: right;">Page 35</p> <p>1 A Employee, and a set of keys at the office.</p> <p>2 Q Okay. And that's the only two sets?</p> <p>3 A Correct.</p> <p>4 Q Do all employees have keys to the office?</p> <p>5 A No.</p> <p>6 Q Who has a key to the office?</p> <p>7 A Well, actually, certain employees do.</p> <p>8 Q Okay.</p> <p>9 A That work in the office.</p> <p>10 Q Okay.</p> <p>11 A Dispatcher, the dispatchers have a key and</p> <p>12 the account assistant.</p> <p>13 Q You?</p> <p>14 A I depend on them to be there when I get</p> <p>15 there, but, yes, I should have one.</p> <p>16 Q Okay. Dee Dee?</p> <p>17 A Yes.</p> <p>18 Q Anybody else?</p> <p>19 A No.</p> <p>20 Q Did Efren ever have a key to the office?</p> <p>21 A No.</p> <p>22 Q What time does your office open?</p> <p>23 A Seven.</p> <p>24 Q Do you know why -- did you ever find out why</p> <p>25 Efren was buying gift cards?</p>	<p style="text-align: right;">Page 37</p> <p>1 BY MR. SCHNITZER:</p> <p>2 Q Can you look at that, tell me if you have</p> <p>3 seen that before.</p> <p>4 A Yes.</p> <p>5 Q And what is that?</p> <p>6 A It's the police report for the embezzlement.</p> <p>7 Q Okay.</p> <p>8 A Geez, I'm getting old. I'm 43.</p> <p>9 Q What's that?</p> <p>10 A I'm getting old. I'm 43.</p> <p>11 Q Do you see on there it said -- I'll</p> <p>12 reference the correct page on there. The last page,</p> <p>13 it's marked as Police Report 0007. Do you see that</p> <p>14 on the bottom right?</p> <p>15 A 007?</p> <p>16 Q Yes. Okay, it looks like JSNS00031.</p> <p>17 A Okay.</p> <p>18 Q It's called Bates stamp numbers and</p> <p>19 sometimes they go back and forth. Do you see on that</p> <p>20 page, it says -- the third paragraph down, it says,</p> <p>21 "Juan believed Efren had a drug addiction"?</p> <p>22 A Correct.</p> <p>23 Q And you believe he purchased the gift cards</p> <p>24 to sell to get cash to purchase illegal drugs?</p> <p>25 A Okay.</p>



<p style="text-align: right;">Page 38</p> <p>1 Q Do you remember that, believing that?</p> <p>2 A Yeah.</p> <p>3 Q Did you tell that to the officer?</p> <p>4 A Yes.</p> <p>5 Q Why did you believe he had a drug addiction?</p> <p>6 A Because most of the time that's a common</p> <p>7 pattern, you know, steal.</p> <p>8 Q Other than the fact that he stole something,</p> <p>9 do you have any other reason to believe he had a drug</p> <p>10 addiction?</p> <p>11 A No.</p> <p>12 Q Was he acting strange?</p> <p>13 A No.</p> <p>14 Q Did you ever find him with drugs, anything</p> <p>15 like that?</p> <p>16 A No.</p> <p>17 Q Did your wife ever tell you anything, I</p> <p>18 think he's on drugs, anything like that?</p> <p>19 A No.</p> <p>20 Q So your sole reason for making that comment</p> <p>21 to the officer was the fact that he took the gift</p> <p>22 cards?</p> <p>23 A Yeah.</p> <p>24 Q And I just want to understand what you were</p> <p>25 thinking at the time. Obviously, I wasn't there.</p>	<p style="text-align: right;">Page 40</p> <p>1 2014?</p> <p>2 A Uh-huh.</p> <p>3 Q And so you believe that's the day you went</p> <p>4 to the police, does that sound accurate?</p> <p>5 A Yes, probably.</p> <p>6 Q Okay. What did you do? I assume you fired</p> <p>7 him when you found out he had stolen?</p> <p>8 A Do not assume. I did.</p> <p>9 Q I assume. I'm asking you to confirm that?</p> <p>10 A I did fire him.</p> <p>11 Q What is the process at your company when</p> <p>12 someone is fired?</p> <p>13 A Take them into the office, let them know</p> <p>14 they're terminated.</p> <p>15 Q Is there some paperwork you have them sign?</p> <p>16 A We collect whatever, you know, company</p> <p>17 property, you know, they were issued at the time of</p> <p>18 employment and then they're released.</p> <p>19 Q Okay. What kind of company property would</p> <p>20 be issued?</p> <p>21 A You know, uniforms. It all depends.</p> <p>22 Uniforms, tools, keys. I mean, I can't recall, but</p> <p>23 that's the main one, keys, credit cards, gas card, to</p> <p>24 be able to purchase. That's it.</p> <p>25 Q Is there like a checklist that HR or I guess</p>
<p style="text-align: right;">Page 39</p> <p>1 A That's why I said I believe.</p> <p>2 Q Okay. And so you had him prosecuted,</p> <p>3 correct?</p> <p>4 A 100 percent.</p> <p>5 Q Did he have to appear in court for that?</p> <p>6 A I don't recall. I don't believe so. I</p> <p>7 don't recall.</p> <p>8 Q Do you know if anyone from your company had</p> <p>9 to appear in court for that?</p> <p>10 A I don't believe so. I mean, they knew what</p> <p>11 happened, so.</p> <p>12 Q Do you know if he hired an attorney?</p> <p>13 A I don't remember.</p> <p>14 Q Do you know if there was a plea deal or how</p> <p>15 it came about?</p> <p>16 A I have no clue. I had no interest.</p> <p>17 Q You said you don't remember if he was living</p> <p>18 with you at the time?</p> <p>19 A No. I said I don't. It's possible, I don't</p> <p>20 remember, though.</p> <p>21 Q So you're not sure whether or not the theft</p> <p>22 had anything to do with him getting kicked out of the</p> <p>23 house?</p> <p>24 A I don't know.</p> <p>25 Q The report, Exhibit 1, is dated December 11,</p>	<p style="text-align: right;">Page 41</p> <p>1 Delia pulls out and says, okay, I've got the uniform,</p> <p>2 I've got the credit card, you know.</p> <p>3 A Yeah.</p> <p>4 Q Yes?</p> <p>5 A Yes, we keep that.</p> <p>6 Q So you know what they've been issued and you</p> <p>7 know what you received back?</p> <p>8 A Yes, we have -- yes.</p> <p>9 Q And that should be in the employee file?</p> <p>10 A Correct.</p> <p>11 Q Were you present when Efren had to give back</p> <p>12 any company issued items?</p> <p>13 A Actually, he gave them back to me.</p> <p>14 Q What did he give back to you?</p> <p>15 A I believe everything that was issued to him.</p> <p>16 Q I don't know what everything is. So what</p> <p>17 would he have gotten that he gave back to you?</p> <p>18 A What I mentioned earlier, probably the</p> <p>19 uniforms, any credit cards, keys to the vehicle and</p> <p>20 gas card. No tools, because he didn't have no tools.</p> <p>21 No, I don't think there was any tools.</p> <p>22 Q Did he have more than one credit card?</p> <p>23 A Which credit card are we talking about?</p> <p>24 Q You said credit card. I'm asking did he</p> <p>25 have more than one credit card?</p>

1 A No. No.  
2 Q So he had one credit card?  
3 A (Witness nods head.)  
4 Q Is that the same as the gas card?  
5 A No.  
6 Q You have a credit card and a gas card?  
7 A Yes.  
8 Q Did Efren have both?  
9 A Yes.  
10 Q But he only made purchases on the credit  
11 card, but not the gas card?  
12 A The other one is strictly gas.  
13 Q So you believe he handed you --  
14 A I don't believe. He did.  
15 Q So he handed you --  
16 A Yes.  
17 Q -- the credit cards?  
18 A Uh-huh.  
19 Q And did he have uniforms or something?  
20 A Yes.  
21 Q Where did this conversation take place with  
22 him, at the office or the house?  
23 A The office.  
24 Q In your office?  
25 A I believe so.

1 Q Was anyone else present?  
2 A I don't think so.  
3 Q And would you have filled out that checklist  
4 that says, okay, I received this?  
5 A Probably.  
6 Q I can't remember if I asked you this. The  
7 report date is December 11th, you believe it was  
8 December 11th that you fired him or you think it was  
9 the day before?  
10 A It was the day before.  
11 Q It was the day before, okay. So  
12 December 10th would have been the day you caught and  
13 fired him?  
14 A Yes, and the next day I wrote the police  
15 report.  
16 Q When you take the keys from, I guess, a  
17 fired employee, they stay at the office because now  
18 you've got two sets, right?  
19 A Sure.  
20 Q Because the employee had one and you had  
21 one, they're fired, now you have two?  
22 A (Witness nods head.)  
23 Q They stay in the office?  
24 A I have one.  
25 Q Okay. So when an employee is fired, you

1 keep one set and one set stays at the office?  
2 A They both should stay at the office. In  
3 this case, I kept those keys in my office.  
4 Q So you had two sets in your office?  
5 A So Danielle should have one, there should be  
6 a set of keys at Danielle's and then that one I kept  
7 in my desk.  
8 Q Who's Danielle?  
9 A She's the office assistant. Counter  
10 assistant.  
11 Q So Danielle usually keeps the office set of  
12 keys?  
13 A Yeah, the spares.  
14 Q So in this case, with Efren's car, Danielle  
15 had a set of keys and you had a key in your drawer?  
16 A Correct.  
17 Q After Efren left your office, when you fired  
18 him, he left your office at some point, correct?  
19 A Yes.  
20 Q Did he seem angry, upset?  
21 A Yeah, I couldn't tell. I couldn't tell.  
22 Q Kind of stoic, I guess?  
23 A He was pretty understanding.  
24 Q Okay. Okay. I mean, how did you leave  
25 things, just get out kind of thing?

1 A The way I do with every employee, you're  
2 fired, don't come back, you're not rehirable period.  
3 Q Was Dee Dee involved in his firing at all?  
4 A No. She supported me, but she was not  
5 involved directly.  
6 Q Did she know you were going to fire him  
7 before you did it?  
8 A Of course.  
9 Q When is the next time, after he left your  
10 office, when was the next time you saw Efren?  
11 A When he was being arrested.  
12 Q When he was being arrested?  
13 A At the accident.  
14 Q At the accident, okay.  
15 (Plaintiff's Exhibit 2 was marked for  
16 identification.)  
17 BY MR. SCHNITZER:  
18 Q So that's Exhibit 2. Do you recognize that?  
19 A Yes.  
20 Q And what is that?  
21 A It's a police report, Voluntary Statement.  
22 Q Do you recognize the handwriting?  
23 A I recognize the signature.  
24 Q Whose signature is that?  
25 A That's mine.

1 Q It's dated 12/12 of 2014?  
2 A Correct.  
3 Q So this is December 10th, Efren is fired?  
4 A Yes.  
5 Q December 11th you file a police report  
6 against him for stealing from the company?  
7 A Right.  
8 Q And now this report is dated December 12th?  
9 A Okay.  
10 Q Correct?  
11 A Uh-huh.  
12 Q Is that a "yes"?  
13 A Yes.  
14 Q And I'm sorry, again, just to make sure we  
15 have a clear record.  
16 A That's fine.  
17 Q Did you write the details on this report?  
18 A Yes.  
19 Q Can you just summarize for me what your  
20 purpose of writing this statement was?  
21 A To let the police officer know what  
22 transpired, you know, what I believe transpired.  
23 Q And what did you believe transpired?  
24 A Just like it says in here, I hired him and  
25 he stole a truck.

1 Q Why do you believe he stole a truck?  
2 A I don't believe. He did. He stole the  
3 truck. He stole the truck.  
4 Q You said next time you saw him, he was being  
5 arrested?  
6 A Yes.  
7 Q How did it come to be that you were at the  
8 accident scene?  
9 A We were reporting the truck stolen.  
10 Q Why were you reporting it stolen?  
11 A Because it was stolen.  
12 Q Okay. When is the first time you noticed  
13 that -- at some point you noticed the truck was  
14 missing?  
15 A I was at my office. Dee Dee woke up, called  
16 me and said, hey, where is the truck? I said, it  
17 should be in the back.  
18 Q In the back where?  
19 A In my backyard.  
20 Q So is that the same truck that was Efren's  
21 delivery truck?  
22 A Yes.  
23 Q How did the truck get to your house?  
24 A I took it to the house. I drove it to the  
25 house.

1 Q I assume that would have been on the 11th?  
2 A I don't recall.  
3 Q Well --  
4 A I just know that I got it to the house.  
5 Q Okay. I mean, do you believe it had been  
6 there for a couple of days or just that night?  
7 A Probably a couple of days.  
8 Q Why would you take the truck to your house  
9 instead of leaving it at the office?  
10 A Because I was going to do the delivery. I  
11 was going to take on that responsibility because I  
12 don't have a truck. So I will take care of the  
13 deliveries needed.  
14 Q What do you mean, because you don't have a  
15 truck?  
16 A I drive an SUV. I don't have a personal  
17 vehicle. So that's what that vehicle is for and I am  
18 willing to do whatever it takes to keep the company  
19 going, so I will deliver.  
20 Q It's your business, right?  
21 A Exactly.  
22 Q You don't have the employee, so now you've  
23 got to take over?  
24 A If I need to, yes.  
25 Q I guess I'm assuming, in your business, you

1 need like a pickup truck because sometimes you have  
2 to bring big pieces of equipment?  
3 A Correct.  
4 Q So you had the truck because you were taking  
5 over deliveries until you found someone else?  
6 A That and it's my truck, it's the company's  
7 truck. I can drive it wherever I want.  
8 Q But I'm just asking why you would drive  
9 that. Before Efren was fired, what car were you  
10 driving around?  
11 A My personal vehicle.  
12 Q And so the only reason you had the truck  
13 instead of your personal vehicle was because you were  
14 doing deliveries?  
15 A If need to. Hey, I'm always ready.  
16 Q So you said you're at the office and you're  
17 wife's at home?  
18 A Correct.  
19 Q Your truck was supposed to be at home?  
20 A Yes.  
21 Q So you took a personal vehicle to work that  
22 morning?  
23 A My personal vehicle.  
24 Q Okay. So I guess you weren't doing any  
25 deliveries at that time, that morning?

Page 50

1 A No.

2 Q What would have happened if you had to do a

3 delivery that day?

4 A I would have gone home, picked up my truck

5 and do what I needed to do.

6 Q How far is your house from your office?

7 A About ten minutes.

8 Q What is the office?

9 A 2741 Losee Road.

10 Q Okay. So you said you had a call from Dee

11 Dee?

12 A Yes.

13 Q Do you remember approximately what time it

14 was?

15 A That, no.

16 Q Do you think it was early morning, late

17 morning?

18 A Early morning. The truck was parked right

19 by our restroom, the master bedroom restroom. So she

20 didn't see it. She said, hey, did you take the

21 truck?

22 Q So you parked -- you said it was in the

23 backyard?

24 A Yes.

25 Q Where did you put the keys that night?

Page 51

1 A In my pocket.

2 Q Okay. You slept with the keys in your

3 pocket?

4 A I don't sleep with my pants on. So they

5 were in my pocket.

6 Q So you left them in your pants pocket?

7 A Exactly.

8 Q In your bedroom or something?

9 A Yeah.

10 Q Okay. When you woke up in the morning, do

11 you remember seeing the truck?

12 A I wasn't looking for it.

13 Q Do you remember seeing it one way or

14 another?

15 A I don't recall it.

16 Q So you get up, go to work, don't notice

17 whether it's there or not?

18 A I don't spend as much time as women do in

19 the restroom. I jump in the shower and I'm gone.

20 Q My question is, you didn't notice whether

21 the truck was there?

22 A I said no.

23 Q So you go to work and then Dee Dee calls you

24 and says, did you take the truck?

25 A Yeah, where's the truck? I said, it should

Page 52

1 be in the back. She said, well, it's not. I said,

2 well, you better call the cops, call the cops right

3 now because I don't have it. There's nobody but us

4 to drive it, so you better call the cops, make a

5 police report, let them know it's stolen.

6 Q When you went to work, were you wearing the

7 same pants that had the truck keys in it?

8 A Yeah.

9 Q Did you have the truck keys on you at work?

10 A Yes.

11 Q In your pocket or in your drawer?

12 A In my pocket.

13 Q In your pocket?

14 A Uh-huh.

15 Q Is that "yes"?

16 A Yes.

17 Q Why would you take your truck keys to work

18 with you if the truck was at the house?

19 A Precautions.

20 Q Precautions from what?

21 A From anything. I want to make sure that

22 they're in my pocket. Okay.

23 Q Okay. And do you have a habit of taking car

24 keys with you?

25 A Yeah. I have two in my pocket right now,

Page 53

1 believe it or not. And they both belong to the same

2 car.

3 Q Okay. Is that the car you drove to get

4 here?

5 A Yeah.

6 Q Okay. So you tell her to call the police?

7 A What's that?

8 Q You told Dee Dee to call the police?

9 A Yes.

10 Q What's the next thing that happened?

11 A She was -- hung up, waiting for her to call

12 me back. She calls me back and goes, hey, as I was

13 calling the police, I get a call from Metro. One of

14 the trucks has been in an accident. I said, where

15 at? What truck? She says, I don't know. She was

16 hysterical, but I said, which cross streets? That's

17 when she told me where the cross streets was and I

18 dropped everything and went to the scene.

19 Q Okay. What's the first thing you noticed

20 when you got to the scene?

21 A There was an accident.

22 Q Okay. What did you see? Describe the

23 accident for me.

24 A I can describe what I saw. It was a truck

25 that was rear-ended by our vehicle.

Page 54

1 Q Did you recognize your vehicle?

2 A Yeah.

3 Q Did your vehicle have like your logo painted

4 on it?

5 A I think it did. It might have.

6 Q Do most of your trucks have your logo

7 painted on it?

8 A Yeah, some we use magnets.

9 Q Did you see Efren?

10 A Yes.

11 Q And where was Efren?

12 A Efren was on the sidewalk.

13 Q Sitting down or standing up?

14 A Sitting down.

15 Q Talking to anybody?

16 A No.

17 Q Did you see --

18 A I mean, I don't recall if he was talking to

19 anybody, but I know he was sitting on the ground, the

20 sidewalk.

21 Q Do you remember seeing the driver of the

22 other car?

23 A Yes.

24 Q Do you remember seeing the police officer?

25 A Yes.

Page 55

1 Q Who did you go talk to first?

2 A I don't recall.

3 Q Well, I guess let's go in order. Did you

4 talk to Efren at any point?

5 A Yes.

6 Q What did you say to Efren?

7 A I said, what the fuck were you doing?

8 Q What did he say?

9 A And he didn't say much.

10 Q Did you think he was on drugs at the time?

11 A I couldn't tell you.

12 Q Did you notice anything about him that made

13 you think he was on drugs?

14 A No. He might have -- I mean, I don't know

15 if the police did a test on him or what, but that

16 might explain everything if he was, you know.

17 Q And I assume that, but I'm saying, you, as

18 the father, have known him 20 some odd years.

19 Anything appear odd about him?

20 A He's never been like, you know -- you know,

21 he has different personalities. It's hard for me to

22 tell.

23 Q Okay. Any other conversations you had with

24 Efren?

25 A I don't recall.

Page 56

1 Q Did you talk to the police officer?

2 A Yes.

3 Q Was there one or two police officers at the

4 scene?

5 A Shoot, I believe there was one. I'm not

6 100 percent sure.

7 Q Do you remember what he looked like?

8 A No.

9 Q Do you remember a conversation with the

10 officer?

11 A Yes.

12 Q And I can tell you, there's one officer who

13 I'm pretty sure is a former UNLV basketball player.

14 He's like 6'7". I mean, do you remember him being

15 very tall?

16 A I don't look at those things, you know. I

17 don't care whether they're tall or small, everybody

18 is the same to me.

19 MR. SCHNITZER: Can we go off the record for

20 one second.

21 (Discussion off the record.)

22 MR. SCHNITZER: We can go back on the

23 record.

24 BY MR. SCHNITZER:

25 Q And I'm sorry, do you remember talking to

Page 57

1 the police officer?

2 A Yeah.

3 Q What did you say to him?

4 A I don't recall, man. Come on.

5 Q Okay. Do you remember anything he said to

6 you?

7 A No. I mean, I did tell him that the vehicle

8 was stolen, he needs to be arrested, but, I mean,

9 other than that, I don't recall. I don't remember

10 the conversation.

11 Q Okay. And that's fine. Again, I'm just

12 trying to find out if we go to trial what you're

13 going to come in and say or what you're not. So if

14 you don't remember, you don't remember, but I'm going

15 to expect you to say the same thing at trial; is that

16 fair?

17 A What I'm telling you is exactly what I

18 remember. So nothing is going to change. I'm not

19 going to come up with new ideas or try to invent

20 anything or try to lie or anything. This is what I

21 know, this is who I am. So we go to trial, what I'm

22 saying now is the exact same thing I'm going to say

23 because that's what I know.

24 Q Okay. It seems to me like I'm asking

25 questions and you're getting a little upset, I don't

<p style="text-align: right;">Page 58</p> <p>1 know, I don't remember.</p> <p>2 A Upsetting because you expect me to remember</p> <p>3 things, come on. That's it.</p> <p>4 MR. GOURLEY: If you don't remember --</p> <p>5 THE WITNESS: Yeah, I don't remember.</p> <p>6 BY MR. SCHNITZER:</p> <p>7 Q That's perfectly fair. I'm just trying to</p> <p>8 find out what you do and don't remember. I'm not</p> <p>9 expecting anything.</p> <p>10 Do you remember any conversations with the</p> <p>11 other driver?</p> <p>12 A I remember having them, but I don't remember</p> <p>13 what they were about.</p> <p>14 Q Okay. Do you remember talking to Dee Dee at</p> <p>15 the scene?</p> <p>16 A I don't recall.</p> <p>17 Q Did you tell -- did you ask the officer to</p> <p>18 have Efren arrested, do you remember that?</p> <p>19 A You know, I don't remember, but I must have</p> <p>20 or else he wouldn't have gotten arrested, because I</p> <p>21 don't want to sit here and lie to you and say yes. I</p> <p>22 don't remember.</p> <p>23 Q And if you don't remember, that's fine.</p> <p>24 What's the next thing I guess you do</p> <p>25 remember about being at the accident scene?</p>	<p style="text-align: right;">Page 60</p> <p>1 Q I'm just asking. I mean, do you think he</p> <p>2 has the same cell phone?</p> <p>3 A I have no idea.</p> <p>4 Q Okay. Do you have his -- do you have a</p> <p>5 number in your phone saved as Efren?</p> <p>6 A No.</p> <p>7 Q Did you delete it?</p> <p>8 A Yeah.</p> <p>9 Q Do you know the last time you've spoken to</p> <p>10 him?</p> <p>11 A I don't recall.</p> <p>12 Q Do you think it was the day of the accident?</p> <p>13 A I don't recall.</p> <p>14 Q Okay. Do you know the last time your wife</p> <p>15 has spoken to him?</p> <p>16 A I don't know.</p> <p>17 Q Do you recall any conversations where she</p> <p>18 said, hey, I spoke to Efren?</p> <p>19 A I don't recall.</p> <p>20 MR. SCHNITZER: I think I'm just about done.</p> <p>21 Let me take a five-minute break. Let me make sure.</p> <p>22 We can go off the record.</p> <p>23 (Thereupon, a recess was taken</p> <p>24 from 11:20 a.m. until 11:24 a.m.)</p> <p>25 MR. SCHNITZER: We can go back on the</p>
<p style="text-align: right;">Page 59</p> <p>1 A The next thing, the tow truck picked up the</p> <p>2 vehicle and took off and Efren got put in the police</p> <p>3 car and that's it.</p> <p>4 Q Okay. Do you remember anything else?</p> <p>5 A No.</p> <p>6 Q Have you seen Efren since the day of the</p> <p>7 accident?</p> <p>8 A Yeah, I've seen him.</p> <p>9 Q Where have you seen him?</p> <p>10 A On and off. Different places.</p> <p>11 Q Such as?</p> <p>12 A Huh?</p> <p>13 Q Such as?</p> <p>14 A Different places, bus stops, driving by, oh,</p> <p>15 there he is, you know. The street.</p> <p>16 Q Have you seen him at your house?</p> <p>17 A No.</p> <p>18 Q Have you seen him at the office?</p> <p>19 A Absolutely not.</p> <p>20 Q Do you know where he's living now?</p> <p>21 A No.</p> <p>22 Q Do you have a phone number for him?</p> <p>23 A Come on, man. No.</p> <p>24 Q I don't know.</p> <p>25 A I'm kidding. No.</p>	<p style="text-align: right;">Page 61</p> <p>1 record.</p> <p>2 BY MR. SCHNITZER:</p> <p>3 Q Before the accident in December 2014, were</p> <p>4 you aware of any other accidents Efren had been</p> <p>5 involved in?</p> <p>6 A No.</p> <p>7 Q Okay. We had disclosed some court documents</p> <p>8 to your attorney showing some complaints that had</p> <p>9 been filed against him for -- I think it was two, for</p> <p>10 two other car accidents. You didn't know about</p> <p>11 those?</p> <p>12 A No.</p> <p>13 Q Does it surprise you that those existed?</p> <p>14 A Yeah.</p> <p>15 Q I'm going to show you a document we're going</p> <p>16 to mark as Exhibit 3.</p> <p>17 (Plaintiff's Exhibit 61 was marked</p> <p>18 for identification.)</p> <p>19 BY MR. SCHNITZER:</p> <p>20 Q Have you ever seen that document before?</p> <p>21 A Gray Ford pickup.</p> <p>22 Q And you don't have to read it. My question</p> <p>23 is, have you ever seen it before?</p> <p>24 A Well, let me read it all.</p> <p>25 Q Okay. No, that's fair.</p>

<p style="text-align: right;">Page 62</p> <p>1 A Well, this is a document from the accident.</p> <p>2 Q My question is, have you ever seen this</p> <p>3 document before I just showed it to you just now?</p> <p>4 A Yes.</p> <p>5 Q When did you see this?</p> <p>6 A We reviewed, you know, the police --</p> <p>7 Q To prepare for the deposition?</p> <p>8 A Not to prepare, but I wanted to see, you</p> <p>9 know.</p> <p>10 Q Was this, let's say, in the last week that</p> <p>11 you saw this document?</p> <p>12 A Uh-huh.</p> <p>13 Q Is that a "yes"?</p> <p>14 A Yes.</p> <p>15 Q Thank you.</p> <p>16 I want to ask you about one line. It's</p> <p>17 about halfway down.</p> <p>18 A Okay.</p> <p>19 Q And would you agree with me this appears to</p> <p>20 be a narrative of the investigating officer about the</p> <p>21 stolen vehicle from the accident?</p> <p>22 A Point it out to me.</p> <p>23 Q I'm not pointing to the line. I'm saying,</p> <p>24 in general, you just read it, correct?</p> <p>25 A I didn't read the full document.</p>	<p style="text-align: right;">Page 64</p> <p>1 A I mean, when he was a teenager, he hung</p> <p>2 around with the wrong crowd, and I guess they were</p> <p>3 doing -- smoking marijuana.</p> <p>4 Q Any other drugs?</p> <p>5 A Not that I know of.</p> <p>6 Q Just marijuana?</p> <p>7 A That's what I know. Is there a document</p> <p>8 from the police? Did they conduct a drug test on</p> <p>9 him, the police? Because they normally do, right, if</p> <p>10 they feel that they're under the influence?</p> <p>11 Q If you have any questions, I would direct</p> <p>12 you to ask your counsel. He's got the answer. If he</p> <p>13 doesn't have it, he will get you whatever you need,</p> <p>14 I'm sure. I'm sorry, I can't answer questions for</p> <p>15 you.</p> <p>16 Did you get the car back?</p> <p>17 A The car?</p> <p>18 Q The truck.</p> <p>19 A The insurance took it. It was totaled.</p> <p>20 Q It was totaled. Was it towed from the</p> <p>21 scene?</p> <p>22 A Yes.</p> <p>23 Q Did you take anything from the truck before</p> <p>24 it was towed away?</p> <p>25 A No.</p>
<p style="text-align: right;">Page 63</p> <p>1 Q Does it appear to be, from what you have</p> <p>2 read at least, a narrative from the officer about the</p> <p>3 stolen vehicle?</p> <p>4 A Uh-huh.</p> <p>5 Q Is that a "yes"?</p> <p>6 A Yes.</p> <p>7 Q So about halfway down, at the end of the</p> <p>8 second paragraph, last sentence, it says, "Delia and</p> <p>9 Juan let Efren stay at the residence because they</p> <p>10 continue to feel sorry for him and are trying to help</p> <p>11 him with his drug history."</p> <p>12 Do you see that?</p> <p>13 A Yes.</p> <p>14 Q Does that refresh your recollection in terms</p> <p>15 of whether or not Efren was living with you at the</p> <p>16 time of the accident?</p> <p>17 A No, because there weren't very many</p> <p>18 instances where this can happen. It doesn't say on</p> <p>19 that particular day. So, no.</p> <p>20 Q And it talks about drug history. On the day</p> <p>21 of the accident, were you aware that Efren had some</p> <p>22 type of drug history?</p> <p>23 A I was not aware. Well, I was aware of</p> <p>24 history, but not here.</p> <p>25 Q What history are you referring to?</p>	<p style="text-align: right;">Page 65</p> <p>1 Q So you left the truck as is?</p> <p>2 A Yes.</p> <p>3 Q Do you still have the set of keys that was</p> <p>4 with your office assistant to that truck?</p> <p>5 A I believe so.</p> <p>6 Q Do you still have the set of keys that was</p> <p>7 with -- that were in your pants on that day?</p> <p>8 A I believe so.</p> <p>9 MR. SCHNITZER: Pass the witness.</p> <p>10 MR. GOURLEY: I don't have any questions.</p> <p>11 THE REPORTER: Do you want to read or waive</p> <p>12 signature?</p> <p>13 MR. GOURLEY: Just going off the record.</p> <p>14 (Off the record discussion.)</p> <p>15 MR. GOURLEY: We'll waive.</p> <p>16 THE REPORTER: Did you want to order a copy</p> <p>17 of the transcript?</p> <p>18 MR. GOURLEY: Yeah. And we have to use a</p> <p>19 specific order form that I have and I will give that</p> <p>20 to you.</p> <p>21 THE REPORTER: What transcript form did you</p> <p>22 want?</p> <p>23 MR. SCHNITZER: E-tran and mini.</p> <p>24 (Thereupon, the deposition was</p> <p>25 concluded at 11:33 a.m.)</p>

## DECLARATION UNDER PENALTY OF PERJURY

I, JUAN SOTELO, do hereby certify under penalty of perjury that I have read the foregoing transcript of my deposition taken on January 18, 2017; that I have made such corrections as appear noted herein in ink, initialed by me; that my testimony as contained herein, as corrected, is true and correct.

Dated this \_\_\_\_ day of \_\_\_\_\_,  
2017, at \_\_\_\_\_,

JUAN SOTELO, Deponent

(Signature waived.)

CERTIFICATE OF REPORTER

STATE OF NEVADA )  
 ) ss:  
COUNTY OF CLARK )

I, Sarah Safier, CCR No. 808, do hereby  
certify: That I reported the deposition of JUAN  
SOTELO, commencing on Wednesday, January 18, 2017, at  
10:16 a.m.

That prior to being deposed, the witness was duly sworn by me to testify to the truth. That I thereafter transcribed my said shorthand notes into typewriting and that the typewritten transcript is a complete, true, and accurate transcription of my said shorthand notes. That prior to the conclusion of the proceedings, pursuant to NRCPP 30(e), the reading and signing of the transcript was not requested by the witness or a party.

I further certify that I am not a relative or employee of counsel of any of the parties, nor a relative or employee of the parties involved in said action, nor a person financially interested in the action.

IN WITNESS WHEREOF, I have set my hand in my  
office in the County of Clark, State of Nevada, this  
25h day of January, 2017.

Sarah Safier, CCR No. 808

CERTIFICATE OF DEPONENT

PAGE	LINE	CHANGE	REASON
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★ ★ ★ ★ ★

I, JUAN SOTELO, deponent herein, do hereby  
certify and declare that the within and foregoing  
transcription to be my deposition in said action;  
that I have read, corrected, and do hereby affix my  
signature to said deposition.

JUAN SOTELO



## DISTRICT COURT

CLARK COUNTY, NEVADA

PHILIP MICHAEL BOUCHARD, an )  
 individual, )

Plaintiff, )

vs. ) Case No. A-16-740711-C

EFREN ISAAC SOTELO, an )  
 individual, JUAN SOTELO, an )  
 individual; NOW SERVICES OF )  
 NEVADA, LLC, dba COOL AIR )  
 NOW, Nevada limited liability )  
 company; DOES I through X, )  
 inclusive; ROE CORPORATIONS I )  
 through X, inclusive; DOES I )  
 through X, inclusive; and ROE )  
 CORPORATIONS I through X, )  
 inclusive, )

Defendants. )

## DEPOSITION OF PHILIP MICHAEL BOUCHARD

Taken on Wednesday, October 11, 2017

At 1:00 p.m.

At Hall, Jaffe & Clayton, LLP  
 7425 Peak Drive  
 Las Vegas, Nevada 89128

Reported by: Cynthia L. Gloe, RPR, CCR No. 607

A P P E A R A N C E S

FOR THE PLAINTIFF:

Jordan P. Schnitzer, Esq.  
 THE SCHNITZER LAW FIRM  
 9205 West Russell Road  
 Suite 240  
 Las Vegas, Nevada 89148

FOR THE DEFENDANTS JUAN SOTELO AND NOW SERVICES OF NEVADA,  
 LLC dba COOL AIR NOW:

Kevin S. Smith, Esq.  
 HALL, JAFFE & CLAYTON, LLP  
 7425 Peak Drive  
 Las Vegas, Nevada 89128

I N D E X

PHILIP MICHAEL BOUCHARD:	PAGE
Examination by Mr. Smith.....	3
Examination by Mr. Schnitzer.....	91
Further Examination by Mr. Smith.....	96

(No exhibits marked)

1 (BE IT REMEMBERED that on Wednesday, October 11, 2017, at  
2 the hour of 1:00 p.m. of said day, at Hall, Jaffe & Clayton,  
3 LLP, 7425 Peak Drive, Las Vegas, Nevada 89128, before me,  
4 Cynthia Gloe, a Certified Court Reporter, representing  
5 Manning, Hall & Salisbury, LLC, 617 S. Eighth Street,  
6 Suite A, Las Vegas, Nevada 89101, personally appeared  
7 Philip Michael Bouchard)

8 PHILIP MICHAEL BOUCHARD,  
9 having been first duly sworn, was  
10 examined and testified as follows:

11 EXAMINATION

12 BY MR. SMITH:

13 Q. Would you please state your name for the record?

14 A. Philip Michael Bouchard.

15 Q. Mr. Bouchard, my name is Kevin Smith. I represent  
16 Now Services and Juan Sotelo in the lawsuit you brought.

17 Do you understand who I am?

18 A. Yes, sir.

19 Q. Have you given your deposition before?

20 A. I have.

21 Q. On how many occasions?

22 A. Several.

23 Q. Do you feel comfortable enough with the deposition  
24 process that we can skip the usual admonitions?

25 A. No, sir.

1 Q. Okay. First of all, you understand you've been  
2 placed under oath. Yes?

3 A. Yes.

4 Q. The oath you've given is basically the same oath  
5 you'd give if you were at the courthouse in front of a judge  
6 and jury. This is a much more informal setting in our  
7 conference room, but the oath you've given and the testimony  
8 you're giving today both carry the same weight and the same  
9 penalty of perjury as if you were at the courthouse in front  
10 of a judge and jury.

11 Do you understand that?

12 A. Yes, sir.

13 Q. The court reporter is going to write down  
14 everything that's said; so I need to ask that all your  
15 responses to my questions be verbal. I know sometimes it  
16 may be instinct to nod or shake the head, and that doesn't  
17 translate very well to the printed page; so I would probably  
18 prod you by asking "Is that a yes?" or "Is that a no?" I'm  
19 not trying to be funny, I just need to have a verbal  
20 response.

21 A. Sure.

22 Q. I'll do the same thing if you use the phrases  
23 uh-huh and huh-uh because they sound very familiar, and it  
24 doesn't print very clearly.

25 A. Understood.

1 Q. Because she is writing down what's said, she'll  
2 have difficulty if we talk over each other. So I would like  
3 to ask if you'd let me finish my question before you start  
4 your answer, and I'll try to give you the same courtesy and  
5 let you complete your answer before I go into the next  
6 question.

7 She may at times -- you've been pretty good about  
8 speaking up, but if you speak softly or you're thinking out  
9 loud, she's going to be writing all that down. So please  
10 keep in mind that anything that's said will be on the  
11 printed page later on down the line.

12 When the deposition is completed, after a few days  
13 she'll transcribe the testimony into a small booklet, and  
14 you'll have a chance to review it and see that it is correct  
15 based on your recollection. You'll have an opportunity to  
16 make changes, if you feel any are necessary at that time, on  
17 a separate page. I would caution you that if you make  
18 changes of a significant nature -- left becomes right, up  
19 becomes down -- then we have the opportunity to comment upon  
20 the fact that you've made a change to your sworn testimony  
21 at a later date. It could affect your credibility.

22 A. Okay.

23 Q. We're not here for any kind of a marathon. We're  
24 happy to take a break if you need to. The only caveat is if  
25 there is a question pending, you do need to give an answer

1 before we can move on and take the break, and then we'll  
2 start with the next question after that's completed.

3 I may ask questions that you don't know the answer  
4 to or that you don't remember because this event happened  
5 several years ago. If that's the case, it's perfectly fine  
6 to tell me that you don't know or that you don't remember  
7 the answer because that's the truth.

8 Now, that being said, occasionally you may be able  
9 to answer with an estimate. You may not know the exact  
10 distance because you were not there with a ruler, but you  
11 can estimate it may have been a foot, a yard, something to  
12 that effect.

13 Same token, I may ask when a date of something  
14 occurred. You may not know the exact calendar date, but you  
15 may remember the month that it occurred or even the season  
16 of the year when something occurred. So if you can give me  
17 your best estimate based on what you recall, please do that.  
18 And you can certainly predicate it by saying that it is an  
19 estimate as opposed to knowing exactly when it is. But if  
20 you don't know at all and you have no recollection, it's  
21 perfectly fine to say you don't know or that you don't  
22 remember.

23 Do you have any questions about the process before  
24 we go any further?

25 A. No, sir.

1 Q. Very good. Let me get some background information  
2 from you first off.

3 What is your date of birth?

4 A. 7/11/61.

5 Q. And where were you born?

6 A. Las Vegas, Nevada.

7 Q. What's your educational background?

8 A. High school graduate and three years of  
9 university.

10 Q. Where did you go to university?

11 A. University of Utah.

12 Q. Did you pursue any particular major?

13 A. English and political science.

14 Q. How are you currently employed?

15 A. By National Title Company.

16 Q. And what do you do for them?

17 A. I'm a sales representative.

18 Q. How long have you been working for National Title?

19 A. Off and on, 20 years.

20 Q. Has title sales been your primary occupation for  
21 most of your working life?

22 A. For the last five years.

23 Q. What kind of job duties does that entail?

24 A. Excuse me?

25 Q. What kind of job duties does that entail?

1 A. Generally, creating and maintaining relationships  
2 with people that can do business with our company.

3 Q. Primarily an office job?

4 A. No, sir.

5 Q. What takes you out of the office? What kind of  
6 duties?

7 A. Visiting clients.

8 Q. I understand you're married.

9 A. I am.

10 Q. Do you have children?

11 A. I have two children.

12 Q. And what are their ages and names?

13 A. Philip Michael Bouchard Jr. is 16, and Mikayla  
14 Lynn Bouchard is 9.

15 Q. What is your current home address?

16 A. 11016 Mount Royal Avenue here in Las Vegas, 89144.

17 Q. How long have you been at that address?

18 A. A year.

19 Q. Do you recall your address prior to that?

20 A. Sure. 908 Royal Birch Lane, 89144.

21 Q. And how long were you at that address?

22 A. Six years.

23 Q. Both of these are detached homes?

24 A. Yes, sir.

25 Q. Does your current residence have -- what kind of



1 landscaping does it have?

2 A. Could you ask that a different way?

3 Q. Sure. Does your current address have a  
4 traditional yard with grass and trees? Is it a zero scape  
5 with, like, desert landscaping?

6 A. I would say it's more traditional. There's grass  
7 and shrubs and rocks and flowers, trees, butterflies.

8 Q. When did you first hire counsel in this case?

9 A. I would say either December of 2014 or January of  
10 2015. It's when I could not get a response from the  
11 insurance companies with the defendant.

12 Q. During the course of the lawsuit, the parties  
13 exchange disclosures of information, and one of the things  
14 they disclose is what kind of damages you're seeking. Last  
15 receipt that we had from your attorney was on June 30, 2017.  
16 At that time, your medical bills were reported to be  
17 \$26,652.12. Since June 30 of 2017, have you had additional  
18 medical care?

19 A. Yes.

20 Q. From which providers?

21 A. Dr. Anthony Ruggeroli, Dr. Zachary Soard.

22 Q. Could you spell Dr. Soard's last name?

23 A. S-o-a-r-d. He's a dentist. I believe that's it.

24 Q. And you're not pursuing any claims for dental  
25 injuries as a result of this accident; is that correct?

1 A. I am not.

2 Q. So the only doctor you've seen with respect to  
3 injuries from this incident was Dr. Ruggeroli?

4 A. That I can recall right now, yes, sir.

5 Q. When did you see him since June 30th?

6 A. Most recently, Monday of this week.

7 Q. And what did he do for you at that time?

8 A. It was consultation on the next step of my  
9 treatment.

10 Q. What was the next step that he recommended?

11 A. Another spinal injection that we've scheduled for  
12 November 1st.

13 Q. When you say "spinal injection," which part of the  
14 spine?

15 A. Can I generalize since I'm not a doctor?

16 Q. Oh, by all means. It's within your knowledge.

17 A. Lower left part.

18 Q. So the lower back?

19 A. Yes, sir. I understand I have a damaged facet  
20 joint.

21 Q. Now, going back to when the accident happened to  
22 present day -- and, again, we're not holding you to the  
23 standard of a doctor -- what is your understanding or your  
24 belief as to the injuries you sustained as a result of this  
25 auto accident?

1           A.   Initially, I sustained injury to my lower back and  
2 to my neck. And that's evidenced by where the pain emanated  
3 from.

4           Q.   And you mentioned you're still receiving care for  
5 the lower back. Are you still receiving care for the neck  
6 these days?

7           A.   I am not.

8           Q.   When did you last receive care for your neck?

9           A.   Medical care?

10          Q.   Yes.

11          A.   I believe that would have been with  
12 Dr. Simoncelli, the physical therapist that I saw for  
13 several months after the accident.

14          Q.   Best estimate, when did your neck pain -- I'll use  
15 the word "resolve"?

16          A.   I didn't say that it had resolved.

17          Q.   Okay. Let me ask it this way: Are you still  
18 having problems with your neck?

19          A.   I am.

20          Q.   And could you describe that for me, please?

21          A.   I have regular pain in my neck. I guess it could  
22 be described as a tightening.

23          Q.   That's it, just a tightening sensation?

24          A.   Uh-huh.

25          Q.   You said that you saw Dr. Simoncelli.

1 Approximately, when was the last date you saw him?

2 A. Can I clarify? I didn't say "just" that. I just  
3 said that.

4 Q. Well, what else?

5 A. That's it.

6 Q. So that we're clear, then. Other than a  
7 tightening sensation in your neck, are you having any other  
8 sensations of discomfort or pain in your neck?

9 A. No.

10 Q. When was the last date you recall seeing  
11 Dr. Simoncelli for care for your neck?

12 A. Late spring, early summer of 2015. I believe I  
13 saw him three or four times a week for about six months.  
14 Five or six months.

15 Q. Since that time, spring or summer of 2015 to  
16 present, have you received any medical care specifically for  
17 your neck?

18 A. Only chiropractic adjustments.

19 Q. Who was that performed by?

20 A. Nicola is his last name.

21 Q. When was the last time you received care  
22 specifically for your neck from Dr. Nicola?

23 A. I think it's been three, four months probably.

24 Q. Now, I understand that you're not making a wage  
25 loss claim in this case; correct?

1 A. Correct.

2 Q. Have you had to miss time from work because of  
3 your injuries?

4 A. I have.

5 Q. Do you have any idea how much time?

6 A. No, sir.

7 Q. Were you ever given a doctor's note to miss work  
8 because of your injuries?

9 A. I don't believe so. And I never asked for one. I  
10 don't have that kind of a job.

11 Q. There was damage to your vehicle, which, I  
12 believe, was a Ford F-150?

13 A. Correct.

14 Q. Has the truck been repaired?

15 A. It has.

16 Q. I show that the damage estimate on that was  
17 \$6,478.76. Does that sound correct?

18 A. No, sir. I recall it being about double that.

19 Q. \$12,000?

20 A. Yes, sir.

21 Q. It's been repaired though?

22 A. It has.

23 Q. Has the property damage claim been resolved?

24 A. I don't understand the question.

25 Q. Well, typically, they will separate property

1 damage from personal injury claims. Do you know whether or  
2 not the \$12,000 for repairs to your truck has been paid?

3 A. By my insurance company. As was the rental car  
4 paid by my insurance company.

5 Q. You're still using the truck today?

6 A. I am.

7 Q. Very good.

8 To prepare for your deposition today, did you  
9 review any documents?

10 A. I did not.

11 Q. For example, there was written discovery,  
12 questions that were sent to your attorney, that you would  
13 have answered. Did you review any of those documents?

14 A. I did not.

15 Q. Any of your medical records?

16 A. No, I did not.

17 Q. Police report?

18 A. No.

19 Q. Have you ever had occasion to review the  
20 deposition of Juan Sotelo in this case?

21 A. I don't recall.

22 Q. Did you have any discussions with your wife about  
23 her testimony after she finished it this morning?

24 A. Yes.

25 Q. When was that?

1 A. Half hour ago.

2 Q. What did she tell you?

3 MR. SCHNITZER: Don't answer that. Spousal  
4 privilege.

5 Q. (BY MR. SMITH) Before the accident date, which I  
6 show is on December 12, 2014, when was the last time you saw  
7 a doctor?

8 A. I don't recall.

9 Q. Have you seen a doctor within, let's say, a year  
10 before the accident? When I say "doctor," I mean any kind  
11 of medical provider.

12 A. I don't recall. I would say it's likely, but I  
13 don't recall.

14 Q. Was there any condition that you were receiving  
15 care for during the year leading up to the accident that you  
16 may have gone to see a doctor or other provider for?

17 A. Yeah. Which is why I said "it's likely." I  
18 sought occasional treatment for lower back pain after I had  
19 done something stupid to injure it.

20 Q. What did you do stupid?

21 A. You know, lifting something too heavy. I'm a  
22 Boy Scout leader. Maybe being a little too aggressive in my  
23 activities with the boys. Those are always temporary  
24 things, you know.

25 Q. Was there anything specific that led you seeking

1 care on any kind of a regular basis?

2 A. No. No. No incident.

3 Q. Do you remember who you were seeing for care  
4 before the accident for the occasional low back pain?

5 A. Dr. Nicola.

6 Q. Before the accident, did you have a primary care  
7 physician?

8 A. Dr. Calixto.

9 Q. Can you spell that?

10 A. C-a-l-i-x-t-o.

11 Q. Is he here in Las Vegas?

12 A. He's deceased, but did practice in Las Vegas.

13 Q. Was he part of any other -- a structured practice,  
14 a partnership, anything like that?

15 A. Box Canyon Primary Care.

16 Q. Do you know when Dr. Calixto passed away?

17 A. I don't.

18 Q. Was it before the accident date?

19 A. I don't recall.

20 Q. As of the date of the accident on December 12, do  
21 you recall if Dr. Calixto was still alive?

22 A. I don't.

23 Q. Do you know the last time you had been to see him  
24 before the accident date?

25 A. I don't.



1 Q. Were you taking any medications on a regular basis  
2 before the accident date?

3 A. No.

4 Q. Do you have any metal implants in your body?

5 A. Any what kind?

6 Q. Metal implants.

7 A. I do.

8 Q. What parts of your body?

9 A. Both shoulders.

10 Q. Why did you have those surgeries?

11 A. Rotator cuff issues, primarily.

12 Q. Did those stem from any particular injury?

13 A. No, sir.

14 Q. Were they just a degenerative condition?

15 A. I don't know what that means.

16 Q. Have any of the doctors that you've ever seen used  
17 the term "degenerative disease" with respect to the  
18 shoulders?

19 A. No.

20 Q. They never suggested that you might have  
21 degenerative disease in your neck?

22 A. No.

23 Q. Or your low back?

24 A. No. It's not a word that I believe the physicians  
25 have ever used.

1 Q. You mentioned that you may have done something  
2 stupid, perhaps, as a Boy Scout leader.

3 Do you recall a specific injury on or about  
4 May 24, 2006, that caused pain in your neck and back?

5 A. I do not.

6 Q. Have you ever had MRI studies of your lumbar spine  
7 before the accident occurred?

8 A. I have.

9 Q. When was that?

10 A. Prior to the accident.

11 Q. Does February 12, 2014, sound about right?

12 A. I have no idea.

13 Q. Do you remember who ordered the MRI?

14 A. I do not.

15 Q. Do you know why it was ordered?

16 A. I do not.

17 Q. Assuming that that date I gave you is accurate,  
18 does that help refresh your memory as to whether or not you  
19 were receiving medical care for treatment for your lower  
20 back within the year leading up to the accident date?

21 A. No.

22 Q. These are fairly standard questions. Please don't  
23 be offended. Have you had any felony convictions in the  
24 last ten years?

25 A. I have not.

1 Q. Have you been involved in any other accidents,  
2 motor vehicle accidents, besides this one within the past  
3 five years?

4 A. No, sir.

5 Q. On the accident date, did you have a valid  
6 driver's license?

7 A. I did.

8 Q. Has your license ever been suspended or revoked?

9 A. It has not.

10 Q. Let's talk about the accident date itself. On  
11 that date, where did you start your trip from?

12 A. Bonner Elementary.

13 Q. And about what time did you leave?

14 A. Approximately, 9:45.

15 Q. And where were you going to?

16 A. Work.

17 Q. Were you in any hurry?

18 A. No, sir.

19 Q. What was your usual work start time?

20 A. There is none.

21 Q. As a practice, did you usually get to the office  
22 at a certain time?

23 A. As a practice, I'm there by 8:00.

24 Q. Any reason why you were later than usual on this  
25 date?

1           A.    I was at my daughter's school performance of some  
2    sort.

3           Q.    I mentioned earlier that it was a Ford F-150 you  
4    were driving.  Is that your usual vehicle?

5           A.    It is.

6           Q.    How long had you owned it before the accident?

7           A.    Approximately, one year.

8           Q.    In the month leading up to the accident, had you  
9    had any maintenance done on the truck?

10          A.    I don't recall.

11          Q.    Where did the accident actually take place?

12          A.    The eastbound lanes of Lake Mead just west of  
13    Tenaya, in front of the Denny's Restaurant.

14          Q.    What was traffic like?

15          A.    What do you mean?

16          Q.    Would you characterize it as heavy?  Light?  Were  
17    there any other vehicles in the roadway?

18          A.    I was at -- I was stopped at a red light, and I  
19    was several cars back.

20          Q.    When you say "several cars," do you recall the  
21    number?

22          A.    Several.

23          Q.    More than two?

24          A.    Yeah, I believe.

25          Q.    How much distance was between your vehicle and the

1 vehicle stopped directly in front of you?

2 A. I have no idea. My practice would be at least a  
3 car length.

4 Q. You believe you were following your usual practice  
5 on this date?

6 A. I don't see why I wouldn't have been.

7 Q. Was there any road construction in the area?

8 A. I don't recall.

9 Q. Which travel lane were you in?

10 A. The most southerly lane.

11 Q. So that would be the far right?

12 A. Yes, sir.

13 Q. Had you changed lanes before you came to a stop in  
14 that lane, say, within five minutes preceding?

15 A. I wasn't on Lake Mead for five minutes.

16 Q. I'll ask it a different way. When you pulled onto  
17 Lake Mead, were you always in the far right lane?

18 A. Yes.

19 Q. When did you first see the defendant vehicle, the  
20 white truck?

21 A. In my rearview mirror when it was approximately 15  
22 yards behind me.

23 Q. So when you came to a stop, until the accident  
24 occurred, there were no other vehicles behind you except for  
25 the white truck?

1 A. Correct.

2 Q. Did the white truck ever change lanes from when  
3 you first saw it until the accident occurred?

4 A. No.

5 Q. Do you have any idea how fast it was going when  
6 you first saw it?

7 A. Fast enough that when I first saw him, I knew he  
8 was going to hit me.

9 Q. Any way you could put that into miles per hour?

10 A. No.

11 Q. After you saw it in your rearview mirror, then  
12 what did you do, if anything?

13 A. I did nothing. There was no time to do anything.

14 Q. At the moment of impact, which way were you  
15 facing?

16 A. I was buckled into my seat, but I was looking up  
17 and to the right into my rearview mirror.

18 Q. So was your head tilted upwards and to the right?

19 A. I don't know.

20 Q. On the impact, did your air bags deploy?

21 A. No, sir.

22 Q. You said that you were seat belted in. Did the  
23 seat belt engage?

24 A. It did.

25 Q. Did it leave any bruising or marks on your body as

1 a result of engaging?

2 A. Yeah. I had a couple little burn marks on my  
3 shoulder.

4 Q. Other than that, how did your body move as a  
5 result of the impact?

6 A. It all happened too fast. I have no idea.

7 Q. Did the impact cause you to strike anything within  
8 the passenger compartment of your truck?

9 A. I don't believe so.

10 Q. You indicated you were at a stop. Was your foot  
11 still on the brake at the moment of impact?

12 A. Yes.

13 Q. Did you hear anything, like the screeching of  
14 tires, to indicate whether the vehicle behind you was trying  
15 to do anything to avoid the impact?

16 A. He didn't hit his brakes. There was no sound.  
17 His head wasn't even above the dashboard.

18 Q. Is that based on something you saw in your  
19 rearview mirror?

20 A. And the answer to when I asked.

21 Q. The F-150 you have, is that a quad cab?

22 A. Could you ask that again?

23 Q. Sure. Is there a back seat in your F-150?

24 A. Yes.

25 Q. Do your windows have any tinting?

1 A. Yes.

2 Q. Did the force of the impact cause your vehicle to  
3 be pushed forward any distance?

4 A. I don't know.

5 Q. Did you strike the vehicle that was in front of  
6 you as a result of the collision?

7 A. I did not.

8 Q. At the moment of impact, was the traffic signal  
9 still red?

10 A. I don't recall.

11 Q. What parts of the two vehicles actually collided?

12 A. The front bumper of his car and the rear bumper of  
13 mine.

14 Q. Following the collision, did any of the vehicles  
15 that were in front of you stick around to provide  
16 statements, talk to the police? Anything?

17 A. I don't believe so.

18 Q. You said you were in the far right lane. Were  
19 there vehicles directly to your left, in the center lane?

20 A. I don't recall.

21 Q. Following the impact, did you move your vehicle  
22 out of the roadway before the police arrived?

23 A. No.

24 Q. So you stayed -- your vehicle stayed in its  
25 position until after the police arrived?



1 A. Yes.

2 Q. Is that true of the white truck as well?

3 A. The white truck?

4 Q. The truck behind you, the white truck.

5 A. Yeah. There's no way it was going anywhere. It  
6 was destroyed.

7 Q. Following the impact, how soon was it before you  
8 physically got out of your truck?

9 A. I think it was within a minute, but I had a really  
10 buzzing sensation going on at first; so I don't really know.  
11 It could have been several minutes.

12 Q. Did you strike your head against anything?

13 A. I don't think so.

14 Q. Did you lose consciousness?

15 A. I don't think so.

16 Q. You said you had a buzzing sensation. Did you  
17 have any ringing in your ears?

18 A. Yes, sir. That was part of it.

19 Q. Did you have any sensation of nausea?

20 A. I did not.

21 Q. Did you experience any dizziness or vertigo?

22 A. Yes.

23 Q. When did you first experience that? While you  
24 were still seated or after you got out of the truck?

25 A. While I was still in the truck.

1 Q. The sensations you've just described, were they  
2 still present when you did get out of the truck?

3 A. They had subsided at least to the point where I  
4 could exit the truck.

5 Q. When you did exit the truck, had the traffic  
6 cleared up at all?

7 A. I recall that when I got out of my truck, I had a  
8 clear -- clear path to get out and go back and talk to the  
9 driver of the car behind me.

10 Q. And you said that was perhaps a minute -- minute  
11 or two after the impact occurred?

12 A. It could have been, more or less. Yeah, I don't  
13 know.

14 Q. Was he still in his vehicle when you approached  
15 him?

16 A. Well, he was actually getting out of his vehicle  
17 and walking towards mine.

18 Q. Do you recall what he was wearing?

19 A. It looked like a work uniform.

20 Q. When you say "work uniform," what kind of shirt?

21 A. Oh, one of those -- the type of shirt that one  
22 would wear maybe in the services industry. You know, the  
23 people that fix air conditioning and do plumbing and -- it's  
24 not a dress shirt like you and I have on. It was a uniform  
25 shirt.

1 Q. Button-up? T-shirt?

2 A. Button-up.

3 Q. Long sleeve? Short sleeve?

4 A. He had a jacket on over it; so I don't recall.

5 Q. Did any of his clothing have a company logo on it?

6 A. I don't recall.

7 Q. What kind of shoes was he wearing?

8 A. I don't recall.

9 Q. You said that he was getting out of his vehicle as  
10 well. Where did you two actually meet?

11 A. About at the point of impact.

12 Q. And did you have a discussion with him at that  
13 time?

14 A. Brief.

15 Q. What did you discuss at that time?

16 A. I asked him if he was okay, and he said, "Yes.  
17 I'm going to go get some cigarettes." And I told him no, he  
18 wasn't. I then told him if he would leave his driver's  
19 license with me, he could go get his cigarettes. He gave me  
20 his driver's license and left for about 15 minutes, when the  
21 convenience store was 50 yards away.

22 Q. Did you watch him walking toward the convenience  
23 store?

24 A. I did.

25 Q. Did he go into the convenience store?

1       A.    I don't recall.  He didn't come back with  
2 cigarettes.

3       Q.    During that time period that he was gone, what did  
4 you do?

5       A.    I waited.  And I believe I called the police and  
6 told them that the guy that hit me wasn't coming back -- had  
7 left the scene and wasn't coming back.

8       Q.    Was that the first time that you called the police  
9 following the accident?

10      A.    I think it was the second time.

11      Q.    When was the first time you called police?

12      A.    After the conversation -- the initial conversation  
13 I had with the young man.  When he left, I believe I got  
14 back in my truck and called the police and told them of the  
15 accident.

16      Q.    So you called the police within maybe one or two  
17 minutes after that discussion?

18      A.    Seems reasonable.

19      Q.    And then you called him again maybe 15 minutes  
20 later?

21      A.    I think so.

22      Q.    During the time between those calls, what else did  
23 you do?

24      A.    I sat in my truck and kind of took inventory on  
25 how my body felt, trying to figure out if I was hurt or not.

1 Because the police dispatch person kept asking me if  
2 somebody was hurt, and informed me that they would only send  
3 somebody to the accident if somebody was hurt. And I think  
4 I responded that I wasn't in a mental condition to assess  
5 whether I or the other individual had been hurt; so they did  
6 send police.

7 Q. How many police vehicles arrived?

8 A. I recall one police officer on a motorcycle.

9 Q. About how long was it before he arrived?

10 A. I don't recall.

11 Q. By the time he arrived, had the other driver  
12 returned?

13 A. I think so. I believe so.

14 Q. Were any emergency medical personnel sent to the  
15 scene?

16 A. I don't remember seeing anybody.

17 Q. Did the officer ask if you needed emergency  
18 medical personnel?

19 A. I don't recall.

20 Q. Did the officer offer to call someone?

21 A. I don't recall.

22 Q. Did you describe any injuries to the officer?

23 A. I don't believe so.

24 Q. Did the officer ask if the other driver had been  
25 injured, that you may have overheard?

1 A. I don't think so.

2 Q. Other than calling the police, did you call anyone  
3 else from the scene?

4 A. I called my wife.

5 Q. When was that?

6 A. I would think right after I called the police the  
7 first time.

8 Q. What did you tell her?

9 A. Told her that I had been rear-ended. I think I  
10 told her the kid was still gone at the time. And I asked  
11 her to come to the scene of the accident in that I might  
12 need transportation either to work or to a hospital.

13 Q. Did you make any other calls?

14 A. I don't believe so.

15 Q. How soon after you called her did your wife arrive  
16 at the scene?

17 A. Shortly thereafter.

18 Q. Best estimate. 15 minutes? 30 minutes?

19 A. Half hour.

20 Q. What kind of investigation did the officer do?

21 MR. SCHNITZER: Object to form. You can answer.

22 THE WITNESS: Can you ask the question again?

23 Q. (BY MR. SMITH) Sure. What kind of investigation  
24 did you observe the officer doing after he arrived?

25 A. Well, he asked questions of myself and the young

1 man that hit me. He was not -- I don't recall him measuring  
2 anything. I recall him distinctly saying he was not going  
3 to search for anything within the truck that hit me because  
4 of the condition of it. At one point, he frisked the young  
5 man that hit me. During that frisking, he unzipped a pocket  
6 on the young man's coat, a sleeve, pulled out a little  
7 package and said, "Oh, heroin." Packaged it back up, stuck  
8 it in the pocket, zipped up the pocket. And if I'm not  
9 mistaken, he handcuffed the young man that hit me. I know  
10 at some point he was handcuffed and sitting on the sidewalk.

11 Q. Did the officer take any photographs at the scene?

12 A. I don't recall.

13 Q. Did he ask anyone to fill out a written statement?

14 A. I don't recall.

15 Q. Have you ever given a written statement to anyone  
16 other than your attorney?

17 A. I don't think so.

18 Q. Have you ever given a recorded statement to anyone  
19 other than your attorney?

20 A. No, sir.

21 Q. Now, you mentioned at one point the officer  
22 frisked the young man. How soon after the officer's arrival  
23 did he do that?

24 A. 45 minutes to an hour maybe.

25 Q. Do you know why he frisked him?

1           A.    I do not -- oh, maybe I do.  When his parents  
2   showed up, they indicated to those that were close enough to  
3   hear that their son had been a heroin user for some time.

4           Q.    When you say that, were they speaking to anyone in  
5   particular or just to the world at large?

6           A.    Dr. Sotelo spoke directly to me.  Said his son had  
7   been using heroin.  And then made the comment that they  
8   didn't even know who he was anymore.

9           Q.    Before he made that statement, had you had any  
10   other discussions with Mr. Sotelo?  And I'll call him  
11   "Juan," because that's the name of the father.

12          A.    Okay.  No.

13          Q.    So if I understand, please correct me if I'm  
14   wrong, when you first spoke with Juan Sotelo, he told you  
15   his son was a heroin user and they didn't know who he was  
16   anymore?

17          A.    Correct.

18          Q.    Didn't have anything that led up to that?  Any  
19   previous conversation that would have flowed into that  
20   statement to you?

21          A.    I don't believe so.

22          Q.    Other than the brief discussion about "Are you  
23   okay?  I'm going to go get cigarettes," did you have any  
24   other discussions with the son -- I'm going to use his name  
25   as Efren -- before the officer arrived?



1 A. Yeah. I asked him where the hell he had been.

2 Q. Okay. What did he tell you?

3 A. He said he went for cigarettes. But yet he didn't  
4 have any cigarettes.

5 Q. Did he say anything else?

6 A. I don't recall.

7 Q. Now, you mentioned that your wife arrived sometime  
8 after the police arrived. You also mentioned that Efren's  
9 parents arrived. When did they arrive at the scene?

10 A. I think in order, Efren's parents were the last to  
11 arrive on the scene. I believe my wife preceded their  
12 arrival -- my wife's arrival preceded their arrival.

13 Q. Did your wife speak with the officer at all?

14 A. I think they did have a conversation.

15 Q. Do you know what they spoke about?

16 A. Yeah. As much as I heard, it was about basketball  
17 and him fitting on his motorcycle.

18 Q. Did you see if Efren's parents spoke with the  
19 officer?

20 A. I recall that when Efren's parents got there,  
21 Mr. Sotelo, Juan, was near me, and Mrs. Sotelo went to where  
22 the officer and Efren were.

23 Q. Were you close enough to hear what discussion she  
24 may have had with the officer?

25 A. I was not. She was hysterical.

1 Q. When you say "hysterical" --

2 A. She was crying. Very emotional.

3 Q. Did you hear any discussions that Efren had with  
4 the officer?

5 A. I did not.

6 Q. Do you know if Juan ever spoke with the officer?

7 A. I don't recall.

8 Q. You said at one point Efren was placed into  
9 handcuffs. When did that occur?

10 A. That was after his parents had arrived and  
11 sometime before I left.

12 Q. Was he handcuffed before or after he was frisked?

13 A. After.

14 Q. Was Efren arrested?

15 MR. SCHNITZER: Object to form. You can answer.

16 THE WITNESS: When I left, the officer and the  
17 Sotelos were all still there. So I don't know.

18 Q. (BY MR. SMITH) Did your wife leave before, after,  
19 or the same time that you did?

20 A. I would think she left at the same time.

21 Q. Following the accident, when is the first time you  
22 started feeling pain in your body?

23 A. The following morning.

24 Q. Which parts of your body?

25 A. My neck, my midback, my lower back, my left

1 shoulder, and I think my feet or my knees. I think I  
2 pressed on the floorboard really hard before the  
3 collision -- before he made impact with me.

4 Q. After the officer arrived, did he instruct you to  
5 move your vehicles out of the roadway?

6 A. I don't believe so.

7 Q. How did your wife arrive at the scene?

8 A. In her car. I'm going to stand, if it's okay.

9 Q. Sure. By all means.

10 A. In her vehicle.

11 Q. Did anyone come with her?

12 A. No.

13 Q. Did your vehicle need to be towed from the scene?

14 A. It did not.

15 Q. Who drove it away?

16 A. I did.

17 Q. Where did you go?

18 A. I think I went to work.

19 Q. How long did you stay at work?

20 A. I think a couple of hours.

21 Q. And after you left work, where did you go?

22 A. Home.

23 Q. Other than yourself and Efren, are you aware of  
24 any other witnesses who observed the accident?

25 A. I am not.

1 Q. Have you ever seen the police report from this  
2 case?

3 A. I believe I have.

4 Q. Do you recall if there was any reference on the  
5 police report to drugs being found on Efren?

6 A. I don't recall.

7 Q. After Efren was handcuffed, were you still --  
8 well, strike that.

9 Were you still at the scene when Efren was  
10 handcuffed?

11 A. Yes, sir.

12 Q. Did you have any other discussions with him after  
13 he was handcuffed?

14 A. I did.

15 Q. When was that?

16 A. After he was handcuffed and before I left.

17 Q. About how long had you been at the scene at the  
18 time?

19 A. Wow, I think quite a while. I think this whole  
20 thing took a couple of hours, if I'm not mistaken. So this  
21 was probably towards the end of this thing. So it wasn't  
22 initial; it was nearer when I was getting ready to leave.

23 Q. What did you-all talk about?

24 A. I talked. He listened. I suggested to him that  
25 this could have been a horrible day, where he could have

1 killed himself and/or I, and that maybe this was a signal  
2 for him to live his life in a different way that didn't  
3 jeopardize his life or others and cause the pain to his  
4 parents that I experienced.

5 Q. At any point, did the officer separate you from  
6 Efren?

7 A. No.

8 Q. Did he ever instruct you to maintain any distance?

9 A. No.

10 Q. After he was handcuffed by the officer, where was  
11 the officer while you were having this discussion?

12 A. In the street by the trucks.

13 Q. About how far away was he from Efren?

14 A. 10, 15 yards maybe.

15 Q. So all told, you had -- and correct me if I'm  
16 wrong -- three different times you had had discussions with  
17 Efren: First, immediately after the accident; second, when  
18 he came back after saying he was going for cigarettes; and  
19 then, third, after he had been handcuffed. Were there any  
20 other discussions you had with Efren?

21 A. I don't believe so.

22 Q. Now, you said that you spoke with Juan shortly  
23 after he arrived. Did you have any further discussions with  
24 Juan?

25 A. No. It wasn't a discussion. He just said a few

1 things and I heard.

2 Q. Okay. And those few things, you said that he said  
3 they had had problems with Efren having drug issues and they  
4 didn't know who he was anymore. What else do you recall  
5 about your discussions with Juan?

6 A. That's all.

7 Q. At any time, did they discuss whether or not Efren  
8 was working at the time?

9 A. The only other comment I recall was something to  
10 the effect of his dad saying he should have taken the keys  
11 away from his son.

12 Q. Did you hear anything that would explain why he  
13 would make that kind of a statement?

14 A. I don't think it was what we heard. I think it's  
15 what we were standing there witnessing.

16 Q. Did you have any discussions at all with the  
17 mother? And she goes by Dede.

18 A. No, I did not.

19 Q. Were there any discussions of whether or not Efren  
20 had permission to be using the truck?

21 A. No.

22 Q. After you had the discussion with Efren, or at  
23 least when you spoke to him when he was in handcuffs, how  
24 soon after that did you leave the scene?

25 A. I think within 30 minutes. And then let me add,

1 please, that all these time frames are pretty loose because  
2 I really wasn't -- I was conscious, but I had that buzzing  
3 thing going on. I wasn't really fully cognizant, I guess  
4 might be a good word.

5 Q. Other than the discussions we've already talked  
6 about with Efren, with Juan, with the police officer, and  
7 your wife, did you have any other discussions at the scene  
8 with anyone that we haven't already talked about?

9 A. I had some lengthy discussions with the police  
10 officer.

11 Q. What did you tell him?

12 A. We talked about his basketball career at UNLV.

13 Q. Did you talk about anything else with the officer?

14 A. No, sir.

15 Q. Since the accident date, have you ever spoken with  
16 Efren Sotelo again?

17 A. No, sir.

18 Q. Have you ever spoken with Juan Sotelo?

19 A. No, sir.

20 Q. Did you ever have any discussions with the mother,  
21 Dede?

22 A. No, sir.

23 Q. Have you ever been back to the accident scene  
24 again?

25 A. Almost every day.

1 Q. Have you ever been there and stopped and looked  
2 around?

3 A. Absolutely.

4 Q. When was that?

5 A. At least once a week since the accident.

6 Q. Why?

7 A. Because it's the way I go to work.

8 Q. Maybe I wasn't clear in my question. Let me ask  
9 it a different way.

10 Have you ever gone to the accident scene, stopped  
11 your vehicle, gotten out to study the scene?

12 A. Oh, no.

13 Q. Have you ever been there maybe with an expert  
14 witness?

15 A. No.

16 Q. Before this accident occurred, let's say within  
17 six months leading up to the accident date, had you had any  
18 pain complaints in your neck?

19 A. I don't recall specifically.

20 Q. How about your lower back? Same time period.

21 A. Yeah, I don't recall specifically.

22 Q. You said that you believed after the accident you  
23 went to work for a couple of hours and then you went home.  
24 After you arrived home, did you go anywhere else, say,  
25 within 24 hours from the moment you got home? Did you leave



1 the home for any reason?

2 A. I don't recall.

3 Q. When did you first seek medical care?

4 A. I don't know.

5 Q. The first medical record we have from

6 Dr. Simoncelli was dated December 22nd, which would have  
7 been ten days later.

8 A. Okay.

9 Q. Was he the first provider you went to for medical  
10 care following the accident?

11 A. He could have been. I don't recall.

12 Q. Do you recall seeing anyone else before him?

13 A. No, sir.

14 Q. How did you come to be referred to Dr. Simoncelli?

15 A. I don't recall.

16 Q. Did you retain counsel before you went to see  
17 Dr. Simoncelli?

18 A. I don't recall.

19 Q. Did your attorney refer you to Dr. Simoncelli?

20 A. I don't recall.

21 Q. When you went to see Dr. Simoncelli, assuming he  
22 was the first person, what were the complaints you had at  
23 that time?

24 A. I had pain in my neck, but primarily in my lower  
25 back.

1 Q. As you're sitting here right now, do you have any  
2 reason to think that you saw anyone before you saw  
3 Dr. Simoncelli ten days after the accident?

4 A. No.

5 Q. Before you went to Dr. Simoncelli, was there  
6 anything that you did at home to treat for the pain you were  
7 having?

8 A. Ice.

9 Q. Anything else?

10 A. No, sir.

11 Q. Didn't take any over-the-counter medications?

12 A. I don't do that.

13 Q. Any sort of stretching exercising? Anything like  
14 that?

15 A. I don't believe so.

16 Q. What kind of treatment did Dr. Simoncelli provide?

17 A. So there was stretching therapy. There was some  
18 version of laser therapy. There was chiropractic  
19 manipulation therapy. There was exercise therapy. There  
20 was certainly all the diagnostic work they did, but that's  
21 not really therapy. I think that's primarily it.

22 Q. When you say "diagnostic," what do you mean?

23 A. Well, before they started treatment, they did  
24 tests to see if they could determine why my back and neck  
25 were hurting.

1 Q. What kind of tests?

2 A. Oh, a bazillion X-rays. And having to stand in  
3 several different positions and move certain ways and bend  
4 this way, and backwards and forwards. It was quite  
5 extensive. It was a better part of two hours of that.

6 Q. And you mentioned you had been seeing Dr. Nicola  
7 before the accident occurred. Why didn't you go back to  
8 him?

9 A. He doesn't have a physical therapy facility. He's  
10 a chiropractor, not a physical therapist.

11 Q. Now, you mentioned you have gone back to see  
12 Dr. Nicola a recent time; correct?

13 A. Correct.

14 Q. When did you first start going back to see  
15 Dr. Nicola after the accident?

16 A. I believe I received therapy from Dr. Simoncelli  
17 for five or six months, and then I was released from that  
18 therapy. I believe it would have been then that I would  
19 have, when I needed some relief, gone back to Dr. Nicola.

20 Q. Did you tell Dr. Nicola about your auto accident?

21 A. I don't recall.

22 Q. Did you advise Dr. Simoncelli that you had been  
23 seeing Dr. Nicola for back complaints before the accident?

24 A. I don't recall.

25 Q. What treatment that Dr. Nicola provided was

1 different from the treatment you got from Dr. Simoncelli?

2 A. Well, only in the sense that Dr. Nicola only  
3 provided a spinal adjustment. There was no therapy  
4 involved. It was just an adjustment. Whereas, with  
5 Dr. Simoncelli, it was all that other therapy that I  
6 described.

7 Q. Now, you said Dr. Simoncelli eventually released  
8 you from care. At that point, did he ever use phrases like  
9 "maximum medical improvement"?

10 A. I don't recall.

11 Q. When he released you, have you seen any  
12 improvement to your pain complaints?

13 A. My neck was feeling better.

14 Q. How about your back?

15 A. I think there was some improvement.

16 Q. Did Dr. Simoncelli instruct you to come back if  
17 you needed to?

18 A. He did.

19 Q. Did you ever go back to him?

20 A. I did not.

21 Q. Any reason why not?

22 A. No.

23 Q. Did Dr. Simoncelli refer you out for any other  
24 diagnostic testing other than the X-rays and the different  
25 positioning he did in his office?

1           A.    Yeah. I believe he sent me for MRIs as well, both  
2 on my cervical and lumbar vertebrae. I think.

3           Q.    Do you remember when those were done?

4           A.    I would imagine early in my treatment with him. I  
5 would think December, January.

6           Q.    Did he sit down and go over what the findings were  
7 with you of the MRIs?

8           A.    I don't recall that.

9           Q.    Have any of your providers ever sat down and gone  
10 over your MRI findings with you?

11          A.    Yes.

12          Q.    Who was that?

13          A.    Dr. Ruggeroli.

14          Q.    How did you come to be referred to Dr. Ruggeroli  
15 for care?

16          A.    I grew up with Dr. Ruggeroli.

17          Q.    So you referred yourself to him?

18          A.    I did.

19          Q.    My understanding is he's a pain management  
20 specialist.

21          A.    Correct.

22          Q.    What did he do for you?

23          A.    He shared with me his diagnosis and recommendation  
24 for treatment.

25          Q.    What did he tell you was his diagnosis?

1 A. That I have a damaged facet joint.

2 Q. When you say "damaged," did he give any better  
3 description of it? Is it fractured? Is it dislocated?

4 A. He didn't use either of those words.

5 Q. Did he say anything other than just damaged?

6 A. Damaged.

7 Q. And what was his recommended course of treatment?

8 A. Spinal injections.

9 Q. Now, at that point, you said that your neck was  
10 feeling better. Did Dr. Ruggeroli ever treat you for your  
11 neck?

12 A. No.

13 Q. Other than Dr. Simoncelli, has anyone treated you  
14 for your neck?

15 A. Dr. Nicola. Now, you said -- before you said  
16 physicians, you just said anyone. I have sought regularly  
17 massage therapy and stretching therapy.

18 Q. And we're going to get to those here in a bit.

19 A. Okay.

20 Q. Now, when you saw Dr. Nicola for neck, was that  
21 before or after the accident?

22 A. Both.

23 Q. Are you still seeing Dr. Nicola these days?

24 A. Yes.

25 Q. How frequently do you see Dr. Nicola?

1           A.    I haven't been in a couple of months.  Although,  
2 I've tried.

3           Q.    Is he still treating you for neck complaints?

4           A.    If I make an appointment and go.

5           Q.    Has Dr. Ruggeroli done anything to treat your  
6 neck?

7           A.    No, sir.

8           Q.    How many different times have you had spine  
9 injection treatments so far?

10          A.    Twice.

11          Q.    And, approximately, when were those?

12          A.    So the last one, the second one, was in January of  
13 2017.  And the preceding injection would have been spring of  
14 the preceding year.  So spring of '16.

15          Q.    And you mentioned you've been scheduled for  
16 another injection in November of this year?

17          A.    Yes, sir.

18          Q.    Are all of the injections in the same area of your  
19 spine?

20          A.    Yes, sir.

21          Q.    With respect to the injury to the neck, did  
22 Dr. Ruggeroli discuss his diagnosis for the neck at all?

23          A.    No.  I never saw Dr. Ruggeroli for the neck.  And  
24 I don't believe I ever said my neck was injured.

25          Q.    Well, let me ask it this way then:  Have you been

1 receiving treatment specifically for your neck from any of  
2 your medical providers since the accident?

3 A. Would that include -- medical providers, does that  
4 include therapists?

5 Q. Let's include everyone. Yes.

6 A. Yes.

7 Q. Are you going to seek damages, monetary damages,  
8 for the medical bills you've incurred for treatment specific  
9 to your neck?

10 A. No.

11 Q. So the medical treatment you've received to date  
12 that you'll be seeking damages for in this case are  
13 specifically for injuries to your lower back only?

14 A. I believe so.

15 MR. SCHNITZER: What he's asking you is are we  
16 going to claim the treatment you got for your neck as part  
17 of what happened to you in this case.

18 THE WITNESS: Oh, yes.

19 Q. (BY MR. SMITH) Okay. That's where I'm getting  
20 confused.

21 A. I'm sorry. Yeah. Well, the treatment that  
22 Dr. Simoncelli provided me I think was directly related to  
23 the auto accident. So, yes, that treatment I would be  
24 seeking recovery.

25 Q. Other than Dr. Simoncelli's care, are there any



1 other providers who have given you care, of whichever  
2 specialty, that was focused on the neck that you'll be  
3 seeking damages for?

4 A. I've never sought care specifically for my neck  
5 other than Dr. Nicola.

6 Q. But he's still providing you care these days? Not  
7 for a couple of months, but --

8 A. Yeah. But I will be calling him and going to see  
9 him.

10 Q. If he treats your neck, are you going to be  
11 pursuing damages for that?

12 A. No.

13 Q. When you had your first set of injections in your  
14 lower back in spring of 2016, how did you feel afterwards?

15 A. It was one injection, and I felt amazing.

16 Q. Did you continue with any medical care for your  
17 back after you had that injection?

18 A. Does medical care include chiropractors and --

19 Q. Anything.

20 A. Yes.

21 Q. If your back was feeling amazing, why were you  
22 still getting more care?

23 A. I didn't say my back didn't have any pain at all.  
24 "Amazing" was a comparative word comparing to how it used to  
25 feel. I didn't say it cured me or that I felt no pain. And

1 I'm one that believes in kind of maintenance medical care  
2 anyway.

3 Q. At any time following this accident, after  
4 whatever type of treatment you may have received, have you  
5 ever been at a point where you could say you were not  
6 feeling any pain at all in your lower back?

7 A. Yes. Absolutely.

8 Q. When was that?

9 A. That would be amidst either a massage therapy or  
10 stretching therapy. But only at that specific moment.

11 Q. And that was kind of my follow-up question. I'm  
12 talking about for a period of time more than a day, more  
13 than a couple of days. Have you ever had a time, since this  
14 accident occurred, where you've not had any pain in your  
15 lower back for an extended period?

16 A. No, sir.

17 Q. How about your neck?

18 A. No, sir.

19 Q. Before the accident, were you having pains in your  
20 neck?

21 A. Yes.

22 Q. Were you having pains in your back?

23 A. Yes.

24 Q. Did your pain level after the accident ever reduce  
25 to where it was at the same level as it was before the

1 accident?

2 MR. SCHNITZER: Object to form.

3 THE WITNESS: No.

4 Q. (BY MR. SMITH) Has it always been better? Worse?  
5 Has it ever been about the same?

6 A. Only at very specific moments during therapy has  
7 the pain left me. When I do have the pain, it's never been  
8 equivalent to or lesser than the pain I had prior to the  
9 accident. And they're in different areas and unrelated.

10 Q. When you say "unrelated," what do you mean?

11 A. The pain I had before I was told was more of a --  
12 for lack of a better term -- old man back. Just the stuff  
13 that comes with normal wear and tear of a 50-plus-year-old  
14 guy. Nobody ever told me anything was damaged or injured.  
15 Nobody ever recommended injections or surgery or anything  
16 like that.

17 Q. Let's do it a different way. During your  
18 treatment, have your doctors or any of your providers used  
19 what they call a pain scale from zero to ten, where zero is  
20 no pain, ten is the worst pain imaginable?

21 A. All the doctors do that.

22 Q. Before the accident occurred, on average, where  
23 would you say your pain level was in your lower back?  
24 Before the accident.

25 A. As bad as it ever got was probably a three.

1 Q. On an average day, where would it be?

2 A. Now?

3 Q. Before.

4 A. Zero.

5 Q. Since the accident has occurred, on average these  
6 days, like within the last month, where would you say your  
7 pain level is in your lower back?

8 A. Five. Maybe six.

9 Q. Has it ever been better than that for an extended  
10 period of time?

11 A. Can you describe "extended" for me?

12 Q. Let's say for a period of about a month.

13 A. Absolutely not.

14 Q. Do you know why Dr. Nicola wasn't identified as a  
15 medical provider until June of this year?

16 A. I would imagine --

17 MR. SCHNITZER: Hold on. Let me object. To the  
18 extent your answer has to do with anything you and I  
19 discussed, don't answer it. If you have something outside  
20 of what you and I talked about, go ahead.

21 THE WITNESS: I would guess I failed to mention  
22 it.

23 Q. (BY MR. SMITH) Okay. How long before the  
24 accident had you been seeing Dr. Nicola?

25 A. An extended period of time.

1 Q. More than five years?

2 A. No.

3 Q. More than three years?

4 A. Perhaps.

5 Q. Now, you mentioned Dr. Ruggeroli. We've talked  
6 about Dr. Nicola. We've talked about Dr. Simoncelli.

7 Focusing on medical doctors, are there any other medical  
8 doctors that you've seen following this accident?

9 A. Yes, sir.

10 Q. Who else?

11 A. And can I answer that question after a restroom  
12 break?

13 Q. Yes -- well, give me their names, then we'll go  
14 into detail.

15 A. Okay. Let me see if I can recall. Dr. Muir,  
16 M-u-i-r, Dr. Dunn, various radiology facilities that those  
17 doctors would have sent me to. I think those are the only  
18 other two physicians that I saw.

19 MR. SMITH: Okay. Let's take a break. Off the  
20 record.

21 (Off the record from 2:19 to 2:29 p.m.)

22 Q. (BY MR. SMITH) Mr. Bouchard, we just took a short  
23 break; correct?

24 A. Yes, sir.

25 Q. You understand you're still under oath?

1 A. Yes, sir.

2 Q. Very good. Now, where we left off, we were  
3 talking about other medical providers that you've seen;  
4 specifically, doctors. You mentioned Dr. Muir and Dr. Dunn.  
5 Now, Dr. Muir, there's actually several in town. I want to  
6 make sure we've got the right one. Was it Dr. William Muir  
7 or Dr. Jeffrey Muir?

8 A. It was young Dr. Muir, who was very excited about  
9 moving to Reno and leaving his father's practice.

10 Q. That would probably be Jeffrey then.

11 A. Okay.

12 Q. What did Dr. Muir do for you?

13 A. Nothing.

14 Q. When did he see you?

15 A. Probably at the same time I was seeing  
16 Dr. Simoncelli. So I'm thinking spring -- when did I get  
17 hit? -- 2014? December of 2014. So it would have been  
18 spring of 2015. I think it was just one, maybe two visits.

19 Q. What was the purpose of the visits?

20 A. He's a pain management doctor, I believe. And I  
21 was in pain.

22 Q. So you saw him before you saw Dr. Ruggeroli?

23 A. Yes.

24 Q. How about Dr. Dunn? Is that Tom Dunn with Desert  
25 Orthopedic Center?

1 A. Yes.

2 Q. How were you referred to see Dr. Dunn?

3 A. By my attorney.

4 Q. About when was that?

5 A. Probably 30 days preceding my visit.

6 Q. I mean when did you see Dr. Dunn?

7 A. You could probably tell me. I don't know.

8 Q. Best estimate.

9 A. This year.

10 Q. What was the purpose of going to see Dr. Dunn?

11 A. I believe I had yet to see an actual orthopedic  
12 doctor to get a diagnosis. I had been getting my orthopedic  
13 diagnoses from Dr. Ruggeroli, who's a pain management  
14 doctor. And I think the discussion was I should probably go  
15 see an orthopedic doctor.

16 Q. Did you discuss your MRI findings with Dr. Dunn?

17 A. Yes.

18 Q. What did he describe -- or what was his diagnosis?

19 A. He also said I had a damaged or injured -- I don't  
20 recall the specific word, but he referred to the facet joint  
21 as well.

22 Q. Other than "damaged," you don't recall if he was  
23 any more descriptive in what he thought was wrong with the  
24 facet joint?

25 A. No, sir.

1 Q. What did he recommend for treatment?

2 A. He recommended, I believe, either injections, a  
3 burning of the nerves technique -- I don't recall the name.  
4 Rhiz-something. Where they kill the nerves temporarily by  
5 burning them.

6 Q. Anything else?

7 A. No, sir.

8 Q. Did either Dr. Muir or Dr. Dunn suggest any sort  
9 of surgery?

10 A. I understand there's no surgery for my condition.

11 Q. How many times have you seen Dr. Dunn?

12 A. Just one time.

13 Q. As you're sitting here right now, it's my  
14 understanding that you are still seeing Dr. Nicola, you're  
15 still seeing your massage therapist. And I think there was  
16 another stretch therapist?

17 A. Yes, sir.

18 Q. And you're still seeing Dr. Ruggeroli?

19 A. Correct.

20 Q. Are there any other medical providers that you are  
21 scheduled or plan to see going forward, say, within the next  
22 six months?

23 A. No. Are you talking in addition to those current  
24 providers?

25 Q. Right.



1 A. Okay.

2 Q. So other than the ones I named, you don't  
3 currently have scheduled any appointments to see anyone else  
4 that we have not already talked about?

5 A. No, sir, I do not.

6 Q. Have you had any times since the accident where  
7 you have not sought medical care of any kind for, let's say,  
8 a period of a month, where you've had a gap in treatment for  
9 up to a month in time?

10 A. No, sir.

11 Q. Are you currently receiving any prescription  
12 medications?

13 A. Yes, sir.

14 Q. From who?

15 A. Box Canyon Primary Care.

16 Q. Is there a particular doctor there that's your  
17 primary care now?

18 A. I don't know her name. I believe she's a  
19 physician's assistant.

20 Q. And what is she prescribing to you?

21 A. It's a headache medication.

22 Q. Is that a condition that you relate to this  
23 accident?

24 A. No, sir.

25 Q. Have you ever been to your primary care people at

1 Box Canyon for treatment for any conditions that you relate  
2 to the auto accident?

3 A. No, sir. Other than I believe I've had an  
4 increased number of headaches and require more medication  
5 subsequent to the accident.

6 Q. And, again, is that a condition that you're going  
7 to argue is related to the accident to recover damages for  
8 it?

9 A. No, sir.

10 MR. SCHNITZER: Object to form.

11 Q. (BY MR. SMITH) At home is there anything that you  
12 do these days to self-treat?

13 A. My whole life revolves around that.

14 Q. What do you do?

15 A. I use ice. I've purchased what's called a zero  
16 gravity chair. I've purchased a machine that stretches me.  
17 I spend time every morning and every evening stretching. At  
18 least once a week, I'm seeing a therapist for the pain. I  
19 have a trainer that I work out with three times a week. Not  
20 to get big and strong, but to kind of help strengthen the  
21 areas that would help me feel better. Oh, I purchased a  
22 TENS unit, T-E-N-S, which provides electrotherapy, that I  
23 use regularly. I go through huge amounts of liniment type  
24 of products that I rub on the area. I've practiced  
25 meditation so that I can ignore the pain, not reduce it. I

1 think that's it.

2 Q. With respect to the devices, you mentioned a zero  
3 gravity chair, a stretching machine, and a TENS unit. Were  
4 any of those prescribed to you by any of your medical  
5 providers?

6 A. The TENS unit was actually utilized by two of my  
7 prescribers.

8 Q. At their offices?

9 A. At their offices.

10 Q. Did they order you for a home unit?

11 A. No. I purchased it myself.

12 Q. So with respect to the devices, those were all  
13 things that you took upon yourself as opposed to something  
14 prescribed by a doctor?

15 A. Correct.

16 Q. With respect to the meditation, was that anything  
17 that was recommended by a medical provider?

18 A. Absolutely not.

19 Q. You mentioned a therapist for pain. Who was that?

20 A. That would be Belinda Freeman, who was a massage  
21 therapist. And, currently, Rebecca Sanchez, who stretches  
22 me with a specific technique called fascia stretching.

23 Q. Were either of those people -- were you referred  
24 to them by one of your medical providers?

25 A. Absolutely not.

1 Q. Let's start with Belinda. How was it that you  
2 came to receive treatment from Belinda?

3 A. One of my clients that I see regularly experienced  
4 my pain, saw me in pain, and told me about this gal that he  
5 had been receiving massages from since his surgery a few  
6 years before -- he called her a medical masseuse -- and said  
7 that she could do wonders for me. And I gave it a shot.

8 Q. Do you know if she works for any particular  
9 service or practice?

10 A. She does not. She's self-employed.

11 Q. Now, you said she's a massage therapist. Do you  
12 know if she holds a license as a massage therapist with the  
13 state of Nevada?

14 A. I do not.

15 Q. Where do you receive your treatment from Belinda?

16 A. At home.

17 Q. So she comes to your house?

18 A. Yes, sir.

19 Q. How frequently does she come to your house?

20 A. Every two weeks.

21 Q. Is it primarily massage that she provides?

22 A. It is.

23 Q. Is there any other service she provides other than  
24 just massage?

25 A. No, sir.

1 Q. How long do your sessions with her last?

2 A. Two hours.

3 Q. And you said that was about every two weeks.

4 A. Yes, sir.

5 Q. What are her charges for that service?

6 A. \$150.

7 Q. Per session?

8 A. Yes, sir.

9 Q. When did you first start seeing her?

10 A. I don't recall.

11 Q. Has it been more than a year?

12 A. Yes.

13 Q. Been more than two years?

14 A. I think two years would be fair. Two, maybe  
15 three.

16 Q. Had you ever seen her before the accident?

17 A. No, sir.

18 Q. The other person you mentioned was Rebecca  
19 Sanchez. You said she does something a little bit  
20 different?

21 A. Yes. She does a technique that's referred to as  
22 FST. I think it actually stands for Fascial Stretch  
23 Therapy.

24 Q. What does it entail? Describe what she does for  
25 you.

1 A. She stretches me.

2 Q. When you say she stretches you, which parts of  
3 your body?

4 A. All parts.

5 Q. Is there a facility you go to for that?

6 A. No.

7 Q. She comes to the house as well?

8 A. She does.

9 Q. How frequently do you see her?

10 A. Once or twice a week.

11 Q. How long do your sessions last?

12 A. One hour.

13 Q. What is her charge?

14 A. \$70.

15 Q. How long have you been seeing her?

16 A. Her and her predecessors of the same therapy since  
17 February of this year. My second injection didn't go very  
18 well in January; so I fairly immediately thereafter sought  
19 some other form of relief.

20 Q. And how were you referred to this type of  
21 treatment?

22 A. My sister's Pilates instructor was the first to  
23 practice that therapy on me.

24 Q. You mentioned you've had several different people  
25 that do this practice for you. Are they part of a single

1 practice or service?

2 A. No, sir.

3 Q. They're all independents?

4 A. Yes. Although their training all comes from the  
5 same place, they act independently as therapists.

6 Q. Do you know what this place is?

7 A. I understand it's the University of Arizona. At  
8 least that's the facility they use when they go to get  
9 trained.

10 Q. Do you know if this type of medical care requires  
11 licensure in Nevada?

12 A. I believe that's currently under dispute.

13 Q. Do you know if any of the people who treated you  
14 in this type of treatment held any particular licenses in  
15 Nevada to provide --

16 A. It was never a concern of mine.

17 Q. You said that there were others besides Rebecca.  
18 Who were the other people who provided this kind of care for  
19 you?

20 A. The first was Taylor Manney, M-a-n-n-e-y. She  
21 stretched me for several months and then moved to the  
22 Midwest. And then I had interim stretcher for two or three  
23 sessions, and her name was Annie Grandmaison.

24 Q. Do you know if Annie is still in the Las Vegas  
25 area?

1 A. I don't know.

2 Q. Any reason why you discontinued treating with her?

3 A. We had difficulty scheduling and keeping  
4 appointments.

5 Q. And you mentioned you have a trainer that you see  
6 three times a week. Who is that?

7 A. His name is Jason Gulbranson, G-u-l-b-r-a-n-s-o-n.

8 Q. And what does Jason do for you?

9 A. He leads me through workouts.

10 Q. What kind of workouts?

11 A. Muscle strengthening workouts.

12 Q. Free weights? Aerobics?

13 A. Not aerobics. I can't handle the repetitive  
14 motion. Free weights, machines.

15 Q. Do you work out with him at a particular gym?

16 A. It's called Fitness 14. And the 14 is a 1 and a  
17 4.

18 Q. Where is that located?

19 A. North Hualapai in Centennial -- or, actually, in  
20 Providence.

21 Q. Do you have to belong to Fitness 14 on top of  
22 working out with Jason?

23 A. No, sir.

24 Q. So it's all encompassed into one charge?

25 A. \$30 per session.



1 Q. And how long do the sessions last?

2 A. One hour.

3 Q. When do you usually have your sessions with Jason?  
4 What days? Is it a regularly scheduled thing?

5 A. It is. Monday afternoon at 4:00, Wednesday  
6 afternoon at 4:00, and Friday morning at 7:00.

7 Q. When do you typically receive treatment from  
8 Belinda?

9 A. Every other Wednesday evening. Well, it may not  
10 be every other Wednesday. I think it really is more twice a  
11 month.

12 Q. But it's usually on a Wednesday?

13 A. Yes, sir.

14 Q. About what time? Does vary?

15 A. It does.

16 Q. How about Rebecca? What times do you usually see  
17 her?

18 A. Weekday evenings or Sunday afternoon.

19 Q. Again, does it vary from session to session?

20 A. Yes, sir. It's just whenever our schedules allow  
21 for it.

22 Q. I think you said earlier that with respect to  
23 work, it's not necessarily something you would need a  
24 doctor's note for. Have you had to have any sort of  
25 accommodations made for your work, either scheduling or your

1 work duties, because of your injuries from the accident?

2 A. I am a commissioned -- fully commissioned  
3 employee; so any accommodations would be those which I would  
4 make myself. I haven't imposed anything upon my employer.  
5 And that really is managing the amount of time that I spend  
6 sitting. I can't sit for very long without having to get up  
7 and move.

8 Q. Before the accident, did you have a regular  
9 exercise regimen?

10 A. No, sir.

11 Q. Going to see Jason, is that something that you  
12 started doing after the accident?

13 A. Yes, sir.

14 Q. Did you ever belong to a gym before the accident?

15 A. Yes.

16 Q. When was that?

17 A. I think the summer of 2010 and 2011 I had a family  
18 membership at Life Time for my family.

19 Q. Nothing within the last couple of years before the  
20 accident?

21 A. No, sir.

22 Q. Was there anything that you would do at home to  
23 exercise, even just walking around the block, jogging, say  
24 within the year leading up to the accident date?

25 A. I might take a walk with my wife or the kids.

1 Never really with the intention of it being exercise as much  
2 as just quality time with the family.

3 Q. Were you involved in any sort of sports before the  
4 accident that since you've been unable to perform: golf,  
5 bowling --

6 A. Yeah, I was a pretty regular golfer. That's not  
7 such a good idea anymore. I played some pretty low-level  
8 intermural -- not intermural -- co-ed softball. I stay away  
9 from that now. Just very recreational stuff like that.  
10 Nothing competitive.

11 Q. Have any doctors suggested that you shouldn't  
12 participate in those kind of sports?

13 A. No.

14 Q. And you mentioned you were a golfer. Have you had  
15 to get rid of any equipment because you're unable to  
16 participate in the sport anymore?

17 A. No. My golf clubs are just a fixture in my office  
18 now. They've become a decoration, my wife told me.

19 Q. Before the accident, were there any specific  
20 household chores that you typically did that you're unable  
21 to do these days?

22 A. Anything that requires lifting or having my hands  
23 above my head for any length of time.

24 Q. Let's see if we can get a little bit more  
25 concrete.

1 In your household, who typically does the cooking?

2 A. This is on the record. My wife. My wife.

3 Q. Did you formerly do man cooking? In other words,  
4 man the grill?

5 A. Absolutely.

6 Q. Are you still able to do that these days?

7 A. Not as often as I would like.

8 Q. What's holding you back?

9 A. Pain.

10 Q. In what way?

11 A. Well, there's just times when my back hurts to the  
12 point where cooking hamburgers or steaks or doing anything  
13 of that nature is just ludicrous to me.

14 Q. How about washing dishes?

15 A. Absolutely.

16 Q. Who is responsible for that?

17 A. Both of us. I eat faster; so I'm usually the one  
18 doing the dishes.

19 Q. Again, what's preventing you from being able to do  
20 the dishes these days?

21 A. Pain.

22 Q. Be more specific. What about doing the dishes is  
23 aggravating to your pain?

24 A. I don't believe that doing the dishes aggravates  
25 my pain. I think my pain level is such that I have no

1 interest in doing the dishes.

2 Q. How about laundry? Was that something that you  
3 would participate in before the accident that you can't do  
4 these days?

5 A. I can still do laundry.

6 Q. Cleaning the bathrooms?

7 A. I can't clean the bathrooms.

8 Q. Was that something you would do before the  
9 accident?

10 A. Absolutely.

11 Q. What specifically about cleaning the bathrooms are  
12 you --

13 A. That type of cleaning generally requires either  
14 bending over and being on your hands and knees. It also  
15 requires getting up in high places, and low and high isn't  
16 really good for me.

17 Q. Let's talk about that. You said you have trouble  
18 if you're reaching over your head for extended periods, if I  
19 heard you correctly.

20 A. Uh-huh.

21 Q. That's a yes?

22 A. Yes, sir.

23 Q. You are capable of reaching above your head?

24 A. I am.

25 Q. How long can you hold something over your head

1 before you're just not going to be able to do it?

2 A. You know, I could reach up and screw in a light  
3 bulb, or something like that, but if it was cleaning a light  
4 fixture or a ceiling fan, or anything that took more than a  
5 couple of seconds, I would avoid that.

6 Q. Do you have any restrictions on how much weight  
7 you can lift?

8 A. Imposed upon me by a medical provider?

9 Q. Let's start with that.

10 A. No, sir.

11 Q. Do you have any that you've self-imposed?

12 A. Absolutely.

13 Q. Like what?

14 A. Like that which does not feel good.

15 Q. Best estimate, what kind of weight are we talking  
16 about?

17 A. It varies depending upon what that weight is and  
18 where it is and is it close to my body, is it far from my  
19 body. So can I stand and do dumbbell curls with 30, 40  
20 pounds? Absolutely. Could I bend over and pick up a  
21 ten-pound pumpkin? I better not try.

22 Q. And those are the kinds of things I was going to  
23 ask.

24 So your wife calls you out to help bring in the  
25 groceries. Can you carry a gallon of milk?

1 A. Sometimes.

2 Q. Can you carry a watermelon?

3 A. Sometimes.

4 Q. A case of soda?

5 A. Sometimes.

6 Q. Now, that was the reaching up, the carrying. You  
7 mentioned bending over. With your back pain, are you able  
8 to bend over and touch your toes?

9 A. Yes.

10 Q. Could you bend over and hold that position?

11 A. I do.

12 Q. Are you able to bend over and pick something up?

13 A. No. In fact, when I come up from stretching in  
14 that position, I usually utilize my hands, pushing off of my  
15 knees, and kind of work them up the thighs to give my back a  
16 little support.

17 Q. Does it hurt your back to move into a squatting  
18 position? They always say lift with your legs. Are you  
19 able to do that, go to a squatting position and lift with  
20 your legs?

21 A. I don't do that.

22 Q. Is that something you've tried to do and you just  
23 can't do it?

24 A. Well, nobody suggested I do it.

25 Q. Do you have -- you've been standing up during the

1 course of this. Do you have problems remaining in a seated  
2 position for extended periods?

3 A. I do.

4 Q. About how long can you stay in a seated position  
5 before you have to move around?

6 A. Can you clarify "move around"?

7 Q. Well, just from what I've observed, you've stood,  
8 you've moved around behind your chair, taken a couple steps  
9 one way, a couple steps the other way, and I'm assuming  
10 that's just to relieve pain in your back; correct?

11 A. Correct.

12 Q. How long can you remain in a seated position  
13 before you have to do something along those lines?

14 A. So sometimes as much as an hour. Depending upon  
15 if I'm feeling really good that day. Sometimes it hurts the  
16 moment I sit down.

17 Q. Do you have trouble standing for extended periods  
18 of time?

19 A. I do.

20 Q. How long can you stand before you need to rest?

21 A. Does that include walking or just standing?

22 Q. Let's just focus on standing. We're going to get  
23 to walking in a minute.

24 A. Probably anything more than 10, 15 minutes I need  
25 to start kind of moving a little bit and stretching.



1 Q. How long can you walk before you have to rest your  
2 back?

3 A. Maybe 10, 15 minutes sometimes. As long as  
4 there's no elevation or decline.

5 Q. What if there is?

6 A. It becomes much harder.

7 Q. Are you able to jog or run?

8 A. With pain.

9 Q. We were talking about household activities. You  
10 said that you do have a yard with grass. Who cares for the  
11 outdoors?

12 A. A landscape company.

13 Q. Did you have them before the accident?

14 A. I did.

15 Q. Now, you saw that Efren had been handcuffed at the  
16 scene. Did you know that he was actually put on trial?

17 A. I had no idea.

18 Q. You don't know what he was charged with? Anything  
19 like that?

20 A. No, sir.

21 Q. Did you know that he was convicted of stealing the  
22 truck?

23 A. No, I did not.

24 Q. Do you know whether or not he had a valid driver's  
25 license at the time of the accident?

1 A. I do not.

2 Q. I mentioned earlier that we had sent some written  
3 questions to your lawyer, that you would have helped answer,  
4 called discovery.

5 A. Yes, sir.

6 Q. One of those is what we call Requests for  
7 Admission, where you would either admit or deny certain  
8 things.

9 Looking at Request for Admission No. 11, we asked,  
10 "Admit that your body did not strike anything inside the  
11 vehicle in which you were traveling at the time of the  
12 subject incident." Your answer to that was "Deny."

13 Now, I thought I understood earlier you said that  
14 you do not believe that you did strike anything at the time  
15 of the accident; so I just want to clarify the answer there.

16 As you're sitting here right now, do you remember  
17 whether or not your body struck anything as a result of the  
18 accident, inside your vehicle?

19 A. I don't believe so.

20 Q. The next one, Request No. 1, we said, "Admit that  
21 no doctors recommended surgery as a result of the subject  
22 incident." There was an objection made, and then the answer  
23 was "Deny."

24 In what we talked about earlier, I understood that  
25 you said Dr. Dunn suggested either injections or -- I think

1 the term you're looking for is called a rhizotomy procedure?

2 A. Yes, sir, that's it.

3 Q. Other than those, has any doctor ever recommended  
4 a surgery of any kind?

5 A. No.

6 Q. Request No. 13 said, "Admit that no doctor has  
7 said your alleged injuries resulting from the subject  
8 incident are permanent."

9 Again, there's an objection made, and the answer  
10 was "Deny."

11 In speaking with any of your medical providers,  
12 have any of them said that your conditions following this  
13 accident are permanent?

14 A. They've all told me that they don't believe  
15 there's a permanent solution or cure.

16 Q. And you said "they've all." Can you name which  
17 ones have told you that?

18 A. Dr. Ruggeroli and Dr. Dunn.

19 Q. You said earlier you thought you may have seen the  
20 police report for the auto accident. There was another  
21 police report generated on the same day that dealt with the  
22 theft of the truck. Have you ever seen that report?

23 A. No, sir.

24 Q. Now, the second type of written discovery that we  
25 sent was called Interrogatories. I'm looking at

1 Interrogatory No. 7 where we asked you to describe how the  
2 incident occurred. I'm going to paraphrase it a little bit  
3 here, but I'll be happy to show you the full one. I don't  
4 want to be taking what you said out of context.

5 It looks like the fourth sentence of your answer,  
6 you said, "Efren told me a few minutes later that he was  
7 bent over adjusting one of his shoes and didn't see me."

8 Do you recall that discussion with Efren?

9 A. I do.

10 Q. When did that take place?

11 A. That was our first interaction.

12 Q. And as you're sitting here now, do you recall what  
13 type of shoes he was wearing?

14 A. I don't.

15 Q. When he said "adjusting," was he any more clear as  
16 to what he was doing with his shoe at the time?

17 A. Yeah, I don't believe I said that indicating that  
18 that was his words. I just don't know that I recall what  
19 specific words he used. I don't know if he said he was  
20 tying his shoes, adjusting his shoes, but his head was under  
21 the dashboard doing something with his darn shoes.

22 Q. And the answer was several pages. I'm on page 6.  
23 And it is the last sentence of the second to the last  
24 paragraph. You stated, "Efren's behavior at the scene was  
25 such that it wasn't hard to believe that he was a drug

1 user."

2 What was his behavior that made you think that he  
3 was a drug user?

4 A. I think his -- his demeanor was consistent with  
5 others I've seen that are using hard drugs. He moved very  
6 fast and in a twitchy kind of a sense. He said words, but  
7 not sentences. The things he said didn't always make sense.  
8 No eye contact. Just behavior I've observed in 56 years of  
9 life was consistent to what I would say was a drug user. I  
10 came to that -- I don't want to call it a conclusion, but I  
11 came to that idea prior to the officer showing up and  
12 pointing out the kid's car and saying he wasn't going to  
13 look for the insurance in there because he didn't want to  
14 get stuck with the needle, having found the heroin. That  
15 was just something I arrived at based upon his behavior.

16 Q. Did he make the statement before or after he found  
17 the heroin, that he was not going to look inside the truck?

18 A. I think that was after when we -- the officer was  
19 concerned that before I left I had insurance information.  
20 And he wasn't about to go look in the car because of the  
21 condition of it, and the kid's stuff was all in there. And  
22 he told me to call the number on the truck and see if I  
23 could get the insurance information from the company.

24 Q. I want to make sure I get the sequence as best I  
25 can in my head. If I recall correctly, you said Efren's

1 parents arrived at the scene, and it was after that that  
2 Efren was frisked?

3 A. I believe so.

4 Q. And do you recall what was said that led to the  
5 officer doing the frisking?

6 A. No. I was over with Mr. Sotelo, and those people  
7 were 10, 15 yards away.

8 Q. In any event, you saw the officer then frisk him,  
9 he made some comment after finding a small bag of something  
10 in his sleeve --

11 A. Yeah. When the officer started to frisk Efren,  
12 Juan and I's attention obviously became focused on that, and  
13 that's when that incident happened.

14 Q. And then the officer cuffed him. And I think you  
15 said he replaced the packet back into the sleeve pocket?

16 A. Yes, sir.

17 Q. Did that happen before or after he cuffed him?

18 A. Before.

19 Q. He takes it out, makes a comment, puts it back,  
20 then handcuffs Efren?

21 A. Correct.

22 Q. Do you recall ever seeing the officer take  
23 possession of this packet away from Efren?

24 A. No, sir.

25 Q. Your observations of Efren's behavior, you said it

1 was just based on your life experiences. In your life  
2 experiences, how many times have you encountered people with  
3 those kind of -- with drug problems?

4 A. Dozens, if not more.

5 Q. In what context?

6 A. In the sense that my family has owned and managed  
7 a company that employs 100 people. I've seen that in our  
8 employees. I've seen it in our family. I've seen it in one  
9 of my brothers. I've seen it with friends I grew up with.  
10 Same experiences I'm sure you've had.

11 Q. Have you ever had any training in how to recognize  
12 drug abuse?

13 A. Yes, sir.

14 Q. When was that done?

15 A. That started on July 11, '61. It's just life  
16 experience. There's no book on that, I don't believe, that  
17 I've read. Are you talking about formal training?

18 Q. Yes.

19 A. No.

20 Q. When you say his behavior, can you be more  
21 specific? What was his behavior that led you to believe he  
22 may be a drug user?

23 A. He was very, very nervous. Very twitchy.  
24 Wouldn't make eye contact. Couldn't stop moving. Had a lot  
25 of energy -- nervous energy. And, like I said, his words

1 didn't really flow into sentences that made sense.

2 Q. The last sentence, which is now on page 7, the  
3 same interrogatory, says, "When Officer Jeeter said I could  
4 leave, my wife had arrived on the scene, took me home to  
5 relax." If I understood you earlier, you said that you  
6 thought you may have actually gone to work following the  
7 accident?

8 A. Yeah, I thought I did.

9 Q. As you're sitting here right now, because there's  
10 an inconsistency, do you remember whether you went to work  
11 or whether you went directly home following the accident?

12 A. I do not.

13 Q. You don't remember one way or the other?

14 A. I don't.

15 Q. The following interrogatory then asks several  
16 specific issues about the incident. Subpart G asked for a  
17 description of where you went after leaving the scene of  
18 subject incident, including the route taken. And your  
19 response there was, "I was taken home by heading west on  
20 Lake Mead, south on Anasazi, west on Far Hills, south on  
21 Laurelglen, and then east into our neighborhood.

22 Does that help refresh your memory at all?

23 A. It does not. However, with that testimony having  
24 been taken much closer to the time of the accident, I would  
25 assume that that's accurate.



1 Q. Now, if that is accurate, and it says you were  
2 taken home, that's where I getting confused because I -- who  
3 drive your vehicle away from the accident scene?

4 A. I don't recall.

5 Q. You don't remember if you drove away from the  
6 scene or not?

7 A. Obviously, I thought I did. But that testimony  
8 there was taken much closer to the time of the accident. I  
9 would think at that point I remembered or I would have said  
10 I didn't know.

11 Q. Well, the responses were served on us February 3  
12 of this year; so it still would have been several years  
13 after the event. Is it fair to say that as you sit here  
14 right now, you cannot say one way or the other whether you  
15 went to work, whether you went straight home, whether you  
16 drove the truck?

17 A. That's fair.

18 Q. You don't have a recollection right now?

19 A. That's fair. Correct.

20 Q. Interrogatory No. 9, we ask you, "State with  
21 particularity in your own words the basis upon which you're  
22 assigning blame or responsibility to defendants Juan Sotelo  
23 and Now Services of Nevada, LLC."

24 There was an objection made.

25 And the first sentence says, "I hold Mr. Juan

1 Sotelo responsible because although he knew of his son's  
2 drug abuse, to the point of putting effort on restriction  
3 from driving his work truck, he did nothing to secure the  
4 vehicle or take away Efren's keys, as was explained to me by  
5 Mr. Sotelo at the scene."

6 Do you remember as you're sitting here now -- does  
7 that help refresh your memory, did Mr. Sotelo tell you, or  
8 did anyone tell you, that Efren was restricted from driving  
9 that vehicle?

10 A. I believe what Juan Sotelo said was that his son  
11 was restricted from driving the vehicle and that he should  
12 have taken the keys away.

13 Q. But you do remember he said that Efren was not  
14 supposed to drive that vehicle?

15 A. Correct.

16 Q. And just to further refresh your memory,  
17 Interrogatory No. 10 asks for any communications you had or  
18 heard involving persons at the scene.

19 The last sentence of that response -- and there  
20 was an objection made -- says, "I also learned that the  
21 truck that hit my truck was Efren's work truck and that his  
22 parents had told him not to drive it, but did not take away  
23 his keys or secure the truck in any way.

24 So given that, does that help refresh your memory  
25 as to whether or not Efren was told, "Do not drive this

1 truck"?

2 A. Yes. That's what I referred to just a minute ago.

3 Q. Okay. Did anyone at any time say whether Efren  
4 was working for Now Services at the time of the accident?

5 A. I don't believe anybody said that.

6 Q. Do you have any evidence, that you know of, that  
7 would show that Efren was performing work on behalf of Now  
8 Services at the time of this accident?

9 A. No.

10 Q. Given your responses here, would you agree with me  
11 that Efren did not have permission from his parents to drive  
12 that truck?

13 MR. SCHNITZER: Object to form.

14 Q. (BY MR. SMITH) You can answer.

15 A. Can you ask the question again, please?

16 Q. Sure. Given your responses to the  
17 interrogatories, would you agree with me that what you  
18 understood was that Efren did not have permission from Juan  
19 and Dede Sotelo to drive that vehicle at the time of the  
20 accident?

21 A. Correct.

22 Q. I believe you said earlier you didn't know that  
23 Efren was later convicted of stealing the truck?

24 A. No.

25 Q. I'm now looking at Interrogatory No. 13, and we

1 asked you to list out the damages you may be pursuing in  
2 this lawsuit. And where I got confused was you listed lost  
3 wages and future lost wages, and the response said, "To be  
4 supplemented."

5 It was my understanding that you're not pursuing a  
6 claim for lost wages in this case.

7 A. I am not.

8 Q. And does that include future lost wages as well?

9 A. It does.

10 Q. Very good.

11 Interrogatory No. 16, we asked you to describe the  
12 activities and/or duties that you're unable to perform  
13 because of your injuries. And the first sentence in your  
14 response was, "I'm unable to list all activities and duties  
15 that are affected by the accident because it has affected  
16 all aspects of my life."

17 And I know that "all" is a very broad subject, but  
18 can you give us some examples of things that you're unable  
19 to do these days that you attribute to your injuries? We  
20 talked a little bit earlier about playing golf, about being  
21 able to reach over your head. Anything else you can think  
22 of?

23 A. That I'm unable to do?

24 Q. Correct.

25 A. Unable to do in the fashion that I did it before

1 the accident?

2 Q. Let's do it two ways. First, if you could say if  
3 there's something you cannot do at all. And then, secondly,  
4 if there are some things you can do, albeit with some  
5 limitation or restriction.

6 A. Yeah, that's difficult. The things I cannot do at  
7 all would be to get on certain types of, like, carnival  
8 rides. Roller coasters, for instance. Those things, it  
9 would just horrify me. But mostly it's affected all aspects  
10 of my life in that everything I do now comes with additional  
11 pain. I'm not limited so much on what I refuse to do. I'm  
12 a father of two young children; so I'm not going to let this  
13 screw up that. So my choice is to continue doing all which  
14 I can do and just deal with the pain as it comes.

15 Q. Are there any specific activities with your  
16 children that you were not able to participate in following  
17 this accident that otherwise you would have? Going on a  
18 trip with them --

19 A. Like, everyday interaction. Where I would wrestle  
20 with my son, or pick my daughter up and lift her over my  
21 head. All of that.

22 Q. Does it affect your ability to travel, your  
23 injuries?

24 A. It affects my ability to travel happily.  
25 Traveling is one of those things I'll continue to do and

1 just deal with the pain. I'm not going to tell my kids at  
2 some point, "Well, we didn't travel when you were kids  
3 because dad had a bad back." So we get where we're going,  
4 they go do what they've got to do, and I'm, like, on ice in  
5 the hotel room for a little bit.

6 Q. Have you had any vacations or trips of any kind  
7 you've had to cancel because of your injuries?

8 A. Never. I wouldn't do it.

9 Q. Interrogatory No. 19, we asked you to identify  
10 your primary care physician and all providers where you were  
11 treated in the seven years before the accident. There were  
12 objections made. And the answer said "None."

13 Now, we've talked about a couple of different  
14 providers. You mentioned that Box Canyon was your primary  
15 care location. And you also mentioned you had been seeing  
16 Dr. Nicola leading up to it. And your dentist. I'm not  
17 going to really worry about the dentist because I wouldn't  
18 say that's related; so let's narrow the scope down.

19 Other than the folks at Box Canyon, did you have  
20 any other primary care physicians? And let's even narrow  
21 the time to say three years leading up to the accident. So  
22 going back to 2011.

23 A. No, I didn't.

24 Q. So Box Canyon would have been your only primary  
25 care physician?

1 A. Correct.

2 Q. Other than Dr. Nicola, do you remember seeing  
3 anybody else that would have done any kind of treatment for  
4 your -- let's narrow it just to your neck and your back,  
5 during that same time period, going back to, say, 2011?

6 A. Well, maybe other doctors within Dr. Nicola's  
7 office. But, you know, other than that facility, no.

8 Q. On Interrogatory No. 23, we asked any medical  
9 providers or designated experts who advised you you'll  
10 require future hospitalization, treatment for any injuries.

11 With objection, it said, "All the doctors I saw  
12 suggested surgery as an option."

13 And when we talked earlier, I thought you said  
14 that neither Dr. Dunn nor Dr. Ruggeroli suggested invasive  
15 surgery, that they suggested the rhizotomies and the  
16 injections?

17 A. Yes, sir. I think --

18 MR. SCHNITZER: Object to form. Go ahead.

19 THE WITNESS: I think we're kind of getting caught  
20 up on the word "surgery" versus "surgical procedures," and  
21 things like that. I thought "surgery" meant, like, any  
22 surgical procedure.

23 Q. (BY MR. SMITH) So let's take a step back.

24 The injections you've received, if I recall  
25 correctly they were all performed at a surgery center?

1 A. Correct.

2 Q. So if we look at any kind of procedures that would  
3 require you to go to either a hospital or a surgery center,  
4 you've had two rounds of injection treatments, you've been  
5 recommended to have a third, and Dr. Dunn also suggested  
6 possibly the rhizotomy procedures?

7 A. Which Dr. Ruggeroli suggested against.

8 Q. So there's a dispute on whether that would even  
9 happen. But the fact that a doctor has made that  
10 suggestion. So setting those aside, are there any other  
11 procedures that would require you to go to a hospital or a  
12 surgery center that anyone has recommended?

13 A. No, sir.

14 Q. Have any of your providers suggested any sort of  
15 less invasive treatment as opposed to the facet block  
16 injections? Maybe just a trigger point injection that could  
17 be done in the office? Have you had any of those types of  
18 treatments recommended that you haven't had done?

19 A. No.

20 Q. Have your medical doctors recommended that you  
21 continue on with the chiropractic care, the massage therapy,  
22 and the stretching therapies?

23 A. They've told me if it provides relief, temporary  
24 or better, absolutely. They would never recommend that type  
25 of care. Doctors don't do that.



1 Q. Have any of them -- have you talked with them  
2 about the fact that you are receiving those alternative  
3 treatments?

4 A. Yes.

5 Q. And they didn't have an opinion one way or the  
6 other?

7 A. They said if it provides relief, keep doing it.

8 Q. Do you know whether either Belinda or Rebecca  
9 maintains records of the treatment they provide for you?

10 A. Other than a calendar record of when the  
11 appointment is, I've never seen either take any notes or  
12 have any type of method of taking notes.

13 Q. When they're treating you, do they go through any  
14 sort of history or ask you what your subjective complaints  
15 are before they start care?

16 A. The massage therapist did.

17 Q. Does she still do that these days? Is that a  
18 normal practice?

19 A. The first thing she asks before she puts her hands  
20 on me, yeah, is "What are we dealing with today?"

21 Q. And you've never seen her take any notes to  
22 reflect what you tell her?

23 A. No, sir.

24 Q. And to compare that, when you go to the  
25 chiropractor's office, do they do the same thing? Do they

1 ask you "How are you doing today?" before they start  
2 anything?

3 A. Yes.

4 Q. And do they record those notes, that you've seen?

5 A. I believe he does, yeah. I believe he's typing  
6 them into a computer.

7 Q. Speaking relatively from when you first started  
8 having pain in your lower back following the accident to  
9 these days in general, is your condition improved? Worse?  
10 About the same?

11 MR. SCHNITZER: Object to form.

12 THE WITNESS: Could you ask the question again,  
13 please?

14 Q. (BY MR. SMITH) Sure. You said that you first  
15 really started feeling the pain in your back probably the  
16 next day --

17 A. Uh-huh.

18 Q. -- after the accident, and that's when you, at  
19 some point, started going and receiving medical care. So  
20 whether you want to do it by using the zero to ten scale,  
21 but just in a general sense, when you first started having  
22 problems right after the accident, comparing that to where  
23 you feel these days, is your condition better, worse, or  
24 about the same?

25 MR. SCHNITZER: Same objection.

1           THE WITNESS: You know, there's really no  
2 consistency with the pain. I haven't been able to determine  
3 that there's a pattern to it. So there's probably days when  
4 my pain is at its best that it's comparable to when I first  
5 got hurt, and then there's probably days when I'm at my  
6 worst when it's comparable, because the pain was just as  
7 unpredictable early on as it is now. It's all over the  
8 board. So I don't think there's -- I don't think there is  
9 either a progression or a declination, I think it's more of  
10 a wave of it gets better, feels better, and then it feels  
11 worse. And then for some unbeknownst reason to me, it gets  
12 better, and then it gets worse.

13           Q. (BY MR. SMITH) But you indicated earlier that  
14 comparing it to your condition before the accident, these  
15 days it is definitely worse?

16           A. Yes, sir.

17           Q. Okay.

18           MR. SMITH: I'll pass the witness.

19           MR. SCHNITZER: Couple of questions for you, Phil.

20                           EXAMINATION

21 BY MR. SCHNITZER:

22           Q. Did you get any indication when you were at the  
23 accident as to where Efren was living, from anybody?

24           A. At home.

25           Q. Where did you get that from?

1           A.    In that brief discussion I had with his father  
2   when he said, "My son is on drugs. I don't even know him  
3   anymore."

4                    Same discussion where he said, "I should have  
5   taken the car keys away." It was in that brief discussion,  
6   the only one I had with him, where he indicated that his son  
7   was still at home.

8           Q.    I just wanted to clarify. The pain you're having  
9   in your lower back now, specifically where is the pain? Can  
10   you give a more specific description?

11          A.    The lumbar area, maybe a couple three inches, I  
12   feel, off to the left of my spine.

13          Q.    Where was the pain you were having before the  
14   accident?

15          A.    L-4.

16          Q.    Was it in the same area --

17          A.    No, no. Right on the back.

18          Q.    So before the accident, you were having pain  
19   actually on --

20          A.    It was, like, a spinal thing. Yeah.

21          Q.    Right. So before the accident, your pain was on  
22   your spine?

23          A.    Right.

24          Q.    After the accident, it is three of four inches  
25   off --

1           A.    Yeah. And very different pains. This is a  
2   stabbing, continual, sometimes burning pain. That was more  
3   of a tight, uncomfortable type of thing. Never the kind of  
4   pain that would take your breath away or that kind of deal.

5           Q.    There was some questions about the therapists --  
6   and I'll throw in the massage therapist, the person who was  
7   doing the stretching. I'll call them therapists, if that's  
8   okay. Are they treating you just for your back or for your  
9   neck and your back?

10          A.    They actually treat my whole body, Jordan.

11          Q.    So for your neck and your back?

12          A.    Yes, sir.

13          Q.    So when he asked you -- he said are you claiming  
14   that you're getting treatment for your neck, and you said  
15   not specifically for my neck, were you saying there's no one  
16   that treats only for my neck, but people that treat for both  
17   the neck and the back?

18          A.    Right.

19          Q.    Okay. I just wanted to clear that up. You said  
20   you don't want to claim any damages for the money you've got  
21   to pay to go see your primary doctor for your headaches;  
22   correct?

23          A.    Yes.

24          Q.    And you had headaches before the accident?

25          A.    I did.

1 Q. Are you going to be claiming that your headaches  
2 are worse and/or more frequent now? And when I say "now," I  
3 mean since the accident.

4 A. Am I claiming? I'll claim that now, yes. More  
5 frequent and more severe.

6 Q. Is that what's going on?

7 A. Yes.

8 Q. And you believe that's from the accident?

9 A. Yes.

10 Q. Describe for me a little bit more about the inside  
11 condition of Efren's truck.

12 A. So, like, from the floorboard to the seat -- I  
13 think it was a bench seat in his truck -- from the  
14 floorboard to the seat was full of garbage. Fast food  
15 wrappings. Work related stuff, you know, tools, wires.  
16 That kind of stuff. Looked like he had some clothes in  
17 there. And, like, soda cans. You know, something that  
18 would indicate, like I, who spends a lot of time in my  
19 truck, but didn't clean it up ever.

20 Q. Did all the stuff in -- you talked about some food  
21 and some soda cans. Did that look old or new to you?

22 A. I don't know. It just looked all garbagey. Yeah,  
23 to the point the officer was not going to go in the truck  
24 looking for insurance.

25 Q. Did you get an understanding of whether the

1 clothes in there were Efren's?

2 A. No idea.

3 Q. Did you see the actual keys that were used?

4 A. I did not.

5 Q. Did you ever get an idea or ever come to any  
6 understanding if anything in that cab was Efren's?

7 MR. SMITH: Calls for speculation.

8 THE WITNESS: No.

9 Q. (BY MR. SCHNITZER) So Efren never told you, "Hey,  
10 this is my stuff," or anything like that?

11 A. No, he didn't.

12 MR. SCHNITZER: I don't have any other  
13 questions --

14 THE WITNESS: Oh, well, he did say this. I  
15 think -- before I called his parents, I think he was going  
16 to have his uncle come pick him up, and then he was going to  
17 gather all the stuff and get it out of the truck. I don't  
18 know if that's because it was his, but he did make that  
19 comment, I recall.

20 Q. (BY MR. SCHNITZER) Do you recall more  
21 specifically the words he used?

22 A. No. I didn't remember that until just now, that  
23 he -- he wasn't happy that I called the folks. So I think  
24 he was going to call his uncle, is what he said, and that he  
25 was going to have to -- because his truck was not operable,

1 that he was going to have to get the stuff out of the truck  
2 before it was towed off.

3 MR. SCHNITZER: Okay. I don't have any other  
4 questions.

5 MR. SMITH: Just a couple in follow-up.

6 FURTHER EXAMINATION

7 BY MR. SMITH:

8 Q. I want to clarify the issue about the headaches.

9 I understand you believe that the more frequency  
10 and the worse severity was caused by the accident. If this  
11 case were to go to trial, would that be something that you  
12 would ask a jury to award you money for?

13 MR. SCHNITZER: Object to form.

14 THE WITNESS: Describe what "that" is.

15 Q. (BY MR. SMITH) The greater severity of your  
16 headaches, the more frequency of your headaches.

17 A. We would certainly address it.

18 Q. Well, is that something you would ask a jury to  
19 give you money for?

20 MR. SCHNITZER: Object to form. Don't answer to  
21 the extent that it calls for any discussions you and I have  
22 had about the value of the case. If you can --

23 THE WITNESS: Can you ask the question again,  
24 please?

25 Q. (BY MR. SMITH) Sure. And I ask this in a very



1 general sense. If this case goes to trial, and you're going  
2 to be asking a jury to award you money and you have to lay  
3 out what you want them to award you money for, would the  
4 fact that you believe your headaches have become more  
5 frequent and more severe because of the accident be one of  
6 the elements that you will ask the jury to award you money  
7 damages for?

8 A. Yes, sir.

9 Q. Okay. There was some discussion about where the  
10 pain was in your lower back before and after the accident.

11 Before the accident, was there any radiation of  
12 pain or other sensations going into your legs?

13 A. No, sir.

14 Q. After the accident, has there been any radiation  
15 of pain or other sensation going into your legs?

16 A. Only initially. I think that was something I  
17 dealt with for maybe a week or two, maybe a month, or  
18 something like that. A little bit of numbness, I think.

19 Q. But that, basically, went away without need for  
20 any specific treatments?

21 A. Well, I thought it went away, but I've heard twice  
22 recently that when I stand, if you're looking at me from  
23 behind, at any given moment my glute and my hamstring might  
24 start doing some twitchy thing.

25 Q. Has it affected your ability to walk?

1 A. Yes.

2 Q. The twitchiness.

3 A. Oh. I didn't realize I was doing it. So I would  
4 say no.

5 Q. And I understand that the pain in your back has  
6 affected your ability to walk and stand, and we talked about  
7 that earlier.

8 A. Right.

9 Q. But with respect to any radiating issues, whether  
10 it be numbness, tingling, pain, any of that going into the  
11 legs, is that anything that you've noticed beyond that  
12 period of a week or a month, I think you said, following the  
13 accident?

14 A. No, sir.

15 Q. As you're sitting here right now, are you feeling  
16 any such sensations in your leg?

17 A. No, sir.

18 Q. Very good.

19 MR. SMITH: Nothing further.

20 MR. SCHNITZER: Nothing. Thank you.

21 MR. SMITH: We're done. Thank you for your time.

22 THE WITNESS: Thank you, sir.

23 (The deposition was concluded at 3:28 p.m.)

24 \* \* \* \* \*

25

CERTIFICATE OF WITNESS

PAGE	LINE	CHANGE	REASON

\* \* \* \* \*

I, PHILIP MICHAEL BOUCHARD, deponent herein, do hereby certify and declare the within and foregoing transcription to be my deposition in said action; that I have read, corrected and do hereby affix my signature to said deposition.

\_\_\_\_\_  
PHILIP MICHAEL BOUCHARD, Deponent

Subscribed and sworn to before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017.

\_\_\_\_\_  
Notary Public

## 1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA )  
3 COUNTY OF CLARK ) SS:

4 I, Cynthia L. Gloe, Certified Court Reporter, do  
5 hereby certify: That I reported the taking of the deposition  
6 of the witness, PHILIP MICHAEL BOUCHARD, commencing on  
7 Wednesday, October 11, 2017, at 1:00 p.m.

8 That the foregoing transcription is a true,  
9 complete, and accurate transcription of the stenographic  
10 notes of the testimony taken by me in the matter entitled  
11 herein to the best of my knowledge, skill, and ability.  
12 That prior to the completion of the proceedings, the reading  
13 and signing of the transcript was requested by the witness  
14 or a party.

15 I further certify that I am not a relative or  
16 employee of an attorney or counsel of any of the parties,  
17 nor a relative or employee of an attorney or counsel  
18 involved in said action, nor a person financially interested  
19 in the action.

20 IN WITNESS WHEREOF, I have hereunto set my hand in  
21 my office in the County of Clark, State of Nevada, this 23rd  
22 day of October, 2017.

23  
24 \_\_\_\_\_  
25 Cynthia L. Gloe, RPR, CCR No. 607

DISTRICT COURT  
CLARK COUNTY, NEVADA

PHILIP MICHAEL BOUCHARD, an                    ) Case No.: A-16-740711-C  
individual,                                        ) Dept. No.: XXXI  
                    Plaintiff,                        )  
                    vs.                                )  
EFREN ISAAC SOTELO, an individual;            )  
JUAN SOTELO, an individual, NOW                )  
SERVICES OF NEVADA, LLC d/b/a/                )  
COOL AIR NOW, a Nevada limited                )  
liability company; DOES 1 through            )  
10, inclusive; and ROE CORPORATIONS) )  
1 through 20, inclusive,                        )  
                    Defendant.                        )  
\_\_\_\_\_ )

RECORDED DEPOSITION OF EFREN ISAAC SOTELO

Taken on January 25, 2017

At 1:32 PM

THE SCHNITZER LAW FIRM

9205 W. Russell Road, Suite 240

Las Vegas, Nevada 89148

<div>Page 2</div> <p>1 APPEARANCES:</p> <p>2 For the Plaintiffs: JORDAN P. SCHNITZER, ESQ.</p> <p>3 THE SCHNITZER LAW FIRM</p> <p>4 9205 W. Russell Road, Suite 240</p> <p>5 Las Vegas, Nevada 89148</p> <p>6</p> <p>7</p> <p>8 For the Defendants: MARSHA L. STEPHENSON, ESQ.</p> <p>9 STEPHENSON &amp; DICKENSON, P.C.</p> <p>10 2820 West Charleston Blvd., Suite 19</p> <p>11 Las Vegas, Nevada 89102</p> <p>12</p> <p>13 KEVIN S. SMITH, ESQ.</p> <p>14 HALL JAFFE &amp; CLAYTON, LLP</p> <p>15 724 Peak Drive</p> <p>16 Las Vegas, Nevada 89128</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<div>Page 4</div> <p>1 MR. MAREZ: Job number 306638. We are</p> <p>2 now on the record in the matter of Philip Michael</p> <p>3 Bouchard versus Efren Isaac Sotelo. My name is Jared</p> <p>4 Marez. I`m the videographer and officer. I work for</p> <p>5 Evolve Deposition Services, located at 10080 Alta</p> <p>6 Drive, Suite 110, Las Vegas, Nevada 89145.</p> <p>7 Today`s date is January 25th, 2018, the</p> <p>8 time is 1:32 p.m. This deposition is being held at</p> <p>9 the Schnitzer Law Firm, 9205 West Russell Road, Suite</p> <p>10 240, Las Vegas, Nevada 89148. This is the recorded</p> <p>11 deposition of Efren Isaac Sotelo. Would you please</p> <p>12 raise your right hand?</p> <p>13 Do you solemnly swear or affirm that</p> <p>14 the testimony you`re about to give will be the truth,</p> <p>15 the whole truth, and nothing but the truth to the</p> <p>16 best of your knowledge?</p> <p>17 MR. SOTELO: Yes</p> <p>18 MR. MAREZ: Thank you. You can lower</p> <p>19 your hand. Can you please state your name with a</p> <p>20 spelling for the record?</p> <p>21 MR. SOTELO: Efren Isaac Sotelo. Efren</p> <p>22 E-F-R-E-N, Isaac I-S-A-A-C, Sotelo S-O-T-E-L-O.</p> <p>23 MR. MAREZ: Okay, thank you. This</p> <p>24 deposition is an audio and visual recorded</p> <p>25 deposition. This will be the official record and any</p>
<div>Page 3</div> <p>1 INDEX</p> <p>2 Witness Direct Cross</p> <p>3 MR. SOTELO Page 5</p> <p>4 (BY: MR. SCHNITZER)</p> <p>5 MR. SOTELO Page 106</p> <p>6 (BY: MR. SMITH)</p> <p>7 MR. SOTELO Page 110</p> <p>8 (BY: MR. SCHNITZER)</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14 EXHIBITS</p> <p>15 NUMBER DESCRIPTION</p> <p>16 Exhibit 1 Employee File</p> <p>17 Exhibit 2 Register of Actions</p> <p>18 Exhibit 3 Complaint</p> <p>19 Exhibit 4 Photograph</p> <p>20 Exhibit 5 Traffic Accident Report</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<div>Page 5</div> <p>1 transcripts created will be created by Evolve from</p> <p>2 this recording. Will all the attorneys present</p> <p>3 please identify themselves, their firm, anybody with</p> <p>4 them, and the party they represent beginning with</p> <p>5 party noticing the procedure.</p> <p>6 MR. SCHNITZER: Jordan Schnitzer with</p> <p>7 the Schnitzer law firm for the plaintiff.</p> <p>8 MS. STEPHENSON: Marsha Stephenson</p> <p>9 representing Efren Sotelo.</p> <p>10 MR. SMITH: Kevin Smith with Hall Jaffe</p> <p>11 &amp; Clayton representing Now Services and Juan Sotelo.</p> <p>12 MR. MAREZ: Okay, please proceed.</p> <p>13 DIRECT EXAMINATION</p> <p>14 BY: Jordan Schnitzer</p> <p>15 Q: Good afternoon Efren. How are you</p> <p>16 doing?</p> <p>17 A: Pretty good.</p> <p>18 Q: You ever had your deposition taken</p> <p>19 before?</p> <p>20 A: No.</p> <p>21 Q: Let me go over some of the ground rules</p> <p>22 with you. Do you understand that the oath you`ve</p> <p>23 taken today carries with it the same penalties of</p> <p>24 perjury as if you were in a court of law?</p> <p>25 A: Yes.</p>

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1 Q: What do you understand that to mean?

2 A: What do I understand that?

3 Q: Yes.

4 A: It's that there'll be penalties.

5 Q: Do you understand what those penalties

6 are?

7 A: Jail time?

8 Q: Yes. Perjury is a class D felony,

9 meaning you could serve a minimum of one year up to

10 four years if convicted of perjury. Do you

11 understand that?

12 A: Mm-hmm.

13 Q: That means if you don't tell the truth

14 to me today, that this record could be submitted to a

15 district attorney and they could press charges. You

16 understand that?

17 A: That's fine.

18 Q: Okay. Have you taken any drugs or

19 alcohol that could affect your ability to understand

20 my questions or answer truthfully today?

21 A: No.

22 Q: Any reason we can't go forward with the

23 deposition today?

24 A: No.

25 Q: Did you do anything to prepare for your

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1 deposition today?

2 A: No.

3 Q: Did you review any documents?

4 A: No.

5 Q: Did you talk to anybody other than your

6 attorney?

7 A: No.

8 Q: You didn't talk to your dad about it?

9 A: No. I didn't see my dad today at all.

10 Q: Okay. How did you get here today?

11 A: An Uber.

12 Q: You got an Uber?

13 A: Mm-hmm.

14 Q: I saw you get out of a truck that said

15 Cool Air Now in the parking lot.

16 A: Mm-hmm.

17 Q: That was an Uber?

18 A: Oh no that was my mom. I'm leaving in

19 an Uber.

20 Q: Okay.

21 A: I'm leaving in an Uber yeah.

22 Q: So, your mom dropped you off?

23 A: Yeah, my mom dropped me off actually.

24 Yeah.

25 Q: Okay.

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1 A: Because the car that I'm trying to use

2 right now is not working. I got money put on the

3 card, and one of the cards wasn't working. So, the

4 Uber that I was trying to bring here, it didn't work,

5 so I had to come here get, dropped off, and now

6 waiting for the... It takes time for... I bought the

7 card at a Walgreens. I could show you everything

8 right now. I bought the card at Walgreens, so I

9 could bring the Uber... bring the Uber here. That

10 didn't work, so I got dropped off by my mom. Now I'm

11 just waiting for it to go by so I can get the

12 activate it on to the Uber and then take an Uber

13 back. It says while you bought your cards at

14 Walgreens takes 15 minutes for it to go through or

15 something like that.

16 Q: Okay. Are you living at your parent's

17 house right now?

18 A: Yeah. I'm staying there right now,

19 yeah.

20 Q: Does your driver's license have your

21 parent's address?

22 A: Yeah.

23 Q: Since the date of the accident... I'm

24 sorry let's go back. A year before the accident.

25 A: A year before the accident?

Page 9

1 Q: Until now.

2 A: Mm-hmm.

3 Q: Has your driver's license ever had any

4 address other than your parent's address?

5 A: Not that I recall. I think it's been

6 the same address for a while.

7 Q: Since when do you think?

8 A: Probably since I got... honestly, I

9 don't know.

10 Q: Probably since you got your driver's

11 license?

12 A: Probably... not since I got my driver's

13 license because I got my driver's license a long time

14 ago, so it's probably been like maybe, I don't know,

15 since I moved in maybe?

16 Q: Okay. When did you move there?

17 A: I would say 2012.

18 Q: Okay. Does September 2, 2011 sound

19 right that your parents got that house?

20 A: I mean, probably it could be.

21 Q: Okay, and you believe your driver's

22 license has had that address since your parents moved

23 into the house, whenever that is?

24 A: Yeah, well maybe... well I'm pretty sure

25 I didn't put a change in my address right away. It

Page 10

1 could have been a little after.

2 Q: As you said since you changed it to that

3 address where your parents live, it's been that

4 address forever? You've never changed it and changed

5 it back?

6 A: Yeah, I've never had to change it.

7 Q: Okay. What's your data of birth?

8 A: 6/13/90.

9 Q: So that will make you 27?

10 A: Mm-hmm.

11 Q: So, you would then... in December 2014,

12 you would have been 24?

13 A: December 2014, yeah 24.

14 Q: When the accident happened?

15 A: Mm-hmm.

16 Q: Is that a yes?

17 A: That's a yes.

18 Q: That's something I should have gone over

19 with you. At the end of this, you're going to get a

20 transcript.

21 A: Mm-hmm.

22 Q: It's going to have everything, anybody

23 in this room says.

24 A: Okay.

25 Q: If you say uh-huh, or you say uh-uh, it

Page 11

1 looks exactly the same.

2 A: All right, so say yes or no.

3 Q: Yes. If you forget, I'll just correct

4 you. I'm not trying to be rude. I'm just trying to

5 make sure we have a clear record.

6 A: All right.

7 Q: One other thing. If you need to take a

8 break at any point today, just let me know and we'll

9 take a break. The only thing I ask is that if I've

10 asked you a question, go ahead and answer that

11 question before we take a break. Fair?

12 A: All right.

13 Q: You've signed a couple of affidavits in

14 this case, correct?

15 A: Yeah.

16 Q: As you sit here today, do you believe

17 those are 100% accurate?

18 A: Yes, they are.

19 Q: Nothing in there that's false?

20 A: No.

21 Q: Okay. Have you ever seen your employee

22 file from Cool Right Now?

23 A: No, I haven't.

24 Q: Mark this as Exhibit 1.

25 MR. MAREZ: Yes, sir.

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1 Q: Do me a favor. Flip through that.

2 MS. STEPHENSON: That's okay. I need

3 to give him a copy. Whenever you're ready, just-

4 Q: Take your time. My question to you at

5 the end of this is going to be is there anything in

6 there that you believe is inaccurate for any reason.

7 Actually, let me give you the official exhibit. I'll

8 trade you.

9 MS. STEPHENSON: Okay.

10 A: Okay, so this is for one of the first

11 tickets I got.

12 MS. STEPHENSON: Just read through it

13 and make sure everything is accurate.

14 A: Okay.

15 Q: Yeah, that's my only question. Don't

16 explain it. Just, ``Is there anything that's

17 inaccurate?`` That's all you need to answer.

18 A: Yeah, this date's wrong.

19 Q: The date's wrong.

20 A: The 12/20, the termination date, that's

21 wrong.

22 Q: So, whose handwriting is that? Do you

23 know?

24 A: That's my handwriting. Oh, wait. No

25 that's not my handwriting. Oh, no. Yeah, this one

Page 13

1 is. I don't know the rest of it though.

2 Q: Okay, so the only part you wrote was

3 where it says ``I 12/20/14 Efren Sotelo`` and then

4 the other ``12/20/14``.

5 A: Yeah that's my mistake right there, my

6 signature in there.

7 Q: Okay, so then why did you write 12/20.

8 A: I don't know. I probably... I don't

9 know why I did that. Probably messed up. I mean it

10 was, what, two or three years ago?

11 Q: Is that your handwriting at the top of

12 the page?

13 A: No, none of these. Just only these and

14 my signature.

15 Q: What about the other dates?

16 A: No. None of those are my handwriting.

17 Q: Did you sign this? Did you write that

18 document? Was the rest of it filled out or did you

19 fill that part out first?

20 A: The rest of it was filled out and then I

21 signed it. It was handed to me filled out, and then

22 I signed it.

23 Q: Okay. So, you did not date by your

24 signature on the bottom right?

25 A: No, they were all... I did this and then



Page 14

1 the signature.

2 Q: My question is where your signature is

3 on the bottom right, that's not the date. You did

4 not write that date?

5 A: I wrote this and this.

6 Q: Okay. So, the only date you put on this

7 document was 12/20/14?

8 A: Yeah, these ones right here where I

9 messed up.

10 Q: Okay. Are you saying you believe that

11 you signed it on a different date?

12 A: Yeah, I don't know why I signed it like

13 that. Honestly, I don't remember.

14 Q: Okay, so my question is do you believe

15 you signed it on different date than 12/20/14?

16 A: No, it was on that date, the day I got

17 fired.

18 Q: Okay, on 12-

19 A: It had to be, yeah.

20 Q: On 12/20/14.

21 A: Because I wouldn't have been at the-

22 MS. STEPHENSON: Oh, let him finish his

23 question.

24 Q: On 12/20/14?

25 A: No, on 12/10.

Page 15

1 Q: Okay so you believe you signed this on

2 12/10/14?

3 A: I know for a fact that's when I signed

4 it.

5 Q: But you wrote 12/20/14.

6 A: I know. I don't why I messed up.

7 Q: Yes or no, did you write 12/20/14?

8 A: Yes, I wrote it.

9 Q: Okay.

10 A: But that's not the day I signed it.

11 Q: Okay. So nowhere on this document did

12 you write 12/10/2014.

13 A: No, I don't believe so.

14 Q: Okay. Continue looking through the

15 document. Tell me if there's anything else that you

16 believe is inaccurate.

17 A: I don't know what this... is this just

18 the end of it, the end of this?

19 MS. STEPHENSON: Looks like it.

20 A: I believe that's it.

21 Q: Okay, so let's go back to the page. In

22 the bottom right of all these documents I'm going to

23 show you today is what's called the Bates stamp

24 numbers.

25 A: Where? These?

Page 16

1 Q: The bottom right, yeah. So, let's go to

2 JSNS45 which is that termination statement. Do you

3 know who filled the rest of that document out?

4 A: I don't know. I have no idea.

5 Q: Do you think it was Efren? I'm sorry,

6 you're Efren. Do you think it was Juan?

7 MR. SMITH: Calls for speculation.

8 A: No.

9 Q: You don't think it was Juan?

10 A: No, my dad wouldn't fill this out.

11 Q: Who would?

12 A: Probably one of his secretaries or

13 somebody.

14 Q: Okay. Just to clarify, all of this was

15 filled out when you got it, correct?

16 A: Mm-hmm. Yeah.

17 Q: Okay. When you got this, had you

18 already turned in your uniforms?

19 A: My uniforms were there already

20 because... they were there.

21 Q: Okay, your gas card was--

22 A: Yeah. I turned in everything, yeah.

23 Q: Before you got this document to sign?

24 A: I turned it in when I signed this.

25 Q: Okay, but the check marks were there

Page 17

1 before you turned in the gas card?

2 A: No. They brought it to me. I just gave

3 it to them, and as I gave it to them, they went down

4 the list.

5 Q: Okay, and then they handed it to you to

6 sign?

7 A: Yeah, and then I signed it.

8 Q: Okay. Who did you give it to?

9 A: I don't really remember. I think it was

10 my dad's secretary at the time.

11 Q: Who's that?

12 A: Oh, he had a few. I don't even remember

13 who it was at the time.

14 Q: Okay, so you don't know who you gave

15 this document to?

16 A: It could have been the secretary, but I

17 don't remember who it was at the time.

18 Q: You don't remember her name?

19 A: Her name, it could have been Kimberly,

20 it could have been Danielle, it could have been

21 whichever one it was at the time.

22 Q: Okay, was Juan present when you signed

23 this?

24 A: I don't believe so, no.

25 Q: Was your mom present when you signed

Page 18

1 this?

2 A: I don't believe so.

3 Q: Where did you sign this?

4 A: At the office.

5 Q: Where?

6 A: Probably in my dad's secretary's office.

7 Q: She's got her own office?

8 A: Yeah.

9 Q: When you handed it back to her, did she

10 look at it?

11 A: I'm assuming.

12 Q: Did you see her look at it?

13 A: Well, she handed it. Obviously, she

14 grabbed it and she looked at it.

15 Q: Okay, so let me clarify something for

16 you. I don't want you to guess at anything today.

17 Okay?

18 A: Well, you've got to understand that I

19 can't remember some things.

20 Q: That's fine. If you don't remember, say

21 I don't remember. If you don't know, say I don't

22 know. There's a distinction. If you never knew,

23 say, "I don't know." If you would have known at

24 one time and don't remember, say, "I don't

25 remember." Okay? I don't want you guessing, you

Page 19

1 understand?

2 A: Yeah.

3 Q: Okay. Do you know whether your dad's

4 secretary looked at this document after you handed it

5 back to her?

6 A: Yeah, she looked at it. She had to.

7 Q: Did she say anything about, "Hey why is

8 this date wrong?"

9 A: No, she didn't

10 Q: Do you know if your dad ever looked at

11 this document after you signed it?

12 A: I don't know.

13 Q: Do you know what your... did you see

14 what your dad's assistant did with this document

15 after you signed it?

16 A: No.

17 Q: How do you know that that 12/20 is

18 wrong?

19 A: Because I remember the date I was

20 arrested. I was in jail on that date.

21 Q: On which day?

22 A: 12/20.

23 Q: You were in jail on that day?

24 A: I was in jail on that day.

25 Q: A hundred percent sure about that?

Page 20

1 A: A hundred percent sure.

2 Q: What were you in jail for?

3 A: For the theft of the truck.

4 Q: So, we'll mark it as Exhibit 2. This is

5 the register of actions from your petty larceny for

6 stealing the truck.

7 A: Mm-hmm.

8 Q: It says that on December 17th, your

9 sentence was suspended, and you were out of Jail on

10 the 17th.

11 A: No, I went... I got out of jail, but I

12 went back. I did my time.

13 Q: It says you were released on the 17th.

14 A: Of December?

15 Q: Yes. Three days before 12/20.

16 A: I don't believe that's true.

17 Q: You don't think the court's right?

18 A: No because I don't think that was the

19 day I was released. Yeah, I don't think that was the

20 day I was released because I went to drug court.

21 They don't release you right away in drug court. I

22 remember being there on Christmas. I remember

23 Christmas day being there.

24 Q: In jail?

25 A: Yeah. I remember New Year's being

Page 21

1 there.

2 Q: Okay. So, you think my reading of this

3 document is inaccurate, then?

4 A: Yes.

5 Q: Okay. How much time did you spend in

6 jail?

7 A: Five months.

8 Q: So, if I pull the jail records, you're

9 telling me it's going to say you were in there for

10 five months?

11 A: Yeah suspended sentence, five months.

12 Q: Do you know what a suspended sentence

13 means?

14 A: Yeah, that they suspended it.

15 Q: Okay, all right.

16 A: Yeah, I remember being in there on

17 Christmas.

18 Q: Okay. What are you doing for work right

19 now?

20 A: I'm not working right now.

21 Q: How are you eating, providing for

22 yourself?

23 A: Do I have to answer that question?

24 Q: Yes.

25 A: I mean, well, sometimes, I just...

Page 22

1 wherever I can eat at.

2 Q: You're living at home?

3 A: I stay there sometimes, yeah. I'm not

4 always there.

5 Q: Mom and dad provide food for you?

6 A: You could say that, sometimes yeah.

7 Q: I'm asking if you're saying that?

8 A: If I'm saying that?

9 Q: That your parents provide you food.

10 A: Sometimes.

11 Q: Okay. When was the last time you had a

12 job?

13 A: Last year... no, 2016.

14 Q: What were you doing?

15 A: Working at Tireworks.

16 Q: Doing what?

17 A: Sales.

18 Q: Why are you no longer at Tireworks?

19 A: For being late. I got fired for being

20 late. See, look. I think that's the date I was

21 released right there.

22 MS. STEPHENSON: That's fine. I

23 believe he wants to ask you he can.

24 A: I think that's when I started drug

25 court.

Page 23

1 Q: Before Tireworks, where were you

2 working?

3 A: Before that was Cool Air Now.

4 Q: When did you start at Tireworks?

5 A: I remember... sometime in May of 2016.

6 Q: So, between December 2014 and May of

7 2016, you had no job?

8 A: Mm-hmm.

9 Q: Is that a yes?

10 A: That's a yes, yeah.

11 Q: Were you looking for a job or what were

12 you doing at that time?

13 A: I mean yes, there was times when I was

14 looking for a job.

15 Q: Okay. What's your highest level of

16 education?

17 A: 11th grade.

18 Q: Did you get your GED?

19 A: No.

20 Q: Was that a requirement of your suspended

21 sentence?

22 A: Yeah, but I didn't do none of that. I

23 volunteered to go back to jail, so I did the time.

24 Q: And you spent five months in jail?

25 A: Mm-hmm.

Page 24

1 Q: Is that a yes?

2 A: That's a yes, yes.

3 Q: Why would you rather go back to jail

4 rather than get a GED?

5 A: The requirements for drug court was way

6 too much, and I would rather do five months in jail

7 than a year of that.

8 Q: What requirements was too much for drug

9 court?

10 A: It was a lot.

11 Q: Give me some examples.

12 A: You know what, I don't want to go

13 through them.

14 Q: I understand that, but--

15 A: It's a lot.

16 Q: Give me some examples.

17 A: You have to show up three times a week.

18 You have to do... what was it? Five... what do they

19 call it? MA classes a week. The levels of

20 requirements, I just rather not do.

21 Q: Okay. Was there any drug court

22 requirements that you did want to do?

23 A: No.

24 Q: Do you know why--

25 A: I mean, besides the GED, that was it.

Page 25

1 That was the only one I really would go after, but

2 the other things were too much for me handle. I'd

3 take the bus there every day. It was too much. I

4 couldn't do it.

5 Q: Okay. Do you have an understanding as

6 to why the court sentenced you to drug court?

7 A: Yeah.

8 Q: What?

9 A: Because I was just in drugs at the time.

10 Q: What kind of drugs?

11 A: Heroin.

12 Q: And you were using heroin at the time of

13 the accident correct?

14 A: I wasn't on it at the time, no.

15 Q: But in that time frame, you were using

16 heroin correct?

17 A: I had stopped maybe two weeks, three

18 weeks before that.

19 Q: Did you have heroin on you at the time

20 of the accident?

21 A: No.

22 Q: Are you aware that my client testified

23 that he saw the officer pull heroin out of your

24 pocket?

25 A: That's a total lie.

Page 26

1 Q: The question is are you aware of that?

2 A: No, I'm not aware of that.

3 Q: Okay, and so if my client states that,

4 you're saying that's a total lie?

5 A: Yeah, because if you can get the

6 officer, the officer will... he ain't going to lie,

7 will he?

8 Q: Okay. My question is if my client

9 testifies that he saw the officer pull heroin out of

10 your pocket, you're saying my client's a liar.

11 A: That's exactly what I'm saying.

12 Q: Now your dad believes the reason you

13 used the company card to buy gift cards was to buy

14 drugs. Are you aware of that?

15 A: Yeah, I'm aware of that.

16 Q: Is that true?

17 A: I guess you could say that.

18 Q: Yes?

19 A: Yes.

20 Q: Are you currently married?

21 A: No.

22 Q: Any kids?

23 A: No.

24 Q: You were born in the United States,

25 correct?

Page 27

1 A: Yes.

2 Q: In Las Vegas?

3 A: California.

4 Q: When did you move to Las Vegas?

5 A: 2000.

6 Q: 2000. So, we've talked about the arrest

7 for the petty larceny. Any other arrests?

8 A: A lot.

9 Q: Let's walk through them.

10 A: All of them?

11 Q: Yes.

12 MR. SMITH: Object to relevance. It

13 was not a conviction.

14 Q: Go ahead, you can answer.

15 A: Then I'm not going to answer.

16 Q: Unless your counsel tells you not to

17 answer, you have to answer.

18 MS. STEPHENSON: He can ask you some

19 questions that may not be admissible, but he's

20 entitled to ask them.

21 A: Do I have to answer them?

22 MS. STEPHENSON: Yes. Only ones you

23 remember.

24 A: Okay, two firearms possessions.

25 Q: When was that?

Page 28

1 A: I don't remember the dates.

2 Q: Approximate a year?

3 A: 2008, 2011. What else?

4 Q: Were those here or in California?

5 A: Here.

6 Q: Okay. What else?

7 A: Well, since I have... control substance.

8 Q: When was that?

9 A: That one I couldn't tell you.

10 Q: Approximate.

11 A: 2019 maybe.

12 Q: We're in 2018.

13 A: I mean 2009.

14 Q: 2009 okay. What kind of controlled

15 substance?

16 A: They were pills, Lortabs.

17 Q: Okay.

18 A: Burglary.

19 Q: When was that?

20 A: That was probably 2008.

21 Q: Okay, and these are all Las Vegas.

22 A: These are all here, yeah. And then just

23 lots of traffic tickets.

24 Q: We've got the petty larceny, correct?

25 A: Those yeah, petty larceny.

Page 29

1 Q: Now were you charged separately for the

2 credit card and for the car?

3 A: Yeah. Oh, that's right, yeah.

4 Embezzlement, yeah.

5 Q: Those would be 2014, right?

6 A: Yeah, both of them. One was North Las

7 Vegas and then the other one was County. The

8 embezzlement was for North Las Vegas and then the

9 truck was for County.

10 Q: Okay. The firearms, is that going to

11 Las Vegas or North Las Vegas?

12 A: Las Vegas.

13 Q: The controlled substance?

14 A: Las Vegas.

15 Q: The burglary?

16 A: Las Vegas.

17 Q: Okay, and all these various traffic

18 tickets. Now, Juan, it's my understanding he's not

19 your biological father?

20 A: That is my biological father.

21 Q: Oh, it is? Okay, so I misunderstood.

22 Okay. Is your dad aware... I want to talk about on

23 the date of the accident. Was your dad aware of the

24 burglary charges against you?

25 A: From before?

Page 30

1 Q: On the date of the accident, did your  
2 dad know that you had the burglary charges from 2008?  
3 A: Well, yeah. He would know.  
4 Q: What about the pills charge?  
5 A: Well, yeah.  
6 Q: The firearms charges?  
7 A: Yes.  
8 Q: In some of these police reports, your  
9 dad said that he believed you were on drugs.  
10 A: Mm-hmm.  
11 Q: You said I was. I was doing heroin.  
12 A: Yeah, I was that time.  
13 Q: Did he know that, or did he guess that  
14 or did you tell him?  
15 A: He was guessing that.  
16 Q: Okay. Do you know why he was guessing  
17 that?  
18 A: He just assumed because of my past.  
19 Q: Because of your past?  
20 A: Past drug use.  
21 Q: Is that pills or past heroin use?  
22 A: Well, I mean it usually goes from pills  
23 to heroin. That's the way it goes.  
24 Q: Okay so when--  
25 A: The same thing.

Page 31

1 Q: Okay. So, when did you start using  
2 heroin? When was the first time?  
3 A: Probably when I was 21, 2011 maybe,  
4 2012.  
5 Q: And when was the first time that you  
6 think your dad knew that you were using heroin?  
7 MR. SMITH: Misstates prior testimony.  
8 MS. STEPHENSON: Yeah, calls for  
9 speculation.  
10 A: What does that mean? Do I have to  
11 answer or not?  
12 MS. STEPHENSON: If you have an answer  
13 for him.  
14 A: I don't. I have no idea.  
15 Q: Did you ever tell your dad you were  
16 using heroin?  
17 A: No, I've never physically. I've never  
18 said those words to him, no.  
19 Q: What about to your mom?  
20 A: No.  
21 Q: Earlier, I asked you the questions about  
22 whether or not your dad knew about all these prior  
23 charges. Was your mom aware of them also?  
24 A: Mm-hmm.  
25 Q: Is that a yes?

Page 32

1 A: Yes, yes.  
2 Q: Did all of those charges... excluding  
3 the traffic tickets, did all of those charges result  
4 in convictions?  
5 A: Yeah. No felonies, though.  
6 Q: But they're all convictions?  
7 A: Mm-hmm, yes. Oh, no. Actually, not all  
8 of them. Some of them, one of the firearms... no,  
9 both firearms actually, I didn't get convicted for.  
10 Q: What happened with those?  
11 A: One of them, the DA didn't file charges.  
12 Well, both of them, the DA didn't file charges.  
13 Q: Okay. Did you ever serve in the  
14 military?  
15 A: No.  
16 Q: How did it come to be that you started  
17 working at Cool Air Now?  
18 A: Let me see. How did I start working  
19 with them? Yeah, I believe my dad just one day told  
20 me, ``One day, you're going to start come working for  
21 me, but you're not going to get paid.`` So I just  
22 started going helping him, and then it turned into  
23 one point where someone needed to start picking up  
24 the equipment, and I was the guy to do it because I  
25 was the only one that didn't really have a position

Page 33

1 like that. So I was the one that did it.  
2 Q: Okay, when do you think that was?  
3 A: No, I don't remember when I started  
4 there.  
5 Q: Okay, would that be in your employee  
6 file? Do you see that anywhere in Exhibit 1?  
7 A: I don't believe that's in there.  
8 Q: Okay. Did you have to fill out an  
9 application to start working for Cool Air Now?  
10 A: No.  
11 Q: Did you do an interview?  
12 A: No.  
13 Q: Your dad just said, "You're coming to  
14 work."  
15 A: Kind of, yeah.  
16 Q: Do you believe this was before or after  
17 the firearms charges?  
18 A: That would be after.  
19 Q: Do you think it was before or after the  
20 controlled substance charges?  
21 A: After.  
22 Q: Okay. Obviously after the burglary  
23 charges.  
24 A: After, yeah.  
25 MS. STEPHENSON: I think he said there

<p style="text-align: right;">Page 34</p> <p>1 were no charges for the firearms.</p> <p>2 A: Well yeah, there was no--</p> <p>3 Q: The arrests?</p> <p>4 A: Arrests, yeah.</p> <p>5 Q: Okay. With the firearms arrest, did you</p> <p>6 have a firearm on you?</p> <p>7 A: Mm-hmm, yes.</p> <p>8 Q: Did you have an understanding as to why</p> <p>9 you were charged with carrying a firearm?</p> <p>10 A: I was under 18... I mean I was 18, I</p> <p>11 wasn't 21. I wasn't old enough to carry a firearm.</p> <p>12 Q: Okay. What kind of firearms were they?</p> <p>13 A: Handguns.</p> <p>14 Q: Both of them?</p> <p>15 A: Yeah. Well, the first one was 18, so it</p> <p>16 was unlawful possession of firearm. The second one</p> <p>17 was a concealed weapon because the gun was hidden.</p> <p>18 Q: Okay. Where did you get... so the 2008</p> <p>19 one, where did you get the gun?</p> <p>20 A: Why does that matter?</p> <p>21 Q: Where did you get the gun?</p> <p>22 A: Where else do you get guns?</p> <p>23 Q: I don't have one. I don't know, sir.</p> <p>24 MS. STEPHENSON: Just answer his</p> <p>25 question if you remember.</p>	<p style="text-align: right;">Page 36</p> <p>1 looks like you have been... this is the third time</p> <p>2 you've been sued for a car accident, correct?</p> <p>3 A: No.</p> <p>4 Q: No?</p> <p>5 A: This is the first time.</p> <p>6 Q: Mark this as Exhibit 3. Exhibit 3, if</p> <p>7 you look, there is actually two complaints tabled</p> <p>8 within there. The first one is a Jenny Abarca vs</p> <p>9 Efren Sotelo.</p> <p>10 A: Oh yeah, that's right. I do remember</p> <p>11 this one.</p> <p>12 Q: Okay. What happened in that case?</p> <p>13 A: Nothing I recall.</p> <p>14 Q: From the description, it sounds like you</p> <p>15 rear-ended her.</p> <p>16 MS. STEPHENSON: I'm sorry he was what?</p> <p>17 Q: From the description, it sounds like you</p> <p>18 rear-ended her?</p> <p>19 A: Yeah, I did.</p> <p>20 Q: Do you know why you rear-ended her?</p> <p>21 Were you not paying attention?</p> <p>22 A: It was more of not paying attention she</p> <p>23 was stopped in the road.</p> <p>24 Q: Okay.</p> <p>25 A: That's what... yeah. That's what it</p>
<p style="text-align: right;">Page 35</p> <p>1 A: On the streets.</p> <p>2 Q: For both of them?</p> <p>3 A: Yeah.</p> <p>4 Q: You never know. Sometimes, people can</p> <p>5 have them at their house. Their parents may have</p> <p>6 them. So you just got them on the street. Is that a</p> <p>7 yes?</p> <p>8 A: Yes, yes.</p> <p>9 Q: Okay. Did you ever get any traffic</p> <p>10 citations while you working for Cool Air Now?</p> <p>11 A: Yes.</p> <p>12 Q: Before the accident, obviously.</p> <p>13 A: Before the accident, yeah.</p> <p>14 Q: How many approximately?</p> <p>15 A: Just two.</p> <p>16 Q: For what?</p> <p>17 A: I didn't have the proof of... I didn't</p> <p>18 have my license on me and there was no proof of</p> <p>19 insurance in the truck.</p> <p>20 Q: Are those two separate incidents? No</p> <p>21 license?</p> <p>22 A: No, same. I got those two sets of</p> <p>23 tickets sometime in November and the same two tickets</p> <p>24 the day of the arrest.</p> <p>25 Q: I had pulled off the courts website,</p>	<p style="text-align: right;">Page 37</p> <p>1 was.</p> <p>2 Q: Okay. Was your dad aware of that</p> <p>3 accident?</p> <p>4 A: No, he wasn't.</p> <p>5 Q: Was your mom aware of that accident?</p> <p>6 A: No.</p> <p>7 Q: How did you keep that from them?</p> <p>8 A: I was working at Tireworks, so I had it</p> <p>9 fixed right then and there, the truck.</p> <p>10 Q: So back in 2011... so when you worked</p> <p>11 for Tireworks in--</p> <p>12 A: 2016.</p> <p>13 Q: 2016? That was your second time working</p> <p>14 for them?</p> <p>15 A: No, that was my first time.</p> <p>16 Q: Okay, this accident is in 2011.</p> <p>17 A: Then I don't know what accident this is,</p> <p>18 then. I have no idea what accident this would be.</p> <p>19 Q: Okay. So you'd been in another accident</p> <p>20 where you rear-ended somebody in 2016?</p> <p>21 A: I mean, 2011 I don't remember... I</p> <p>22 didn't rear-end anybody.</p> <p>23 Q: Okay, hold on. When you were working at</p> <p>24 Tireworks, you got in an accident where you rear-</p> <p>25 ended somebody.</p>

Page 38

1 A: Yeah, that's what I thought this one  
2 was.  
3 Q: Okay. That was obviously after the  
4 accident with my client.  
5 A: Yeah.  
6 Q: You're saying this 2011 document, where  
7 you were sued, you don't have any recollection of?  
8 A: I don't even know where this is from.  
9 Toyota 4Runner? Yeah, I don't even know who this is  
10 or where this is from.  
11 Q: Okay. Did you ever drive a '92 Ford  
12 F150?  
13 A: No.  
14 Q: No?  
15 A: No.  
16 Q: Are you aware of Efren Sotelos live in  
17 Vegas?  
18 A: My uncle.  
19 Q: Does he have an F150?  
20 A: I don't know if he has an F150.  
21 Q: Okay.  
22 A: Yeah, this is... I don't even know who  
23 this is. I've never drove an F250 in my life, F150  
24 in my life. I don't know what this is.  
25 Q: Okay. So it's your position that this

Page 39

1 is another Efren Sotelo?  
2 A: This has to be, yeah. I don't know who  
3 this is. Yeah, I don't know who this is. Yeah  
4 because, see, this is Efren Sotelo. Mine always says  
5 Efren I. Sotelo. It always has my middle name in  
6 there.  
7 Q: It looks like we're missing page 3 of  
8 this report. That would show the address of the  
9 driver. Okay so it's your testimony that's not you?  
10 Not your accident?  
11 A: Yeah, that's not me. I don't know who  
12 that is.  
13 Q: Okay. So what were your duties when you  
14 were working at Cool Air Now?  
15 A: Just pick up and drop off equipment.  
16 Q: How many hours were you working a week?  
17 A: Probably around 40, something like that.  
18 Q: How would you get paid?  
19 A: By check.  
20 Q: A handwritten check?  
21 A: No, printed out check.  
22 Q: No direct deposit?  
23 A: No, check. I might have had direct  
24 deposit maybe at one point, but I'm not sure. For  
25 the most part, I would get my check.

Page 40

1 Q: Okay. Let's talk about the  
2 embezzlement. Was it a Lowe's card?  
3 A: Yeah.  
4 Q: Tell me about that.  
5 A: I was basically getting the card just  
6 selling to get money.  
7 Q: To buy drugs?  
8 A: Yeah.  
9 Q: Do you know approximately how much  
10 you... how many--  
11 A: I don't remember that. That was three  
12 years ago.  
13 Q: Okay. Do you think it was more than  
14 \$1,000?  
15 A: I couldn't tell you. Maybe two, three,  
16 somewhere around there.  
17 Q: Two, three thousand or two, three  
18 hundred?  
19 A: Two, three thousand, somewhere maybe,  
20 yeah.  
21 Q: So tell me about when you mom or dad  
22 found out about it.  
23 A: That was the day that I got fired.  
24 Q: Tell me what they said to you when they  
25 confronted you. Tell me about that conversation.

Page 41

1 A: My dad called me and said, "Well, where  
2 are you at?" And I told him where I was it, and he  
3 said, "What's this? What's going on?" I explained  
4 to him. He said, "All right. Well you need to go to  
5 the office and drop off the truck and give them the  
6 keys and give them everything and find your way  
7 home," so that's what I did.  
8 Q: At that time did you have... you had a  
9 work truck, correct?  
10 A: Yeah.  
11 Q: That's the truck that was in the  
12 accident?  
13 A: Mm-hmm.  
14 Q: Is that a yes?  
15 A: Yes, yes.  
16 Q: When he said, "Go to work and drop off  
17 all the stuff," you did that right away?  
18 A: Well, yeah. I was right there by the  
19 office.  
20 Q: That was December 10?  
21 A: Mm-hmm.  
22 Q: Is that a yes?  
23 A: December 10th, yeah.  
24 Q: Okay. At that time, did you have a car  
25 of your own?

<p style="text-align: right;">Page 42</p> <p>1 A: No.</p> <p>2 Q: So the only car you had was...?</p> <p>3 A: That truck.</p> <p>4 Q: Okay. And you were living at home at</p> <p>5 the time, right?</p> <p>6 A: Right then and there, yeah.</p> <p>7 Q: Who else lived in the house with you</p> <p>8 guys?</p> <p>9 A: My grandparents, my brothers, my sister.</p> <p>10 Q: How many brothers do you have?</p> <p>11 A: Three.</p> <p>12 Q: How old are they?</p> <p>13 A: Right now, one of them is 23, 14, and 5.</p> <p>14 Q: And how old is your sister?</p> <p>15 A: 18.</p> <p>16 Q: Obviously, your mom and dad live there.</p> <p>17 A: Yes.</p> <p>18 Q: How many bedrooms are in the house?</p> <p>19 A: Why does that matter?</p> <p>20 Q: How many bedrooms are in the house?</p> <p>21 A: Four.</p> <p>22 Q: Before you got the care taken away,</p> <p>23 where would you leave the work truck?</p> <p>24 A: Where would I leave the work truck? I</p> <p>25 would take it home.</p>	<p style="text-align: right;">Page 44</p> <p>1 house was a Cool Air Now car?</p> <p>2 A: Except for my brother's.</p> <p>3 Q: Are you saying your brother had a non-</p> <p>4 work truck or your...?</p> <p>5 A: My brother had his own vehicle.</p> <p>6 Q: Okay, I just want... because you've got</p> <p>7 multiple brothers right?</p> <p>8 A: Yeah, but only one drives.</p> <p>9 Q: Okay. That's what I'm trying to</p> <p>10 clarify. Okay so you've got all the cars that would</p> <p>11 park there were work cars except for your brother who</p> <p>12 had a non-work car?</p> <p>13 A: There were the truck and then my</p> <p>14 brother's car.</p> <p>15 Q: And that was the only people... that was</p> <p>16 the only cars that were parked there?</p> <p>17 A: Yeah, I think so.</p> <p>18 Q: Okay. What would your mom drive?</p> <p>19 A: At that time, I don't know. When I got</p> <p>20 into the accident, what did she drive? I think she</p> <p>21 might have showed up in my brother's car.</p> <p>22 Q: Okay. So she didn't have her own</p> <p>23 separate car?</p> <p>24 A: She does. I don't remember why she</p> <p>25 didn't have it at the time, though.</p>
<p style="text-align: right;">Page 43</p> <p>1 Q: And park it where?</p> <p>2 A: On the side of the house.</p> <p>3 Q: Is there like a dirt lot or a cement</p> <p>4 side?</p> <p>5 A: On the side of the house, yeah, pretty</p> <p>6 much.</p> <p>7 Q: Was it dirt or cement or...?</p> <p>8 A: Well after the gate, it's dirt.</p> <p>9 Q: Okay, and so you'd open the gate, put in</p> <p>10 the dirt?</p> <p>11 A: Yeah sometimes. Sometimes I would leave</p> <p>12 it outside.</p> <p>13 Q: Okay. And you said you had no personal</p> <p>14 vehicle of your own, correct?</p> <p>15 A: No.</p> <p>16 Q: Who else would park a car at the house?</p> <p>17 A: My grandparents, my parents, my brother.</p> <p>18 Q: They all had a car?</p> <p>19 A: Yeah.</p> <p>20 Q: Were they all working for Cool Air Now?</p> <p>21 A: My brother doesn't.</p> <p>22 Q: Were there any cars that would be parked</p> <p>23 at the house that were not work trucks or work cars?</p> <p>24 A: At that time, there wasn't, no.</p> <p>25 Q: So that time everybody's car at the</p>	<p style="text-align: right;">Page 45</p> <p>1 Q: Okay. And did your dad have a separate</p> <p>2 car or did he drive a work car?</p> <p>3 A: My dad had his own car.</p> <p>4 Q: Was it a personal car or was it a work</p> <p>5 car?</p> <p>6 A: It was a work car, I guess. Well he has</p> <p>7 his own car and pretty much his own work truck too.</p> <p>8 Q: So he has... what was it--</p> <p>9 A: Well it's okay. He pretty much had his</p> <p>10 truck, his car, his vehicle.</p> <p>11 Q: What kind of car was that?</p> <p>12 A: At the time, an Escalade.</p> <p>13 Q: And he would take that to work everyday?</p> <p>14 A: I mean different things would happen</p> <p>15 everyday. Sometimes my mom and dad would go with the</p> <p>16 same car. Sometimes they would leave in separate</p> <p>17 cars. It was just different.</p> <p>18 Q: Okay.</p> <p>19 A: There's no routine.</p> <p>20 Q: Okay. So on the 10th, when your dad</p> <p>21 says come to the office, tell me what happens.</p> <p>22 A: I go and I turn everything in.</p> <p>23 Q: Was your dad there?</p> <p>24 A: I don't believe he was there, no.</p> <p>25 Q: Was your mom there?</p>



Page 46

1 A: I don't think she was there.

2 Q: And your testimonies you gave,

3 everything on that in Exhibit 1 on that list...

4 A: Uh-huh.

5 Q: You gave all that to your dad's

6 secretary?

7 A: Yeah.

8 Q: Is that a yes?

9 A: Yes.

10 Q: Okay. Now you've signed an affidavit

11 saying you made a spare key?

12 A: Yes.

13 Q: When did you do that?

14 A: The date, I couldn't recall, but there

15 was one day when I was at Lowe's.

16 Q: Why did you do that?

17 A: Because I used to have... I had a spare

18 one underneath the truck.

19 Q: Okay.

20 A: So I had that one and then I had lost

21 it. So I went and made a spare one.

22 Q: So there was already a spare one

23 underneath the truck?

24 A: Yeah but my dad didn't know about the

25 one I had made.

Page 47

1 Q: I understand.

2 A: Because there was a spare underneath.

3 Q: Where did that spare one come from?

4 A: I don't know. And then it fell off one

5 day.

6 Q: It was like in a magnet or something?

7 A: Mm-hmm.

8 Q: Is that a yes?

9 A: Yes.

10 Q: Okay. Did your dad know about the

11 magnet one?

12 A: No, he didn't know about that one.

13 Q: How did that magnet one get there?

14 A: I put that one there.

15 Q: Why did you make a spare?

16 A: Because that one fell off. Because

17 whatever, I mean, you always need a spare. I only

18 had one key.

19 Q: Okay. So you--

20 A: They had one. I had the other one. So

21 when I turned in that key... well the initial key I

22 was using, I had that key and then I had the other

23 key, the one that was underneath the truck just in

24 case I ever lost the other key. Then one day that

25 one fell off, so I went and made another one.

Page 48

1 Q: Okay. And so the first spare key made,

2 you made that just in case you got locked out or

3 something?

4 A: Yeah.

5 Q: So in case you're at a job or something?

6 A: Something happens, I have the extra one

7 right there, yeah.

8 Q: Okay and then you can open the door and

9 get the other key.

10 A: Exactly, or it's underneath.

11 Q: Okay that makes sense. But your dad

12 didn't know about that one.

13 A: No, he didn't know.

14 Q: But you made the spare key so that you

15 could get into the workshop, correct?

16 A: Yeah in case you what if I lose the key?

17 Q: And you've got to go to a job--?

18 A: Because there's always that possibility

19 I'm in an attic, the key falls. You know?

20 Q: Okay, all right.

21 A: It happens.

22 Q: I understand. So in case you're at a

23 job or something and you get locked out of the car,

24 you can use the spare, right?

25 A: Mm-hmm.

Page 49

1 Q. Is that a yes?

2 A: Yes.

3 Q: Okay. Your dad didn't ask if you had a

4 spare key?

5 A: No.

6 Q: Did they ask you... did they say give us

7 all keys to the car or what did they say?

8 A: They said, "Give me the keys."

9 Q: Okay.

10 A: Like they were asking for the keys that

11 they gave me, the key that they're aware that the

12 truck had.

13 Q: I understand. Why didn't you give them

14 the spare key?

15 A: Because I didn't have it on me.

16 Q: Why didn't you tell them about the spare

17 key?

18 A: They didn't need to. I didn't think I

19 needed to.

20 Q: Okay. How did you get home that day

21 when you gave them the car?

22 A: I think I got picked up.

23 Q: By who?

24 A: A friend.

25 Q: Were you on heroin that day?

Page 50

1 A: Not at that day.

2 Q: Any pills or drugs or alcohol?

3 A: No.

4 Q: When you were using the Lowe's card, did

5 you believe you were addicted to heroin?

6 A: I mean you don't ever believe you're

7 addicted to it when you're addicted to it.

8 Q: As you sit there today looking back, do

9 you think you were addicted to heroin?

10 A: Yeah. Looking back, yeah.

11 Q: On days you were using the heroin, how

12 much would you use on a day?

13 A: Just a little bit. I mean, unless you

14 use drugs you wouldn't know what I'm talking about.

15 A dub, you wouldn't know what that is.

16 Q: Can you explain what a dub is?

17 A: A little piece like that.

18 Q: Okay. Now a little piece like that

19 would be more powerful than several pills, correct?

20 A: Yes.

21 Q. My understanding that's why a lot of

22 people get addicted to heroin is they use the pills

23 and then that's not strong enough.

24 A: Yeah, pills are more expensive. \$20 of

25 heroin is like \$100 worth of pills, same equivalence

Page 51

1 but cheaper.

2 Q: Okay. Let's go to the day of the

3 accident. You wake up in the morning. Walk me

4 through what happens.

5 A: I get up. Everybody is asleep. Well my

6 mom is asleep, my brother is asleep, and then

7 everybody else is gone. Then I just grab the keys to

8 the truck and I took off. I went in my drawer and

9 looked for them, the extra spare I had, and then I

10 found it and went to the truck. Got in the truck and

11 left.

12 Q: Okay. Was there any other cars at the

13 house other than the work truck?

14 A: My brother's car.

15 Q: Why didn't you take your brother's car?

16 A: Because why would I take my brother's

17 car? The truck was right there. I had the key to

18 it.

19 Q: So you took the truck simply because you

20 had a key to it?

21 A: Yeah, I had the extra key.

22 Q: If you had a key to your brother's car

23 would you have take your brother's car?

24 A: Yeah. But I didn't.

25 Q: Did you talk to your dad... from the day

Page 52

1 you gave the key to your dad's secretary, had you

2 talked to your dad up until the accident?

3 A: I don't recall.

4 Q: Do you recall your dad ever telling you

5 specifically, "You cannot drive the car anymore"?

6 A: Yeah.

7 Q: When was that?

8 A: The day I gave back the keys.

9 Q: Where were you when this conversation

10 took place?

11 A: I was on the phone with him. I don't

12 remember where I was at.

13 Q: What did he say?

14 A: You need to turn back everything and

15 then give me the keys. You're not allowed to drive

16 the truck. You're not working for us no more.

17 You're done.

18 Q: So you specifically... you think he

19 specifically said the word you can't drive the truck

20 anymore?

21 A: He said... well basically, that comes

22 with you're done. If you're not working for us, that

23 means you can't drive the truck. Won't that mean

24 that--

25 Q: You took the car.

Page 53

1 A: Well that's why I went to jail for it.

2 Q: I understand. Did he specifically say

3 to you, you cannot use the car anymore? Did those

4 words come out of his mouth?

5 A: Yeah, when he took the keys.

6 Q: I thought your dad's assistant took the

7 keys?

8 A: Well when they took the keys. Whoever

9 took the keys, when they took that... when I turned

10 in the keys after I talked... when I was talking to

11 my dad... well, he had said that before I came to

12 actually turn in the keys, when I was with him on the

13 phone.

14 Q: What were the exact words he said to

15 you?

16 A: I couldn't remember, but he had to say

17 something like that. He said something along the

18 lines that, "Why are you doing this? That's it.

19 You're done. Turn in the keys to the truck. That's

20 it."

21 Q: You believe that's the extent of what he

22 said?

23 A: Well yeah, there had to be, somewhere in

24 there he said you can't use the truck. Obviously you

25 can't use the truck no more. I need you to turn in

Page 54

1 the keys.

2 Q: My question is, are you assuming that

3 you couldn't use the truck or did he actually say it

4 to you?

5 A: No, I know for a fact I couldn't use the

6 truck. I know for a fact that I couldn't use the

7 truck, and that's why when I took it, I went to jail

8 for it.

9 Q: Okay. My question to you, did he

10 specifically say you cannot use the truck anymore?

11 A: Yeah. At one point, he did, yeah.

12 Q: Before the accident?

13 A: Yeah, before the accident.

14 Q: You believe it was on that December

15 10th?

16 A: Yeah. It was somewhere probably within

17 that day, yeah.

18 Q: So you woke up and your mom was

19 sleeping?

20 A: Yeah, she's asleep and my brother is

21 asleep.

22 Q: Your dad is gone?

23 A: Mm-hmm.

24 Q: Is that a yes?

25 A: Yes, yes.

Page 55

1 Q: Do you know why your... I'm going to

2 refer to it as your truck. I understand it was taken

3 away, but do you know why your truck was at the house

4 that morning?

5 A: Whether my mom or my dad... I think my

6 mom was the one that brought it home, that's why she

7 didn't have a vehicle that morning. That's why when

8 I got in a car accident, she had to take my brother's

9 car to the accident.

10 Q: Okay, so you believe that she was going

11 to drive it that day?

12 A: I think my mom is the one that drove it

13 home, yeah.

14 Q: Okay. Do you know where your mom had her

15 key to the truck?

16 A: I don't.

17 Q: Okay, so where were you going to go when

18 you got in the truck?

19 A: First, I was going to my friend's house

20 and then I was going to the Chevron to get

21 cigarettes.

22 Q: Okay, had you gone to your friend's

23 house when the accident happened?

24 A: No, I hadn't got there yet.

25 Q: Where does your friend live?

Page 56

1 A: At the time, he lived in the apartments

2 there, which street is that? Tenya and Lake Mead,

3 right there around the corner from the accident.

4 Q: So tell me the direction you took to get

5 to where the accident happened. Because you left

6 your house--

7 A: Yeah.

8 Q: And you were on your way to your

9 friend's house when the accident--

10 A: Yeah, I got off the freeway and then I

11 had passed Tania on accident, so I had to make a U-

12 turn to come back. Then I was going to pull in to

13 the Chevron right there for Tania.

14 Q: Okay. Why did you take the truck if you

15 weren't supposed to take the truck?

16 A: Because I wanted to use it.

17 Q: Were you afraid to get it in trouble?

18 A: What do you mean?

19 Q: Were you afraid that your dad at Cool

20 Air Now, you might get in some sort of trouble?

21 A: Well I kind of did want to get away from

22 the house. I didn't want to be there.

23 Q: Why?

24 A: Because of what happened.

25 Q: Explain it to me.

Page 57

1 A: It's as simple as that.

2 Q: You say because of what happened. What

3 happened?

4 A: Well because of the situation that

5 happened between me and my dad, me getting fired and

6 all that happening.

7 Q: Okay, so there was a lot of tension in

8 the house?

9 A: I mean, I guess you could say that.

10 Q: You need to take that?

11 A: No. I don't know what it is. All

12 right, go ahead.

13 Q: So you just wanted to get away.

14 A: I guess, yeah.

15 Q: Did your mom know you were taking the

16 car?

17 A: No.

18 Q: Did you know your mom needed the car to

19 get to work?

20 A: No.

21 Q: I'm having trouble understanding why, if

22 you... you told me you're not supposed to take the

23 car. Why did you take the car?

24 A: Because people do things they're not

25 supposed to.

Page 58

1 Q: So you just didn't care?

2 A: I guess you could say that.

3 Q: Now, I think your dad testified, before

4 you got caught stealing, he had wanted to kick you

5 out, did you understand that? To kick you out of the

6 house?

7 A: No. I didn't know that.

8 Q: You didn't know that?

9 A: Mm-mm.

10 Q: Okay. I think he testified that you

11 weren't listening to certain things, not doing

12 chores, arguing with your mom. Any of those things

13 come up?

14 A: I mean things like that do happen, yeah.

15 Q: I understand things like that happen.

16 Did you ever have an understanding that it was to the

17 point that your mom or dad were considering kicking

18 you out of the house?

19 A: No, I didn't know that. Can we take a

20 break?

21 Q: Yeah, absolutely.

22 MR. MAREZ: Going off the record at

23 2:25 p.m. We are back on the record, the time is

24 2:32 p.m.

25 Q: We just had a break. Did you talk to

Page 59

1 anybody while you were on break?

2 A: No.

3 Q: Having been on break, have you thought

4 of any answers that I've asked you before and you've

5 answered that either you want to correct or clarify?

6 A: No.

7 Q: Anything you've said "I don't know" or

8 "I don't remember" to earlier that maybe now you

9 remember?

10 A: No.

11 Q: Okay. So when you left, I think we were

12 talking about why you would take that truck that

13 morning.

14 A: Mm-hmm.

15 Q: It was basically people do things

16 they're not supposed to do, correct?

17 A: Yes.

18 Q: When you took the truck, were you

19 concerned about any repercussions from... when you

20 took the truck, were you afraid that anything could

21 happen to you as a result of taking the truck?

22 A: No, I didn't even think about it.

23 Q: You weren't worried that something might

24 happen with your dad?

25 A: Nothing like that even came to mind.

Page 60

1 Q: Nothing with Cool Air Now?

2 A: No.

3 Q: Nothing with your mom?

4 A: No.

5 Q: At the time, if your dad had found you

6 with the truck, what do you think he would have done?

7 A: Call the cops, just like exactly what he

8 did.

9 Q: Why do you think that?

10 A: I mean, why wouldn't he? That's what

11 they did.

12 Q: I understand. Let's say you hadn't been

13 in the accident. Let's say you come home and he sees

14 you take the truck, you think he would have called

15 the cops on you?

16 A: Yeah.

17 Q: So why would you do that?

18 MS. STEPHENSON: Why would he do that?

19 Q: Yeah. Why would you take the truck if

20 you thought your dad might call the cops on you?

21 A: I mean just sometimes you just don't

22 think about it. Sometimes you're just in the moment.

23 Something seems like a good idea, so you do it.

24 Q: What was your friend's name that his

25 house you were going to?

Page 61

1 A: Why does that matter?

2 Q: He could be a witness.

3 A: I never got to see him.

4 Q: I know. What was his name?

5 A: His name was Brian, but he's no longer

6 here.

7 Q: Okay, Brian what?

8 A: I don't know his last name.

9 Q: Did he have a cell phone number?

10 A: Yeah, but I don't have it anymore. I

11 haven't talked to him since.

12 MR. SMITH: Did you say Brian or Ryan?

13 A: Brian.

14 MR. SMITH: Okay.

15 Q: You have not talked to him since?

16 A: No, I have not seen him since.

17 Q: You haven't seen him or you haven't

18 talked to him.

19 A: I haven't seen him, talked to him,

20 nothing. I lost contact with him after I went to

21 jail.

22 Q: Okay, you're supposed to go to his

23 house, right?

24 A: Yeah.

25 Q: He knew you were coming over?

Page 62

1           A: No, he had no idea I was going over  
2 there.  
3           Q: So if I find him and I say, "Hey, was  
4 Efren coming to your house?" he's going to say, "I  
5 had no idea."  
6           A: Yeah.  
7           Q: What were you going over there for?  
8           A: Just to get away.  
9           Q: Was he a heroin user also?  
10          A: No.  
11          Q: Was he a heroin seller?  
12          A: No.  
13          Q: How did you know Brian?  
14          A: I had met him through another friend a  
15 while ago, like maybe a year before that.  
16          Q: What does he do for work?  
17          A: What did he do for work? I think he  
18 installed like security cameras or something like  
19 that.  
20          Q: Did he live in the house or an  
21 apartment?  
22          A: In a house.  
23          Q: Do you know if he owned it or?  
24          A: I think he rented it.  
25          Q: Okay, did he have roommates?

Page 63

1           A: I guess his mom.  
2           Q: Okay. What time were you going to get  
3 to his house?  
4           A: I don't even remember what time I left  
5 the house.  
6           Q: And so you were just going to show up  
7 announced.  
8           A: Yeah, I was just going over there. I  
9 didn't have my phone.  
10          Q: Where was your phone?  
11          A: I think... I don't remember. For some  
12 reason, I didn't have my phone. I didn't have... I  
13 don't know. For some reason, I didn't have it.  
14          Q: At the time of the accident, were you  
15 going to his house or to get cigarettes?  
16          A: I was stopping to get cigarettes.  
17          Q: All right, so walk me through what  
18 happens with the accident.  
19          A: I was driving and then I was reaching  
20 down to grab my wallet out of the cup holder. I look  
21 up, and that guy just stopped in the middle of the  
22 street for no reason when the light was green because  
23 as soon as I look up, he's just stopped there in  
24 front of me.  
25          Q: You're talking about my client?

Page 64

1           A: Yes.  
2           Q: So did you have time to apply the brakes  
3 or was it too late?  
4           A: I had time to apply the brakes, yeah.  
5           Q: Approximately how long did you apply the  
6 brakes for?  
7           A: A couple of seconds.  
8           Q: Two, three, four?  
9           A: I would say two or three.  
10          Q: Did you apply the brakes hard or softly?  
11          A: Yeah, I smashed them.  
12          Q: Did you hear--  
13          A: The tires?  
14          Q: Yeah.  
15          A: Mm-hmm.  
16          Q: Is that a yes?  
17          A: Yes.  
18          Q: How fast do you think you were going  
19 before you applied the brakes?  
20          A: About 35, 40.  
21          Q: Why were you going into the, what did  
22 you say, the cup holder for your wallet?  
23          A: Yeah.  
24          Q: Why were you going to get your wallet?  
25          A: Because I was buying cigarettes.

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1           Q: Wouldn't it have been better to wait  
2 until you get in the parking lot to get your wallet?  
3           A: Well I had it in the cup holder, so I  
4 was just grabbing it.  
5           Q: But you looked down?  
6           A: For a second, yeah. I looked down to  
7 grab it.  
8           Q: Did you think my client was going to  
9 start driving or... because you said you looked up,  
10 and the light was green. You didn't understand why  
11 he would stop there.  
12          A: Yeah, I don't know why he would even  
13 stop there.  
14          Q: Okay, so did you think he was going to  
15 start going forward at some point?  
16          A: Well he should have... when I was  
17 driving, I look up, he's driving, so I'm looking  
18 down, there was no reason why he should have been  
19 stopped where he was.  
20          Q: Okay. So did you see his car actually  
21 moving before the accident?  
22          A: Yeah, he was driving.  
23          Q: So, it's your testimony is when he is  
24 driving and he stops for no reason. You look down to  
25 get your wallet--

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1           A: And as I look up, he stops. So I smash  
2 on the brakes, but it was too late.  
3           Q: And you have a recollection of seeing  
4 him driving in front of you before that?  
5           A: Oh yeah. He was going. He was up  
6 ahead.  
7           Q: Okay. Approximately how many cars lanes  
8 ahead was he the last time you saw him before you  
9 looked up?  
10          A: I would say like three.  
11          Q: I'll represent to you that my client has  
12 testified he stopped at a red light, and the light  
13 turned green. That's why he was stopped.  
14          A: We weren't even at the light.  
15          Q: So if that's my client's testimony,  
16 you're saying my client's a liar?  
17          A: Yes.  
18          Q: Describe the impact for me.  
19          A: What do you mean?  
20          Q: Was it hard?  
21          A: It wasn't that hard.  
22          Q: Had you been in an accident before this  
23 one?  
24          A: I mean, not really. I don't think so.  
25          Q: Are you able to estimate for me how fast

Page 67

1 you were going at the time of impact?  
2          A: Like I told you. Probably 35.  
3          Q: Well you said you were going 35 before  
4 you hit the brakes?  
5          A: Oh, I mean, how would I know that? I  
6 hit the brakes. I don't know how fast I was going  
7 then.  
8          Q: Okay. All right. That's fine. I was  
9 just seeing if you had an estimate for me.  
10          A: Obviously it would be slower than 35.  
11          Q: Okay. Why do you think you were going  
12 35 before you hit the brakes?  
13          A: Because I was slowing down turning to  
14 the chevron.  
15          Q: And it's your testimony that the impact  
16 was not that hard?  
17          A: I wouldn't say it was that hard. Nobody  
18 went to the hospital.  
19          Q: Okay. So your definition of hard is  
20 someone's got to go to the hospital?  
21          A: That would be hard to me, yeah.  
22          Q: Okay. And if no one-  
23          A: It wasn't soft, but it wasn't hard.  
24          Q: Okay. So medium impact?  
25          A: Yeah. You could say a slightly hard

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1 maybe. Not hard, though.  
2          Q: Okay. Your car was totaled, right?  
3          A: I don't know if it was totaled.  
4          Q: We'll mark this Exhibit 4. Do you  
5 recognize the car in that photo?  
6          A: Yeah. That's the truck.  
7          Q: After the accident?  
8          A: Yeah.  
9          Q: Would you consider that a lot of damage  
10 to the truck?  
11          A: I mean to my truck, yeah.  
12          Q: Okay. And so you're saying even though  
13 there's a lot of damage to truck, it wasn't a hard  
14 hit?  
15          A: It wasn't that hard.  
16          Q: Okay. You see on the dash board of the  
17 truck? What was all that stuff?  
18          A: I don't know what that is. Looks like  
19 paperwork.  
20          Q: Okay. Other than your wallet, did you  
21 have any other possessions in the truck?  
22          A: I don't believe so.  
23          Q: My client said that he remembers seeing  
24 a lot of stuff in the truck. You don't think any of  
25 that stuff was yours?

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1          A: It's just paperwork. That's probably  
2 what it was.  
3          Q: For work?  
4          A: Work-related paperwork, yeah. Anything  
5 In there would've been work-related.  
6          Q: Okay.  
7          A: But see how far we are? If you go look  
8 at this intersection, you'll see how far we are away  
9 from the light.  
10          Q: Okay.  
11          A: So why would your client be stopped  
12 there?  
13          Q: Okay. So again--  
14          A: Look at that sign right there.  
15          Q: I understand. So again if my client  
16 says he was stopped at the lights, your testimony is  
17 he's a liar?  
18          A: Correct.  
19          Q: Okay. Did you end up hurt at all after  
20 the accident?  
21          A: No.  
22          Q: No pain, no stiffness, no soreness?  
23          A: Nothing at all. I'm fine.  
24          Q: You saw the accident was going to  
25 happen, correct?

Page 70

1 A: Well yeah, when it was too late.

2 Q: What I'm saying, you knew it was coming

3 within a second or two?

4 A: Yeah. I braced for it.

5 Q: Okay. What happened after the impact?

6 A: I got out and your client got out and we

7 started talking.

8 Q: Tell me what was said.

9 A: The first thing your client said was,

10 "Oh don't worry. I'm not one of those crazy people

11 that's going to try and come after you and sue you."

12 So from that moment on, I knew that's exactly what he

13 was.

14 Q: Okay.

15 A: He's seen a work truck coming.

16 Q: Okay. He say anything else?

17 A: Yeah. When the police showed up, asked

18 us both, "Are you guys fine?" I said, "Yeah," and

19 your client said, "Yeah." He said he's fine. He

20 said, "Nothing. No worries."

21 Q: Okay. Anything else you remember being

22 said?

23 A: Other than that, that's really all the

24 most part I remember.

25 Q: Do you remember telling my client that

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1 you were going to get cigarettes?

2 A: Yeah. I remember telling him I was

3 getting a cigarette. That's what I was going to do.

4 Q: Do you remember going to get cigarettes

5 after the accident, waiting for the police or your

6 dad to show up?

7 A: No. I don't remember that part.

8 Q: Do you remember telling my client,

9 "Hey. I am going to get some cigarettes. I'm going

10 to be right back"?

11 A: I don't remember that.

12 Q: So it's your testimony you never left

13 the scene of the accident from the time of the

14 accident until the police showed up?

15 A: I don't remember it.

16 Q: Okay. So my client says you did leave

17 the scene. You said you were going to get

18 cigarettes. Are you denying that or are you saying

19 he might be correct?

20 A: He might be, he might not be. I don't

21 remember.

22 Q: Okay. So you're not going to dispute

23 him saying that, then?

24 A: I mean I don't remember.

25 Q: Okay. So you have no basis to call my

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1 client a liar on that fact, correct?

2 A: I mean I don't remember, so I couldn't

3 say yes or no.

4 Q: Okay. All right. So after you guys

5 have a little discussion, what happens?

6 A: Well, that's when the police officer

7 shows up.

8 Q: Okay. And then what happened?

9 A: We're just sitting there talking. The

10 cop writes me a ticket, and then until once my mom

11 shows up, then they realize that I took the truck

12 without permission. Mom shows up and tells the cop

13 that, "I was just reporting this truck's stolen."

14 Then that's when they put me in handcuffs, and from

15 there, I went to jail.

16 Q: Did you have any other conversations

17 with my client?

18 A: I don't believe so.

19 Q: Did you have conversation with my client

20 sitting on the curb?

21 A: I don't think so, no.

22 Q: My client said, at some point, you're

23 sitting there in handcuffs and he's talking to you

24 about kind of making good life choices and things

25 like that. Do you recall a conversation like that?

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1 A: No.

2 Q: If my client testified to that, is he

3 lying or you just don't remember?

4 A: I don't remember, but I am pretty sure

5 he's lying.

6 Q: Did you ever see the officer talking to

7 my client outside of your earshot?

8 A: Yes.

9 Q: I assume you don't know what was said if

10 it was outside your earshot, correct?

11 A: Well, actually, no. Actually, no. They

12 were right there the whole time. Now that I think

13 about it, yeah. His wife showed up, as a matter of

14 fact. Him and the officer and the wife were sitting

15 there just talking. That's right. They were right

16 there.

17 Q: Next to you or away from you?

18 A: Not that far from me.

19 Q: Okay. My question is, did you ever see

20 my client talk to the officer where you could not

21 hear?

22 A: Where I could not hear? I don't know.

23 I don't think so because the officer couldn't get

24 that far away from me because I was in handcuffs. He

25 couldn't leave that far away from me.

<p style="text-align: right;">Page 74</p> <p>1 Q: Okay. It's your testimony that my</p> <p>2 client told the officer that he was not hurt at that</p> <p>3 time?</p> <p>4 A: Damn it. I'm not going to take it now.</p> <p>5 Q: Okay. Did you have a conversation with</p> <p>6 your dad at the scene of the accident?</p> <p>7 A: I mean, he said a few words to me, and</p> <p>8 that was it.</p> <p>9 Q: What did he say to you?</p> <p>10 A: Oh shit. I don't recall what he said.</p> <p>11 I don't remember what he said.</p> <p>12 Q: Okay. Have any conversation with your</p> <p>13 mom at the accident scene?</p> <p>14 A: They were the first few words, ``You're</p> <p>15 in trouble,`` once she showed up. The initial</p> <p>16 conversation was, ``You're in trouble. Look what you</p> <p>17 caused,`` and then she walked away.</p> <p>18 Q: You're not disputing you're at fault for</p> <p>19 the accident, are you?</p> <p>20 A: No.</p> <p>21 Q: Did you ever talk to my client's wife?</p> <p>22 A: No.</p> <p>23 Q: It's my understanding that two police</p> <p>24 officers showed up.</p> <p>25 A: Yeah. The second one was the one that</p>	<p style="text-align: right;">Page 76</p> <p>1 time. This time, they didn't really think I was</p> <p>2 really using like that, I guess you could say.</p> <p>3 Q: Well, your dad testified, and I think</p> <p>4 it's in the police report, that the reason you were</p> <p>5 embezzling was because of the drugs, because you were</p> <p>6 on drugs.</p> <p>7 A: Yeah.</p> <p>8 Q: So my question is, prior to the day of</p> <p>9 the accident, did they try to do anything to help you</p> <p>10 with the fact that they thought you were on drugs?</p> <p>11 A: I mean, yeah. They've tried.</p> <p>12 Q: Like what?</p> <p>13 A: Clinics.</p> <p>14 Q: What kind of clinics?</p> <p>15 A: Methadone clinics</p> <p>16 Q: This was before the accident?</p> <p>17 A: Yeah.</p> <p>18 Q: When approximately?</p> <p>19 A: I couldn't tell you the dates. I</p> <p>20 couldn't tell you--</p> <p>21 Q: I understand. Approximately, was it the</p> <p>22 same year?</p> <p>23 A: No, I think it was the year before.</p> <p>24 Q: Just one time?</p> <p>25 A: No. Three or twice, I think. Might</p>
<p style="text-align: right;">Page 75</p> <p>1 transported me.</p> <p>2 Q: Okay. Did you tell either of the cops</p> <p>3 that you stole the car?</p> <p>4 A: No.</p> <p>5 Q: At that time, did you consider yourself</p> <p>6 to have stolen the car?</p> <p>7 A: Yeah.</p> <p>8 Q: Did you ever see your dad and my client</p> <p>9 talking?</p> <p>10 A: They might have talked.</p> <p>11 Q: Do you remember seeing them talk?</p> <p>12 A: I mean, there was a group huddled up; my</p> <p>13 mom, the cop, the client, the wife. So some words</p> <p>14 could've been exchanged for sure.</p> <p>15 Q: On the day of the accident, were your</p> <p>16 parents trying to help you with your heroin</p> <p>17 addiction?</p> <p>18 A: What do you mean? Describe exactly as</p> <p>19 how they're trying to help me.</p> <p>20 Q: Anything, I guess, that you consider</p> <p>21 them trying to help you. Did they try to get you to</p> <p>22 rehab? did they try to help you wean off your</p> <p>23 addiction--</p> <p>24 A: Well, at that point in time, I don't</p> <p>25 think they even really knew until that, until this</p>	<p style="text-align: right;">Page 77</p> <p>1 have been three times.</p> <p>2 Q: Before the accident?</p> <p>3 A: Mm-hmm.</p> <p>4 Q: And all three were methadone clinics?</p> <p>5 A: Yeah.</p> <p>6 Q: Methadone is specifically for heroin</p> <p>7 users, correct?</p> <p>8 A: Yeah.</p> <p>9 Q: So no one's there because they're</p> <p>10 addicted to marijuana, correct?</p> <p>11 A: No.</p> <p>12 Q: Okay. No one's there because they're</p> <p>13 alcoholics, correct?</p> <p>14 A: No.</p> <p>15 Q: It's specifically heroin?</p> <p>16 A: Yeah. Opiate use.</p> <p>17 Q: Okay. Pills or heroin?</p> <p>18 A: Yeah.</p> <p>19 Q: Did you believe your time in that clinic</p> <p>20 worked?</p> <p>21 A: Yeah. The time in the clinic worked,</p> <p>22 yeah.</p> <p>23 Q: Every time?</p> <p>24 A: Yeah.</p> <p>25 Q: And then you relapse?</p>



<p style="text-align: right;">Page 78</p> <p>1           A: You usually pretty much think you're 2 good. ``I don't need this no more,`` and you'll stop 3 and then there will come a time again where you'll 4 think, ``I'm fine. If I use once, I'll be fine,`` 5 but then it never happens like that. 6           Q: You kind of fall back in to it? 7           A: Mm-hmm. 8           Q: Is that a yes? 9           A: Yes. 10          Q: What's the last thing you remember about 11 being at the accident scene? 12          A: The last thing, going to jail. Getting 13 put in the car and going to jail. 14          Q: Did the officers say anything to you? 15          A: They did, but I don't remember what. 16          Q: Did they tell you you're being arrested? 17          A: Well, yeah. 18          Q: Did they tell you what for? 19          A: Yes. 20          Q: For what? 21          A: At the time, it was... what was the 22 charge? Possession of a stolen vehicle, I think it 23 was. 24          Q: Did the officer ask you if you were on 25 drugs or alcohol?</p>	<p style="text-align: right;">Page 80</p> <p>1           Q: Why do you say that? 2           A: Because I know. I was there. 3           Q: Well, we talked about a couple of things 4 you think my clients lying about, right? 5           A: I know for a fact. 6           Q: I understand that. Are there other 7 things we haven't talked about that you think my 8 client's lying about? 9           A: Not that I could think of. 10          Q: So we've covered everything that you 11 think my client's lying about? 12          A: That I know he's lying about, yes. 13          Q: Well, actually I've got another one that 14 I haven't asked you about. Did you ever hear... my 15 client testified that your dad said at the scene, ``I 16 should have taken his keys away from him.`` 17          A: No. 18          Q: Did you ever hear your dad say that 19 statement? 20          A: No, because they had the keys. 21          Q: So if my client testifies about that, 22 you're saying my client's a liar? 23          A: Yes. 24          Q: No one else was in the car with you, 25 correct?</p>
<p style="text-align: right;">Page 79</p> <p>1           A: No. 2           Q: Do you know if he did an investigation 3 in terms of whether you were on drugs or alcohol? 4           A: He did not. 5           Q: Is there anything else about the 6 accident or your conversations that you remember that 7 you haven't told me? 8           A: No, I don't believe so. 9           Q: Okay, just to make sure you're not going 10 to come into trial and say, ``Oh yeah. Your client 11 said this,`` or, ``The officer said this.`` 12          A: I mean, I don't remember anything else. 13          Q: Okay. As we sit here right now, you've 14 told me all the conversation that you remember. 15          A: Yeah. 16          Q: Do you know if there were any witnesses 17 to the accident? 18          A: No, we didn't have any witnesses, 19 unfortunately. 20          Q: No one that stopped at least, assuming 21 there were cars on the road? 22          A: Yeah. If we did, we wouldn't be here 23 right now. 24          Q: Why do you say that? 25          A: Because your client's a liar.</p>	<p style="text-align: right;">Page 81</p> <p>1           A: No. 2           Q: And you said your phone was not in the 3 car? 4           A: I don't remember if I had my phone with 5 me or not. I don't think I did, though. It might 6 have been dead. I don't remember why I didn't... 7 Oh, you know what? I did have my phone because I 8 called my uncle. I called my uncle for the tow 9 truck. 10          Q: Okay. What's your uncle's name? 11          A: Efren. 12          Q: Does he have a middle initial that 13 differentiates you two? 14          A: No, Efren Sotelo. That's the one I was 15 telling you about the other accident. I don't know 16 if it's him or not, but that's him. 17          Q: Okay. You said that day you had not 18 used any heroin, correct? 19          A: Mm-hmm. 20          Q: Had you used heroin the day before? 21          A: No. 22          Q: Are you aware of my client's injury 23 claims in this case? 24          A: Yes. 25          Q: What do you think about that?</p>

<p style="text-align: right;">Page 82</p> <p>1 A: I am aware that he's probably had</p> <p>2 probably things from the past.</p> <p>3 Q: Why do you say that?</p> <p>4 A: Because I think he mentioned something</p> <p>5 like that.</p> <p>6 Q: Okay. Are you aware of the injuries</p> <p>7 he's claiming is from the accident?</p> <p>8 A: I mean, obviously that's why we're here,</p> <p>9 right?</p> <p>10 Q: Do you have any understanding... I mean,</p> <p>11 have you ever seen any medical bills, any reports?</p> <p>12 A: No. I've never seen anything like that.</p> <p>13 Q: Okay. Anything with the amount of</p> <p>14 injuries he's claiming?</p> <p>15 A: Mm-mm.</p> <p>16 Q: If my client says he was injured because</p> <p>17 of the accident, are you saying he's a liar?</p> <p>18 A: Yes, because he said he was fine.</p> <p>19 Q: Okay. Is that your entire basis? Is</p> <p>20 that he said he was fine at the scene of the</p> <p>21 accident?</p> <p>22 A: Yeah. The officer asked him multiple</p> <p>23 times.</p> <p>24 Q: If my client had told the officer that</p> <p>25 he was hurt at the scene, would that change your</p>	<p style="text-align: right;">Page 84</p> <p>1 A: My great grandma? Well, I just call her</p> <p>2 abuelita, but her name is... fuck, what is my</p> <p>3 grandma's name? I always forget her name. I've</p> <p>4 always just known her as abuelita. You know, like</p> <p>5 grandma in Spanish.</p> <p>6 Q: Sure. You don't know her...</p> <p>7 A: I do know her name. I just forget</p> <p>8 sometimes.</p> <p>9 Q: All right. Where does she live?</p> <p>10 A: In Jerez Zacatecas, Mexico.</p> <p>11 Q: You want to spell that for the court</p> <p>12 reporter?</p> <p>13 A: J, Jerez is the city. J-E-R-E-S, and</p> <p>14 then Zacatecas, Z-A-C-A-T-A-C-A-S.</p> <p>15 Q: When you went to visit her, did you</p> <p>16 drive or fly?</p> <p>17 A: I drove.</p> <p>18 Q: How long is the drive from Las Vegas?</p> <p>19 A: It's a long drive.</p> <p>20 Q: Approximate.</p> <p>21 A: Twenty-four.</p> <p>22 Q: Twenty-four hours?</p> <p>23 A: Mm-hmm.</p> <p>24 Q: Where did you cross the border?</p> <p>25 A: Tijuana.</p>
<p style="text-align: right;">Page 83</p> <p>1 mind?</p> <p>2 A: I change my mind on what?</p> <p>3 Q: Whether or not my client was hurt from</p> <p>4 the accident?</p> <p>5 A: Well, if obviously if he was hurt then,</p> <p>6 then yeah, he would have been hurt from the accident,</p> <p>7 but if he's not.</p> <p>8 Q: Okay. So if my client told the officer</p> <p>9 at the scene he was hurt from the accident, then you</p> <p>10 would've believed him?</p> <p>11 A: I mean, that wouldn't mean I believe</p> <p>12 him.</p> <p>13 Q: You would still think he's a liar?</p> <p>14 A: I wouldn't have a reason to believe him.</p> <p>15 Yes.</p> <p>16 Q: Why?</p> <p>17 A: Well, the first thing he said to me when</p> <p>18 he hopped out of the vehicle.</p> <p>19 Q: Okay. In one of your affidavits, you</p> <p>20 said that you were visiting your... is it great</p> <p>21 grandma?</p> <p>22 A: In Mexico?</p> <p>23 Q: Yeah.</p> <p>24 A: Yeah.</p> <p>25 Q: What's her name?</p>	<p style="text-align: right;">Page 85</p> <p>1 Q: How far is the drive from Tijuana?</p> <p>2 A: From here?</p> <p>3 Q: How far is the drive from Tijuana to</p> <p>4 your great grandmother's house?</p> <p>5 A: I am not even sure. It's a long drive,</p> <p>6 though.</p> <p>7 MR. SMITH: Would you like me to close</p> <p>8 that for you?</p> <p>9 A: Yeah. Can you close that please?</p> <p>10 MR. SMITH: I got it, hang on. Keep</p> <p>11 going.</p> <p>12 Q: Sure. Do you think that's more than 10</p> <p>13 hours?</p> <p>14 A: Yeah. It's more than 10 hours.</p> <p>15 Q: When you took the work truck, was it</p> <p>16 parked on the side of the house?</p> <p>17 A: It was park on the side of the house.</p> <p>18 Q: Same place you would park it?</p> <p>19 A: It was on the side just in the driveway.</p> <p>20 Q: Is that the same place you parked it</p> <p>21 A: Well, it usually could be in the</p> <p>22 driveway or in the back.</p> <p>23 Q: Did you ever park in the place where you</p> <p>24 found it that day?</p> <p>25 A: Yeah. I would park it both places. I</p>

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1 never heard you're not allowed to have work trucks in  
2 the street or anything, so we would always have them  
3 outside.

4 Q: Okay. When your parents took the car  
5 away from you, did they explain how you're supposed  
6 to get around if you needed to go somewhere?

7 A: No.

8 Q: Okay. I understand the affidavit you  
9 signed you went to Mr. Smith's office, correct?

10 A: Who?

11 Q: Mr. Smith?

12 A: Your office? Yeah.

13 Q: Tell me how that came about.

14 A: I was just told to go down there.

15 Q: By who? I don't want to know... if you  
16 had a conversation with your attorney, let me make  
17 this clear. If Ms. Stephenson said something to you,  
18 I don't want to know about it. So did anyone other  
19 than Ms. Stephenson tell you to go to Mr. Smith's  
20 office?

21 MS. STEPHENSON: Assumes facts not in  
22 evidence.

23 A: What was that?

24 Q: You can answer.

25 A: I mean, I don't even remember. It's

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1 been a while, hasn't it?

2 Q: Do you think it was your dad?

3 A: I don't think it was my dad. I don't  
4 remember who told me. I remember having to go down  
5 there.

6 Q: Did you type out the document that you  
7 signed?

8 A: I believe I wrote it down.

9 Q: On a piece of paper?

10 A: Yeah. And then I believe they typed it  
11 up afterwards and then gave it back to me to make  
12 sure everything was correct when I signed it.

13 Q: Okay. So word for word, what is in that  
14 affidavit is what you wrote down?

15 A: Yeah.

16 Q: At that time, did you know Ms.  
17 Stephenson was your attorney?

18 A: I believe so.

19 Q: Why didn't you ask Ms. Stephenson to go  
20 with you?

21 A: I don't know. Why would I ask her to go  
22 with me?

23 Q: You go into another lawyer's office to  
24 sign something under oath, I would want my attorney  
25 there.

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1 A: I didn't think about that.

2 Q: Okay. Who was in the room when you  
3 wrote out your statement?

4 A: It wasn't you?

5 Q: You can't ask questions.

6 A: I mean, I don't even remember.

7 Q: So did you believe it was Mr. Smith?

8 A: He might have been there.

9 Q: Okay, anybody else?

10 A: I think there might have been somebody  
11 else, yeah.

12 Q: Okay. Do you remember a female who's a  
13 notary?

14 A: Yeah. There was somebody there, yeah.

15 Q: Okay. Did you have any conversations  
16 with her?

17 A: No.

18 Q: Never spoke with her?

19 A: I might have stated my name or something  
20 like that maybe. I don't remember exactly how it  
21 happened.

22 Q: Okay. Was your dad with you?

23 A: No.

24 Q: There was just you?

25 A: Yeah.

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1 Q: How did you get there?

2 A: I got a ride.

3 Q: From who?

4 A: I don't remember who took me. I think  
5 my brother. I don't remember.

6 Q: Okay. Did you have any conversations  
7 with anyone when you were there?

8 A: No.

9 Q: No? So you silent the whole time you  
10 walked in--

11 A: Oh. Obviously there was conversations,  
12 yeah.

13 Q: So tell me about the conversations.

14 A: They just asked me to write it out and  
15 make sure everything was fine, dates, words said,  
16 everything.

17 Q: Okay. What did they ask you to write  
18 out?

19 A: I don't remember everything. It's been  
20 a while. It was like four, five months ago. I don't  
21 remember exactly everything that happened here.

22 Q: Okay. Did they tell you what to write  
23 out?

24 A: No.

25 Q: Okay. Did you write in like a yellow

<p style="text-align: right;">Page 90</p> <p>1 pad like I've got, like a legal pad?</p> <p>2 A: No.</p> <p>3 Q: Was it a white sheet of paper?</p> <p>4 A: I think it was a white sheet of paper.</p> <p>5 Q: And it's your testimony that what's in</p> <p>6 the affidavit is verbatim, what you wrote down?</p> <p>7 A: Yeah.</p> <p>8 Q: Did you ever have conversation with your</p> <p>9 dad about going to Mr. Smith's office?</p> <p>10 A: I don't recall that.</p> <p>11 Q: Did you have a conversation with your</p> <p>12 mom about going to Mr. Smith's office?</p> <p>13 A: I don't recall that either.</p> <p>14 Q: Do you have any understanding as to the</p> <p>15 legal significance whether or not you had permission</p> <p>16 to use the car and didn't have permission to use the</p> <p>17 car?</p> <p>18 A: Yeah, of course.</p> <p>19 Q: What's the difference?</p> <p>20 A: The difference is if you have the right</p> <p>21 to use the vehicle, you're legally allowed to use the</p> <p>22 vehicle. If not, you're not.</p> <p>23 Q: Okay. Do you understand how that</p> <p>24 distinction could impact you in this case?</p> <p>25 A: Yeah.</p>	<p style="text-align: right;">Page 92</p> <p>1 my client's damages?</p> <p>2 A: Yeah.</p> <p>3 Q: Okay. You understand my client's claim</p> <p>4 medical bills in excess of a million dollars?</p> <p>5 A: Yeah. Now I understand, but I didn't</p> <p>6 know it was a million dollars.</p> <p>7 Q: Okay. Do you understand that you've</p> <p>8 been defaulted in this case.</p> <p>9 A: What does that mean?</p> <p>10 Q: That means Cool Air Now's insurance</p> <p>11 company didn't represent you and let the judge take</p> <p>12 what's called the default, meaning that the court is</p> <p>13 essentially finding you at fault.</p> <p>14 MR. SMITH: Misstates the facts.</p> <p>15 MS. STEPHENSON: Mistates...</p> <p>16 Q: You can answer.</p> <p>17 A: I wasn't aware of that.</p> <p>18 MS. STEPHENSON: Just so I am clear, I</p> <p>19 didn't hear. Did you say did or did not?</p> <p>20 Q: Did. Do you have an understanding that</p> <p>21 Cool Air Now's insurance has sued you in a separate</p> <p>22 law suit?</p> <p>23 A: No.</p> <p>24 Q: They've sued you in a separate law suit</p> <p>25 saying they don't have a duty to represent you here</p>
<p style="text-align: right;">Page 91</p> <p>1 Q: How?</p> <p>2 A: Got to be sued, right?</p> <p>3 Q: Okay. Do you have an understanding in</p> <p>4 terms of how Cool Air Now's insurance could be</p> <p>5 impacted by whether or not you have permission to use</p> <p>6 the vehicle?</p> <p>7 MR. SMITH: I've got to object. Out of</p> <p>8 source, calls for legal conclusion.</p> <p>9 Q: You can answer.</p> <p>10 A: I am not going to answer.</p> <p>11 Q: You can answer.</p> <p>12 A: I am not going to answer.</p> <p>13 Q: You have to answer.</p> <p>14 A: Well. Okay. What was the question?</p> <p>15 Q: Do you have an understanding as to the</p> <p>16 impact on Cool Air Now's insurance in terms of</p> <p>17 whether or not you had permission to use the car or</p> <p>18 not.</p> <p>19 MR. SMITH: Same objections.</p> <p>20 A: Yeah. I guess I do.</p> <p>21 Q: What's that?</p> <p>22 A: They can be sued, I guess.</p> <p>23 Q: Okay. Do you understand that, if the</p> <p>24 jury believes you didn't have permission to use the</p> <p>25 vehicle, that you could personally be on the hook for</p>	<p style="text-align: right;">Page 93</p> <p>1 in this case. Do you understand that?</p> <p>2 A: No, I didn't know that.</p> <p>3 Q: Has Cool Air Now's insurance ever</p> <p>4 offered you what's called independent counsel for</p> <p>5 this case?</p> <p>6 A: No.</p> <p>7 Q: Knowing that they're trying to say that</p> <p>8 Ms. Stephenson doesn't have to represent you, do you</p> <p>9 think that's something you might want is independent</p> <p>10 counsel?</p> <p>11 MR. SMITH: Calls for legal conclusion,</p> <p>12 misstates the facts.</p> <p>13 A: I don't understand that.</p> <p>14 Q: I think you're entitled to independent</p> <p>15 legal counsel that's not associated with Cool Air</p> <p>16 Now's insurance because they're trying to say that</p> <p>17 Ms. Stephenson doesn't have to represent you. If</p> <p>18 that's true, would you want your own independent</p> <p>19 attorney?</p> <p>20 MR. SMITH: Counsel's opinions are</p> <p>21 irrelevant. Assumes facts not in evidence,</p> <p>22 incomplete hypothetical, speculative, calls for legal</p> <p>23 conclusion.</p> <p>24 MS. STEPHENSON: Go ahead and answer.</p> <p>25 Q: Do you understand that if the jury</p>

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1 thinks you didn't have permission to use the car and  
 2 Cool Air Now's insurance doesn't cover you, that  
 3 you're personally exposed?  
 4 A: Yes.  
 5 Q: Does that worry you?  
 6 A: No.  
 7 Q: Why?  
 8 A: I was just not aware about it.  
 9 Q: Have you worked for Cool Air Now since  
 10 the accident?  
 11 A: No.  
 12 Q: Never?  
 13 A: No.  
 14 Q: Who owned the truck?  
 15 A: The company.  
 16 Q: In your affidavit, you said your dad  
 17 owned the truck.  
 18 A: Well. It's his company.  
 19 Q: Did your dad own it or did the company  
 20 own it?  
 21 A: Well, it would be the company's truck.  
 22 Q: Okay. So then in your affidavit, when  
 23 you said your dad owned it, that would not be  
 24 accurate?  
 25 A: Well, I guess it's the company's truck,

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1 then.  
 2 Q: So my question is, in your affidavit,  
 3 you said your dad owned the truck. That would not be  
 4 accurate?  
 5 A: Well, my dad owns the company.  
 6 Q: Simple question. In your--  
 7 A: I mean, I don't understand how you don't  
 8 understand that.  
 9 Q: My question to you is, in the affidavit,  
 10 it says your dad owns the truck--  
 11 A: Okay, so the company owns the truck.  
 12 Q: So then your affidavit would be  
 13 inaccurate?  
 14 A: Okay. That part, well I guess it would  
 15 be. The truck is owned by the company, I guess.  
 16 A: Okay.  
 17 MR. SMITH: Calls for legal conclusion.  
 18 Q: Is that you?  
 19 A: Yeah. I am not going to take it.  
 20 Q: You said that you recall my client  
 21 telling the office he did not suffer injuries at the  
 22 accident scene, correct?  
 23 A: Yes.  
 24 Q: If the officer witness report that my  
 25 client said he was injured, is the officer lying?

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1 A: Yeah, because I clearly heard it, so I'm  
 2 pretty sure he didn't write that.  
 3 MR. SMITH: Belated objection. Calls  
 4 for opinion as to the veracity of another witness.  
 5 It's improper.  
 6 Q: Kevin, I'm going to ask you not to make  
 7 speaking objections. If you have any objections to  
 8 the form--  
 9 MR. SMITH: I have made my objection to  
 10 form, counsel. That was a bad question. You know  
 11 it.  
 12 Q: I don't think it was bad at all. If you  
 13 have an objection to form, say so. Let's mark this  
 14 as the next one in line.  
 15 MR. MAREZ: Exhibit 5.  
 16 Q: Exhibit 5. Efren, I'll represent to you  
 17 that this is the traffic accident report. At the  
 18 bottom of the first page, see, it's a description of  
 19 the accident. Last sentence says vehicle 2 driver,  
 20 which is my client, claim neck injuries.  
 21 A: Yeah, I never heard him say nothing like  
 22 that.  
 23 Q: So it's your position that the officer  
 24 is lying in his report?  
 25 MR. SMITH: Calls for an opinion as to

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1 the veracity of another witness, hearsay, officer's  
 2 narrative is not admissible.  
 3 Q: Kevin, a form objection wasn't asked.  
 4 MR. SMITH: I have formed my objection  
 5 to form. It was a bad question.  
 6 Q: Question is, are you saying the  
 7 officer's lying in his report?  
 8 MR. SMITH: Same objections.  
 9 MS. STEPHENSON: He said he never heard  
 10 that.  
 11 A: I never heard him say that.  
 12 Q: So do you believe the officer's lying?  
 13 MR. SMITH: Same objections.  
 14 A: I mean, I wouldn't know because I didn't  
 15 hear him say that. I heard him clearly say that he  
 16 was fine. I heard the officer ask him, "Do you want  
 17 me to call an ambulance for you or the fire medics?"  
 18 and he said, "No. I am fine." So why would he put  
 19 that?  
 20 Q: My question is, do you think the  
 21 officer's lying?  
 22 MR. SMITH: Same objections.  
 23 Q: Yes or no?  
 24 MR. SMITH: Same objections.  
 25 A: I didn't hear him say that.

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1           Q: He`s not answering the question. Do you  
2 think the officer`s lying?  
3           MR. SMITH: Same objections. Asked and  
4 answered multiple times. He`s answered to the best  
5 of his ability.  
6           A: I did. I answered to the best of my  
7 ability.  
8           Q: Yes or no. Do you think the officer`s  
9 lying?  
10          A: I do not know.  
11          MR. SMITH: Same objection.  
12          MS. STEPHENSON: Calls for speculation.  
13          A: How would I know? I didn`t hear him say  
14 that.  
15          Q: Okay. So as far as you know, that`s not  
16 true?  
17          A: As far as I know.  
18          Q: When did you realize you needed  
19 cigarettes?  
20          A: Actually, I was going to stop at the  
21 store to get them.  
22          Q: I understand. When you left the house,  
23 did you know you needed cigarettes?  
24          A: I don`t remember when I realized. I was  
25 going to stop to get them.

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1           Q: My question is why didn`t you stop by  
2 your house to get cigarettes?  
3           A: I don`t know. I don`t know why.  
4           Q: I assume there is a gas station by your  
5 house, right?  
6           A: Yeah. There is.  
7           Q: I assume you probably had to pass a  
8 couple of gas stations to get from your house to  
9 where the accident happened  
10          A: Yeah.  
11          Q: And you don`t know why you didn`t stop  
12 at those gas stations for cigarettes?  
13          A: I don`t know why I didn`t stop  
14 specifically at any of them.  
15          Q: Well do you know what time your mom  
16 usually got up in the morning?  
17          A: Different times every day.  
18          Q: And you said you knew if they caught you  
19 with the car they were going to call the cops on you?  
20          A: I didn`t know that, but I would assume  
21 so.  
22          Q: Okay. How long were you planning on  
23 staying at your friend`s house?  
24          A: I didn`t really have a plan. I just  
25 left. That was the area I had went to, so I was

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1 going to go there; but I didn`t have a plan. I  
2 didn`t have a plan.  
3           Q: Was your sister in school at the time?  
4           A: Yeah.  
5           Q: Did your mom use to take her to school?  
6           A: She took the bus.  
7           Q: Your sister took the bus?  
8           A: Yeah. Yes.  
9           Q: Your mom did not take your sister to  
10 school?  
11          A: At that time, I believe she was taking  
12 the bus.  
13          Q: How old do you think your sister was at  
14 the time, December 2014?  
15          A: Three years ago, 15.  
16          Q: You said your mom had brought the car  
17 home that night, the night before, correct?  
18          A: I believe so, yeah, and she was going to  
19 take her home.  
20          Q: In your affidavit, when you said you  
21 went to Mexico to stay with your great grandmother,  
22 how long did you stay with your great grandmother?  
23          A: Three months, I believe it was, four  
24 months.  
25          Q: You were there the entire time?

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1           A: Yes.  
2           Q: During that time when you were with your  
3 grandmother, did you ever stay in Tijuana?  
4           A: Yeah. I was in Tijuana for a while.  
5           Q: Visiting grandma?  
6           A: Oh. I passed through.  
7           Q: How long did you stay in Tijuana?  
8           A: I don`t remember.  
9           Q: More than a week or just a couple of  
10 days?  
11          A: I would say yeah, maybe more than a  
12 week.  
13          Q: More than a month?  
14          A: I don`t remember how long I was there  
15 for.  
16          Q: What were you doing in Tijuana?  
17          A: I got to pass through Tijuana.  
18          Q: I accept, but you could just pass  
19 through, take an hour to get through Tijuana. What  
20 were you doing there for more than a week?  
21          A: Just there.  
22          Q: Did you have a hotel room?  
23          A: No.  
24          Q: Staying with a friend?  
25          A: Does that mean I was... yeah, I was

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1 there.

2 Q: Were you staying with a friend?

3 A: Why is he asking? I don't get it.

4 MS. STEPHENSON: If you remember--

5 A: I remember I was there.

6 Q: Where were you staying?

7 A: I don't remember. I don't remember the

8 address and the point.

9 Q: I understand. Was it a friend's house,

10 was it a hostel, hotel, motel?

11 A: I was at a hotel. I don't remember

12 where exactly it was at.

13 Q: Is the hotel the only place you stayed

14 while you were in Tijuana?

15 A: I don't even remember. I don't

16 remember.

17 Q: Anything in particular you were doing in

18 Tijuana or just hanging out?

19 A: No. Not really.

20 Q: What was that?

21 A: I said no.

22 Q: Just hanging out?

23 A: I was just there.

24 Q: Do you have friends there?

25 A: Now I do, yeah. I've got friends there.

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1 Q: Were you in rehab when you were there?

2 A: No.

3 Q: Are you aware that your dad told Ms.

4 Stephenson you were in rehab when you were in

5 Tijuana?

6 A: No. I was not aware.

7 Q: So, is your dad lying?

8 MR. SMITH: Ask for an opinion as to

9 another witness is veracity. It's in improper.

10 Q: Kevin, a form objection will suffice.

11 MR. SMITH: That is the form.

12 Q: No. All you're allowed to say is form

13 and--

14 MR. SMITH: That's not true, and you

15 know that. Bonny has specifically said that you do

16 not just say form. You articulate what the problem

17 is with the question which is what I've done.

18 Q: You can answer the question.

19 A: What was the question?

20 Q: If your dad said you were in rehab, is

21 that not true?

22 MR. SMITH: Same objection.

23 A: I don't get what is going on here.

24 Q: You were in rehab, correct?

25 A: Okay. For a period, I was there in

Page 104

1 rehab for a while.

2 Q: In Tijuana?

3 A: Mm-hmm.

4 Q: Yes?

5 A: Yes.

6 Q: Why did you just deny it?

7 A: Because I am ashamed of being in rehab.

8 Q: Why would you be ashamed of that when

9 you told me you were in it three times before that?

10 Why would the fourth time be an issue?

11 A: I don't know. It's just different. You

12 fail three times before, the fourth time you just

13 figure. It's just something you deny now. You don't

14 want people to know.

15 Q: When you were in Tijuana in rehab, were

16 you there sort of on your own choosing or did your

17 dad send you down there?

18 A: It was my own choosing.

19 Q: Who paid for the rehab down there?

20 A: My parents.

21 Q: Why go to Tijuana for rehab? Why not do

22 it up here?

23 A: Because over here you can leave. Over

24 there, you can't. Over there, they don't actually

25 live at all. They have guards, and you can't leave.

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1 Here, you can leave whenever you want

2 Q: Okay. Did that one work for you?

3 A: Yeah, I don't get--

4 Q: Been clean since?

5 A: Mm-hmm.

6 Q: Congratulations.

7 A: Thank you.

8 Q: When you started working for Cool Air

9 Now, did you have to give your dad or someone at the

10 office your driving license?

11 A: Pretty sure I did.

12 Q: When you went to rehab the three times

13 out here in Vegas, did your dad pay for those?

14 A: The clinics, I paid for some of them.

15 Q: Did your dad pay for some of them?

16 A: He paid. I mean, there was times...

17 because it was weekly, so we have weeks where I would

18 pay. If I didn't have money, I would ask them. If

19 they had it, they would help me out.

20 Q: So at least part of it, he paid for you?

21 A: Yeah.

22 Q: Did you get to take anything out of the

23 truck when you were arrested?

24 A: No.

25 Q: Was your wallet and phone left in the

<p style="text-align: right;">Page 106</p> <p>1 truck?</p> <p>2 A: It might have been. I don't really</p> <p>3 know. I am pretty sure the officer grabbed all my</p> <p>4 property and took it with him.</p> <p>5 Q: But you're not sure of that?</p> <p>6 A: I don't remember.</p> <p>7 Q: Okay. You said your dad had an</p> <p>8 Escalade?</p> <p>9 A: At the time?</p> <p>10 Q: Yeah. Is that what he took to work the</p> <p>11 day of the accident?</p> <p>12 A: I believe so.</p> <p>13 Q: If he had taken the work truck, not the</p> <p>14 Escalade, would you have taken the Escalade?</p> <p>15 A: Yeah. I mean if I had access to the</p> <p>16 key, yeah.</p> <p>17 Q: You wouldn't have hot-wired the car or</p> <p>18 anything, right?</p> <p>19 A: I wouldn't have went that far, no.</p> <p>20 Q: Only take a car you had keys to?</p> <p>21 A: Yeah.</p> <p>22 Q: All right, I'll pass the witness.</p> <p>23 CROSS EXAMINATION</p> <p>24 BY: Kevin Smith</p> <p>25 Q: Efren, I want to be real clear. What was</p>	<p style="text-align: right;">Page 108</p> <p>1 Q: Who informed the police that they thought</p> <p>2 you'd stolen the truck?</p> <p>3 A: Initially, I think my mum was the one</p> <p>4 who was going to call the police until she got the</p> <p>5 call that I had gotten into a car accident. She</p> <p>6 showed up to the scene and told the officer, ``I was</p> <p>7 just reporting this truck stolen.``</p> <p>8 Q: And you understood that that was the</p> <p>9 crime you were arrested for?</p> <p>10 A: At that moment, yes.</p> <p>11 Q: Was that the crime you were charged</p> <p>12 with?</p> <p>13 A: Possession of a stolen vehicle.</p> <p>14 Q: Was that the crime you were convicted</p> <p>15 of?</p> <p>16 A: Yes.</p> <p>17 Q: What was your plea?</p> <p>18 A: Guilty.</p> <p>19 Q: Now, looking at Exhibit 2, there was</p> <p>20 some question about where you were, whether you were</p> <p>21 in custody on December 20. So, looking at page 2 of</p> <p>22 that, if you look down, the date on the left-hand</p> <p>23 side is January 5, 2015.</p> <p>24 A: That is the day I--</p> <p>25 MS. STEPHENSON: Let him finish.</p>
<p style="text-align: right;">Page 107</p> <p>1 the calendar date that you were terminated working</p> <p>2 for Cool Air Now Services?</p> <p>3 A: It was December 10th, 2014.</p> <p>4 Q: Did you do any work for Now Services in</p> <p>5 any capacity after December 10th, 2014?</p> <p>6 A: No, I did not.</p> <p>7 Q: You mentioned that you recall, at some</p> <p>8 point, your dad specifically told you, you didn't</p> <p>9 have permission to drive the company vehicles?</p> <p>10 A: Yes. Yes.</p> <p>11 Q: So, your understanding on December 12,</p> <p>12 2014 was you did not have permission to drive a Now</p> <p>13 Services vehicle?</p> <p>14 A: Correct.</p> <p>15 Q: And you understood that you were not a</p> <p>16 Now Services employee on that day?</p> <p>17 A: Correct.</p> <p>18 Q: On December 12, were you doing any task</p> <p>19 or were you going to do any task that would in any</p> <p>20 way benefit Now Services as a business?</p> <p>21 A: No.</p> <p>22 Q: Were you going to do any task that would</p> <p>23 in any way benefit your father, Juan?</p> <p>24 A: No. I was in flip flops and sweats, who</p> <p>25 could I be now?</p>	<p style="text-align: right;">Page 109</p> <p>1 Q: Let me finish my question. It says drug</p> <p>2 court status check. Below that, it says in custody.</p> <p>3 Does that help refresh your memory whether or not you</p> <p>4 were still in police custody?</p> <p>5 A: I was.</p> <p>6 Q: Okay. And then below that, it says</p> <p>7 comments, and I'll read it for the record. It says,</p> <p>8 ``Defendant has been assessed. Defendant's release</p> <p>9 date is 1-6-15. Defendant to report to choices for</p> <p>10 orientation.`` What is choices?</p> <p>11 A: Choices is where you show up to for drug</p> <p>12 court three times a week.</p> <p>13 Q: Does this help refresh your memory when</p> <p>14 you were released from custody?</p> <p>15 A: Yes.</p> <p>16 Q: How does it refresh your memory?</p> <p>17 A: It was after New Year's. I remember</p> <p>18 spending New Year's in jail. I remember our</p> <p>19 celebration and everything in jail, so I know it was</p> <p>20 after that.</p> <p>21 Q: Nothing further.</p> <p>22 MR. MAREZ: Anything further?</p> <p>23 MR. SCHNITZER: Yeah. I have one</p> <p>24 follow up on that same document on page 3.</p> <p>25 REDIRECT EXAMINATION</p>



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1 BY: Jordan Schnitzer

2 Q: So, it's your belief you were released

3 January 6?

4 A: Yes.

5 Q: And part of your... was that you were

6 not supposed to live at your parent's house?

7 A: Correct.

8 Q: And if you look at the 1-26-15 date, it

9 says on January 19th, 2015, you start living there

10 again?

11 A: No, I wasn't there.

12 Q: You were not there?

13 A: No. I was staying over at my aunt's

14 house.

15 Q: Okay. So that is inaccurate?

16 A: Yeah. I don't know why it says that.

17 Q: All right. I don't have any questions.

18 MS. STEPHENSON: All right, you're

19 done.

20 MR. MAREZ: Nothing further? All

21 right, this concludes the recorded deposition of

22 Efren Isaac Sotelo. The time is 3:27 p.m. Going off

23 the record in the matter of Philip Michael Bouchard

24 versus Efren Isaac Sotelo. The time is 3:27 p.m.

25 (Deposition adjourned at 9:59 p.m.)

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1 CERTIFICATE OF RECORDER

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

4 NAME OF CASE: PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO

5 I, Jared Marez, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I recorded the taking of the

8 deposition of the witness, Efren Sotelo,

9 commencing on 01/25/2017.

10 That prior to being examined the witness was

11 duly sworn to testify to the truth.

12 I further certify that I am not a relative or

13 employee of an attorney or counsel of any of the

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


15 counsel involved in said action, nor a person

16 financially interested in the action.

17 IN WITNESS WHEREOF, I have hereunto set my

18 hand in my office in the County of Clark, State of

19 Nevada, this 01/25/2017.

20 

21 \_\_\_\_\_

22 Jared Marez Notary

23

24

25

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1 CERTIFICATE OF TRANSCRIPTION

2 STATE OF NEVADA )

3 COUNTY OF CLARK )

4 NAME OF CASE: PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO

5 I, Peter Hellman, a duly commissioned

6 Notary Public, Clark County, State of Nevada, do hereby

7 certify: That I transcribed or supervised the transcription

8 of the Recorded deposition of the witness,

9 Efren Sotelo,

10 commencing on 01/25/2017. The Transcription is a true

11 and accurate representation of the testimony taken from

12 the witness, Efren Sotelo.

13 I further certify that I am not a relative or

14 employee of an attorney or counsel of any of the

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

16 counsel involved in said action, nor a person

17 financially interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my

19 hand in my office in the County of Clark, State of

20 Nevada, this 01/25/2017.

21 \_\_\_\_\_

22 \_\_\_\_\_

23 Peter Hellman - Notary

24

25

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1 Errata Sheet

2 NAME OF CASE: PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO

3 DATE OF DEPOSITION: 01/25/2017

4 NAME OF WITNESS: Efren Sotelo

5 Reason Codes: 1. To clarify the record.

6 2. To conform to the facts.

7 3. To correct transcription errors.

8 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

9 From \_\_\_\_\_ to \_\_\_\_\_

10 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

11 From \_\_\_\_\_ to \_\_\_\_\_

12 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

13 From \_\_\_\_\_ to \_\_\_\_\_

14 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

15 From \_\_\_\_\_ to \_\_\_\_\_

16 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

17 From \_\_\_\_\_ to \_\_\_\_\_

18 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

19 From \_\_\_\_\_ to \_\_\_\_\_

20 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

21 From \_\_\_\_\_ to \_\_\_\_\_

22 Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_

23 From \_\_\_\_\_ to \_\_\_\_\_

24 \_\_\_\_\_

25 EFREN SOTELO

DISTRICT COURT  
CLARK COUNTY, NEVADA

PHILIP MICHAEL BOUCHARD, an ) Case No.: A-16-740711-C  
individual, ) Dept. No.: XXXI  
Plaintiff, )  
vs. )  
EFREN ISAAC SOTELO, an individual; )  
JUAN SOTELO, an individual, NOW )  
SERVICES OF NEVADA, LLC d/b/a/ )  
COOL AIR NOW, a Nevada limited )  
liability company; DOES 1 through )  
10, inclusive; and ROE CORPORATIONS )  
1 through 20, inclusive, )  
Defendant. )  
\_\_\_\_\_ )

RECORDED DEPOSITION OF DELIA RUIZ SOTELO

Taken on January 26, 2018

At 2:05 PM

THE SCHNITZER LAW FIRM

9205 W. Russell Road, Suite 240

Las Vegas, Nevada 89148

<div>Page 2</div> <div>1 APPEARANCES:</div> <div>2 For the Plaintiffs: JORDAN P. SCHNITZER, ESQ.</div> <div>3 THE SCHNITZER LAW FIRM</div> <div>4 9205 W. Russell Road, Suite 240</div> <div>5 Las Vegas, Nevada 89148</div> <div>6</div> <div>7</div> <div>8 For the Defendants: MIKE SHANNON, ESQ.</div> <div>9 HALL JAFFE &amp; CLAYTON, LLP</div> <div>10 724 Peak Drive</div> <div>11 Las Vegas, Nevada 89128</div> <div>12</div> <div>13</div> <div>14</div> <div>15</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 4</div> <div>1 MS. GRONEMAN: Job number 306639. We are</div> <div>2 now on the record in the matter of Philip Michael</div> <div>3 Bouchard versus Efren Isaac Sotelo. My name is Kailey</div> <div>4 Groneman. I'm the videographer and officer. I work</div> <div>5 for Evolve Recording Group, LLC located at 10080 Alta</div> <div>6 Drive, Suite 100, Las Vegas, Nevada, 89145.</div> <div>7 Today's date is January 26, 2018. The</div> <div>8 time is 2:05 p.m. This deposition is being held at</div> <div>9 9205 West Russell Road, Suite 240, Las Vegas, Nevada,</div> <div>10 89148. This is the recorded deposition of Delia</div> <div>11 Sotelo. Can you please raise your right hand, ma'am?</div> <div>12 Do you solemnly swear or affirm that the</div> <div>13 testimony you're about to give will be the truth, the</div> <div>14 whole truth, and nothing but the truth to the best of</div> <div>15 your knowledge?</div> <div>16 MS. SOTELO: Yes.</div> <div>17 MS. GRONEMAN: Thank you. Can you please</div> <div>18 state your name with the spelling?</div> <div>19 MS. SOTELO: Delia Ruiz Sotelo. First</div> <div>20 name, D-E-L-I-A, last name, R-U-I-Z, hyphen, S-O-T-E-L-</div> <div>21 O.</div> <div>22 MS. GRONEMAN: Thank you. This</div> <div>23 deposition is an audio and visual-recorded deposition.</div> <div>24 This will be the official record and any transcripts</div> <div>25 created will be created by Evolve from this recording.</div>
<div>Page 3</div> <div>1 INDEX</div> <div>2 Witness Direct</div> <div>3 MR. SOTELO Page 5</div> <div>4 (BY: MR. SCHNITZER)</div> <div>5</div> <div>6</div> <div>7</div> <div>8</div> <div>9</div> <div>10 EXHIBITS</div> <div>11 NUMBER DESCRIPTION</div> <div>12 Exhibit 1 Police Report</div> <div>13 Exhibit 2 Incident Report</div> <div>14 Exhibit 3 Employee File</div> <div>15 Exhibit 4 Photograph</div> <div>16</div> <div>17</div> <div>18</div> <div>19</div> <div>20</div> <div>21</div> <div>22</div> <div>23</div> <div>24</div> <div>25</div>	<div>Page 5</div> <div>1 Would all attorneys present please identify themselves,</div> <div>2 their firm, anybody with them, and the party they</div> <div>3 represent beginning with the party noticing the</div> <div>4 proceeding?</div> <div>5 MR. SCHNITZER: Jordan Schnitzer for the</div> <div>6 plaintiff.</div> <div>7 MR. SHANNON: Mike Shannon for the</div> <div>8 defendants, and also present is Juan Sotelo.</div> <div>9 MS. GRONEMAN: Please proceed.</div> <div>10 DIRECT EXAMINATION</div> <div>11 BY: Jordan Schnitzer</div> <div>12 Q: First, do you have a preference in</div> <div>13 terms of how I address you, Ms. Sotelo, Delia?</div> <div>14 A: Uh-uh.</div> <div>15 Q: It doesn't matter?</div> <div>16 A: Uh-uh.</div> <div>17 Q: Okay.</div> <div>18 MR. SHANNON: You have to actually say</div> <div>19 yes or no.</div> <div>20 A: Oh. No.</div> <div>21 Q: Okay. I was going to give it though</div> <div>22 later. I assume this is your first deposition?</div> <div>23 A: Yes.</div> <div>24 Q: Okay. So, one of the ground rules is</div> <div>25 the court reporter is going to produce a transcript at</div>

<p style="text-align: right;">Page 6</p> <p>1 the end of this. There will be a little booklet that's</p> <p>2 transcribed everything we've said.</p> <p>3 A: Okay.</p> <p>4 Q: If you say uh-huh or uh-uh, that</p> <p>5 looks exactly the same in the transcript. So, I may</p> <p>6 say, "Is that a yes?" or "Is that a no?" to clarify and</p> <p>7 that's just to make sure we have a clear record. Okay?</p> <p>8 A: Yes.</p> <p>9 Q: Okay. Do you understand that the</p> <p>10 oath you've taken today carries with it the same</p> <p>11 penalties of perjury as if you were in a court of a</p> <p>12 law?</p> <p>13 A: I do. Yes.</p> <p>14 Q: Do you understand that perjury is a</p> <p>15 class D felony in Nevada?</p> <p>16 A: Yes.</p> <p>17 Q: If at any point today you need to</p> <p>18 break for any reason, let me know. I'll be happy to do</p> <p>19 so. The only thing I ask is that if I have a question</p> <p>20 pending, you go and answer that question before we take</p> <p>21 a break. Is that fair?</p> <p>22 A: That's fair.</p> <p>23 Q: Did you do anything to prepare for</p> <p>24 your deposition today?</p> <p>25 A: No.</p>	<p style="text-align: right;">Page 8</p> <p>1 A: No.</p> <p>2 Q: You haven't talked to him about it at</p> <p>3 all?</p> <p>4 A: No.</p> <p>5 Q: Did you see him after his deposition?</p> <p>6 A: No. No.</p> <p>7 Q: Did you look at any documents in</p> <p>8 preparation of your deposition?</p> <p>9 A: I looked at the police report and my</p> <p>10 written statement.</p> <p>11 Q: Okay.</p> <p>12 A: That I said at the time of the</p> <p>13 incident. Yeah.</p> <p>14 Q: When you say the police report, are</p> <p>15 you talking about the accident report or the</p> <p>16 embezzlements and larceny report?</p> <p>17 A: The accident report.</p> <p>18 Q: You looked at the actual traffic</p> <p>19 accident report?</p> <p>20 A: I'm assuming that was what it was,</p> <p>21 yes.</p> <p>22 Q: Okay. I'm going to show you two</p> <p>23 documents. The first one, which is the traffic</p> <p>24 accident report, is Exhibit one. We'll mark the second</p> <p>25 one as Exhibit two. Let me know which one you're</p>
<p style="text-align: right;">Page 7</p> <p>1 Q: Did you talk to anybody?</p> <p>2 A: Yes.</p> <p>3 Q: Who did you talk to?</p> <p>4 A: The attorney, Mr. Smith.</p> <p>5 Q: Is Mr. Smith your attorney?</p> <p>6 A: Yes.</p> <p>7 Q: Did you talk to anyone other than Mr.</p> <p>8 Smith?</p> <p>9 A: Michael.</p> <p>10 Q: I assume he's your attorney also?</p> <p>11 A: Yes.</p> <p>12 Q: Okay. Did you talk to anybody else?</p> <p>13 A: No.</p> <p>14 Q: You did not talk to your husband</p> <p>15 about it?</p> <p>16 A: About?</p> <p>17 Q: The deposition?</p> <p>18 A: No.</p> <p>19 Q: About the case?</p> <p>20 A: No.</p> <p>21 Q: I understood you dropped Efren off at</p> <p>22 the deposition yesterday?</p> <p>23 A: Yesterday, I dropped him off.</p> <p>24 Q: Did you talk to him about his</p> <p>25 deposition?</p>	<p style="text-align: right;">Page 9</p> <p>1 referring to?</p> <p>2 A: Just look through it?</p> <p>3 Q: You said you looked at the police</p> <p>4 report, and I'm curious if either of those two other</p> <p>5 ones you looked at.</p> <p>6 A: It looked similar to this one.</p> <p>7 MR. SHANNON: Exhibit two for the record.</p> <p>8 A: It was this one, this page.</p> <p>9 Q: So just... Okay. So, looking at Bates</p> <p>10 number JSNS26 of Exhibit two?</p> <p>11 A: Yes.</p> <p>12 Q: Okay. You did not look at Exhibit</p> <p>13 one?</p> <p>14 A: No.</p> <p>15 Q: Okay. When you looked at that page</p> <p>16 in Exhibit two, anything stands out to you as</p> <p>17 inaccurate?</p> <p>18 A: Yes.</p> <p>19 Q: What's that?</p> <p>20 A: The officer made a statement that my</p> <p>21 husband and I were going to call Metro to report the</p> <p>22 vehicle stolen approximately I believe it was 10:30</p> <p>23 a.m., but we were already at the accident scene at</p> <p>24 10:30. I was already at the accident scene at 10:30.</p> <p>25 I never intended to go to the police department. I</p>

<p style="text-align: right;">Page 10</p> <p>1 actually made a 911 phone call to report the vehicle 2 stolen.</p> <p>3 Q: My understanding is at some point, 4 either you or your husband received the phone call that 5 the vehicle was in an accident. Correct?</p> <p>6 A: Correct.</p> <p>7 Q: Was that you or your husband?</p> <p>8 A: It was my husband.</p> <p>9 Q: Okay. At some point, he let you know 10 that he received that phone call?</p> <p>11 A: Yes.</p> <p>12 Q: Did you make the 911 phone call 13 before or after you found out that the truck was in the 14 accident?</p> <p>15 A: Before.</p> <p>16 Q: What phone number did you call 911 17 from?</p> <p>18 A: 702-348-9011.</p> <p>19 Q: Do you know approximately what time 20 you made that call?</p> <p>21 A: I'm going to say like approximately 22 9:20, 9:30.</p> <p>23 Q: What prompted you to make that phone 24 call?</p> <p>25 A: Because the truck was missing, and I</p>	<p style="text-align: right;">Page 12</p> <p>1 A: I don't remember.</p> <p>2 Q: Okay. Did you ever drive that truck?</p> <p>3 A: Like in the past?</p> <p>4 Q: Yeah. Before this incident, had you 5 ever driven the truck before?</p> <p>6 A: Yeah.</p> <p>7 Q: So, it's very possible that you had 8 driven the truck home from work?</p> <p>9 A: It's possible, but I can't say yes 10 for sure or no.</p> <p>11 Q: Okay.</p> <p>12 A: I just don't remember.</p> <p>13 Q: Okay. So, you're not disputing 14 Efren's story as you don't remember?</p> <p>15 A: His story about what?</p> <p>16 Q: That he thinks you were the one who 17 brought it home the night before?</p> <p>18 A: It's possible. I just don't 19 remember.</p> <p>20 Q: Okay. Did you review anything else 21 other than that one page in Exhibit two--</p> <p>22 A: No.</p> <p>23 Q: --to prepare for your deposition?</p> <p>24 A: No.</p> <p>25 Q: Why did you want to look at that one</p>
<p style="text-align: right;">Page 11</p> <p>1 called my husband, asked him if he had the truck and he 2 said no. So, I called 911 to report it was stolen.</p> <p>3 Q: At the time you called, did you know 4 who had the truck?</p> <p>5 A: No.</p> <p>6 Q: Did you have any suspicion it might 7 be Efren?</p> <p>8 A: No.</p> <p>9 Q: If you had known it was Efren that 10 took the truck, would you have called 911?</p> <p>11 A: Yes.</p> <p>12 Q: Efren testified yesterday the truck, 13 when he took the truck it was on the side of the house 14 but in the driveway. Is that your recollection?</p> <p>15 A: Well, that's two different locations 16 because on the side of the house, it's behind the gate. 17 It's not a driveway. The driveway is on front of our 18 home and where the truck was, it was behind our gate, 19 on that property.</p> <p>20 Q: Okay. The last time you saw it, it 21 was behind the gate on the side of the house?</p> <p>22 A: Yes. Yes.</p> <p>23 Q: It was Efren's belief that you had 24 driven the car home the night before. Is that 25 accurate?</p>	<p style="text-align: right;">Page 13</p> <p>1 page?</p> <p>2 A: Just to refresh my memory.</p> <p>3 Q: Okay. Was there anything else in 4 that report that you believe was inaccurate?</p> <p>5 A: No, just those two things that I 6 mentioned.</p> <p>7 Q: I've got one thing. The time that 8 you're going to call and that it was at 10:30, are 9 those the two things?</p> <p>10 A: That we intended on calling and the 11 time.</p> <p>12 Q: Okay.</p> <p>13 A: Those two.</p> <p>14 Q: All right. So, let's go through this 15 then. Efren said at the day of the incident, he was 16 living at the house. True?</p> <p>17 A: True.</p> <p>18 Q: He spent the night in his bedroom the 19 night before?</p> <p>20 A: Yes.</p> <p>21 Q: There is some discussion here that 22 you're trying to help him with his drug history.</p> <p>23 MR. SHANNON: Wait. Wait for a question. 24 That wasn't really a question.</p> <p>25 A: Yeah.</p>

Page 14

1 Q: Do you remember seeing that in the  
2 report?  
3 A: That I was-- Repeat the question.  
4 Q: The report says, "Delia and Juan let  
5 Efren stayed at the residence because they continue to  
6 feel sorry for him and trying to help him with his drug  
7 history." Do you remember seeing that?  
8 A: Seeing that in the report, yes.  
9 Q: Do you know what drug history that is  
10 referring to?  
11 A: Well, we didn't know there was a drug  
12 history at that time.  
13 Q: Okay. So, you did not know at that  
14 time that Efren had been addicted to heroin in the  
15 past?  
16 A: That's correct. We did not know. We  
17 did not.  
18 Q: Okay. So, do you have any idea why  
19 the officer would say Efren had a drug history?  
20 A: No.  
21 Q: Do you think he just made that up?  
22 A: I don't know. You would have to ask  
23 him.  
24 Q: Okay. So, at least as far as your  
25 concern, you never told the officer that Efren had a

Page 15

1 drug history?  
2 A: No.  
3 Q: I think that was a poor question,  
4 right? Did you tell the officer that Efren had some  
5 history with drugs?  
6 A: No.  
7 Q: So, prior to the day of the accident,  
8 you had no knowledge that Efren had ever used drugs?  
9 A: No knowledge that Efren used drugs.  
10 Q: Since the accident, do you have any  
11 understanding in terms of whether or not Efren's ever  
12 used drugs?  
13 A: Yes.  
14 Q: What do you understand now?  
15 A: Well, this past year that he did have  
16 an issue with drugs.  
17 Q: In 2017?  
18 A: Yes. Approximately, yes.  
19 Q: Do you know what drugs?  
20 A: No.  
21 Q: Do you know if Efren's ever been in  
22 rehab?  
23 A: Yes.  
24 Q: When?  
25 A: It was in September. It was

Page 16

1 September 2017.  
2 Q: Was this after the accident?  
3 A: Yes.  
4 Q: Where was this rehab?  
5 A: In Mexico.  
6 Q: Do you know what type of drugs the  
7 rehab was for?  
8 A: It was for all drugs, I believe.  
9 Q: Okay. Okay. We'll come back to some  
10 of that stuff. First, I'm going to go through a little  
11 bit of background information about you. What is your  
12 date of birth?  
13 A: 12-17-1972.  
14 Q: Where were you born?  
15 A: I'm sorry?  
16 Q: Where were you born?  
17 A: Salinas, California.  
18 Q: When did you move to Vegas?  
19 A: 2000, August 2000.  
20 Q: Are you still living at the 5915--  
21 A: Musketeer Lane, yes.  
22 Q: Musketeer Lane? How long have you  
23 lived there?  
24 A: Six years.  
25 Q: Six years?

Page 17

1 A: Six years.  
2 Q: Who live with you currently?  
3 A: Me, my husband and four of my  
4 children, and my mother and my father-in-law.  
5 Q: Does Efren live with you?  
6 A: No.  
7 Q: Efren does not live with you?  
8 A: Uh-uh.  
9 MR. SHANNON: No, right?  
10 Q: Is that a no?  
11 MR. SHANNON: Is that a no?  
12 A: That's a no.  
13 MR. SHANNON: Okay.  
14 Q: Where does he live?  
15 A: You have to ask him.  
16 Q: Do you know if he has a job?  
17 A: No, I don't know.  
18 Q: You don't know?  
19 A: No.  
20 Q: Are you guys close, you and Efren?  
21 A: Not now.  
22 Q: Why is that?  
23 A: Because of his issues.  
24 Q: What issues?  
25 A: We don't... I guess his drug history.

Page 18

1 We don't, how to say, we don't condone that in our  
2 home. Well, our family actually. It's to much of an  
3 issue with him.

4 Q: The drugs?

5 A: Yes.

6 Q: What drugs are you aware that he's  
7 taking?

8 A: I don't know. That, I can't say.  
9 That, I don't know.

10 Q: Do you believe he is currently using  
11 drugs?

12 MR. SHANNON: I'll just object it  
13 calls for speculation. You can answer. If you know,  
14 you can answer.

15 A: I don't know.

16 Q: I'll represent to you, yesterday, in  
17 his deposition; he said he's been clean since the rehab  
18 in Mexico.

19 A: That's good.

20 Q: Do you believe that or don't believe  
21 that?

22 MR. SHANNON: Foundation.

23 A: What?

24 MR. SHANNON: Go ahead.

25 A: As a mother, I want to believe it. I

Page 19

1 don't know.

2 Q: Okay.

3 A: Yeah.

4 Q: You don't have any basis one way or  
5 another?

6 A: No.

7 Q: Okay. If he lived with you, you  
8 might have more of a basis?

9 A: Yes.

10 Q: I understand you're married.

11 Correct?

12 A: Uh-hah.

13 Q: To Juan? How many kids do you have?

14 A: We have five, total.

15 Q: Do you have any prior marriages?

16 A: No.

17 Q: Any kids that are not Juan's?

18 A: No.

19 Q: Have you ever been convicted of  
20 felony or misdemeanor involving dishonesty?

21 A: Never.

22 Q: Any military service?

23 A: No.

24 Q: Highest level of education that you  
25 have?

Page 20

1 A: Twelfth. Thank you.

2 Q: Are you okay?

3 A: Yes.

4 Q: Do you want to take a break?

5 A: Uh-uh.

6 Q: Are you sure?

7 A: Yes, I'm sure.

8 Q: Okay. You said twelfth grade?

9 A: Yes.

10 Q: What is your current job?

11 A: What was your question?

12 Q: What is your current job?

13 A: I do bookkeeping.

14 Q: Who do you bookkeeping for?

15 A: Now Services of Nevada.

16 Q: I'm sorry. Do you want to take a  
17 break? Are you okay?

18 MR. SOTELO: Yeah. She's sick. She  
19 doesn't have to be going through this.

20 MR. SHANNON: Well, okay, let's--

21 MR. SOTELO: I'm sorry.

22 A: My blood pressure is getting high.

23 MR. SHANNON: Let's go off the record.

24 MR. SOTELO: Yeah.

25 MR. SHANNON: Let's go off the record for

Page 21

1 a minute.

2 MS. GRONEMAN: Going off the record at  
3 2:23 p.m. We are back on the record. The time is 2:32  
4 p.m.

5 Q: Okay. So, well, we had break. Are  
6 you doing okay?

7 A: Yes.

8 Q: Okay. I just want to make sure  
9 you're okay to go forward with the deposition.

10 A: Yes.

11 Q: There's no reason at all today that  
12 you can't understand my questions and answer  
13 truthfully, correct?

14 A: Correct.

15 Q: Okay. As always, any time you need  
16 to take a break, please let me know.

17 A: Okay.

18 Q: Okay? When we left off, I asked you  
19 what your job was and just so we can have a clear  
20 record, what is your job?

21 A: Bookkeeping?

22 Q: Okay. Where do you bookkeeping?

23 A: Now Services of Nevada.

24 Q: Is that your title, bookkeeper?

25 A: Yes.

Page 22

1 Q: How long have you had that title?

2 A: Eleven plus years.

3 Q: Have you had that title as long as

4 the business has been opened?

5 A: Yes.

6 Q: Do you have a background in

7 bookkeeping or accounting or just kind of learned on

8 the fly?

9 A: I've done bookkeeping in the past for

10 a home improvement store back home. So, background,

11 yes.

12 Q: Okay. What is your job entail in

13 terms of bookkeeper? When I deposed Juan, my

14 understanding is far more than just bookkeeping or a

15 little bit of everything?

16 A: Yeah, a little bit of everything.

17 Q: Okay. So, describe some of the

18 things you do.

19 A: That's my main thing that I would

20 keep his books, do payroll, oversee the bills,

21 payables, taxes to prepare when it's tax season,

22 prepare employee's forms. When I don't have an

23 assistant, I'll do new hires and whatever else is

24 needed in the office.

25 Q: Okay. Are you the person responsible

Page 23

1 for maintaining employee files?

2 A: Yes.

3 Q: Are you the person responsible for

4 doing new employee interviews?

5 A: No.

6 Q: Who would that be?

7 A: Whichever department it falls in.

8 Q: Okay. Do all new employees have to

9 fill out an application?

10 A: Yes.

11 Q: Is it your responsibility to hand out

12 the applications?

13 A: No.

14 Q: Is it your responsibility to receive

15 the applications?

16 A: I keep it in the file.

17 Q: Okay. So, when it's all done,

18 someone gives it to you and it goes in the file?

19 A: Exactly.

20 Q: Okay. Now, I know the testimony in

21 this case has been that Efren was fired on December

22 10th?

23 A: Yes.

24 Q: Is that a process, I'm not talking

25 Efren specifically, but generally, when someone is

Page 24

1 fired, are you usually involved in that process?

2 A: In the process of firing the person?

3 Q: Yeah. The way it's been described to

4 me by Juan and Efren is you come in, you got to get

5 some stuff, sign some paperwork. Are you usually

6 involved in that or no?

7 A: No, not really. The only part that I

8 would be involved in will be removing them from

9 payroll. There are forms that are given or resigned,

10 that are in the employee's file that have to be

11 resigned, but I usually don't do that. It's usually my

12 assistant or Juan's assistant that does that.

13 Q: Okay.

14 A: Is that fair? Does that answer your

15 question?

16 Q: Yeah, I understand.

17 A: Okay.

18 Q: I understand. Would you consider

19 someone's payroll records part of their employee file?

20 A: No.

21 Q: No. Why is that?

22 A: Because it's held in a different

23 location. Payroll's payroll and employee files are

24 employee files.

25 Q: What's your understanding of why

Page 25

1 Efren was fired?

2 A: From my understanding he purchased..

3 he was using the credit card.. Home Improvement credit

4 card to purchase gift cards, I believe it was, that

5 didn't have anything to do with the company.

6 Q: Okay. How did you come to that

7 understanding?

8 A: That's what my husband had mentioned.

9 Q: Okay. Did you ever hear that from

10 Efren?

11 A: No.

12 Q: Before he was fired, did you have a

13 conversation with Juan that whether or not you should

14 fire Efren?

15 A: Repeat the question.

16 Q: When Juan came to you and said

17 something to the effect of Efren's been using the

18 company credit card, did you have a discussion with

19 Juan about whether or not Efren should be fired?

20 A: No.

21 Q: Did you know he was going to be fired

22 before he was fired?

23 A: No.

24 Q: So, that came as a surprise to you?

25 A: Well, as soon as Juan found out, he



Page 26

1 was fired immediately.

2 Q: Okay. So, did Juan call you after

3 Efren had already been fired?

4 A: He didn't call me it was when he came

5 home.

6 Q: Okay. So, when he got home, Efren

7 had already been fired?

8 A: Yes.

9 Q: Okay. Was Efren already home?

10 A: I don't remember.

11 Q: Did Juan tell you if he fired Efren

12 in person or over the phone?

13 A: No.

14 Q: As you sit here today, do you have

15 any understanding of whether Efren was fired in person

16 or over the phone?

17 A: I don't, no.

18 Q: Where were you... Do you know where you

19 were when Efren was fired?

20 A: I'm assuming I was home because I

21 know I wasn't at the office.

22 Q: How many days of the week are you in

23 the office?

24 A: Now, I'm there five days a week.

25 Q: Back then?

Page 27

1 A: Back then, it was probably three to

2 four.

3 Q: Okay. So far to say then... There are

4 some documents saying that Efren had to give some

5 company items back.

6 A: Okay.

7 Q: Have you seen that?

8 A: No. I can't say that I have, no.

9 Q: Okay. What was Efren's position at

10 that time?

11 A: A delivery driver.

12 Q: What would the company have given

13 Efren that he would need to work as the delivery

14 driver?

15 A: Probably uniforms, a gas card, a Home

16 Improvement store card for example, Lowe's or Home

17 Depot and then the vehicle. Yeah, that's about it.

18 Q: Okay. What is the company's process

19 when someone is fired in terms of getting those items

20 back?

21 A: When an employee is hired, they fill

22 out how many uniforms they're responsible for, the gas

23 card, the keys, basically sign out sheets, and then at

24 the bottom of the forms, there's a return. So,

25 whenever an employee is fired, there's a count of

Page 28

1 uniforms. There's a count for the gas card, the Home

2 Improvement cards, the keys. So, those are dated and

3 signed as to what has been returned.

4 Q: Okay. You were not at the office

5 when this took place for Efren?

6 A: No.

7 Q: You don't know whether your husband

8 was or not?

9 A: No.

10 Q: No, you don't know?

11 A: I don't know if he was-- Wait, wait.

12 What's the question?

13 Q: Do you know if your husband was

14 present when that process took place?

15 A: I don't.

16 Q: Tell me about the conversation you

17 had with your husband when he came home and told you

18 about what Efren had done and how he'd fired him.

19 A: Well, he told me that he let Efren go

20 and that was the reason why, for the credit card

21 charges.

22 Q: Did he tell you that he thought he

23 was using the credit card to buy gift cards, to buy

24 drugs?

25 A: No. No.

Page 29

1 Q: Okay.

2 A: He told me that he was buying gift

3 cards.

4 Q: Okay. But he didn't tell you that he

5 thought he was buying the gift cards to buy drugs?

6 A: No.

7 Q: Before the date of the accident, were

8 you aware if Efren had ever been arrested?

9 A: Yes.

10 Q: How many times?

11 A: That I... I don't know, a couple.

12 Q: Okay. List the ones that you do know

13 off the top of your head for me.

14 A: He was arrested once for, I don't

15 even know for what, traffic tickets that were unpaid.

16 I believe when he was a juvenile, he was arrested.

17 Q: For what?

18 A: He had marijuana seeds. I actually

19 had him arrested.

20 Q: Okay.

21 A: Oh, God. He was arrested for... oh, my

22 gosh, what else was he arrested for? Burglary, he was

23 arrested for burglary. I had him arrested for

24 burglary. I pressed charges. Burglary. Okay. This

25 was a while back. Oh, I can't remember what other

Page 30

1 times.

2           Q: Okay. Why did you have him arrested

3 for burglary?

4           A: Why did I have him arrested for

5 burglary? God, that was so long ago. Why? That must

6 have been over 10 years ago. I don't remember.

7           Q: Did he take something from you or

8 something from someone else?

9           A: What was it? What was it? Oh, my

10 God, I don't remember.

11          Q: Okay. Are you aware that he was

12 arrested for firearms in 2008 and 2011?

13          A: Maybe in 2008.

14          Q: But not the one in 2011?

15          A: No. 2008.

16          Q: Okay. Were you aware he was arrested

17 for controlled substance for having pills in 2009?

18          A: Oh, my God. I don't remember that

19 one.

20          Q: Okay. You're not saying yes or no,

21 you just don't remember?

22          A: I just don't remember.

23          Q: Okay.

24          A: Yeah. The 2008, yes, I do remember

25 that.

Page 31

1           Q: The burglary?

2           A: No, the weapon.

3           Q: The weapon. Okay.

4           A: Yes.

5           MR. SHANNON: Jordan, let me just make a

6 belated objection here to the extent that given that

7 there wasn't any timeframe tended to the question. I

8 would just object to the use of any of the evidence

9 related to Efren's arrest record to the extent it

10 doesn't fall within the parameters of the statute.

11          Q: When did Cool-Air Now first hired

12 Efren? Let me guess. Let me give you what's been

13 represented to me as his employee file. We'll mark

14 that as Exhibit three. If you need to use that to

15 refresh your memory, you can use that.

16          A: I'm sorry. What was your question?

17          Q: When was Efren hired at Cool-Air Now?

18          A: The exact date, I don't know.

19          Q: Would it be in his employee file?

20          A: Yes. It says here, I'm assuming,

21 January 13th, 2017. That's the day he signed his W4

22 and this is for payroll. So, I would assume it that

23 date.

24          Q: Go back to that page, if you could

25 reference that number in the bottom right for us?

Page 32

1           A: JSNS000044.

2           Q: Okay. On that page, that's W4. Do

3 you know what a W4 is?

4           A: Yes.

5           Q: What is it?

6           A: It's for federal tax withholding for

7 a payroll.

8           Q: So, is that something you require

9 employees to sign?

10          A: Yes.

11          Q: When?

12          A: At the beginning of hire.

13          Q: Okay.

14          A: When they're hired.

15          Q: All right. So..

16          A: If there are W4 for employee.

17          Q: What is a W form?

18          A: W4, W2 employee.

19          Q: Okay.

20          A: If they're not, a 1099.

21          Q: Okay, all right. Okay. Can I see

22 the document for a second?

23          A: Yes.

24          Q: Could that be the way Efren writes 4,

25 because it's a 2014 document, right? I assume you

Page 33

1 didn't hire him last year?

2           MR. SHANNON: I'll just object

3 foundation. Go ahead.

4           Q: Do you know? You said his hired date

5 would have been January of 2017. This accident

6 happened in 2014 and it's a 2014 document. Do you know

7 if that's how he writes his four's?

8           A: I don't know that.

9           Q: Okay. My understanding was that

10 Cool-Air Now's position is he was fired as of December

11 10.

12          A: A couple days before the accident,

13 yes.

14          Q: 2014?

15          A: Yeah.

16          Q: So, I assumed he's not working there

17 in January 15, 2017?

18          A: No.

19          Q: Okay. So, other than that, is there

20 any way to tell his start date based upon this employee

21 file?

22          A: May I?

23          Q: Yeah. Yeah, please.

24          A: Well, I'm going to say before this

25 date because he had a payroll deduction.

Page 34

1 Q: What date are you referring to?

2 A: 11-24-14 on JSNS000041.

3 Q: Okay. Can I see that document?

4 Okay. Whose signature is below his name?

5 A: It looks like Lila Johnson.

6 Q: Who's that?

7 A: She was the bookkeeper at that time.

8 Q: You were not the bookkeeper?

9 A: Not at that time.

10 Q: What was your job duty then?

11 A: I basically did everything else.

12 Help my husband whatever he needed to be done, run

13 errands and I would, for example I would go to the post

14 office, I would go to the DA's office for insufficient

15 fund's checks, stuff like that. Yeah.

16 Q: Okay, all right. Let's see this for

17 a second.

18 A: Buy office supplies, stuff like that.

19 Q: I'm looking at JSNS45. This is the

20 termination statement. Do you know whose signature is

21 below Efren's on that? Do you recognize it?

22 A: My husband's?

23 MR. SHANNON: Don't guess.

24 Q: Don't guess.

25 A: No.

Page 35

1 Q: Do you recognize this as anybody's?

2 A: No, no.

3 Q: Okay. Do you know what your

4 husband's signature looks like?

5 A: Yeah. I would say yes.

6 Q: Okay. That does not look like your

7 husband's signature as far as you know?

8 A: Yeah. I don't know.

9 Q: How long have you been married?

10 A: 20 years, 20 plus years.

11 Q: As you look at that, you're not sure

12 if that's your husband's signature or not?

13 A: It looks like it.

14 Q: It does? Okay. Does it look like

15 your husband's signature?

16 A: It looks like it.

17 Q: Okay.

18 A: Yeah.

19 Q: All right. So, I'm just trying to

20 figure out who signed this document. So, you believe

21 that that is your husband's signature?

22 A: Yes.

23 Q: Do me a favor. Look through this

24 entire Exhibit three. My understanding is you're in

25 charge of the employee files, correct?

Page 36

1 A: I am now, yes.

2 Q: Okay. Is this the entirety of

3 Efren's employee file?

4 A: I don't know. I haven't looked

5 through it.

6 Q: Well, take a minute. Look through

7 and tell me if off the top of your head you know that

8 anything is missing.

9 A: If anything is missing. Direct

10 deposit for return statement. Probably the only thing

11 that would be missing is the uniform sign-out.

12 Q: Okay.

13 A: The uniform sign-out and a gas card,

14 if he was issued a gas card. This is the gas card

15 right here, so..

16 Q: Okay.

17 A: So, maybe just the uniform sign-out

18 sheet.

19 Q: What is that?

20 A: When they're issued uniforms, they're

21 issued 11 sets. So, 11 bottoms, 11 tops. So, they're

22 responsible to return 11 bottoms and 11 tops. If not,

23 when they're on termination, the day of termination,

24 they're not given their final check until all the

25 uniforms are turned in or the cost of uniform is

Page 37

1 deducted from their final pay.

2 Q: Okay. Now, in Efren's position,

3 would he have to clock in, clock out?

4 A: No.

5 Q: He just came in when as he pleased?

6 Not as he pleased, but as needed?

7 A: Yes.

8 Q: Okay.

9 MR. SHANNON: Are you doing okay?

10 A: Yeah.

11 MR. SHANNON: Okay.

12 Q: Do you want to take another break?

13 MR. SHANNON: We were over like 20

14 minutes in..

15 A: No.

16 MR. SHANNON: Are you okay to keep going?

17 A: Yeah.

18 Q: Okay. You just let me know, okay?

19 A: Okay.

20 Q: All right. You said you're in charge

21 of the employee files, right?

22 A: Yeah.

23 Q: Okay. So, any time a document is to

24 on the employee file, it's given to you?

25 A: Yes.

<p style="text-align: right;">Page 38</p> <p>1 Q: When you're given documents for the</p> <p>2 employee file, do you check them for accuracy or do you</p> <p>3 just take them and stick them in?</p> <p>4 A: No. I just put them right in.</p> <p>5 Q: Okay.</p> <p>6 A: If it's something that I have to do,</p> <p>7 I'll initial it, a timesheet correction or something,</p> <p>8 I'll just toss it right into the file.</p> <p>9 Q: Okay. So, when a document gets to</p> <p>10 you, unless it needs your signature, you just stick it</p> <p>11 in the file?</p> <p>12 A: Right.</p> <p>13 Q: Okay.</p> <p>14 A: Unless they require some kind of</p> <p>15 action, send it somewhere, fax it somewhere and then</p> <p>16 just put it right in the file.</p> <p>17 Q: Okay. Do you have any concern that</p> <p>18 by not checking it, documents that are inaccurate may</p> <p>19 ended in the file?</p> <p>20 A: No.</p> <p>21 Q: You think it would be better for your</p> <p>22 business for you to check documents they go to the file</p> <p>23 to make sure there's no inaccuracies?</p> <p>24 A: Yes.</p> <p>25 Q: Why don't you do that?</p>	<p style="text-align: right;">Page 40</p> <p>1 about Efren being fired?</p> <p>2 A: Well, basically, Juan told me what</p> <p>3 happened--</p> <p>4 Q: Okay.</p> <p>5 A: --and why.</p> <p>6 Q: Did you support the decision?</p> <p>7 A: Yes.</p> <p>8 Q: Why is that?</p> <p>9 A: Because he did wrong. He's not</p> <p>10 special.</p> <p>11 Q: Okay. One thing in that employee</p> <p>12 file, I didn't see an application. Would Efren have</p> <p>13 filled out an application?</p> <p>14 A: Maybe not.</p> <p>15 Q: Do you usually do background checks</p> <p>16 on your employees?</p> <p>17 A: No.</p> <p>18 Q: Never?</p> <p>19 A: Sometimes. Yes, sometimes.</p> <p>20 Q: What's it depend on?</p> <p>21 A: It's just the resume if there's a gap</p> <p>22 in employment.</p> <p>23 Q: Okay. Other than that, no background</p> <p>24 checks?</p> <p>25 A: No.</p>
<p style="text-align: right;">Page 39</p> <p>1 A: I will.</p> <p>2 MR. SHANNON: Okay.</p> <p>3 Q: So, I have convinced you to do start</p> <p>4 doing that?</p> <p>5 A: Well, I guess, before, in the past, I</p> <p>6 never felt I had to.</p> <p>7 Q: Okay. As you went through his</p> <p>8 employee file, is there something you believe is</p> <p>9 inaccurate?</p> <p>10 A: Inaccurate?</p> <p>11 MR. SHANNON: You can take a minute to go</p> <p>12 through it if you need to. Just take a minute to look</p> <p>13 at it.</p> <p>14 A: I probably would have taken a better</p> <p>15 copy of this gas card or written down the full credit</p> <p>16 card number.</p> <p>17 Q: Okay.</p> <p>18 A: I can't point anything out.</p> <p>19 Q: Okay. So, I can't remember if I</p> <p>20 asked this question. When Juan came home, did you guys</p> <p>21 have a discussion about him being fired, Efren?</p> <p>22 MR. SHANNON: It was asked and answered</p> <p>23 but go ahead.</p> <p>24 A: I'm sorry?</p> <p>25 Q: Did you and Juan have a conversation</p>	<p style="text-align: right;">Page 41</p> <p>1 Q: You don't do a criminal check or</p> <p>2 anything?</p> <p>3 A: No.</p> <p>4 Q: What's the reason for that?</p> <p>5 A: Well, like I said if there's a gap in</p> <p>6 the employment that just questions me as to why they</p> <p>7 haven't been employed but we ask on the application.</p> <p>8 Q: A lot of your employees are in</p> <p>9 people's home, right?</p> <p>10 A: They are.</p> <p>11 Q: They're out traveling the roads,</p> <p>12 right?</p> <p>13 A: They are.</p> <p>14 Q: Someone could be a danger and still</p> <p>15 have been employed, correct?</p> <p>16 MR. SHANNON: Object to form.</p> <p>17 A: I'm sorry?</p> <p>18 MR. SHANNON: You can answer.</p> <p>19 A: We ask on the application. There's a</p> <p>20 box for that.</p> <p>21 Q: Someone could simply if they wanted</p> <p>22 to lie to you, they could simply check, "no?"</p> <p>23 A: They can, yes.</p> <p>24 Q: You don't run a background check on</p> <p>25 someone unless there's a gap in employment?</p>

Page 42

1 A: Right.

2 Q: Do you believe it would be safer to

3 run a background check on all of your employers who are

4 going to be either out on the road or in people's

5 homes?

6 A: I do.

7 Q: Any reason you don't do it?

8 A: Just for that reason that if there's

9 a gap in their employment or... usually, the person

10 interviewing would say yes or no to run it.

11 MR. SHANNON: Jordan, I'm sorry. Can I

12 ask for clarification? Are we talking about what the

13 practice is now like how it exists today?

14 Q: Well, is there a difference between

15 the practice now versus--

16 A: Then?

17 Q: Yes.

18 A: Oh, yeah.

19 Q: Okay.

20 A: Yes.

21 Q: When you answered, were you referring

22 to back then?

23 A: Yes.

24 MR. SHANNON: Back then being 2014?

25 A: Yes.

Page 43

1 Q: 2014 and earlier?

2 A: Yes.

3 Q: Okay. So, now, are you running

4 background checks on everybody?

5 A: Not everybody. Not everybody.

6 Q: Okay.

7 A: But I'm going to say the technicians.

8 Q: Okay. Because they're on people's

9 homes?

10 A: Yes.

11 Q: Okay. What about anybody who's

12 driving around town?

13 A: We do MVR reports. We have the

14 driving history is what we've ran. MVR through Nevada,

15 the motor vehicles, we check their record.

16 Q: Okay. But you don't run a check to

17 see if someone who's driving your vehicles has a

18 history of drug arrest?

19 A: If they're a technician, yes.

20 Q: Are there other positions that are

21 driving your vehicles other than technicians?

22 A: Installers.

23 Q: Okay. You don't run a background

24 check on your installers?

25 A: Randomly.

Page 44

1 Q: Okay.

2 A: Randomly.

3 Q: Why randomly?

4 A: Just our choice.

5 Q: Okay.

6 A: I don't have to.

7 Q: Is it a cost issue?

8 A: No.

9 Q: Why did you not run background checks

10 on anybody except people with gaps in history in 2014

11 and before that?

12 A: Why did we not?

13 Q: Correct.

14 A: It just depends on the situation at

15 that time. It just depended on the situation and

16 depending on whom was interviewing this potential

17 employee.

18 Q: But you agree with me that it would

19 have been safer to do a background check on everybody,

20 correct?

21 A: Always.

22 Q: How much does a background check cost

23 you?

24 A: I think it's like maybe 39.95 online.

25 Like a 39.95.

Page 45

1 Q: Okay. Let's say today, because

2 you're doing background checks on your technicians,

3 correct?

4 A: Yes.

5 Q: If one of your technicians'

6 background check comes back with a drug arrest, would

7 you still hire them?

8 A: I would say no. I'm going to say no.

9 Q: Why is that?

10 A: Because we don't have facts. We

11 don't know... I guess you could say everybody's situation

12 is different. That's all you get, when you run a

13 background check, boom. That's what you get. Their

14 situation may be different on that arrest.

15 Q: So, is it basically safer for your

16 company and your customers to not hire a technician

17 with a drug arrest? Is that why you wouldn't hire

18 them?

19 A: I would say... this is what I will

20 say. This is how I'm going to answer that. We...

21 depending on the situation, you just don't know how

22 long ago was it or what... are they reformed? I just

23 don't know. It just doesn't...

24 Q: So, before you answer, you said you

25 would not hire someone with a prior drug arrest if it

Page 46

1 came popped up on their background check. Are you now  
2 saying maybe you would depending?  
3 A: Well, first of all, I'm not the one  
4 who does the hiring. It just depends on, like I said,  
5 the person interviewing the potential employee.  
6 Q: Okay. So, the person who interviews  
7 the employee, are they the ones who had the same terms  
8 of whether someone gets hired or not regardless if a  
9 background check pops up a drug history, a drug arrest?  
10 A: Say that again.  
11 Q: If someone, if an applicant has a  
12 prior drug arrest--  
13 A: Okay.  
14 Q: --whose decision is it whether or not  
15 that that's acceptable for their position?  
16 A: The hiring person, the hiring  
17 manager.  
18 Q: Okay. So, it's not you?  
19 A: No.  
20 Q: It's not Juan?  
21 A: No.  
22 Q: Who is directly below Juan?  
23 A: Right now, no one.  
24 Q: Okay. Who is the hiring manager that  
25 hired Efren?

Page 47

1 A: I believe it was... God, I don't even  
2 know because at that time, we did have a manager. So,  
3 I don't know.  
4 Q: Okay.  
5 MS. GRONEMAN: Can we lower those blinds.  
6 Q: Sure.  
7 MS. GRONEMAN: We're getting a very--  
8 A: Yeah.  
9 Q: Are you okay? Do you want to take a  
10 break?  
11 A: No.  
12 MR. SHANNON: Are you sure? It'd be a  
13 good time.  
14 A: Yeah. I'm good.  
15 Q: All right.  
16 MS. GRONEMAN: There we go.  
17 A: Better.  
18 MR. SHANNON: You don't like being  
19 blinded.  
20 A: Yeah.  
21 MR. SHANNON: It's like the light shining  
22 on your face.  
23 Q: Can you play back my last question  
24 for me?  
25 [Start of audio replay]

Page 48

1 A: So, I don't know...  
2 Q: Okay.  
3 A: I believe it was... God, I don't even  
4 know because at that time, we did have a manager. So,  
5 I don't know.  
6 [End of audio replay]  
7 A: How funny when you hear your own  
8 voice. It doesn't sound like your voice.  
9 MR. SHANNON: You don't like it, right?  
10 It never sounds good.  
11 Q: Yeah. Why did your policy change at  
12 some point to where now you're doing background checks  
13 on all installers?  
14 A: We had change in management. Well,  
15 actually, my husband fired the manager at that time.  
16 Things were not set in stone. For the better of the  
17 company. I would say for the better of the company.  
18 Q: I'm sorry. What was Efren's title  
19 again?  
20 A: He was the delivery driver.  
21 Q: Do you have a delivery driver right  
22 now?  
23 A: No.  
24 Q: That job is gone?  
25 A: Yes. The installers pick up their

Page 49

1 stuff now.  
2 Q: Okay. Now, I'm sorry, you said  
3 there's the installers, and who else is driving around?  
4 A: Technicians.  
5 Q: Technicians, okay. The technicians  
6 are the one who you do the background checks on?  
7 A: Yes.  
8 Q: Today, if you had an installer and  
9 you knew they had a drug history, would you hire them?  
10 MR. SHANNON: Foundation. Go ahead.  
11 A: It's difficult to say because you  
12 don't know what their situation was at that time.  
13 Q: So, is it a case-by-case basis?  
14 A: I would say yes.  
15 Q: Okay. Are you okay? You want to  
16 take a break?  
17 A: No, I'm good.  
18 Q: Okay. Is the light in your eyes?  
19 A: No, not anymore.  
20 Q: Okay. All right. All right. So,  
21 basically, Juan comes home, and he tells you what  
22 happened. Was Efren at the house?  
23 MR. SHANNON: Asked and answered. You  
24 can answer.  
25 A: That, I don't remember.

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1                   Q: Okay. After Juan told you Efren was  
2 fired, when was the next time you remember seeing  
3 Efren?  
4                   A: Probably at the accident, at the  
5 scene of the accident.  
6                   Q: Okay. So, you don't remember seeing  
7 him the day before?  
8                   A: I think he stayed at the house that  
9 night. I believe he stayed home that night.  
10                  Q: Do you remember seeing him?  
11                  A: Yeah, I do.  
12                  Q: Did you have a conversation with him  
13 about getting fired?  
14                  A: No. Are you kidding?  
15                  Q: Never came up?  
16                  A: I didn't... how am I going to say it?  
17 I left my husband dealt with it.  
18                  Q: Okay. It seems out to me if I was  
19 fired from the family business, I can imagine both my  
20 parents having conversation with me. So, you're saying  
21 you didn't have a conversation about it?  
22                  A: Well, then, you don't understand my  
23 relationship with my children. I'll tell you that.  
24                  Q: Okay. So, explain it.  
25                  A: I'm the hard one in the family. I'm

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1 the hard one in the family.  
2                   Q: Okay.  
3                   A: When husband came to me and told me  
4 this, I was so pissed off that... I was just disgusted.  
5 I couldn't even look at him. Why would I want to have  
6 a conversation with him? Who does that? I was just  
7 pissed off. I didn't want to see him.  
8                   Q: Okay. What's interesting is when I  
9 deposed your husband, he said he's the tough one. He  
10 wanted to kick Efren out a long time before that and  
11 that you're kind of Mama Bear keeping him in the house.  
12                   A: I would say that... not that date,  
13 well, at times but not that time. Not that time.  
14                   Q: Why did Juan want to kick him out of  
15 the house before then?  
16                   A: Because we didn't know what he was  
17 doing, the way he was acting, we just... We couldn't deal  
18 with him because we just didn't know what was going on  
19 with him.  
20                   Q: I think this was like months before  
21 he was fired?  
22                   A: Yeah.  
23                   MR. SHANNON: Hey, Jordan. You got an  
24 extra pen?  
25                   Q: I should.

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1                   MR. SHANNON: Out of ink. I didn't bring  
2 another one.  
3                   MS. GRONEMAN: Here.  
4                   MR. SHANNON: Thank you. I appreciate  
5 it.  
6                   MS. GRONEMAN: I have 21 new pens in  
7 there.  
8                   MR. SHANNON: I usually bring like a  
9 whole bunch and this would be the day it ran out, all  
10 right. Sorry.  
11                  Q: That's okay. So, you said he's  
12 acting weird, you don't know what to do with him.  
13 Describe that more for me.  
14                  A: We just didn't know what was going on  
15 with him. We just didn't know. We just didn't know.  
16 So, we have other kids. I have a sick child, my  
17 daughter. She's a type 1 diabetic. I have her to  
18 worry about. I have a little one.  
19                  Q: Was Efren acting differently than--?  
20                  A: He was acting strange and we just  
21 couldn't pinpoint it. We just didn't know.  
22                  Q: I understand. How was the acting  
23 strange? Give me some examples.  
24                  A: He would isolate himself. He  
25 wouldn't interact with us. He would leave the house

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1 for a long period of time. He was a moody.  
2                   Q: At any point, did you have any  
3 suspicion that it was drugs?  
4                   A: At times. I would say possibly,  
5 maybe, then no. I just didn't... I couldn't pinpoint  
6 it.  
7                   Q: Okay.  
8                   A: I couldn't pinpoint it.  
9                   Q: Did you ask him if he was using  
10 drugs?  
11                   A: I did.  
12                   Q: What did he say?  
13                   A: No. He would say no.  
14                   Q: Do you ever give drug test to your  
15 employees?  
16                   A: Randomly.  
17                   Q: Could you have randomly given Efren a  
18 drug test?  
19                   A: We could have.  
20                   Q: Why didn't you?  
21                   A: I can't say. I don't know. I don't  
22 know. I guess that I wasn't actively there, but I  
23 don't know. I don't know.  
24                   Q: Now, Efren told me that he had a  
25 spare key, basically it's a magnet under the truck.

<p style="text-align: right;">Page 54</p> <p>1 It's kind of my impression that some of the installers,  2 who was the other driver you have to drive on,  3 installers and--?</p> <p>4 A: The technicians.</p> <p>5 Q: Technicians, I'm sorry. So, they  6 would do that. They would make a spare and have a  7 magnet under the trucks, it kept locked out. Do you  8 have some understanding that some of your employers are  9 doing that?</p> <p>10 A: There was a couple of them, yes.  11 Because other than that, we have a lock box.</p> <p>12 Q: Okay. You knew that at the time of  13 the accident that some of your employees are doing  14 that?</p> <p>15 A: Know what?</p> <p>16 Q: That some of the employees would have  17 like a magnet key?</p> <p>18 A: Yes.</p> <p>19 Q: Okay. Do you discourage that  20 practice?</p> <p>21 A: No. Because they would lock their  22 keys in their car, lose them or whatever, but yeah.  23 But only the technicians.</p> <p>24 Q: Okay. Were you aware that Efren had  25 one of those magnet keys on the day that he was fired?</p>	<p style="text-align: right;">Page 56</p> <p>1 the truck.</p> <p>2 A: Right.</p> <p>3 Q: That's the position you guys have  4 taken, correct?</p> <p>5 A: Correct.</p> <p>6 Q: Why was the truck back at the house?  7 Why not leave it at the office?</p> <p>8 A: I couldn't be sure why that decision  9 was made that day.</p> <p>10 Q: Okay. You don't remember who brought  11 it to the house?</p> <p>12 A: I don't. I don't remember.</p> <p>13 Q: When you found out the truck was  14 missing, did it surprise you that it was Efren who was  15 driving it?</p> <p>16 A: I didn't know that Efren was driving  17 it at that moment.</p> <p>18 Q: I understand. When you found out it  19 was Efren who was driving it, did that surprise you?</p> <p>20 A: Yeah, because my husband had the  21 keys.</p> <p>22 Q: How did you know your husband had the  23 keys?</p> <p>24 A: Because he told me. I called him and  25 I said, I asked him, "Did you take the truck for any</p>
<p style="text-align: right;">Page 55</p> <p>1 A: No.</p> <p>2 Q: You weren't there when they took his  3 keys, correct?</p> <p>4 A: When they took whose keys?</p> <p>5 Q: When they took Efren's keys, correct?</p> <p>6 A: No.</p> <p>7 Q: Okay. So, you don't know whether or  8 not they asked them for any magnet keys under the  9 truck?</p> <p>10 A: No.</p> <p>11 Q: I think I asked you this. You don't  12 know why the truck was at the house that night?</p> <p>13 A: Why the truck was at the house?</p> <p>14 Q: Right. My understanding was it was a  15 work truck and it was Efren's work truck, correct?</p> <p>16 A: It's a company's work truck but Efren  17 had it.</p> <p>18 Q: Right. My impression was the  19 technicians or Efren, they were basically assigned a  20 truck.</p> <p>21 A: Right.</p> <p>22 Q: So, when I say it's there, I mean..</p> <p>23 A: Assigned to him?</p> <p>24 Q: Right. So, once according to Cool-  25 Air Now he was fired, then Efren no longer has use of</p>	<p style="text-align: right;">Page 57</p> <p>1 reason?" He said no. I said, "Well, that's not here."  2 He said, "That's impossible. I have the keys in my  3 pocket."</p> <p>4 Q: He said that to you on the phone?</p> <p>5 A: "I have the keys," well, I'm calling  6 911.</p> <p>7 Q: Why would he take the keys if the car  8 is at the house?</p> <p>9 A: That's a question you have to ask  10 him.</p> <p>11 Q: Did you have a personal car at the  12 house that you could have taken if you had to go  13 somewhere?</p> <p>14 A: Yes.</p> <p>15 Q: What was the first thing you did when  16 you woke up the morning of the accident?</p> <p>17 A: I took my daughter to school, 6-ish.</p> <p>18 Q: Did you drive her, or she take the  19 bus?</p> <p>20 A: No, I drove her.</p> <p>21 Q: Was that normal?</p> <p>22 A: Yeah, that was normal. She had to be  23 there I guess 6:50. That was normal.</p> <p>24 Q: When did you notice the truck  25 missing?</p>



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1 A: Like around 9:30. About 9:30.

2 Q: Why the lapse in time between you

3 getting up and never seen the car is missing?

4 A: Because it was there... Okay, so, when

5 I wake up to take my daughter, I go to the bathroom.

6 So, in my bathroom is a window. It's like that window,

7 and the truck is right outside because it's parked

8 behind the gate. So, when I get up in the morning, I

9 go to the restroom. My restroom is right over there in

10 the corner, this is my master bedroom. I have to walk

11 by that window to go to the restroom. I see the truck,

12 go take my daughter, come back, go back to bed. My

13 husband is there. The truck is there. So, when I get

14 up on my own, same thing, my husband is gone, I go to

15 the restroom, come back, pass to the window, the truck

16 is gone.

17 Q: Okay. It was after you took your

18 daughter to school?

19 A: Yes.

20 Q: Okay. All right. So, tell me about

21 what happened when you get to the accident scene. Do

22 you want to take a break?

23 A: No. No, I don't.

24 Q: Okay.

25 A: I don't. I get to the accident scene

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1 and I pull into the, I believe it's a Denny's right

2 there. Pull in there. I see that they're still... the

3 vehicles are still in the same place as the accident.

4 They weren't moved or anything like that. So, I just

5 get out and, "What happened?" The officer tells me,

6 "It's obvious," and just... that my son rear-ended this

7 gentleman. Our truck was totaled, and I asked the

8 gentleman if he was okay. He said, "I'm fine. All I

9 want is your insurance information." He was kind of

10 rude so I just didn't... That was all I said to him. I

11 tell the officer, "He's not supposed to have this

12 truck."

13 Q: Did you tell the officer you thought

14 he was on drugs?

15 A: No. I didn't know that he was.

16 Q: Did you ever see the officer pull a

17 bag of heroin out of Efren's shirt?

18 A: No.

19 Q: Did you ever talk with Efren?

20 A: What do you mean, like at that

21 moment?

22 Q: At the scene, yeah. Yeah, I'm sorry.

23 A: I screamed at him. Why?

24 Q: What did you say?

25 A: What the hell are you doing?

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1 Q: What did he say?

2 A: Nothing.

3 Q: Nothing at all?

4 A: Uh-uh.

5 Q: I understand that the accident scene

6 was about six miles from your house. Do you know what

7 he was doing down there?

8 A: I don't.

9 Q: Till this day?

10 A: No. I don't. I don't.

11 Q: Did you have any conversations with

12 Juan while you were there?

13 A: I remember he... I don't. I just

14 remember him getting there after... No. I can't say I

15 did.

16 Q: Before the day of the accident, did

17 you confront Efren about why he was stealing money from

18 the company?

19 A: He wasn't stealing money. It was

20 gift cards or something that he was buying.

21 Q: Okay. He was using the company

22 credit card to buy gift cards, correct?

23 A: Right.

24 Q: Okay. I generally call that

25 stealing. Can we...?

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1 A: Yes, yes.

2 Q: Okay. Did you ever ask him why he

3 was stealing from the company?

4 A: God, I don't remember. I don't

5 remember.

6 Q: Did you hear Juan say anything to

7 Efren at the scene?

8 A: The only thing that I remember him

9 saying to Efren was, "Are you kidding me?" That was it

10 that I remember. That was it.

11 Q: Do you remember anything else that

12 either you or Juan said to the police officer?

13 A: That he wasn't supposed to have the

14 vehicle, that he wasn't supposed to have the vehicle.

15 Q: Anything else?

16 A: No.

17 Q: Did you take anything out of the

18 vehicle?

19 A: No.

20 Q: Did you overhear any other

21 conversations or anything my client said?

22 A: No.

23 Q: Now, my understanding is you had

24 Efren charged with stealing the car?

25 A: Yes.

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1 Q: He told me yesterday he was given a  
2 five-month suspended sentence and then ended up going  
3 back to jail because he didn't want to do the terms of  
4 drug court. Do you have an understanding of that?  
5 A: As a result of the accident?  
6 Q: Yes.  
7 A: He did that I remember. We didn't  
8 have a lot of contact with him afterwards.  
9 Q: Okay, all right. He told us he spent  
10 Christmas and New Year's in jail. The accident  
11 happened on the 12th of December.  
12 A: Okay.  
13 Q: He said yesterday he spent Christmas  
14 and New Year's in jail. Do you remember that?  
15 A: I do remember that.  
16 Q: What did you remember about that?  
17 A: He wasn't around. Like I said, he  
18 wasn't... After all this happened, we didn't have a lot  
19 of contact with him.  
20 Q: Okay. Did you go visit him in jail?  
21 A: I remember visiting him in jail, but  
22 I don't know if it was at that time.  
23 Q: Is there another time he was in jail?  
24 A: He was in jail September last year.  
25 Q: '17?

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1 A: I think so, yeah.  
2 Q: For what?  
3 A: For unpaid traffic tickets. I don't  
4 know if it was for this infraction.  
5 Q: Okay.  
6 A: But I do remember for traffic  
7 tickets.  
8 Q: You remember you visited him in jail  
9 for traffic tickets?  
10 A: At that time, at CCDC, and I think it  
11 was for traffic tickets.  
12 Q: Okay. So, when he stole the car, you  
13 don't remember if you visited him in jail, during that  
14 stay in jail?  
15 A: I don't. I don't.  
16 Q: Okay. Okay. Has Efren ever told you  
17 how the accident happened?  
18 A: No.  
19 Q: You said the work truck was totaled,  
20 correct?  
21 A: It was.  
22 Q: We'll mark this as Exhibit four?  
23 MS. GRONEMAN: Yes. I don't have my  
24 stickers with me today.  
25 Q: Okay. All right. Do you recognize

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1 that truck?  
2 A: Yes.  
3 Q: Was that the truck that Efren was  
4 driving on the accident?  
5 A: Yes.  
6 Q: Do you know what is all that stuff on  
7 the dashboard?  
8 A: No, not exactly, but it looks like  
9 paperwork.  
10 Q: Okay. When Efren was fired, if he  
11 had any personal items in the truck, would those have  
12 been taken out?  
13 A: No.  
14 Q: They were just been left in there?  
15 A: Well, yeah, because they took the  
16 truck.  
17 Q: When he was fired?  
18 A: Oh, you're asking me if any of his  
19 personal items would have been removed from the truck?  
20 Q: Right. When he was fired.  
21 A: I don't know.  
22 Q: I knew his was in there somewhere.  
23 Okay. Going back on Exhibit two, Bates stamp number  
24 JSNS31. This is from December 11th, 2014. This is the  
25 day before the accident.

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1 A: Okay.  
2 Q: I'll read it to you and then I'll  
3 give it to you because I think I've only got one copy  
4 of it here. So, this is the day before the accident,  
5 JSNS31. It says, "Juan believed Efren had a drug  
6 addiction and he believed he purchased the gift cards  
7 to sell to get cash to purchase illegal drugs." Do you  
8 see that?  
9 A: Efren was..  
10 MR. SHANNON: Which paragraph? Oh, I  
11 see. It's right here. The third paragraph.  
12 A: Oh, here. "Juan believed Efren had a  
13 drug addiction and he believed he purchased the gift  
14 cards to sell to get cash to purchase illegal drugs."  
15 Q: Okay. On December 11th, 2014, did  
16 you know that that was Juan's belief?  
17 A: No.  
18 MR. SHANNON: Belated foundation  
19 objection.  
20 A: No.  
21 Q: On December 11, 2014, was that your  
22 belief that that's why he had taken the gift cards?  
23 A: No.  
24 Q: So, the fact that Juan told that to  
25 the officer, it surprised you?

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1 A: Yeah. Yes. No.  
2 Q: At the time of the accident, I  
3 understand Juan had an Escalade?  
4 A: Yes.  
5 Q: You said you had your own personal  
6 car?  
7 A: Yes.  
8 Q: What kind of personal car did you  
9 have?  
10 A: 2007 Cadillac.  
11 Q: Who were those two cars insured with?  
12 A: Western?  
13 MR. SHANNON: Don't guess.  
14 Q: Don't guess.  
15 A: Okay. I don't remember.  
16 Q: Okay. But both of those cars were  
17 insured?  
18 A: Yes.  
19 Q: Do you believe they were on separate  
20 policies or the same policy?  
21 A: The same policy, that much I know.  
22 Q: Do you know who your agent was?  
23 A: Yes.  
24 Q: Who's that?  
25 A: Stephanie Salmon with Safeguard

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1 Insurance.  
2 Q: Salmon like the fish?  
3 A: Yes.  
4 Q: Is she the same person who wrote the  
5 business policies, not wrote the business policies but  
6 helped you get the business policies?  
7 A: I believe so at that time. Yes.  
8 Q: Okay. Is she still your agent for--  
9 A: She is now again because she wasn't  
10 and then we want... then, she was. Because she was and  
11 then I went to a different agent. Now, she is again.  
12 Q: Okay. Is she with Safeguard still?  
13 A: Yes. Yes.  
14 Q: Okay. Are you doing okay? Do you  
15 want a take a break?  
16 A: Not yet. No. Let's continue.  
17 Q: Okay. I'm just about done. Maybe  
18 five minutes left.  
19 MR. SHANNON: You said 15-minute  
20 increments, right?  
21 A: Yeah.  
22 MR. SHANNON: I know. I know. That's  
23 what you do to your credit.  
24 Q: Before the accident, had you ever  
25 kicked Efren out of the house?

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1 A: I kicked my kids out all the time,  
2 yes.  
3 Q: Okay. Actually, as I'm looking back  
4 at Juan's depo, he does say you were the one that  
5 kicked Efren out before.  
6 A: Yes.  
7 Q: But then he does say the next time he  
8 would have kicked him out, but you kept him a little  
9 bit, so you guys both switched off between a good  
10 cop/bad cop?  
11 A: Yeah. Yeah.  
12 Q: Do you know when you hire a new  
13 employee who has to drive one of the work trucks, do  
14 you give their driver's license to the insurance  
15 company?  
16 A: Yes.  
17 Q: For what reason?  
18 A: It's required by the insurance.  
19 Q: Okay. When they are terminated, do  
20 you let the insurance company know they've been  
21 terminated?  
22 A: Yes.  
23 Q: Would the document going to the  
24 insurance company saying that they've been terminated  
25 be in the employee's file?


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1 A: No.  
2 Q: Where would that be?  
3 A: It's just an email.  
4 Q: Do you have an email going out to  
5 your insurance company saying Efren had been fired?  
6 A: I wouldn't have done it at that time?  
7 It would have been Lila.  
8 Q: Okay. Is that a document you could  
9 get?  
10 A: I'm sure it is. Yes.  
11 Q: You believe Lila did it in this case?  
12 A: I don't know. You would have to ask  
13 her.  
14 Q: Okay. Do you know if it was her  
15 practice to do it the same day or couple days later?  
16 A: I don't know. That, I don't know.  
17 Q: Who would she have sent the email to?  
18 A: Stephanie.  
19 Q: Juan, in his deposition, said.. I'm  
20 sorry. I already asked you that question. I'll skip  
21 that. Before the accident, were you aware of any other  
22 car accidents Efren had been involved in?  
23 A: Before?  
24 Q: Yes.  
25 A: No. Not with another car, no.

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1           **Q: Did he hit something else?**  
2           A: Yeah, my car. He ran something over.  
3           **Q: What did he run over?**  
4           A: The median. He never got into a car  
5 accident. He just like hit something with my car.  
6           **Q: When was that?**  
7           A: It was a median. Oh, God, that was a  
8 long time ago, like 2011.  
9           **Q: Do you know why that happened? Did**  
10 **he explain why?**  
11          A: Because it was raining.  
12          **Q: Okay. So, he lost control?**  
13          A: Yeah.  
14          **Q: Pass the witness.**  
15          MR. SHANNON: I have no questions.  
16          **Q: We're all done. Thank you.**  
17          MS. GRONEMAN: This concludes the  
18 recorded deposition. The time is 3:40 p.m. Going off  
19 the record. The time is 3:40 p.m.  
20               (Deposition adjourned at 3:40 p.m.)  
21  
22  
23  
24  
25

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1           CERTIFICATE OF RECORDER  
2   STATE OF NEVADA   )  
3   COUNTY OF CLARK   )  
4   NAME OF CASE:   PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO  
5       I, Kailey Groneman, a duly commissioned  
6 Notary Public, Clark County, State of Nevada, do hereby  
7 certify: That I recorded the taking of the  
8 deposition of the witness, Delia Sotelo,  
9 commencing on 01/26/2018.  
10 That prior to being examined the witness was  
11 duly sworn to testify to the truth.  
12       I further certify that I am not a relative or  
13 employee of an attorney or counsel of any of the  
14 parties, nor a relative or employee of an attorney or  
15 counsel involved in said action, nor a person  
16 financially interested in the action.  
17 IN WITNESS WHEREOF, I have hereunto set my  
18 hand in my office in the County of Clark, State of  
19 Nevada, this 01/26/2018.  
20   
21 \_\_\_\_\_  
22 Kailey Groneman Notary  
23  
24  
25

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1           CERTIFICATE OF TRANSCRIPTION  
2   STATE OF NEVADA   )  
3   COUNTY OF CLARK   )  
4   NAME OF CASE:   PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO  
5       I, Peter Hellman, a duly commissioned  
6 Notary Public, Clark County, State of Nevada, do hereby  
7 certify: That I transcribed or supervised the transcription  
8 of the Recorded deposition of the witness,  
9 Delia Sotelo,  
10 commencing on 01/26/2018. The Transcription is a true  
11 and accurate representation of the testimony taken from  
12 the witness, Delia Sotelo.  
13       I further certify that I am not a relative or  
14 employee of an attorney or counsel of any of the  
15 parties, nor a relative or employee of an attorney or  
16 counsel involved in said action, nor a person  
17 financially interested in the action.  
18 IN WITNESS WHEREOF, I have hereunto set my  
19 hand in my office in the County of Clark, State of  
20 Nevada, this 01/26/2018.  
21  
22 \_\_\_\_\_  
23 Peter Hellman - Notary  
24  
25

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1           Errata Sheet  
2   NAME OF CASE:   PHILIP MICHAEL BOUCHARD vs EFREN ISAAC SOTELO  
3   DATE OF DEPOSITION: 01/26/2018  
4   NAME OF WITNESS:   Delia Sotelo  
5   Reason Codes:   1. To clarify the record.  
6                    2. To conform to the facts.  
7                    3. To correct transcription errors.  
8   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
9   From \_\_\_\_\_ to \_\_\_\_\_  
10   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
11   From \_\_\_\_\_ to \_\_\_\_\_  
12   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
13   From \_\_\_\_\_ to \_\_\_\_\_  
14   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
15   From \_\_\_\_\_ to \_\_\_\_\_  
16   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
17   From \_\_\_\_\_ to \_\_\_\_\_  
18   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
19   From \_\_\_\_\_ to \_\_\_\_\_  
20   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
21   From \_\_\_\_\_ to \_\_\_\_\_  
22   Page \_\_\_\_ Line \_\_\_\_ Reason \_\_\_\_  
23   From \_\_\_\_\_ to \_\_\_\_\_  
24  
25                               DELIA SOTELO

## TERMINATION STATEMENT

12-10-2014  
Date

☐ Voluntary Termination  
☒ Involuntary Termination

I, 12/20/14 Efren Sotelo, do hereby give acknowledgment of termination of employment. My last day of work will be 12/20/14.

Reason for Termination:

Employee Misconduct  
NOT TO BE Rehired

Keys	✓
Gas Card	✓
Uniforms	✓
All misc Company property	✓

[Signature]  
Employee Signature

12-10-2014  
Date

[Signature]  
Supervisor Signature

12-10-2014  
Date

JSNS000045

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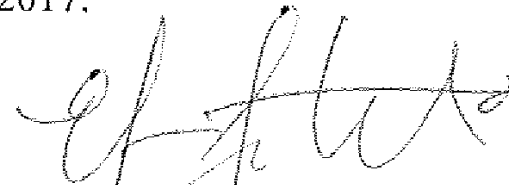
**AFFIDAVIT OF EFREN SOTELO**

STATE OF NEVADA       )  
                                  )    ss:  
COUNTY OF CLARK     )

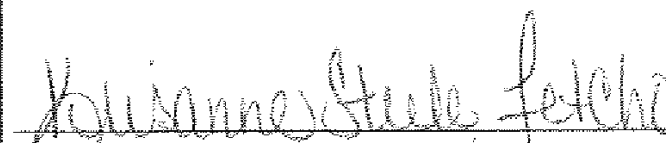
I, EFREN SOTELO being first duly sworn deposes and says:

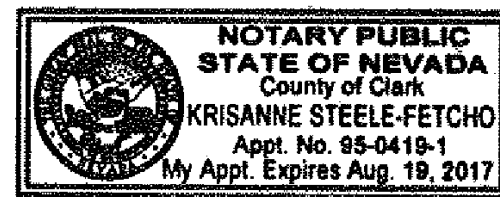
1. That at the time of the service of the Complaint on August 17, 2016, I was not residing with my parents at their residence located at 5915 Musketeer Lane, Las Vegas, Nevada;
2. That on August 17, 2016, I was staying with a friend and did not have a contact phone number;
3. Approximately September 16, 2016, I left for Mexico to visit my Great-Grandmother, Dolores Banuelas, and did not return to the United States until around the Christmas holidays;
4. I received a letter from Nationwide Insurance counsel at Selman Breitman and attempted to contact that counsel instead of the counsel at Stephenson & Dickinson, P.C. that was assigned to me.

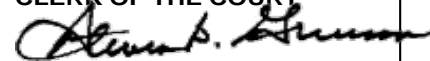
DATED this 11 day of April, 2017.

  
\_\_\_\_\_  
EFREN SOTELO

SUBSCRIBED AND SWORN to before me  
this 11th day of April, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC





ROBERT W. FREEMAN  
Nevada Bar No. 3062  
PRISCILLA L. O'BRIANT  
Nevada Bar No. 10171  
LEWIS BRISBOIS BISGAARD & SMITH LLP  
6385 S. Rainbow Boulevard, Suite 600  
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E-Mail: [Robert.Freeman@lewisbrisbois.com](mailto:Robert.Freeman@lewisbrisbois.com)  
E-Mail: [Priscilla.Obriant@lewisbrisbois.com](mailto:Priscilla.Obriant@lewisbrisbois.com)  
*Attorneys for National Casualty Company*

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

PHILIP BOUCHARD, an individual,  
  
Plaintiff,  
  
vs.

CASE NO.: A-20-813355-C

DEPT.: 13

**NOTICE OF ENTRY OF ORDER  
GRANTING STAY OF DISCOVERY  
PENDING OUTCOME OF WRIT  
PETITION**

NATIONAL CASUALTY COMPANY, a  
foreign corporation; COAST NATIONAL  
INSURANCE COMPANY dba FOREMOST  
INSURANCE GROUP, a foreign entity;  
SELMAN BREITMAN LLP, a foreign limit  
liability partnership corporation;  
STEPHENSON & DICKINSON, a Nevada  
professional corporation, DOES 1 through 10,  
and ROE CORPORATIONS 1 through 20,  
inclusive,  
  
Defendants.

NOTICE IS HEREBY GIVEN that the Order Granting Stay of Discovery Pending Outcome  
of Writ Petition was filed on October 22, 2021; and a true and correct copy is attached hereto.

DATED this 25<sup>th</sup> day of October 2021 LEWIS BRISBOIS BISGAARD & SMITH LLP

BY /s/ PRISCILLA L. O'BRIANT

ROBERT W. FREEMAN, Nevada Bar No. 3062  
PRISCILLA L. O'BRIANT, Nevada Bar No. 10171  
6385 S. Rainbow Boulevard, Suite 600  
Las Vegas, NV 89118

1 **CERTIFICATE OF SERVICE**

2 Pursuant to N.E.F.C.R. 9, I certify that I am an employee of, and that on this 25th day of  
3 OCTOBER, 2021, I did cause a true copy of NOTICE OF ENTRY OF ORDER GRANTING  
4 STAY OF DISCOVERY PENDING OUTCOME OF WRIT PETITION to be served via electronic  
5 service by the above-entitled Court to the parties on the Electronic Filing System.  
6

7 Jordan P. Schnitzer, Esq.  
8 The Schnitzer Law Firm  
9 9205 W. Russell Road, Suite 240  
10 Las Vegas, NV 89148  
11 Phone 702.960.4050  
12 Fax 702.960.4092  
13 [Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
14 Attorney for Philip Bouchard, Plaintiff

Sheri Thome, Esq.  
Wilser Elser Moskowitz Edelman & Dicker  
LLP  
6689 Las Vegas Blvd., South, Suite 200  
Las Vegas, NV 89119  
Phone 702.727.1400  
Fax 702.727.1401  
[Sheri.Thome@wilsonelser.com](mailto:Sheri.Thome@wilsonelser.com)  
Attorney for Stephenson & Dickinson

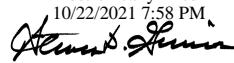
12 David J. Feldman, Esq.  
13 John C. Dorame, Esq.  
14 The Feldman Firm  
15 8831 W. Sahara Avenue  
16 Las Vegas, NV 89117  
17 Phone 702.949.5096  
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21 Attorney for Coast National Insurance  
22 Company dba Foremost Insurance Group

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Alan Yuter, Esq.  
Selman Breitman LLP  
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Fax 702.228.8824  
[cquinn@selmanlaw.com](mailto:cquinn@selmanlaw.com)  
[ayuter@selmanlaw.com](mailto:ayuter@selmanlaw.com)  
Attorneys for Selman Breitman LLP

23  
24 By /s/ Anne Cordell  
25 An Employee of  
26 LEWIS BRISBOIS BISGAARD & SMITH LLP  
27  
28



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10/22/2021 7:58 PM  
  
CLERK OF THE COURT

1 ROBERT W. FREEMAN  
Nevada Bar No. 3062  
2 PRISCILLA L. O'BRIANT  
Nevada Bar No. 10171  
3 LEWIS BRISBOIS BISGAARD & SMITH LLP  
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E-Mail: Robert.Freeman@lewisbrisbois.com  
6 E-Mail: Priscilla.Obriant@lewisbrisbois.com  
Attorneys for National Casualty Company

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

10 PHILIP BOUCHARD, an individual,

11 Plaintiff,

12 vs.

13 NATIONAL CASUALTY COMPANY, a  
foreign corporation; COAST NATIONAL  
14 INSURANCE COMPANY dba FOREMOST  
INSURANCE GROUP, a foreign entity;  
15 SELMAN BREITMAN LLP, a foreign limit  
liability partnership corporation;  
16 STEPHENSON & DICKINSON, a Nevada  
professional corporation, DOES 1 through 10,  
17 and ROE CORPORATIONS 1 through 20,  
inclusive,

18 Defendants.  
19

CASE NO.: A-20-813355-C

DEPT.: 13

**ORDER GRANTING STAY OF  
DISCOVERY PENDING OUTCOME OF  
WRIT PETITION**

20 National Casualty Company's Motion To Stay Pending Outcome Of Writ Petition, having  
21 been fully briefed and submitted, the Court, having reviewed all of the pleadings and papers on  
22 file herein, finds as follows:

23 IT IS ORDERED, ADJUDGED AND DECREED that Defendant's Motion to Stay  
24 Proceedings Pending Outcome of Writ Petition is hereby GRANTED.

25 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the above-captioned  
26 matter is hereby STAYED until further order of the Court.

27 ///

28 ///

**LEWIS  
BRISBOIS  
BISGAARD  
& SMITH LLP**  
ATTORNEYS AT LAW

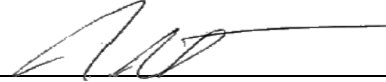
4858-6183-0912.1

Case Number: A-20-813355-C

1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that the parties appear for a  
2 status check on December 13, 2021 at 9:00 a.m.

3 IT IS SO ORDERED.

Dated this 22nd day of October, 2021



DISTRICT COURT JUDGE

66B 14A BBAE F97D  
Mark R. Denton  
District Court Judge

ABG

7 Submitted by:

8 LEWIS BRISBOIS BISGAARD & SMITH LLP

10 /s/ Priscilla L. O'Briant

11 ROBERT W. FREEMAN

Nevada Bar No. 3062

12 E-Mail: Robert.Freeman@lewisbrisbois.com

PRISCILLA L. O'BRIANT

13 Nevada Bar No. 010171

E-Mail: Priscilla.O'Briant@lewisbrisbois.com

14 6385 S. Rainbow Boulevard, Suite 600

Las Vegas, Nevada 89118

15 Attorneys for Defendant

16 Approved as to Form and Content:

17 THE SCHNITZER LAW FIRM

19 /s/ Jordan P. Schnitzer

20 JORDAN P. SCHNITZER

Nevada Bar No. 10744

21 E-Mail: Jordan@TheSchnitzerLawFirm.com

9205 W. Russell Road, Suite 240

22 Las Vegas, NV 89148

23 Attorney for Plaintiff

**From:** [Jordan Schnitzer](#)  
**To:** [O'Briant, Priscilla](#)  
**Cc:** [Melisa Gabhart](#); [Freeman, Kristen](#); [Cordell, Anne](#)  
**Subject:** [EXT] RE: Bouchard v. NCC - Proposed Order  
**Date:** Wednesday, October 20, 2021 2:39:34 PM  
**Attachments:** [image001.png](#)  
[image002.png](#)  
[image003.png](#)  
[image004.png](#)  
[image005.png](#)

**Caution:** This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

You may e-sign for me.

*Jordan P. Schnitzer, Esq.*



TheSchnitzerLawFirm.com  
Tel 702.960.4050 | Fax 702.960.4092  
Email [Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
9205 West Russell Road | Suite 240 | Las Vegas, Nevada 89148

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**From:** O'Briant, Priscilla <[Priscilla.Obriant@lewisbrisbois.com](mailto:Priscilla.Obriant@lewisbrisbois.com)>  
**Sent:** Wednesday, October 20, 2021 2:23 PM  
**To:** Jordan Schnitzer <[Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)>  
**Cc:** Melisa Gabhart <[Melisa@TheSchnitzerLawFirm.com](mailto:Melisa@TheSchnitzerLawFirm.com)>; Freeman, Kristen <[Kristen.Freeman@lewisbrisbois.com](mailto:Kristen.Freeman@lewisbrisbois.com)>; Cordell, Anne <[Anne.Cordell@lewisbrisbois.com](mailto:Anne.Cordell@lewisbrisbois.com)>  
**Subject:** Bouchard v. NCC - Proposed Order

Attached please find the proposed order and advise of any comments, or your authority to submit with your electronic signature as to form and content.



**Priscilla L. O'Briant**  
**Partner**  
[Priscilla.Obriant@lewisbrisbois.com](mailto:Priscilla.Obriant@lewisbrisbois.com)  
**T: 702.693.4388 F: 702.893.3789**

6385 South Rainbow Blvd., Suite 600, Las Vegas, NV 89118 | [LewisBrisbois.com](http://LewisBrisbois.com)

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1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Philip Bouchard, Plaintiff(s)

CASE NO: A-20-813355-C

7 vs.

DEPT. NO. Department 13

8 Stephenson & Dickinson,  
9 Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
14 recipients registered for e-Service on the above entitled case as listed below:

Service Date: 10/22/2021

15 Priscilla O'Briant priscilla.obriant@lewisbrisbois.com

16 Anne Cordell anne.cordell@lewisbrisbois.com

17 Jordan Schnitzer jordan@theschnitzerlawfirm.com

18 Kristen Freeman kristen.freeman@lewisbrisbois.com

19 Maceo Butler Maceo.Butler@lewisbrisbois.com

20 Efile LasVegas efilelasvegas@wilsonelser.com

21 Sheri Thome sheri.thome@wilsonelser.com

22 David Feldman dfeldman@feldmanattorneys.com

23 Robert Freeman robert.freeman@lewisbrisbois.com

24 Heather Villiard hvilliard@feldmanattorneys.com

25 Lani Maile lani.maile@wilsonelser.com

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Melisa Gabhart

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Rachel Holzer

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Amy Mettler

[amettler@feldmanattorneys.com](mailto:amettler@feldmanattorneys.com)



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Steven D. Grierson  
CLERK OF THE COURT

JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Suite 240  
Las Vegas, Nevada 89148  
Telephone: (702) 960-4050  
Facsimile: (702) 960-4092  
[Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
*Attorney for Plaintiff*

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

PHILIP MICHAEL BOUCHARD, an individual,  
Plaintiffs,

vs.

EFREN ISSAC SOTELO, an individual; JUAN  
SOTELO, an individual, NOW SERVICES OF  
NEVADA, LLC d/b/a/ COOL AIR NOW, a  
Nevada limited liability company; DOES 1  
through 10, inclusive; and ROE  
CORPORATIONS 1 through 20, inclusive,

Defendants.

Case No.: A -16-740711-C

Dept. No.: XXXI

**NOTICE OF ENTRY OF ORDER**  
**ON PLAINTIFF'S MOTION FOR**  
**JUDICIAL ASSIGNMENT OF**  
**CAUSES OF ACTION**

PLEASE TAKE NOTICE that on the 2<sup>nd</sup> day of April 2020, the Order on Plaintiff's  
Motion for Judicial Assignment of Causes of Action was entered. A true and correct copy of the  
Order filed on the 3<sup>rd</sup> day of April 2020, is attached hereto and incorporated herein by the reference.

DATED this 3<sup>rd</sup> day of April 2020.

THE SCHNITZER LAW FIRM

BY:   
JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
9205 W. Russell Road, Suite 240  
Las Vegas, Nevada 89148  
*Attorney for Plaintiff*



1 **CERTIFICATE OF SERVICE**

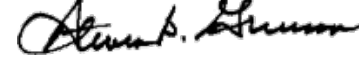
2 In accordance with Rule 9 of the N.E.F.C.R., I, the undersigned hereby certify that on the  
3 3<sup>rd</sup> day of April 2020, I served a true and correct copy of the foregoing **NOTICE OF ENTRY**  
4 **OF ORDER ON PLAINTIFF'S MOTION FOR JUDICIAL ASSIGNMENT OF CAUSES**  
5 **OF ACTION** to the above-entitled Court for electronic filing and service upon the Court's  
6 Service List for the above-referenced case to the following counsel:

7 Steven T. Jaffe, Esq.  
8 Kevin S. Smith, Esq.  
9 HALL JAFFE & CLAYTON, LLP  
724 Peak Drive  
Las Vegas, NV 89128  
10 *Attorneys for Defendants,*  
11 *Now Services of Nevada LLC dba*  
*Cool Air Now & Juan Sotelo*

12 Marsha L. Stephenson, Esq.  
13 STEPHENSON & DICKENSON, P.C.  
2820 West Charleston Blvd., Suite 19  
Las Vegas, NV 89102  
14 *Attorney for Defendant,*  
15 *Efren Issac Sotelo*

16 John H. Cotton Esq.  
17 Katherine L. Turpen, Esq.  
JOHN H. COTTON & ASSOCIATES, LTD.  
7900 West Sahara Avenue, Suite 200  
Las Vegas, NV 89117  
18 *Attorney for Non-party Zoran Maric, M.D.*

21 An employee of  
22 THE SCHNITZER LAW FIRM



JORDAN P. SCHNITZER, ESQ.  
Nevada Bar No. 10744  
THE SCHNITZER LAW FIRM  
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[Jordan@TheSchnitzerLawFirm.com](mailto:Jordan@TheSchnitzerLawFirm.com)  
*Attorney for Plaintiff*

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

PHILIP MICHAEL BOUCHARD, an individual,  
  
Plaintiff,

Case No.: A-16-740711-C

Dept. No.: XXXI

vs.

EFREN ISSAC SOTELO, an individual; JUAN  
SOTELO, an individual, NOW SERVICES OF  
NEVADA, LLC d/b/a/ COOL AIR NOW, a Nevada  
limited liability company; DOES 1 through 10,  
inclusive; and ROE CORPORATIONS 1 through 20,  
inclusive,

**ORDER ON PLAINTIFF'S**  
**MOTION FOR JUDICIAL**  
**ASSIGNMENT OF CAUSES OF**  
**ACTION**

Defendants.

Plaintiff's Motion For Judicial Assignment of Causes of Action having come on an Order Shortening Time for hearing on February 13, 2020, before this Honorable Court, with Jordan P. Schnitzer, Esq. appearing on behalf of Plaintiff, Philip Michael Bouchard and Marsha Stephenson, Esq., appearing on behalf of Defendant, Efren Sotelo. The hearing was continued, and the parties were provided time to submit additional briefing. The matter then came on again for hearing on March 23, 2020, with Jordan P. Schnitzer, Esq. appearing on behalf of Plaintiff, Philip Michael Bouchard and Marsha Stephenson, Esq., appearing on behalf of Defendant, Efren Sotelo, both via CourtCall.

The Court having considered the papers and pleading on file herein, the Court noting there be no opposition filed, the Court being fully advised in the premises and good cause appearing therefore, finds and Orders as follow:



1. Although Ms. Stephenson indicated she may have a conflict of interest, she did not file a Motion to Withdraw as Counsel nor has Mr. Sotelo obtained separate counsel after this matter was continued;
2. There was no filed opposition and, therefore, the Motion may be granted pursuant to EDCR 2.20;
3. The Court also finds Plaintiff's Motion meritorious based upon the citations in the Motion;
4. Pursuant to NRS 21.230, "rights of action held by a judgment debtor are personal property subject to execution in satisfaction of a judgment." *Gallegos v. Malco Enterprises of Nevada, Inc.*, 127 Nev. 579, 582, 255 P.3d 1287, 1289 (2011). As a result, such rights of action "may be judicially assigned in satisfaction of a judgment." *Id.*;
5. In *Gallegos*, the Nevada Supreme Court specifically authorized district court judges to judicially assign claims held by judgment debtors against any insurance carriers "for breach of contract, breach of fiduciary duties, and breach of duty of good faith and fair dealing." *Id.* at 1288;
6. Plaintiff Philip Bouchard currently has a judgment against Defendant Efren Sotelo in the amount of \$385,108.17 plus post-judgment interest dating back to September 27, 2019;
7. Based upon the unrefuted facts set forth in the Motion, Efren Sotelo potentially has causes of action against National Casualty Company (NCC), Civil Service Employee Insurance Group (CSE) and Foremost Insurance Group (Foremost) for breach of contract and/or breach of the covenant of good faith and fair dealing (tortious and contractual) if the alleged facts are true;
8. Based upon the unrefuted facts set forth in the Motion, Efren Sotelo potentially has causes of action Stephenson & Dickinson (as agents of NCC) and Selman Breitman (as agents of NCC) for breach of the covenant of good faith and fair dealing (tortious and/or contractual) if the alleged facts are true. *See Liberty Mutual Ins. Co. v. Garrison Contractors, Inc.*, 966 S.W.2d 482 (Tex. 1998); *Taylor v. Nationwide Mutual Ins. Co.*,



589 S.E.2d 55 (W. Va. 2003); *Morvay v. Hanover Ins. Companies*, 127 N.H. 723, 726 (1986); *Brown v. State Farm Fire & Cas. Co.*, 58 P.3d 217 (Okla. Civ. App. 2002); *Continental Ins. Co. v. Bayless & Roberts, Inc.*, 608 P.2d 281, 287-88 (Alaska 1980).

9. The Court does not take any position regarding whether the Nevada Supreme Court would allow such causes of action against parties acting as agents of an insurer;

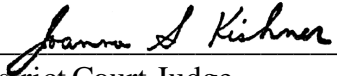
10. Plaintiff is not requesting assignment of any causes of action for legal malpractice and no such causes of action are assigned by this Order;

11. It is therefore Ordered that Plaintiff is judicially assigned all of Efren Sotelo's causes of action for breach of contract and breach of the duty of good faith and fair dealing (contractual and tortious) against NCC, CSE and Foremost;

12. It is therefore Ordered that Plaintiff is judicially assigned all of Efren Sotelo's causes of action, to the extent they exist under Nevada law, against Selman Breitman and Stephenson & Dickinson for breach of the covenant of good faith and fair dealing (tortious and/or contractual) for their actions as agents of NCC.

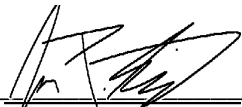
**IT IS SO ORDERED**

DATED this 2nd day of April 2020.

  
District Court Judge

Respectfully Submitted by:

Approved as to form and content:

BY:   
Jordan P. Schnitzer, Esq.  
THE SCHNITZER LAW FIRM  
9205 W. Russell Road, Suite 240  
Las Vegas, NV 89148  
*Attorney for Plaintiff*

BY: Did Not Respond  
Marsha L. Stephenson, Esq.  
STEPHENSON & DICKENSON, P.C.  
2820 West Charleston Blvd., Suite 19  
Las Vegas, NV 89102  
*Attorney for Defendant,*  
*Efren Issac Sotelo*

Selman Breitman LLP  
ATTORNEYS AT LAW

1 ERIC S. POWERS  
2 NEVADA BAR NO. 12850  
3 SELMAN BREITMAN LLP  
3993 Howard Hughes Parkway, Suite 200  
Las Vegas, NV 89169-0961  
Telephone: 702.228.7717  
4 Facsimile: 702.228.8824  
Email: epowers@selmanlaw.com  
5

6 Attorneys for Plaintiff National Casualty  
Company, a Wisconsin corporation  
7

8 UNITED STATES DISTRICT COURT

9 DISTRICT OF NEVADA  
10

11 NATIONAL CASUALTY COMPANY, a  
12 Wisconsin corporation,

13 Plaintiff,

14 v.

15 EFREN ISAAC SOTELO, an individual; and  
16 PHILIP MICHAEL BOUCHARD, an  
individual,

17 Defendants.  
18

Case No. 2:17-cv-02456-KJD-CWH

**PROPOSED DISCOVERY PLAN AND  
SCHEDULING ORDER**

**(SUBMITTED IN COMPLIANCE WITH  
LR 26-1(B))**

19 Plaintiff National Casualty Company (hereinafter "NCC"), by and through its counsel,  
20 Eric S. Powers of Selman Breitman LLP, and defendant Philip Michael Bouchard (hereinafter  
21 "Bouchard"), by and through its counsel, Jordan P. Schnitzer of The Schnitzer Law Firm, hereby  
22 submit the following stipulated discovery plan and scheduling order pursuant to the provisions of  
23 Local Rule 26-1(d) and (e). Counsel for the parties have conferred and, as a result, have agreed  
24 upon the following discovery plan and scheduling order.

25 **A. INTRODUCTION**

26 Meeting: Counsel for the parties met and conferred pursuant to FRCP 26(f) and LR 26-1,  
27 and addressed the following topics.  
28 . . .

(1) Consider nature and basis of claims and defenses

**Plaintiff National Casualty Company's Allegations:**

This is an insurance declaratory relief action. This action arises from a car accident between Defendant Efren Sotelo ("Sotelo") and Bouchard. Sotelo is a former employee of his father's business, Cool Air. Sotelo was terminated from employment and required to return the Cool Air keys, gas card, uniform and other company property in his possession. Effective that date, Sotelo was no longer authorized to operate any Cool Air vehicles. Unbeknownst to Sotelo's father or Cool Air, Sotelo had made unauthorized copies of some Cool Air keys, including a key to Cool Air's 2005 Chevrolet 1500 pickup truck (the "Chevy").

On December 12, 2014, Sotelo stole the Chevy using his copied key. His father filed a police report and asked the Las Vegas Metropolitan Police Department to prosecute Sotelo for the theft. On December 17, 2014, a criminal case was opened; and on February 15, 2015, Sotelo pled guilty to the charge of theft and was sentenced. Sotelo has admitted the above facts and confirms that he did not have permission to use the Chevy on December 12, 2014. See Exhibit A attached to NCC's Complaint on file herein.

When Sotelo stole the Chevy on December 12, 2014, he allegedly caused an accident by rear ending a vehicle driven by Philip Bouchard. On July 27, 2016, Bouchard filed a complaint for negligence against Efren, Juan, and Cool Air. That action is pending, and is styled *Bouchard v. Efren Isaac Sotelo, et al.*, in the Eighth Judicial District Court, Clark County District Court Case No. A-16-740711-C (the "Underlying Action"). NCC is informed and believes, and based thereon alleges, that Bouchard seeks damages in excess of \$75,000 in that action.

NCC is defending its insureds, Juan Sotelo (Sotelo's father) and Cool Air, in that action. Sotelo failed to answer the complaint and a default has been entered against him. National Casualty hired courtesy counsel on Sotelo's behalf, under a reservation of rights, and has sought to overturn that default. The request was denied by the court. Sotelo is a necessary party to this action because he is a named Defendant in the Underlying Action and NCC is seeking a declaration from this Court regarding its insurance coverage obligations to Sotelo in the Underlying Action.

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Defendants:

**(a) Defendant Philip Bouchard's Position:**

Philip Bouchard believes the facts will show that, while Cool Air Now fired Efren Sotelo on December 10, 2017, his termination was not effective until December 20, 2017. Additionally, Cool Air Now allowed Efren Sotelo to keep his keys. Juan Sotelo admitted at the scene of the accident that he knew his son was using heroin and 'he should have taken his keys from him.' Juan Sotelo did not report the car stolen until after the accident. He then coerced his son, a convicted embezzler and heroin addict, to file a false affidavit, to try to avoid responsibility and having his insurance rates go up.

Moreover, Bouchard contends that this action should be stayed pending resolution of the Underlying Action as litigating this case could give rise to factual or legal decisions that could improperly impact the Underlying Action. Moreover, the test for whether coverage is owed is whether or not a covered claim could be made. Until the underlying litigation and factual disputes are resolved by a trier of fact, it would be impossible for this Court to make any coverage determinations.

**(b) Sotelo**

Despite diligent efforts to serve Sotelo, NCC has been unable to locate and/or serve him with its Complaint in the instant action. NCC has filed a Motion to Extend Time to Serve Sotelo and Service by Publication with this Court.

**(2) Consider possibility of settlement**

The parties have engaged in settlement discussions via telephonic conversations. Bouchard's counsel has also sent a written demand for settlement of the Underlying Action.

**(3) Make or arrange for initial disclosure of witnesses and documents required by FRCP 26(a)(1)**

Plaintiff Position:

NCC contends that each party should exchange their respective Initial Disclosures via email by the close of business on January 5, 2018.

Defendant's Position:

Bouchard contends that this matter should be stayed and thus did not agree to a deadline to disclose Initial Disclosures. Should this Court execute the Discovery Plan herein and determine that a stay is not appropriate, the parties agree to exchange their Initial Disclosures by January 5, 2018.

**B. Information Pursuant to LR 26-1**

Discovery Plan: Bouchard contends that this case should be stayed pending the outcome of the Underlying Action and thus did not agree to the dates proposed herein. NCC disagrees with this contention and asserts that it is entitled to seek declaratory relief with respect to its insurance obligations in this Court. The parties have agreed to be bound and comply with the proposed discovery deadlines herein should the Court approve the Proposed Discovery Plan.

The following discovery plan is based upon standard Rules governing the conduct of discovery.

(a) Discovery Cut-Off Date:

Plaintiffs Position: The discovery cut-off date shall be **Wednesday June 13, 2018**.

Defendant's Position: This matter should be stayed. In any event, factual issues necessary to determining coverage in the underlying case will not be resolved and/or known by June 13, 2018.

(b) Amending Pleadings and Adding Parties:

Plaintiffs Position: The parties shall have until **Thursday, March 15, 2018**, which is not less than 90 days before the discovery cut-off date, to file any motion to amend the pleadings or add parties.

Defendant's Position: This matter should be stayed.

(c) FRCP 26(a)(2) Expert Disclosures: Disclosure of experts shall proceed in accordance with FRCP 26(a)(2) subject to the following deadlines:

Plaintiffs Position:

- i. The disclosure of experts and expert reports shall occur no later than **Monday April 16, 2018**<sup>1</sup>, which is not less than 60 days before the

<sup>1</sup> Thirty days after the initial expert deadline is Saturday, April 14, 2018. The parties stipulate to move the deadline to the following Monday.

discovery cut-off date.

ii. The disclosure of rebuttal experts and their reports shall occur no later than **Monday May 14, 2018**, which is not more than 30 days after the deadline for initial expert disclosures.

(d) **Interim Status Report**: The status report shall be filed no later than **Monday April 16, 2018**, which is not less than 60 days before the discovery cut-off date.

(e) **Dispositive Motions**: The parties shall have until **Friday, July 13, 2018** to file dispositive motions, which is not more than 30 days after the discovery cut-off date.

(f) **Pretrial order**: The parties shall file their pretrial order no later than **Monday, August 13, 2018**<sup>2</sup>, which is not more than 30 days after the dispositive motion deadline.

Defendant's Position: This matter should be stayed.

### C. Other Items

(a) **Court Conference**: The parties are not requesting a conference with the Court before entry of this Discovery Plan and Scheduling Order.

(b) **Later Appearing Parties**: A copy of this Discovery Plan and Scheduling Order shall be served on each party after it has been entered, or if additional defendants should appear, within 5 days of their first appearance. This Discovery Plan and Scheduling Order shall apply to all such later-appearing parties unless the Court, on motion and for good cause, orders otherwise. Defendant Sotelo has not yet appeared in this case; however a Motion for Extension of Time to Serve Sotelo and Service by Publication is pending in this Court.

(c) **Format of Discovery**: Pursuant to the electronic discovery amendments to the Federal Rules of Civil Procedure effective December 1, 2006, the parties have addressed the e-discovery issues pertaining to the format of discovery at the Rule 26(f) conference. The parties do not

<sup>2</sup> Thirty days after the discovery cut-of deadline is Sunday, August 12, 2018. The parties stipulate to move the deadline to the following Monday.

1 anticipate discovery of native files or metadata at this time, but each party reserves the right to  
2 request such electronic data as discovery progresses. Any responsive, non-privileged electronic  
3 information will be produced in paper or .pdf form.

4 (d) Alternative Dispute Resolution: The parties certify pursuant to LR 26-1(b)(7) they met and  
5 conferred about the possibility of using alternative dispute-resolution processes including  
6 mediation, arbitration, and if applicable, early neutral evaluation (collectively "ADR"). The parties  
7 have determined that ADR is not a viable option at this time and settlement discussions may take  
8 place in the underling personal injury action.

9 (e) Alternative Forms of Case Disposition: The parties certify pursuant to LR 26-1(b)(8) they  
10 considered consent to trial by a magistrate judge and use of the short trial program. They do not  
11 consent to either at this time.

12 (f) Attorney-Client Privilege:

13 The parties reserve the right to make appropriate objections and redactions pursuant to the Federal  
14 Rules of Civil Procedure and related case law.

15 **D. SIGNATURES PURSUANT TO LR 26-1(d)**

16 This plan is signed in accordance with FRCP 26(g)(1). Each signature constitutes a certification  
17 that, to the best of the signer's knowledge, information, and belief, formed after reasonable  
18 inquiry, the disclosures made by the signer are complete and correct.

19  
20 DATED: December 15, 2017

SELMAN BREITMAN LLP

21  
22 By: /s/ Eric S. Powers  
23 ERIC S. POWERS  
24 NEVADA BAR NO. 12850  
25 3993 Howard Hughes Parkway, Suite 200  
26 Las Vegas, NV 89169-0961  
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Attorneys for Plaintiff National Casualty  
Company, a Wisconsin corporation



Selman Breitman LLP  
ATTORNEYS AT LAW

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DATED: December 15, 2017

THE SCHNITZER LAW FIRM

By: /s/ Jordan P. Schnitzer  
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Attorneys for Defendant PHILIP MICHAEL  
BOUCHARD

The Court will not consider a stay  
unless a motion to stay is filed.  
Plaintiff's proposed dates are  
approved. IT IS SO ORDERED.

  
\_\_\_\_\_  
U.S. MAGISTRATE JUDGE

DATED this 18 day of December 2017

Activity in Case 2:20-cv-01084-JCM-BNW Bouchard v. National Casualty Company et al  
Order on Motion to Consolidate Cases

cmecf@nvd.uscourts.gov <cmecf@nvd.uscourts.gov>

Fri 10/2/2020 1:36 PM

To: cmecfhelpdesk@nvd.uscourts.gov <cmecfhelpdesk@nvd.uscourts.gov>

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**United States District Court**

**District of Nevada**

**Notice of Electronic Filing**

The following transaction was entered on 10/2/2020 at 1:34 PM PDT and filed on 10/2/2020

**Case Name:** Bouchard v. National Casualty Company et al

**Case Number:** [2:20-cv-01084-JCM-BNW](#)

**Filer:**

**Document Number:** 36(No document attached)

**Docket Text:**

**MINUTE ORDER IN CHAMBERS of the Honorable Judge Kent J. Dawson on 10/2/2020. Presently before the Court is Plaintiff National Casualty Companys Motion to Consolidate (#87). Having read and considered the briefing, both courts agree that the actions should be consolidated. However, due to the pending motion to remand, the Court believes that the same purposes can be achieved by transferring the case to the department with the lower case number, pending resolution of the motion to remand. Accordingly, the motion is granted to the extent that Case No. 2:20-cv-1084-JCM-BNW is transferred to Judge Dawson. IT IS SO ORDERED. (Copies have been distributed pursuant to the NEF - DXS)**

**2:20-cv-01084-JCM-BNW Notice has been electronically mailed to:**

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**2:20-cv-01084-JCM-BNW Notice has been delivered by other means to:**

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

\* \* \*

PHILIP BOUCHARD, an individual

Plaintiff,

v.

NATIONAL CASUALTY COMPANY, a  
foreign corporation; COAST NATIONAL  
INSURANCE COMPANY dba FOREMOST  
INSURANCE COMPANY, a foreign entity;  
SELMAN BREITMAN LLP, a foreign liability  
partnership; STEPHENSON & DICKINSON, a  
Nevada professional corporation; DOES 1  
through 10, and ROE CORPORATIONS 1  
through 20, inclusive,

Defendants.

Case No. 2:20-cv-01084-KJD-BNW

**ORDER GRANTING PLAINTIFF'S  
MOTION TO REMAND**

Before the Court is Plaintiff's Motion to Remand to State Court (#10). Defendants responded (#26/28) in opposition, to which Plaintiff replied (#31).

**I. Factual History**

This action arises from a car accident involving Philip Bouchard ("Bouchard") and Efren Sotelo ("Sotelo") on or about December 12, 2014. (#1-1 at 5). Defendant National Casualty Company ("NCC") alleged that Sotelo was not a permissive user of the work truck he was driving at the time of the accident and refused to represent him in the original action. Id. The state court entered default judgment against Sotelo and assigned his potential causes of action to Bouchard. Id. at 5–6. With the causes of action now assigned to him, Bouchard filed this suit in state court on April 7, 2020. Id. at 11. Defendants removed the action to federal court, alleging that the law firm defendants, one of which is a Nevada resident, were fraudulently added to obstruct federal diversity jurisdiction. (#1 at 3).

1           II.       Legal Standard

2           A defendant may remove a civil action “brought in a State court of which the district  
3 courts of the United States have original jurisdiction.” 28 U.S.C. § 1441(a). Removal based on  
4 diversity jurisdiction requires complete diversity where “the citizenship of each plaintiff is  
5 diverse from the citizenship of each defendant.” Caterpillar, Inc. v. Lewis, 519 U.S. 61, 68  
6 (1996). To determine whether complete diversity exists, “district courts may disregard the  
7 citizenship of a non-diverse defendant who has been fraudulently joined.” Grancare, LLC v.  
8 Thrower by and through Mills, 889 F.3d 543, 548 (9th Cir. 2018) (citing Chesapeake & Ohio Ry.  
9 Co. v. Cockrell, 232 U.S. 146, 152 (1914)).

10          There are “two ways to establish improper joinder: ‘(1) actual fraud in the pleading of  
11 jurisdictional facts, or (2) inability of the plaintiff to establish a cause of action against the non-  
12 diverse party in state court.’” Hunter v. Philip Morris USA, 582 F.3d 1039, 1044 (9th Cir. 2009)  
13 (quoting Smallwood v. Illinois Central R.R. Co., 385 F.3d 568, 573 (5th Cir. 2004)). A defendant  
14 must show that a party “joined in the action cannot be liable on any theory” to prove fraudulent  
15 joinder. Ritchey v. Upjohn Drug Co., 139 F.3d 1313, 1318 (9th Cir. 1998). However, “if there is  
16 a possibility that a state court would find that the complaint states a cause of action against any  
17 of the resident defendants, the federal court must find that the joinder was proper and remand the  
18 case to the state court.” Hunter, 582 F.3d at 1046 (quoting Tillman v. R.J. Reynolds Tobacco,  
19 340 F.3d 1277, 1279 (11th Cir. 2003)). A defendant opposing remand bears a heavy burden as he  
20 faces a “strong presumption against removal jurisdiction and the general presumption against  
21 fraudulent joinder.” Id. (citation omitted).

22          III.       Analysis

23          Bouchard argues that the removal was procedurally deficient and that complete diversity  
24 of parties does not exist.

25               A.   Procedurally Deficient

26          Bouchard alleges that the case was removed without consent from the other defendants.  
27 When an action is removed, “all defendants who have been properly joined and served must join  
28 in or consent to the removal of the action.” 28 U.S.C. § 1446(b)(2)(A). Defendants do not

1 dispute that they did not comply with this rule. However, they have since cured the defect and  
2 argue that the district court may accept the removal if the deficiency is cured prior to a final  
3 judgment. Bouchard argues that this rule only applies during appellate review and that district  
4 courts may not ignore the procedural rules. The Court agrees with Defendants.

5 “[A] procedural defect existing at the time of removal but cured prior to the entry of  
6 judgment does not warrant reversal and remand of the matter to state court.” Destfino v. Reiswig,  
7 630 F.3d 952, 957 (9th Cir. 2011). The Ninth Circuit makes clear that this rule applies to district  
8 courts. If all defendants have not joined a petition for removal “when the notice of removal is  
9 filed, the *district court* may allow the removing defendants to cure the defect by obtaining  
10 joinder of all defendants prior to the entry of judgment.” Id. (emphasis added). District courts  
11 have discretion to permit defendants to cure their procedural deficiencies so long as there has  
12 been no final judgment.

13 Because district courts have such discretion, the Court denies Plaintiff’s motion based on  
14 this argument alone.

15 B. Fraudulent Joinder

16 There is a strong presumption against making a finding of fraudulent joinder. Hunter, 582  
17 F.3d at 1046. To satisfy the fraudulent joinder standard, there must be no possibility that a state  
18 court would find that the claim against the resident defendant is valid. Defendants argue that  
19 there is no possible cause of action against an insurance company’s agent-attorney because “a  
20 general agent-principal relationship . . . is distinguishable from an attorney-client relationship.”  
21 Dezzani v. Kern & Associates, Ltd., 412 P.3d 56, 61 (Nev. 2018).

22 The Court tends to agree with Defendants that the attorney-client relationship is  
23 distinguishable from a typical agent-principal relationship and that there is no cause of action  
24 against the resident law firm. However, “[w]hether an attorney is liable under an agency theory  
25 hinges on whether the attorney is acting solely as an agent for the client, i.e., as a debt collector,  
26 or whether the attorney is providing legal services to a client.” Id. at 62. It is possible for an  
27 attorney to be liable under an agency theory, depending on the services provided. Additionally,  
28 the Court is unaware of any Nevada authority that affirmatively answers the specific questions

1 raised by Plaintiff in this case. The Court cannot hold that there is no possibility that a state court  
2 could find Plaintiff's claims against the resident law firm are valid causes of action.

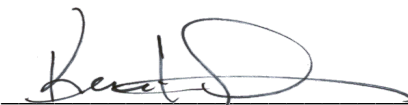
3 Therefore, fraudulent joinder cannot be established, and the action must be remanded to  
4 state court. However, if the state court dismisses or severs the action against the resident law  
5 firm, the parties may remove the case.

6 IV. Conclusion

7 Accordingly, IT IS HEREBY ORDERED that Plaintiff's Motion to Remand (#10) is  
8 **GRANTED.**

9 IT IS FURTHER ORDERED that Defendant's Motion to Consolidate (#19) is **DENIED**  
10 as moot.

11 Dated this 2nd day of October, 2020.

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15 Kent J. Dawson  
16 United States District Judge  
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