

Electronically Filed
Dec 16 2021 01:35 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

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Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

GENARO GOMEZ SANTANA,

Plaintiff,

vs.

WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-20-821483-C
Dept. No. II

NOTICE OF APPEAL

Notice is hereby given that Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc., by and through their attorneys of record, the law firm TYSON & MENDES LLP, appeals to the Supreme Court of Nevada from an Order Affirming the Discovery Commissioner's Report and Recommendations, rendered by the Eighth Judicial District Court, Clark County, Nevada on November 9, 2021, at 3:31 pm.

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1 A copy of the Order Affirming the Discovery Commissioner's Report and
2 Recommendations is attached hereto as **Exhibit A**.

3 A copy of the Timely Served Objection to the Discovery Commissioner's Report and
4 Recommendation is attached hereto as **Exhibit B**.

5 DATED this 8th day of December, 2021.

6 TYSON & MENDES LLP

7 A handwritten signature in blue ink that reads "Russell Christian".

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18 *Attorneys for Defendants Defendants Willy*
19 *Gomez, Erez Bitton, and Oasis Moving &*
20 *Storage, Inc.*

EXHIBIT A

EXHIBIT A

Thomas E. McGrath
CLERK OF THE COURT

ORDR

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Attorneys for Defendants
Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

GENARO GOMEZ SANTANA,

Plaintiff,

vs.

WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-20-821483-C
Dept. No. XXXII

ORDER

Hearing Date: September 14, 2021
Hearing Time: 9:30 a.m.

ORDER

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

_____ No timely objection having been filed,

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

AND

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

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted as modified (attached hereto).



170 South Green Valley Parkway, Suite 300
Henderson, Nevada 89012

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Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. al.
Case No.: A-20-821483-C

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

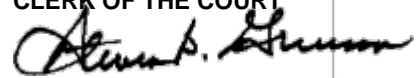
IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____.

DATED this _____ day of _____, 2021.

Dated this 9th day of November, 2021

Carli Kierny

879 ED6 91E8 3C0C
Carli Kierny
District Court Judge



DCRR
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9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 GENARO GOMEZ SANTANA,

12 Plaintiff,

13 vs.

14 WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
15 MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

16 Defendants.

Case No. A-20-821483-C
Dept. No. 2

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Hearing Date: September 14, 2021
Hearing Time: 9:30 a.m.

17
18 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

19 **APPEARANCES:**

For the Defendants, Willy Gomez, Erez Bitton, and Oasis
Moving & Storage, Inc.
Russell D. Christian, Esq.
21 TYSON & MENDES, LLP

22 For the Plaintiff, Genaro Gomez Santana
23 Michael S. Matzke, Esq.
DECASTROVERDE LAW GROUP

24
25 Defendants' Motion to Compel NRCP 35 Neuropsychological Examination and to
26 Preclude Observer at Exam Pursuant to NRCP 35 (4)(a) was heard on September 14, 2021. After
27 considering the Motion, any related opposition and reply briefs, and the arguments of counsel, the
28

Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. al.
Case No.: A-20-821483-C

Discovery Commissioner enters the following Findings and Recommendations.

I.
FINDINGS

This action arises out of a one-vehicle motor vehicle accident that occurred on November 14, 2019. Plaintiff Genaro Gomez Santana was a passenger in a commercial diesel truck driven by his nephew, Defendant Willy Gomez.

Plaintiff claims to have sustained a traumatic brain injury. As noted in Counsel's affidavit, Plaintiff has treated with Dr. Enrico Fazzini, who has offered opinions regarding an alleged head injury. Additionally, Michael A. Elliot, Ph.D., a licensed Psychologist, has offered a future medical specials opinion related to psychological treatment for the Plaintiff. As such the parties have agreed that Plaintiff will present for an NRCP 35 neurological examination. However, there is disagreement as to the protocol to be followed related to the presence of a third-party observer during the examination and recording of the neurological testing¹. Accordingly this motion was filed in an effort to achieve a ruling with regard to the parties' respective positions with regard to NRS 52.380 and NRCP 35 (4)(A)(i).

The parties have agreed to the following parameters:

1. The examination will be limited to the date and time agreed to by counsel.
2. Examiner agrees to abide by the following safety practices:
 - a. All unvaccinated individuals will wear a mask during the Examination;
 - b. The Examiner will wash his/her hands prior to the Examination;
 - c. The seat, table, chair used by Plaintiff during the Examination must

¹ Although not specifically addressed during the EDCR 2.34 conference this Motion also anticipates and addresses the issue of audio recording of the Rule 35 exam.

1 be sanitized prior to use;

2 d. Any instruments used during the examination will be sterilized prior
3 to use; and

4 e. Any pens or writing utensils used by Plaintiff will be either new or
5 sterilized prior to use.

6 3. The designated physician shall not ask any questions which are not
7
8 normally a part of a customary medical examination (e.g. liability opinions, potential
9 monetary recovery, professional criticisms, Plaintiff's motivation for or willingness to
10 pursue the claim, Plaintiff's intentions/thoughts regarding potential monetary recovery,
11 past settlements, past lawsuits).

12 4. No blood work, x-rays, CT scans or MRI's shall be performed during the
13
14 examination unless advance permission is sought and approved in writing.

15 5. Plaintiff will not be required to disrobe unless advanced permission is
16 sought and approved in writing.

17 6. The Examiner shall not contact Plaintiff before or after the examination.

18 7. The designated physician may not engage in ex parte contact with Plaintiff's
19
20 health care providers or other experts.

21 8. Plaintiff will not bring any medical records or films to the exam, as Defense
22 counsel may provide these to the Examiner.

23 9. Defense Counsel shall provide the Examiner with a copy of these
24
25 terms and advise the Examiner that the examination is contingent on the Examiner
26 adhering to each and every rule.

27 10. Within ten (15) days of receipt by Defense Counsel, or by the initial expert
28

deadline, whichever is sooner, Defense Counsel shall provide Plaintiff's Counsel with a copy of all reports generated by the examining physician and/or the physician's staff regarding this examination.

11. If the examination does not begin within fifteen minutes of the scheduled start time, Plaintiff's Counsel will contact Defense Counsel in an attempt to reach a solution before leaving.

12. A notice regarding an agreed upon time, date and place for the examination will be served by Defendant.

II. RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Defendants' Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a) is GRANTED, as follows:

IT IS FURTHER RECOMMENDED there will be no video recording, but the observer will be present by remote means outside the door of the examination room in case the observer needs to interrupt the Rule 35 examination; an audio recording can be made, but it is PROTECTED

Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. Al.
Case No.: A-20-821483-C

under NRCP 26(c) for attorneys and experts only; no transcription of psychological testing or documents, and for use in any other litigation.

DATED this 13th day of October, 2021.


DISCOVERY COMMISSIONER

Submitted by:



170 South Green Valley Parkway, Suite 300
Henderson, Nevada 89012

1 TYSON & MENDES LLP

2
3 /s/ Russell Christian

4 THOMAS E. MCGRATH

5 Nevada Bar No. 7086

6 RUSSELL D. CHRISTIAN

7 Nevada Bar No. 11785

8 170 South Green Valley Parkway, Suite 300

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10 *Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.*

11 *Approved as to form and content by:*

12 DE CASTROVERDE LAW GROUP

13 /s/ Michael Matzke

14 ALEX DE CASTROVERDE

15 Nevada Bar No. 6950

16 ORLANDO DE CASTROVERDE

17 Nevada Bar No. 7320

18 KIMBERLY VALENTIN

19 Nevada Bar No. 12509

20 1149 South Maryland Parkway

21 Las Vegas, Nevada 89104

22 *Attorneys for Plaintiff*

23 *Genaro Gomez Santana*

NOTICE

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

Objection time will expire on October 28 2021.

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

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____ 2021:

☒ Electronically filed and served counsel on **October 14**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: Natलिए Simonetti
COMMISSIONER DESIGNEE

1 **CSERV**

2
3 DISTRICT COURT
4 CLARK COUNTY, NEVADA

5
6 Genaro Gomez Santana,
7 Plaintiff(s)

CASE NO: A-20-821483-C

8 vs.

DEPT. NO. Department 2

9 Willy Gomez, 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: 11/9/2021

15 Kimberly Valentin kimberly@decastroverdelaw.com

16 Stefania Ross SRoss@TysonMendes.com

17 Thomas McGrath tmcgrath@tysonmendes.com

18 Scarlett Fisher sfisher@tysonmendes.com

19 Cheryl Wilson cwilson@tysonmendes.com

20 Filing Assistant efiling@decastroverdelaw.com

21 Michael Matzke Michael@decastroverdelaw.com

22 Tyson & Mendes tysonmendesLV@outlook.com

23 Shantei O'Dell SODell@TysonMendes.com

24 Russell Christian rchristian@tysonmendes.com

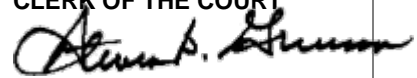
25 Solange Cardenas solange@decastroverdelaw.com

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EXHIBIT B

EXHIBIT B



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Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

GENARO GOMEZ SANTANA,

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vs.

WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-20-821483-C
Dept. No. II

**OBJECTION TO DISCOVERY
COMMISSIONER'S REPORT AND
RECOMMENDATIONS**

[HEARING REQUESTED]

COMES NOW Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc., by and through their counsel Thomas McGrath and Russell D. Christian of the law firm of Tyson & Mendes LLP, hereby respectfully submit their Objection to the Discovery Commissioner's Report and Recommendation from the September 14, 2021 hearing on Defendant's Motion to Compel Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCPC 35(4)(A)(i). (Attached as Exhibit "A")

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This Objection is made pursuant to NRCP 16.3 (c)(2) the attached Memorandum of Points and Authorities, any exhibits attached hereto, the pleadings and papers on file in this case and any arguments permitted at the time of the hearing on this matter.

DATED this 26th day of October, 2021.

TYSON & MENDES LLP

Russell Christian

THOMAS E. MCGRATH

Nevada Bar No. 7086

RUSSELL D. CHRISTIAN

Nevada Bar No. 11785

170 South Green Valley Parkway, Suite 300

Henderson, Nevada 89012

*Attorneys for Defendants Willy Gomez,
Erez Bitton and Oasis Moving & Storage, Inc.*

MEMORANDUM OF POINTS AND AUTHORITIES

I.

INTRODUCTION

This action arises out of a one-vehicle motor vehicle accident that occurred on November 14, 2019. Plaintiff Genaro Gomez Santana was a passenger in a commercial diesel truck driven by his nephew, Defendant Willy Gomez.

Plaintiff claims to have sustained a traumatic brain injury. As noted in Counsel's affidavit, Plaintiff has treated with Dr. Enrico Fazzini, who has offered opinions regarding an alleged head injury. Additionally, Michael A. Elliot, Ph.D., a licensed Psychologist, has offered a future medical special opinion related to psychological treatment for the Plaintiff. As such the parties have agreed that Plaintiff will present for an NRCP 35 neurological examination. However, there is disagreement as to the protocol to be followed related to the presence of a third-party observer during the examination and recording of the neurological testing¹. According this motion was filed in an effort to achieve a ruling with regard to the parties' respective positions with regard to

¹ Although not specifically addressed during the EDCR 2.34 conference this Motion also anticipates and addresses the issue of audio recording of the Rule 35 exam.

NRS 52.380 and NRCP 35 (4)(A)(i).

A. NRCP 35 (4)(A)(i) Explicitly Prohibits an Observer at a Neuropsychological, Psychological, or Psychiatric examination.

NRCP 35 permits a Court to Order that a party whose physical or mental condition is in controversy to submit to a physical or mental examination by a suitably licensed or certified examiner. See, NRCP 35 (a)(1). As this Court is well aware this exam known colloquially as a “Rule 35 Exam”, an “Independent Medical Examination (IME)”, or as preferred by some members of the Plaintiff’s bar a “Defense Medical Examination (DME)”. Regardless of nomenclature they are a common aspect of personal injury litigation in Nevada. NRCP 35 (4)(A)(i) contains a specific prohibition against an observer attending the exam, stating as follows:

- (A) The party may have one observer present for the examination, unless:
- (i) the examination is a neuropsychological, psychological, or psychiatric examination; or
 - (ii) the court orders otherwise for good cause shown.

(emphasis added)

As such the plain language of NRCP 35 specifically prohibits the attendance of an observer at a Rule 35 examination that is neuropsychological, psychological, or psychiatric in nature such as the present exam. Additionally, the plain language of NRCP 35 grants the Court authority to prohibit the attendance of an observer at a Rule 35 exam. The plain language of NRCP 35 provides a two-fold legal basis for prohibiting the attendance of an observer at a Rule 35 exam. In the present matter the exam being sought is neuropsychological, psychological, and/ or psychiatric in nature. As such, an observer cannot attend the Rule 35 exam pursuant to the plain language of NRCP 35 (4)(A)(i).

B. NRS 52.380 is a Legislative Attempt to Circumvent NRCP 35’s Prohibition of an Observer at a Rule 35 Exam.

Plaintiff maintains that NRS 52.380, adopted October 1, 2019, permits an observer to be present

1 at Plaintiff's pending neuropsychological exam. Plaintiff is correct that NRS 52.380 allows an
2 observer, and indeed NRS 52.380 (7)(a) expands the definition of "Examination" to include a
3 mental examination. See, NRS 52.380 (7)(a).

4 Why would the Nevada Legislature pass a new law that directly contradicts a newly
5 adopted Nevada Rule of Civil Procedure? The answer appears to be that since the Plaintiffs' bar
6 could not convince the Nevada Supreme Court to adopt its proposed rules related to NRCP 35
7 medical examinations, it attempted to perform an end around via the legislative process.

8
9 **This gives rise to the question of whether the Nevada Legislature can pass a law on**
10 **October 1, 2019 to directly contradict and change the Nevada Rules of Civil Procedure**
11 **adopted on March 1, 2019. Defendants respectfully submit it can not.**

12 Less than two weeks after NRCP 35 was adopted by the Nevada Supreme Court, AB285
13 was introduced into the Nevada Assembly in an apparent effort to override Rule 35 by including
14 provisions in direct conflict which were previously submitted to the Nevada Supreme Court and
15 rejected. Minutes from the legislative record related to AB285 make that quite clear. *See, Nevada*
16 *Assembly Minutes of AB285 (March 27, 2019), previously attached as Exhibit "E" to*
17 *Defendant's Motion to Compel Neuropsychological Examination and to Preclude Observer at*
18 *Exam Pursuant to NRCP 35(4)(A)(i).* For example, Allison Braiser, Esq., related: Under the
19 current state of our rules [NRCP as adopted on March 1, 2019], [the] claimant - the victim - has
20 no right to have an observer present for a mental examination. (*See id.* at 3.) Others appearing in
21 favor of changing this rule to override newly adopted NRCP 35 expressed similar complaints and
22 concerns. For example, Graham Galloway, Esq., related that he and other members of his
23 subcommittee presented recommended changes to NRCP 35 to the Nevada Supreme Court which
24 were rejected, stating: **At that point, we reassessed our position.** (*See id.* at 3-4. Emphasis
25 added.) In other words, when the Plaintiffs' bar could not effectuate its desired change within the
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1 judiciary, it went to the Nevada Legislature to create new law for the purpose of invalidating rules
2 established by the judiciary as to how civil court cases are to proceed in Nevada. The Nevada
3 Constitution provides for the separation of powers, with each branch of government being equal.
4 (See Nev. Const. Art. 3 ' 1.) In keeping with this theory, the judiciary has the inherent power to
5 govern its own procedures. (See *Berkson v. Lepome*, 126 Nev. 492, 499 245 P.3d 560, 565 (2010)
6 (quotation omitted).) Further, NRS 2.120(1) provides: **The supreme court may make rules not**
7 **inconsistent with the constitution** NRS 2.120(2) provides that the Nevada Supreme Court
8 by rules adopted and published from time to time, **shall regulate original and appellate civil**
9 **practice and procedure, including, without limitation, pleadings, motions, writs, notices and**
10 **forms of process, in judicial proceedings in all courts of the state, for the purpose of**
11 **simplifying the same and of promoting the speedy determination of litigation upon its merits.**

12 . . . (Emphasis added.) Interestingly, this issue was recently
13 addressed by the Ninth Circuit in *Freteluco v. Smiths Food & Drug Ctrs.*, 2020 U.S. Dist. LEXIS
14 113217, 2020 WL 3504456 (June 29, 2020). There, the parties in a personal injury action had a
15 dispute over the procedure to follow in a Rule 35 neuropsychological examination. The defense
16 sought to conduct a neuropsychological examination pursuant to FRCP 35 and Plaintiff's counsel
17 invoked NRS 52.380, arguing that it effectively overrides court rules governing
18 neuropsychological examinations. The Ninth Circuit reviewed the legislative history of NRS
19 52.380 and determined that it is procedural in nature, reflecting a procedural preference. (See *id.*
20 at *11, citation omitted.) The court therefore found that the application of Rule 35 (as opposed to
21 NRS 52.380) would serve to promote equitable administration of law while discouraging forum
22 shopping. (See *id.* at *12.)

23
24 In *Nelson v. Heer*, 121 Nev. 832, 834, 122 P.3d 1253 (2005), the Nevada Supreme Court
25 noted it has previously recognized that federal decision involving the Federal Rules of Civil
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Procedure provide persuasive authority when examining its rules. The *Freteluco* decision is directly relevant to issues presently before this Honorable Court.

As between NRCP 35 and NRS 52.380, the former as adopted by the Nevada Supreme Court controls. The Nevada Legislature does not have power to override rules promulgated and adopted by the Nevada Judiciary Branch. Accordingly, NRS 52.380 is, at best, as procedural preference. **The issues presented in this motion related to the neuropsychological examination of Plaintiff must be resolved exclusively pursuant to NRCP 35.**

C. Discovery Matters are Within the Discretion of the Court and the Legislature May not Circumvent the Court's Rules with Regard to Discovery.

Discovery matters are within the district court's sound discretion. *Club Vista Fin. Servs. v. Dist. Ct.*, 128 Nev. 224, 228 (2012). The judiciary is entrusted with rule-making and other incidental powers reasonable and necessary to carry out the duties required for the administration of justice and to economically and fairly manage litigation. *Berkson v. LePome*, 126 Nev. 492, 499 (2010).

The legislature may not enact a procedural statute that conflicts with a pre-existing procedural rule, without violating the doctrine of separation of powers, and such a statute is of no effect. *Berkson*, 126 Nev. 492, 499; *State v. Connery*, 99 Nev. 342, 345 (1983).

Previously attached as Exhibit "G" to Defendant's Motion to Compel Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35(4)(A)(i) was a copy of a Minute Order from a case in February 2021 wherein the Court upheld the case law set forth *supra* and ordered that an observer was allowed to be present at a Rule 35 examination. See, *Id.* The Court noted in their opinion that the "Separation of powers provision" of Nevada's Constitution, Article 3, Section 1 recognizes the power of the Judicial branch as a "separate" department and notes that NRS 2.120 "recognizes that the Nevada Supreme Court is responsible for adopting rules for civil practice". See, *Id.* For all of these reasons, NRCP 35 is the controlling statute and it

prohibits an observer at the Rule 35 exam.

D. Plaintiff Should Not Be Allowed to Have an Observer Present for a Rule 35 Neuropsychological Examination

There are very good reasons supporting the provision within Rule 35 to prohibit the presence of a third-party observer for a neuropsychological examination, the most critical being that it threatens the validity of the testing. (*See Affidavit of Vincent Filoteo, Ph.D.*, dated November 3, 2020 at 2-3, previously attached as Exhibit “H” to Defendant’s Motion to Compel Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCPC 35(4)(A)(i)) To this point, an Official Statement of the National Academy of Neuropsychology provides the following:

. . . In general, **neuropsychologists should have the right to carry out their examination in a manner that will not in any way jeopardize, influence or unduly pressure their normal practice. The presence of a third party observer during the administration of formal test procedures is inconsistent with recommendations promulgated in The Standards for Educational and Psychological Testing** (APA, 1985) and Anastasi (1988), that the psychological testing environment be distraction free. More recently, standardized test manuals (for example, The WAIS-III, WMS-III Technical Manual; The Psychological Corporation, 1997) have specifically stated that **third party observers should be excluded from the examination room to keep it free from distraction. The presence of a third party observer in the testing room is also inconsistent with the requirements for standardized test administration as set forth in the APA=s Ethical Principles Of Psychologists and Code Of Conduct** (APA, 1992) in that it creates the potential for distraction and/or interruption of the examination (McSweeney et al., 1998).

(*See id.* at 1-2, emphasis added.)²

Of note, the Ninth Circuit determined in the *Fretchuco* decision that the plaintiff was not entitled to have a third-party observer present for a neuropsychological examination. (*See Fretchuco, supra*, at *15.) More specifically, it stated:

The Court agrees with the majority rule adopted by federal courts that exclude third parties from observing medical and psychiatric examinations. *Flack*, 333

²Plaintiff’s position relies on NRS 52.380, which provides: An observer may attend an examination but shall not participate in or disrupt the examination. Yet, the above Official Statement of the National Academy of Neuropsychology provides that ***the mere presence of an observer*** at a neuropsychological examination ***by its very nature*** will serve to disrupt the examination.

1 *F.R.D. at 517 citing Smolko, 327 F.R.D. at 61 (see additional omitted citations from*
2 *the District of South Carolina, District of Minnesota, the District of Colorado, and*
3 *the Southern District). The introduction of a third party "changes the nature*
4 *of the proceeding, much in the way that television 'coverage' of events*
5 *qualitatively changes what occurs in front of the camera." Tirado v. Erosa, 158*
6 *F.R.D. 294299 (S.D.N.Y. 1994).*
7 *(Id. at *12-13, emphasis added.)*

8 Defendants have presented scientific evidence that the presence of a third-party observer can
9 invalidate testing results. The Ninth Circuit has considered this very issue and agrees.
10 Accordingly, Defendants respectfully move for an order providing that Plaintiff present for a
11 neuropsychological examination without a third-party observer present.

12 **D. Plaintiff Should Also Be Precluded From Recording of the Neuropsychological**
13 **Examination**

14 Rule 35(a)(3), Nevada Rules of Civil Procedure, governs the recording of a medical
15 examination as follows:

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

22 Plaintiff does not have a *carte blanche* right to have the neuropsychological examination
23 recorded. The act of recording also threatens the validity of neurological examination results - not
24 only in how it may impact the patient, but also as it pertains to maintaining the integrity of
25 neurological testing within the field.

26 In the Official Statement of the National Academy of Neuropsychology, the following is
27 provided: "Electronic recording and other observation also raises the test security considerations
28 that are detailed in the National Academy of Neuropsychology's position statement on Test
Security." (See previously attached as Exhibit "I" to Defendant's Motion to Compel
Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP

35(4)(A)(i) There is a concern within the field of neuropsychology that allowing test protocols to become part of the public domain can itself serve to invalidate test results in the future. (*See id.* at 3.) It is therefore critical to provide test security due to the harm that can result from public dissemination of novel test procedures. (*See id.*)

Referring again to the *Fretchuco* case, the Ninth Circuit wrote the following:

As stated in *Flack*:

Courts are often reluctant to permit a third party or recording device out of concern that the intrusion would (1) potentially invalidate the examination results; (2) fail to provide a level playing field[] as plaintiff was not required to tape record his examinations with his own health care providers; and (3) inject a greater degree of the adversary process into an evaluation that is to be neutral.

(*See Fretchuco, supra.*, at *13, emphasis added.)

Based on the foregoing, Defendants cannot agree to provide Plaintiff's counsel with a recording of the neuropsychological testing absent a showing of good cause.

III. CONCLUSION

Based upon the above Defendants respectfully request an Order reversing the Discovery Commissioner's Report and Recommendation from the September 14, 2021 hearing on Defendant's Motion to Compel Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35(4)(A)(i).

DATED this 26th day of October, 2021. TYSON & MENDES LLP

Russell Christian

THOMAS E. MCGRATH

Nevada Bar No. 7086

RUSSELL D. CHRISTIAN

Nevada Bar No. 11785

170 South Green Valley Parkway, Suite 300

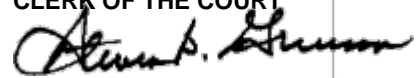
Henderson, Nevada 89012

Attorneys for Defendants Willy Gomez,

Erez Bitton and Oasis Moving & Storage, Inc.

EXHIBIT A

EXHIBIT A



DCRR
1 **TYSON & MENDES LLP**
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Email: tmcgrath@tysonmendes.com
3 CHERYL H. WILSON
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7 Tel: (702) 724-2648
Fax: (702) 410-7684
8 *Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 GENARO GOMEZ SANTANA,

12 Plaintiff,

13 vs.

14 WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
15 MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

16 Defendants.

Case No. A-20-821483-C
Dept. No. 2

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Hearing Date: September 14, 2021
Hearing Time: 9:30 a.m.

17
18 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

19 **APPEARANCES:**

For the Defendants, Willy Gomez, Erez Bitton, and Oasis
Moving & Storage, Inc.
Russell D. Christian, Esq.
21 TYSON & MENDES, LLP

22 For the Plaintiff, Genaro Gomez Santana
23 Michael S. Matzke, Esq.
DECASTROVERDE LAW GROUP

24
25 Defendants' Motion to Compel NRCP 35 Neuropsychological Examination and to
26 Preclude Observer at Exam Pursuant to NRCP 35 (4)(a) was heard on September 14, 2021. After
27 considering the Motion, any related opposition and reply briefs, and the arguments of counsel, the
28

Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. al.
Case No.: A-20-821483-C

Discovery Commissioner enters the following Findings and Recommendations.

I.
FINDINGS

This action arises out of a one-vehicle motor vehicle accident that occurred on November 14, 2019. Plaintiff Genaro Gomez Santana was a passenger in a commercial diesel truck driven by his nephew, Defendant Willy Gomez.

Plaintiff claims to have sustained a traumatic brain injury. As noted in Counsel's affidavit, Plaintiff has treated with Dr. Enrico Fazzini, who has offered opinions regarding an alleged head injury. Additionally, Michael A. Elliot, Ph.D., a licensed Psychologist, has offered a future medical specials opinion related to psychological treatment for the Plaintiff. As such the parties have agreed that Plaintiff will present for an NRCP 35 neurological examination. However, there is disagreement as to the protocol to be followed related to the presence of a third-party observer during the examination and recording of the neurological testing¹. Accordingly this motion was filed in an effort to achieve a ruling with regard to the parties' respective positions with regard to NRS 52.380 and NRCP 35 (4)(A)(i).

The parties have agreed to the following parameters:

1. The examination will be limited to the date and time agreed to by counsel.
2. Examiner agrees to abide by the following safety practices:
 - a. All unvaccinated individuals will wear a mask during the Examination;
 - b. The Examiner will wash his/her hands prior to the Examination;
 - c. The seat, table, chair used by Plaintiff during the Examination must

¹ Although not specifically addressed during the EDCR 2.34 conference this Motion also anticipates and addresses the issue of audio recording of the Rule 35 exam.

- 1 be sanitized prior to use;
- 2 d. Any instruments used during the examination will be sterilized prior
- 3 to use; and
- 4 e. Any pens or writing utensils used by Plaintiff will be either new or
- 5 sterilized prior to use.
- 6 3. The designated physician shall not ask any questions which are not
- 7
- 8 normally a part of a customary medical examination (e.g. liability opinions, potential
- 9 monetary recovery, professional criticisms, Plaintiff's motivation for or willingness to
- 10 pursue the claim, Plaintiff's intentions/thoughts regarding potential monetary recovery,
- 11 past settlements, past lawsuits).
- 12 4. No blood work, x-rays, CT scans or MRI's shall be performed during the
- 13 examination unless advance permission is sought and approved in writing.
- 14
- 15 5. Plaintiff will not be required to disrobe unless advanced permission is
- 16 sought and approved in writing.
- 17
- 18 6. The Examiner shall not contact Plaintiff before or after the examination.
- 19
- 20 7. The designated physician may not engage in ex parte contact with Plaintiff's
- 21 health care providers or other experts.
- 22
- 23 8. Plaintiff will not bring any medical records or films to the exam, as Defense
- 24 counsel may provide these to the Examiner.
- 25
- 26 9. Defense Counsel shall provide the Examiner with a copy of these
- 27 terms and advise the Examiner that the examination is contingent on the Examiner
- 28 adhering to each and every rule.
10. Within ten (15) days of receipt by Defense Counsel, or by the initial expert

1 deadline, whichever is sooner, Defense Counsel shall provide Plaintiff's Counsel with a
2 copy of all reports generated by the examining physician and/or the physician's staff
3 regarding this examination.

4 11. If the examination does not begin within fifteen minutes of the scheduled
5 start time, Plaintiff's Counsel will contact Defense Counsel in an attempt to reach a
6 solution before leaving.

7 12. A notice regarding an agreed upon time, date and place for the examination
8 will be served by Defendant.

9
10
11 **II.**
12 **RECOMMENDATIONS**

13 IT IS THEREFORE RECOMMENDED that Defendants' Motion to Compel NRCP 35
14 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)
15 is GRANTED, as follows:

16 IT IS FURTHER RECOMMENDED there will be no video recording, but the observer
17 will be present by remote means outside the door of the examination room in case the observer
18 needs to interrupt the Rule 35 examination; an audio recording can be made, but it is PROTECTED

19 *Discovery Commissioner's Report and Recommendations*
20 *Case Name: Santana vs. Oasis Moving & Storage, Inc., et. Al.*
21 *Case No.: A-20-821483-C*

22 under NRCP 26(c) for attorneys and experts only; no transcription of psychological testing or
23 documents, and for use in any other litigation.

24 DATED this 13th day of October, 2021.

25
26 
27 DISCOVERY COMMISSIONER

28 Submitted by:

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28

TYSON & MENDES LLP

/s/ Russell Christian

THOMAS E. MCGRATH

Nevada Bar No. 7086

RUSSELL D. CHRISTIAN

Nevada Bar No. 11785

170 South Green Valley Parkway, Suite 300

Henderson, Nevada 89012

Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.

Approved as to form and content by:
DE CASTROVERDE LAW GROUP

/s/ Michael Matzke

ALEX DE CASTROVERDE

Nevada Bar No. 6950

ORLANDO DE CASTROVERDE

Nevada Bar No. 7320

KIMBERLY VALENTIN

Nevada Bar No. 12509

1149 South Maryland Parkway

Las Vegas, Nevada 89104

Attorneys for Plaintiff

Genaro Gomez Santana

NOTICE

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

Objection time will expire on October 28 2021.

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

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____ 2021:

☒ Electronically filed and served counsel on **October 14**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: Natलिए Simonetti
COMMISSIONER DESIGNEE

CASE SUMMARY**CASE NO. A-20-821483-C**

Genaro Gomez Santana, Plaintiff(s)
vs.
Willy Gomez, Defendant(s)

§
§
§
§
§

Location: **Department 2**
 Judicial Officer: **Kierny, Carli**
 Filed on: **09/18/2020**
 Case Number History:
 Cross-Reference Case Number: **A821483**

CASE INFORMATIONCase Type: **Negligence - Auto**

Case Status: **09/18/2020 Open**





DATE**CASE ASSIGNMENT****Current Case Assignment**

Case Number A-20-821483-C
 Court Department 2
 Date Assigned 01/04/2021
 Judicial Officer Kierny, Carli

PARTY INFORMATION














Plaintiff	Gomez Santana, Genaro	<i>Lead Attorneys</i> Decastroverde, Alejandro J. <i>Retained</i> 702-383-0606(W)
Defendant	Bitton, Erez	
	Gomez, Willy	McGrath, Thomas E. <i>Retained</i> 702-724-2648(W)
	Oasis Moving & Storage, Inc	McGrath, Thomas E. <i>Retained</i> 702-724-2648(W)

DATE**EVENTS & ORDERS OF THE COURT****INDEX****EVENTS**

09/18/2020	 Complaint Filed By: Plaintiff Gomez Santana, Genaro [1] <i>Complaint</i>
09/18/2020	 Initial Appearance Fee Disclosure Filed By: Plaintiff Gomez Santana, Genaro [2] <i>Initial Appearance Fee Disclosure</i>
09/18/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Gomez Santana, Genaro [3] <i>Summons - Erez</i>
09/18/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Gomez Santana, Genaro [4] <i>Summons - Oasis</i>

CASE SUMMARY

CASE NO. A-20-821483-C

09/18/2020	 Summons Electronically Issued - Service Pending Party: Plaintiff Gomez Santana, Genaro <i>[5] Summons - Willy</i>
09/28/2020	 Summons Filed by: Plaintiff Gomez Santana, Genaro <i>[6] Summons - Erez</i>
09/28/2020	 Summons Filed by: Plaintiff Gomez Santana, Genaro <i>[7] Summons - Oasis</i>
09/28/2020	 Summons Filed by: Plaintiff Gomez Santana, Genaro <i>[8] Summons - Willy</i>
11/13/2020	 Answer to Complaint Filed by: Defendant Gomez, Willy; Defendant Oasis Moving & Storage, Inc <i>[9] Defendants Oasis Moving & Storage, Inc. and Willie Gomez s Answer to Plaintiff s Complaint</i>
11/13/2020	 Initial Appearance Fee Disclosure Filed By: Defendant Gomez, Willy; Defendant Oasis Moving & Storage, Inc <i>[10] Defendants Oasis Moving & Storage, Inc. and Willie Gomez s Initial Appearance Fee Disclosure</i>
11/13/2020	 Demand for Jury Trial Filed By: Defendant Gomez, Willy; Defendant Oasis Moving & Storage, Inc <i>[11] Defendants Oasis Moving & Storage, Inc. and Willie Gomez s Demand for Jury Trial</i>
11/20/2020	 Amended Answer Filed By: Defendant Gomez, Willy; Defendant Bitton, Erez; Defendant Oasis Moving & Storage, Inc <i>[12] Defendants First Amended Answer to Plaintiff s Complaint</i>
11/20/2020	 Initial Appearance Fee Disclosure <i>[13] Defendant Erez Bitton s Initial Appearance Fee Disclosure</i>
11/23/2020	 Request for Exemption From Arbitration Filed by: Plaintiff Gomez Santana, Genaro <i>[14] Request for Exemption from Arbitration</i>
12/11/2020	 Commissioners Decision on Request for Exemption - Granted <i>[15] Commissioner's Decision on Request for Exemption - GRANTED</i>
01/04/2021	Case Reassigned to Department 2 <i>Judicial Reassignment to Judge Carli Kierny</i>
01/22/2021	 Notice Filed By: Defendant Gomez, Willy; Defendant Bitton, Erez; Defendant Oasis Moving & Storage, Inc <i>[16] Notice of Change of Address</i>
02/08/2021	 Joint Case Conference Report










CASE SUMMARY

CASE NO. A-20-821483-C



	<p>Filed By: Plaintiff Gomez Santana, Genaro <i>[17] Joint Case Conference Report</i></p>
02/16/2021	<p> Scheduling and Trial Order <i>[18] Scheduling Order and Order Setting Civil Jury Trial</i></p>
02/22/2021	<p> Mandatory Rule 16 Conference Order <i>[19] Mandatory Rule 16 Pre-Trial Conference Order</i></p>
04/13/2021	<p> Amended Order Setting Jury Trial <i>[20] Amended Order Setting Civil Jury Trial an Calendar Call</i></p>
08/10/2021	<p> Motion to Compel Filed By: Defendant Gomez, Willy; Defendant Bitton, Erez; Defendant Oasis Moving & Storage, Inc <i>[21] Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)(I)</i></p>
08/10/2021	<p> Clerk's Notice of Hearing <i>[22] Notice of Hearing</i></p>
08/24/2021	<p> Opposition to Motion to Compel Filed By: Plaintiff Gomez Santana, Genaro <i>[23] Opposition to Defendant's Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(A)(i)</i></p>
09/03/2021	<p> Reply to Opposition Filed by: Defendant Gomez, Willy; Defendant Bitton, Erez; Defendant Oasis Moving & Storage, Inc <i>[24] Reply to Plaintiff's Opposition to Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)(I)</i></p>
09/20/2021	<p> Application for Issuance of Commission to Take Deposition Party: Plaintiff Gomez Santana, Genaro <i>[25] Plaintiff's Application for the Issuance of a Commission to Take Deposition of Retired Police Officer, Jason Ellico Outside the State of Nevada</i></p>
09/20/2021	<p> Commission Issued Filed by: Plaintiff Gomez Santana, Genaro <i>[26] Commission to Take Deposition of Retired Police Officer, Jason Ellico, Outside the State of Nevada</i></p>
09/27/2021	<p> Commission to Take Deposition Outside the State of Nevada Filed By: Plaintiff Gomez Santana, Genaro <i>[27] Commission to Take Deposition of Retired Police Officer, Jason Ellico Outside the State of Nevada</i></p>
10/07/2021	<p> Deposition Subpoena Filed By: Plaintiff Gomez Santana, Genaro <i>[28] Deposition Subpoena</i></p>
10/11/2021	<p> Stipulation and Order Filed by: Plaintiff Gomez Santana, Genaro <i>[29] Stipulation and Order to Extend Discovery (First Request)</i></p>

CASE SUMMARY

CASE NO. A-20-821483-C

10/11/2021	 Notice of Entry of Stipulation and Order Filed By: Plaintiff Gomez Santana, Genaro <i>[30] Notice of Entry of Stipulation and Order</i>
10/14/2021	 Discovery Commissioners Report and Recommendations <i>[31] Discovery Commissioner s Report and Recommendations -Originals</i>
10/26/2021	 Objection to Discovery Commissioners Report and Recommend <i>[32] Objection To Discovery Commissioner s Report And Recommendations</i>
11/08/2021	 Response Filed by: Plaintiff Gomez Santana, Genaro <i>[33] Plaintiff's Response in Support of Discovery Commissioner's Report and Recommendations</i>
11/09/2021	 Order Filed By: Defendant Gomez, Willy; Defendant Oasis Moving & Storage, Inc <i>[35] Order</i>
11/30/2021	 Motion to Amend Complaint Filed By: Plaintiff Gomez Santana, Genaro <i>[36] Plaintiff's Motion to Amend Complaint to Add Punitive Damages Against Defendant Willy Gomez</i>
12/01/2021	 Clerk's Notice of Hearing <i>[37] Notice of Hearing</i>
12/08/2021	 Notice of Appeal <i>[38] Notice of Appeal</i>
12/08/2021	 Ex Parte Motion <i>[39] Defendants Ex Parte Emergency Motion To Extend Discovery Deadlines On Order Shortening Time</i>


HEARINGS

04/07/2021	 Mandatory Rule 16 Conference (9:30 AM) (Judicial Officer: Kierny, Carli) Scheduling Order Will Issue; Journal Entry Details: <i>Defense noted that Plaintiff has moved out of state; and, Defense is prepared to work with counsel on scheduling adjustment. Colloquy regarding early settlement. COURT is going to incorporate the dates listed in the Case Conference Report; and, request trial be set 60 days from 2/07/22; date to file dispositive motions. Court directed parties to submit a Stipulation if the dates need to be adjusted later. TRIAL ORDER STANDS.. 05/18/22 9:30 p.m. Calendar Call 05/23/22 9:00 a.m. Jury Trial;</i>
09/14/2021	 Motion to Compel (9:30 AM) (Judicial Officer: Truman, Erin) <i>Defendant's Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)(I)</i> Granted; Defendant's Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)(I) Journal Entry Details: <i>Arguments by counsel. Commissioner stated there is a clear conflict between NRCP 35 and NRS 52.380. After analyzing the issues, Commissioner stated the Statute effects substantive rights of Plaintiff. COMMISSIONER RECOMMENDED, motion is GRANTED; no video recording, but the observer will be present by remote means outside the door of the examination room in case the observer needs to interrupt the Rule 35 examination; an audio recording can be made, but it is PROTECTED under NRCP 26(c) for attorneys and experts</i>

EIGHTH JUDICIAL DISTRICT COURT

CASE SUMMARY

CASE NO. A-20-821483-C

	<p>only; no transcription of psychological testing or documents, and for use in any other litigation. Mr. Christian to prepare the Report and Recommendations, and Mr. Matzke to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of the hearing. Otherwise, counsel will pay a contribution. COMMISSIONER RECOMMENDED, Status Check SET; if the DCRR is submitted, contact the Discovery office to vacate the Status Check. 10-14-2021 9:00 a.m. Status Check: Compliance / 9-14-2021 DCRR ;</p>
10/14/2021	<p>CANCELED Status Check: Compliance (8:59 AM) (Judicial Officer: Truman, Erin) <i>Vacated</i> <i>Status Check: Compliance / 9-14-2021 DCRR</i></p>
11/09/2021	<p> Minute Order (4:30 PM) (Judicial Officer: Kierny, Carli) Minute Order - No Hearing Held; Journal Entry Details: <i>The DCCR that was entered on 11/9/21 at 8:43 AM is hereby ordered STRICKEN and the Court will file another DCCR by close of business today. CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro Shell Hurtado, to all registered parties for Odyssey File & Serve./rh;</i></p>
01/05/2022	<p>Motion to Amend Complaint (9:30 AM) (Judicial Officer: Kierny, Carli) Events: 11/30/2021 Motion to Amend Complaint <i>Plaintiff's Motion to Amend Complaint to Add Punitive Damages Against Defendant Willy Gomez</i></p>
05/18/2022	<p>Calendar Call (9:30 AM) (Judicial Officer: Kierny, Carli)</p>
05/23/2022	<p>Jury Trial (9:00 AM) (Judicial Officer: Kierny, Carli)</p>

DATE

FINANCIAL INFORMATION

Defendant Oasis Moving & Storage, Inc	
Total Charges	277.00
Total Payments and Credits	277.00
Balance Due as of 12/10/2021	0.00
 Plaintiff Gomez Santana, Genaro	
Total Charges	270.00
Total Payments and Credits	270.00
Balance Due as of 12/10/2021	0.00

DISTRICT COURT CIVIL COVER SHEET

County, Nevada
Case No. _____
(Assigned by Clerk's Office)

CASE NO: A-20-821483-C
Department 32

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone): <div style="text-align: center; font-weight: bold; font-size: 1.2em;">GENARO GOMEZ SANTANA,</div>	Defendant(s) (name/address/phone): WILLY GOMEZ; EREZ BITTON; OASIS , MOVING & STORAGE, INC. d/b/a U TRUST MOVING; DOES I-X, inclusive, and ROE CORPORATIONS I-X, inclusive,
Attorney (name/address/phone): De Castroverde Law Group 1149 South Maryland Parkway Las Vegas, Nevada 89104 702.383.0606	Attorney (name/address/phone):

II. Nature of Controversy (please select the one most applicable filing type below)

Civil Case Filing Types

Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input checked="" type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ		Other Civil Filing Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters

Business Court filings should be filed using the Business Court civil coversheet.

September 18, 2020

Date

/s/ Mariela Ramos

Signature of initiating party or representative

See other side for family-related case filings.

Heather S. Lavin

CLERK OF THE COURT

ORDR

TYSON & MENDES LLP
THOMAS E. MCGRATH
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RUSSELL D. CHRISTIAN
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Tel: (702) 724-2648
Fax: (702) 410-7684
Attorneys for Defendants
Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.

EIGHTH JUDICIAL DISTRICT COURT

DISTRICT OF NEVADA

GENARO GOMEZ SANTANA,

Plaintiff,

vs.

WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

Defendants.

Case No. A-20-821483-C
Dept. No. XXXII

ORDER

Hearing Date: September 14, 2021
Hearing Time: 9:30 a.m.

ORDER

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

_____ No timely objection having been filed,

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

AND

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

_____ IT IS HEREBY ORDERED the Discovery Commissioner's Report and Recommendations
are affirmed and adopted as modified (attached hereto).



170 South Green Valley Parkway, Suite 300
Henderson, Nevada 89012

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Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. al.
Case No.: A-20-821483-C

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

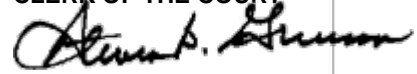
IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report is set for _____.

DATED this _____ day of _____, 2021.

Dated this 9th day of November, 2021

Carli Kierny

879 ED6 91E8 3C0C
Carli Kierny
District Court Judge



DCRR
1 **TYSON & MENDES LLP**
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Fax: (702) 410-7684
8 *Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.*

9 **DISTRICT COURT**

10 **CLARK COUNTY, NEVADA**

11 GENARO GOMEZ SANTANA,

12 Plaintiff,

13 vs.

14 WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. d/b/a U TRUST
15 MOVING; DOES I-X, inclusive, and ROE
CORPORATIONS I-X, inclusive,

16 Defendants.

Case No. A-20-821483-C
Dept. No. 2

**DISCOVERY COMMISSIONER'S
REPORT AND RECOMMENDATIONS**

Hearing Date: September 14, 2021
Hearing Time: 9:30 a.m.

17
18 **DISCOVERY COMMISSIONER'S REPORT AND RECOMMENDATIONS**

19 **APPEARANCES:**

For the Defendants, Willy Gomez, Erez Bitton, and Oasis
Moving & Storage, Inc.
Russell D. Christian, Esq.
21 TYSON & MENDES, LLP

22 For the Plaintiff, Genaro Gomez Santana
23 Michael S. Matzke, Esq.
DECASTROVERDE LAW GROUP

24
25 Defendants' Motion to Compel NRCP 35 Neuropsychological Examination and to
26 Preclude Observer at Exam Pursuant to NRCP 35 (4)(a) was heard on September 14, 2021. After
27 considering the Motion, any related opposition and reply briefs, and the arguments of counsel, the
28

Discovery Commissioner's Report and Recommendations
Case Name: Santana vs. Oasis Moving & Storage, Inc., et. al.
Case No.: A-20-821483-C

Discovery Commissioner enters the following Findings and Recommendations.

I.
FINDINGS

This action arises out of a one-vehicle motor vehicle accident that occurred on November 14, 2019. Plaintiff Genaro Gomez Santana was a passenger in a commercial diesel truck driven by his nephew, Defendant Willy Gomez.

Plaintiff claims to have sustained a traumatic brain injury. As noted in Counsel's affidavit, Plaintiff has treated with Dr. Enrico Fazzini, who has offered opinions regarding an alleged head injury. Additionally, Michael A. Elliot, Ph.D., a licensed Psychologist, has offered a future medical specials opinion related to psychological treatment for the Plaintiff. As such the parties have agreed that Plaintiff will present for an NRCP 35 neurological examination. However, there is disagreement as to the protocol to be followed related to the presence of a third-party observer during the examination and recording of the neurological testing¹. Accordingly this motion was filed in an effort to achieve a ruling with regard to the parties' respective positions with regard to NRS 52.380 and NRCP 35 (4)(A)(i).

The parties have agreed to the following parameters:

1. The examination will be limited to the date and time agreed to by counsel.
2. Examiner agrees to abide by the following safety practices:
 - a. All unvaccinated individuals will wear a mask during the Examination;
 - b. The Examiner will wash his/her hands prior to the Examination;
 - c. The seat, table, chair used by Plaintiff during the Examination must

¹ Although not specifically addressed during the EDCR 2.34 conference this Motion also anticipates and addresses the issue of audio recording of the Rule 35 exam.

- 1 be sanitized prior to use;
- 2 d. Any instruments used during the examination will be sterilized prior
- 3 to use; and
- 4 e. Any pens or writing utensils used by Plaintiff will be either new or
- 5 sterilized prior to use.
- 6 3. The designated physician shall not ask any questions which are not
- 7
- 8 normally a part of a customary medical examination (e.g. liability opinions, potential
- 9 monetary recovery, professional criticisms, Plaintiff's motivation for or willingness to
- 10 pursue the claim, Plaintiff's intentions/thoughts regarding potential monetary recovery,
- 11 past settlements, past lawsuits).
- 12 4. No blood work, x-rays, CT scans or MRI's shall be performed during the
- 13 examination unless advance permission is sought and approved in writing.
- 14
- 15 5. Plaintiff will not be required to disrobe unless advanced permission is
- 16 sought and approved in writing.
- 17
- 18 6. The Examiner shall not contact Plaintiff before or after the examination.
- 19
- 20 7. The designated physician may not engage in ex parte contact with Plaintiff's
- 21 health care providers or other experts.
- 22
- 23 8. Plaintiff will not bring any medical records or films to the exam, as Defense
- 24 counsel may provide these to the Examiner.
- 25
- 26 9. Defense Counsel shall provide the Examiner with a copy of these
- 27 terms and advise the Examiner that the examination is contingent on the Examiner
- 28 adhering to each and every rule.
10. Within ten (15) days of receipt by Defense Counsel, or by the initial expert

1 deadline, whichever is sooner, Defense Counsel shall provide Plaintiff's Counsel with a
2 copy of all reports generated by the examining physician and/or the physician's staff
3 regarding this examination.

4 11. If the examination does not begin within fifteen minutes of the scheduled
5 start time, Plaintiff's Counsel will contact Defense Counsel in an attempt to reach a
6 solution before leaving.

7 12. A notice regarding an agreed upon time, date and place for the examination
8 will be served by Defendant.

9
10
11 **II.**
12 **RECOMMENDATIONS**

13 IT IS THEREFORE RECOMMENDED that Defendants' Motion to Compel NRCP 35
14 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)
15 is GRANTED, as follows:

16 IT IS FURTHER RECOMMENDED there will be no video recording, but the observer
17 will be present by remote means outside the door of the examination room in case the observer
18 needs to interrupt the Rule 35 examination; an audio recording can be made, but it is PROTECTED

19 *Discovery Commissioner's Report and Recommendations*
20 *Case Name: Santana vs. Oasis Moving & Storage, Inc., et. Al.*
21 *Case No.: A-20-821483-C*

22 under NRCP 26(c) for attorneys and experts only; no transcription of psychological testing or
23 documents, and for use in any other litigation.

24 DATED this 13th day of October, 2021.

25
26 
27 DISCOVERY COMMISSIONER

28 Submitted by:

1 TYSON & MENDES LLP

2
3 /s/ Russell Christian

4 THOMAS E. MCGRATH

5 Nevada Bar No. 7086

6 RUSSELL D. CHRISTIAN

7 Nevada Bar No. 11785

170 South Green Valley Parkway, Suite 300

8 Henderson, Nevada 89012

9 *Attorneys for Defendants Willy Gomez, Erez Bitton, and Oasis Moving & Storage, Inc.*

10 *Approved as to form and content by:*

11 DE CASTROVERDE LAW GROUP

12 /s/ Michael Matzke

13 ALEX DE CASTROVERDE

14 Nevada Bar No. 6950

15 ORLANDO DE CASTROVERDE

16 Nevada Bar No. 7320

17 KIMBERLY VALENTIN

18 Nevada Bar No. 12509

19 1149 South Maryland Parkway

20 Las Vegas, Nevada 89104

21 *Attorneys for Plaintiff*

22 *Genaro Gomez Santana*

NOTICE

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

Objection time will expire on October 28 2021.

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

_____ Mailed to Plaintiff/Defendant at the following address on the _____ day of _____ 2021:

☒ Electronically filed and served counsel on **October 14**, 2021, Pursuant to N.E.F.C.R. Rule 9.

By: Natलिए Simonetti
COMMISSIONER DESIGNEE

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4
5
6 Genaro Gomez Santana,
Plaintiff(s)

CASE NO: A-20-821483-C

7 vs.

DEPT. NO. Department 2

8
9 Willy Gomez, 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
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 11/9/2021

15 Kimberly Valentin kimberly@decastroverdelaw.com

16 Stefania Ross SRoss@TysonMendes.com

17 Thomas McGrath tmcgrath@tysonmendes.com

18 Scarlett Fisher sfisher@tysonmendes.com

19 Cheryl Wilson cwilson@tysonmendes.com

20 Filing Assistant efiling@decastroverdelaw.com

21 Michael Matzke Michael@decastroverdelaw.com

22 Tyson & Mendes tysonmendesLV@outlook.com

23 Shantei O'Dell SODell@TysonMendes.com

24 Russell Christian rchristian@tysonmendes.com

25 Solange Cardenas solange@decastroverdelaw.com

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**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

April 07, 2021

A-20-821483-C Genaro Gomez Santana, Plaintiff(s)
vs.
Willy Gomez, Defendant(s)

**April 07, 2021 9:30 AM Mandatory Rule 16
Conference**

HEARD BY: Kierny, Carli

COURTROOM: RJC Courtroom 16B

COURT CLERK: Alan Castle

RECORDER: Jessica Kirkpatrick

REPORTER:

PARTIES

PRESENT: Christian, Russell Attorney
Harnik, Michelle J Attorney

JOURNAL ENTRIES

- Defense noted that Plaintiff has moved out of state; and, Defense is prepared to work with counsel on scheduling adjustment. Colloquy regarding early settlement. COURT is going to incorporate the dates listed in the Case Conference Report; and, request trial be set 60 days from 2/07/22; date to file dispositive motions. Court directed parties to submit a Stipulation if the dates need to be adjusted later. TRIAL ORDER STANDS..

05/18/22 9:30 p.m. Calendar Call

05/23/22 9:00 a.m. Jury Trial

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

September 14, 2021

A-20-821483-C Genaro Gomez Santana, Plaintiff(s)
vs.
Willy Gomez, Defendant(s)

September 14, 2021	9:30 AM	Motion to Compel	Defendant's Motion to Compel NRCP 35 Neuropsychological Examination and to Preclude Observer at Exam Pursuant to NRCP 35 (4)(a)(I)
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HEARD BY: Truman, Erin**COURTROOM:** RJC Level 5 Hearing Room**COURT CLERK:** Jennifer Lott**RECORDER:** Francesca Haak**REPORTER:****PARTIES**

PRESENT:	Christian, Russell	Attorney
	Matzke, Michael S.	Attorney

JOURNAL ENTRIES

- Arguments by counsel. Commissioner stated there is a clear conflict between NRCP 35 and NRS 52.380. After analyzing the issues, Commissioner stated the Statute effects substantive rights of Plaintiff. COMMISSIONER RECOMMENDED, motion is GRANTED; no video recording, but the observer will be present by remote means outside the door of the examination room in case the observer needs to interrupt the Rule 35 examination; an audio recording can be made, but it is PROTECTED under NRCP 26(c) for attorneys and experts only; no transcription of psychological testing or documents, and for use in any other litigation.

Mr. Christian to prepare the Report and Recommendations, and Mr. Matzke to approve as to form and content. Comply with Administrative Order 20-10, and submit the DCRR to DiscoveryInbox@clarkcountycourts.us. A proper report must be timely submitted within 14 days of

the hearing. Otherwise, counsel will pay a contribution. COMMISSIONER RECOMMENDED, Status Check SET; if the DCRR is submitted, contact the Discovery office to vacate the Status Check.

10-14-2021 9:00 a.m. Status Check: Compliance / 9-14-2021 DCRR

**DISTRICT COURT
CLARK COUNTY, NEVADA**

Negligence - Auto

COURT MINUTES

November 09, 2021

A-20-821483-C Genaro Gomez Santana, Plaintiff(s)
vs.
Willy Gomez, Defendant(s)

November 09, 2021 4:30 PM Minute Order

HEARD BY: Kierny, Carli

COURTROOM: Chambers

COURT CLERK: Ro'Shell Hurtado

RECORDER:

REPORTER:

PARTIES

PRESENT:

JOURNAL ENTRIES

- The DCCR that was entered on 11/9/21 at 8:43 AM is hereby ordered STRICKEN and the Court will file another DCCR by close of business today.

CLERK S NOTE: This Minute Order was electronically served by Courtroom Clerk, Ro Shell Hurtado, to all registered parties for Odyssey File & Serve.//rh



EIGHTH JUDICIAL DISTRICT COURT CLERK'S OFFICE
NOTICE OF DEFICIENCY
ON APPEAL TO NEVADA SUPREME COURT

THOMAS E. MCGRATH
170 S. GREEN VALLEY PKWY., SUITE 300
HENDERSON, NV 89012

DATE: December 10, 2021
CASE: A-20-821483-C

RE CASE: GENARO GOMEZ SANTANA vs. WILLY GOMEZ; EREZ BITTON; OASIS MOVING & STORAGE, INC. dba U TRUST MOVING

NOTICE OF APPEAL FILED: December 8, 2021

YOUR APPEAL HAS BEEN SENT TO THE SUPREME COURT.

PLEASE NOTE: DOCUMENTS **NOT** TRANSMITTED HAVE BEEN MARKED:

- ☒ \$250 – Supreme Court Filing Fee (Make Check Payable to the Supreme Court)**
 - If the \$250 Supreme Court Filing Fee was not submitted along with the original Notice of Appeal, it must be mailed directly to the Supreme Court. The Supreme Court Filing Fee will not be forwarded by this office if submitted after the Notice of Appeal has been filed.
- ☐ \$24 – District Court Filing Fee (Make Check Payable to the District Court)**
- ☒ \$500 – Cost Bond on Appeal (Make Check Payable to the District Court)**
 - NRAP 7: Bond For Costs On Appeal in Civil Cases
 - *Previously paid Bonds are not transferable between appeals without an order of the District Court.*
- ☒ Case Appeal Statement
 - NRAP 3 (a)(1), Form 2
- ☐ Order
- ☒ Notice of Entry of Order

NEVADA RULES OF APPELLATE PROCEDURE 3 (a) (3) states:

"The district court clerk must file appellant's notice of appeal despite perceived deficiencies in the notice, including the failure to pay the district court or Supreme Court filing fee. **The district court clerk shall apprise appellant of the deficiencies in writing**, and shall transmit the notice of appeal to the Supreme Court in accordance with subdivision (g) of this Rule with a notation to the clerk of the Supreme Court setting forth the deficiencies. Despite any deficiencies in the notice of appeal, the clerk of the Supreme Court shall docket the appeal in accordance with Rule 12."

Please refer to Rule 3 for an explanation of any possible deficiencies.

*****Per District Court Administrative Order 2012-01, in regards to civil litigants, "...all Orders to Appear in Forma Pauperis expire one year from the date of issuance." You must reapply for in Forma Pauperis status.***

Certification of Copy

State of Nevada }
County of Clark } SS:

I, Steven D. Grierson, the Clerk of the Court of the Eighth Judicial District Court, Clark County, State of Nevada, does hereby certify that the foregoing is a true, full and correct copy of the hereinafter stated original document(s):

NOTICE OF APPEAL; DISTRICT COURT DOCKET ENTRIES; CIVIL COVER SHEET; ORDER; DISTRICT COURT MINUTES; NOTICE OF DEFICIENCY

GENARO GOMEZ SANTANA,

Plaintiff(s),

vs.

WILLY GOMEZ; EREZ BITTON; OASIS
MOVING & STORAGE, INC. dba U TRUST
MOVING,

Defendant(s),

Case No: A-20-821483-C

Dept No: II

now on file and of record in this office.

IN WITNESS THEREOF, I have hereunto
Set my hand and Affixed the seal of the
Court at my office, Las Vegas, Nevada
This 10 day of December 2021.

Steven D. Grierson, Clerk of the Court



Heather Ungermann, Deputy Clerk

