

No. _____

In the Supreme Court of Texas

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP. AND LAUREN
KRUEGER,**
Relators.

Original Proceeding from the
444th District Court Cameron County, Texas
No. 2020-DCL-03939
Following denial of mandamus relief by
Thirteenth Court of Appeals at Corpus Christi, Texas
No. 13-24-00042-CV

**RECORD TO PETITION FOR WRIT OF MANDAMUS
VOLUME 5 OF 5**

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AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	30:12 you observed, the black Tundra that was involved in the		
	30:13 accident on February 5th, 2020, was fine to drive after		
	30:14 the accident?		
	30:15 A. Yes, ma'am.		
	30:16 Q. After the accident, did Jose Ruiz drive the		
	30:17 Toyota black Tundra from his home to work every day for		
	30:18 two months?		
	30:19 A. Yes.		
	30:20 Q. When you were in the vehicle driving to and		
	30:21 from work in the two-month period after the		
	30:22 February 5th, 2020 accident, was everyone in the vehicle		
	30:23 capable of going to work?		
31:01 - 31:06	Arellano, Alejandro 2022-05-09	00:00:19	AAC2.38
	31:01 A. Yes.		
	31:02 Q. Oh. Mr. Arellano, is it correct that after the		
	31:03 two-month period, the only reason why you did not		
	31:04 continue driving with Jose Ruiz to work was because you		
	31:05 got shifted to a different project?		
	31:06 A. Yes, ma'am.		
31:12 - 31:16	Arellano, Alejandro 2022-05-09	00:00:15	AAC2.158
	31:12 Q. When you would drive with Jose Ruiz in the		
	31:13 vehicles to and from work, were there times when you		
	31:14 would ever stop to get a coffee or breakfast to eat on		
	31:15 the way to work?		
	31:16 A. Yes, we would stop at a gas station.		
31:19 - 31:23	Arellano, Alejandro 2022-05-09	00:00:12	AAC2.159
	31:19 Q. When you stopped, would you get a snack,		
	31:20 something to drink?		
	31:21 A. Yeah, I would get a coffee and a taco.		
	31:22 Q. What would Mr. Ruiz get?		
	31:23 A. Coffee.		
32:05 - 32:10	Arellano, Alejandro 2022-05-09	00:00:09	AAC2.39
	32:05 Q. So while you were driving down the road, would		
	32:06 you drink your coffee?		
	32:07 A. Yes.		
	32:08 Q. And Jose would drink his coffee while driving		
	32:09 down the road?		
	32:10 A. Yes, ma'am.		
34:16 - 35:21	Arellano, Alejandro 2022-05-09	00:01:38	AAC2.40

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID	
	34:16 Q. What else would Jose Ruiz do besides the 34:17 welding?		AAC2.40	
	34:18 A. Screw -- screw the deck and he would clean 34:19 after -- when we'll go home, we'll help him clean our 34:20 area.			
	34:21 Q. Okay. When you would finish -- let me ask you 34:22 this: Mr. Arellano, when you were working on the SpaceX 34:23 project -- SpaceX project after the February 5th, 2020 34:24 accident, what was your typical workday?			
	34:25 A. I don't remember exactly the day.			
	35:01 Q. Do you remember what time you would meet at 35:02 Jose Ruiz' house?			
	35:03 A. Yes. It was at 5:30 in the morning.			
	35:04 Q. What time would you typically leave his house?			
	35:05 A. At 6:00.			
	35:06 Q. So you would wait at his house until Humberto 35:07 arrived and Hector Garcia, Junior, arrived?			
	35:08 A. We would wait for Hector Garcia and then we 35:09 would meet Humberto on the side of the freeway on Ware 35:10 road.			
	35:11 Q. Humberto's wife would take him to that 35:12 location?			
	35:13 A. Yes.			
	35:14 Q. Did Humberto ever drive?			
	35:15 A. No.			
	35:16 Q. Did anybody ever drive the Toyota Tundra to or 35:17 from the work site besides Jose Ruiz?			
	35:18 A. No.			
	35:19 Q. So he was the designated driver for Ruiz 35:20 Erectors?			
	35:21 A. Yes.			
36:20 - 37:07	Arellano, Alejandro 2022-05-09	00:00:35		AAC2.41
	36:20 Q. When was the last time you saw Jose Ruiz?			
	36:21 A. The last time I saw him was three months ago.			
	36:22 Q. Where did you see him?			
	36:23 A. I saw him in a store.			
	36:24 Q. Grocery store?			
	36:25 A. Yes.			
	37:01 Q. He was shopping?			
	37:02 A. Yes.			

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	37:03 Q. Was he by himself or was he with his wife or 37:04 someone else? 37:05 A. By himself. 37:06 Q. And was he doing well? 37:07 A. He was doing all right.		
37:15 - 37:15	Arellano, Alejandro 2022-05-09	00:00:03	AAC2.42
	37:15 Q. Did he drive to the grocery store himself?		
37:17 - 38:19	Arellano, Alejandro 2022-05-09	00:01:15	AAC2.43
	37:17 A. Yes. 37:18 Q. (By Ms. Pector) So you mentioned, Mr. Arellano, 37:19 you would meet at Jose Ruiz's house at 5:30 a.m. to go 37:20 to work and then leave his house at 6:00 a.m. for work 37:21 after the accident, correct? 37:22 A. Yes, ma'am. 37:23 Q. When you would drive to work, what time would 37:24 you typically arrive at work? 37:25 A. At work I would arrive 8:30 in the morning. 38:01 Q. Is it correct to say that it would take about 38:02 two hours to get from Mission to the work site after the 38:03 accident? 38:04 A. Yes. 38:05 Q. The 30 minutes would be a stop to get food and 38:06 drinks -- 38:07 A. Yes, ma'am. 38:08 Q. -- on the way? Would you stop every day? 38:09 A. Yes. 38:10 Q. And get coffee every day? 38:11 A. Uh-huh. 38:12 Q. Is that "yes"? 38:13 A. Yes, ma'am. 38:14 Q. Every day when you would drive to work after 38:15 the accident, would you and Jose Ruiz drink coffee 38:16 together on the way to work? 38:17 A. Yes, ma'am. 38:18 Q. Would you listen to music in the car? 38:19 A. Yes.		
39:02 - 39:04	Arellano, Alejandro 2022-05-09	00:00:12	AAC2.44
	39:02 Q. It was always the four of you in the vehicle 39:03 together or sometimes did other people ride with you? 39:04 A. No, it was only us four.		

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DESIGNATION	SOURCE	DURATION	ID
39:16 - 40:03	<p>Arellano, Alejandro 2022-05-09</p> <p>39:16 Q. Yeah. So February 5th, 2020, the day of the 39:17 accident was the first day of Hector Garcia, Junior's 39:18 work on the SpaceX project? 39:19 A. No, it was already there before the accident. 39:20 Q. Oh, he had already started working on the 39:21 SpaceX project before then? 39:22 A. Yes. 39:23 Q. How long had you worked on the SpaceX project 39:24 before the accident? 39:25 A. I think it was a month. 40:01 Q. And then you said you worked on that project 40:02 two months after the accident? 40:03 A. Yes.</p>	00:00:35	AAC2.45
40:17 - 41:01	<p>Arellano, Alejandro 2022-05-09</p> <p>40:17 Okay. So is it fair to say that every day 40:18 after the February 5th, 2020 accident you would drive 40:19 approximately 240 miles with Jose Ruiz, Humberto Garcia 40:20 and Hector Garcia, Junior, from Mission, Texas to the 40:21 SpaceX project site? 40:22 A. Yes, ma'am. 40:23 Q. Mr. Garcia was always the driver for those 40:24 trips -- I'm sorry, Mr. Ruiz, Jose Ruiz was always the 40:25 driver for those trips? 41:01 A. Yes.</p>	00:00:37	AAC2.46
41:02 - 41:13	<p>Arellano, Alejandro 2022-05-09</p> <p>41:02 Q. When you are not working, Mr. Arellano, do you 41:03 ever get together socially with Jose Ruiz? 41:04 A. No. 41:05 Q. Ever or never? 41:06 A. Never. 41:07 Q. Okay. You have never had any events where 41:08 there was a social gathering of Ruiz Erector employees 41:09 on a weekend where other employees came? 41:10 A. No. 41:11 Q. Did you ever get together socially with 41:12 Humberto Garcia? 41:13 A. No.</p>	00:00:29	AAC2.47
41:14 - 41:15	<p>Arellano, Alejandro 2022-05-09</p>	00:00:04	AAC2.48

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DESIGNATION	SOURCE	DURATION	ID
	41:14 Q. Is Humberto Garcia a friend of yours?		AAC2.48
	41:15 A. He's a friend.		
41:16 - 41:20	Arellano, Alejandro 2022-05-09	00:00:09	AAC2.49
	41:16 Q. Do you keep in touch with him?		
	41:17 A. No.		
	41:18 Q. Have your families ever had any activity		
	41:19 together?		
	41:20 A. No.		
42:19 - 42:24	Arellano, Alejandro 2022-05-09	00:00:23	AAC2.50
	42:19 Q. When you worked to Ruiz Erectors, how many days		
	42:20 a week would you work for them?		
	42:21 A. Monday through Friday.		
	42:22 Q. Were there ever times when you needed to work		
	42:23 on weekends?		
	42:24 A. Yes. There were sometimes.		
43:23 - 44:04	Arellano, Alejandro 2022-05-09	00:00:31	AAC2.51
	43:23 Q. Mr. Arellano, I'm going to take you to the day		
	43:24 of the accident, which was February 5th, 2020. Can you		
	43:25 tell me what is the first thing you remember that day.		
	44:01 A. I was sitting of the front seat, I was a		
	44:02 passenger. We were at a light and we started hearing		
	44:03 the truck beep. By the time I looked up to look at the		
	44:04 dashboard, we just got hit from the back.		
44:09 - 44:11	Arellano, Alejandro 2022-05-09	00:00:07	AAC2.52
	44:09 Q. (By Ms. Pector) I'm talking about the Toyota		
	44:10 Tundra that you were in. How many miles an hour was the		
	44:11 Toyota Tundra going at the time of the accident?		
44:13 - 44:16	Arellano, Alejandro 2022-05-09	00:00:12	AAC2.53
	44:13 A. We were stopped at a red light.		
	44:14 Q. (By Ms. Pector) Red light. How many cars were		
	44:15 in front of you?		
	44:16 A. In front of us was three cars.		
45:10 - 45:21	Arellano, Alejandro 2022-05-09	00:00:38	AAC2.54
	45:10 Q. So once you felt the bump of the vehicle behind		
	45:11 you, what happened next?		
	45:12 A. We all got down and checked -- well, I got down		
	45:13 and ran to the driver's side to check on Jose and		
	45:14 Hector. And Humberto got down, too, and we checked on		
	45:15 Jose and he was doing fine.		

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DESIGNATION	SOURCE	DURATION	ID
	45:16 Q. And when you say you got down, you mean you had 45:17 immediately jumped out of the truck? 45:18 A. Yes. 45:19 Q. So you and Humberto and Hector Garcia all 45:20 jumped out immediately after the bump? 45:21 A. Yes, ma'am.		
46:03 - 46:06	Arellano, Alejandro 2022-05-09	00:00:12	AAC2.55
	46:03 Q. Okay. And then when you checked on Jose Ruiz 46:04 and saw he was fine, what did he do next? 46:05 A. He got down and we went to go check on the 46:06 person that was behind us.		
46:07 - 46:10	Arellano, Alejandro 2022-05-09	00:00:15	AAC2.56
	46:07 Q. What did you -- when you checked on the person 46:08 behind you, was he fine, too? 46:09 A. He was. He was fine but he was having -- his 46:10 head was hurting and his back.		
46:19 - 46:20	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.57
	46:19 Q. When you saw Hector Garcia, Junior, did you see 46:20 anything physically wrong with him?		
46:22 - 46:25	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.58
	46:22 A. No, everything was fine. 46:23 Q. (By Ms. Pector) And when you saw Humberto 46:24 Garcia right after the accident, did you see anything 46:25 physically wrong with him?		
47:02 - 47:02	Arellano, Alejandro 2022-05-09	00:00:02	AAC2.59
	47:02 A. No.		
47:25 - 48:10	Arellano, Alejandro 2022-05-09	00:00:23	AAC2.60
	47:25 Q. Okay. No -- is it correct that Hector Garcia, 48:01 Junior, did not get any medical treatment at the scene? 48:02 A. No. 48:03 Q. Did Humberto Garcia get any medical treatment 48:04 at the scene? 48:05 A. No. 48:06 Q. Did Jose Ruiz get any medical treatment at the 48:07 scene? 48:08 A. No. 48:09 Q. Did you get any medical treatment at the scene? 48:10 A. No. They took us to a little clinic that was		

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DESIGNATION	SOURCE	DURATION	ID
48:24 - 49:09	<p>Arellano, Alejandro 2022-05-09</p> <p>48:24 Q. There was no request for medical treatment by 48:25 Jose Ruiz, right?</p> <p>49:01 A. No.</p> <p>49:02 Q. Did Humberto Garcia request any medical 49:03 assistance?</p> <p>49:04 A. No, he didn't.</p> <p>49:05 Q. Did Hector Garcia, Junior, request any medical 49:06 assistance?</p> <p>49:07 A. No.</p> <p>49:08 Q. Did you request any medical assistance? 49:09 A. No.</p>	00:00:19	AAC2.62
49:13 - 49:15	<p>Arellano, Alejandro 2022-05-09</p> <p>49:13 Q. Okay. Do you remember -- did anybody tell the 49:14 police that they needed medical attention? 49:15 A. No.</p>	00:00:12	AAC2.63
49:20 - 49:21	<p>Arellano, Alejandro 2022-05-09</p> <p>49:20 Q. Were you just walking around the area? 49:21 A. Uh-huh, yes.</p>	00:00:05	AAC2.64
50:02 - 50:04	<p>Arellano, Alejandro 2022-05-09</p> <p>50:02 Q. Did -- were the lights on the Toyota Tundra on 50:03 or off? 50:04 A. They were on.</p>	00:00:06	AAC2.65
50:08 - 50:09	<p>Arellano, Alejandro 2022-05-09</p> <p>50:08 Q. Is the Toyota Tundra a full-sized truck? 50:09 A. Yes.</p>	00:00:05	AAC2.66
50:17 - 51:05	<p>Arellano, Alejandro 2022-05-09</p> <p>50:17 Q. When the accident happened, what did you see 50:18 Jose Ruiz do? 50:19 A. Nothing. He was holding the steering wheel 50:20 waiting for the green light -- the red light to turn 50:21 green. 50:22 Q. Okay. Do you know if he had both hands on the 50:23 steering wheel or only one hand? 50:24 A. I think he only had one hand. 50:25 Q. Do you remember which hand? 51:01 A. I think it was his left hand. 51:02 Q. Was music on when the accident happened? 51:03 A. No, ma'am.</p>	00:00:36	AAC2.67

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	51:04 Q. It was quiet in the car?		
	51:05 A. It was quiet, yes.		
51:11 - 51:17	Arellano, Alejandro 2022-05-09	00:00:23	AAC2.68
	51:11 Q. Okay. And then once you got out of the car and		
	51:12 checked on Jose Ruiz and he was fine, did everyone stay		
	51:13 exited from the vehicle while the police were there?		
	51:14 A. Yeah. We all got out of the --		
	51:15 Q. Did another truck from Ruiz Erectors come to		
	51:16 the scene?		
	51:17 A. Yes. Martin, Senior.		
52:08 - 52:13	Arellano, Alejandro 2022-05-09	00:00:13	AAC2.69
	52:08 Q. How long did they stay at the scene?		
	52:09 A. They stayed for, I think, 5 minutes and they		
	52:10 left to the job site.		
	52:11 Q. Did they get out just to make sure all of you		
	52:12 were okay?		
	52:13 A. Yes.		
52:18 - 52:20	Arellano, Alejandro 2022-05-09	00:00:06	AAC2.70
	52:18 Q. (By Ms. Pector) Did Martin Ruiz talk to Jose		
	52:19 Ruiz?		
	52:20 A. Yes, he did.		
53:17 - 54:08	Arellano, Alejandro 2022-05-09	00:00:35	AAC2.71
	53:17 Q. Did you have your seat belt on at the time?		
	53:18 A. Yes, ma'am.		
	53:19 Q. Did Jose Ruiz have his seat belt on?		
	53:20 A. Yes.		
	53:21 Q. And Hector Garcia, Junior, had his seat belt		
	53:22 on?		
	53:23 A. Yes.		
	53:24 Q. Humberto Garcia had his seat belt on?		
	53:25 A. Yes.		
	54:01 Q. Nobody hit their head, correct?		
	54:02 A. No.		
	54:03 Q. And did you see anyone lose consciousness after		
	54:04 the accident?		
	54:05 A. No, no one lost consciousness.		
	54:06 Q. So everybody was conscious and able to get out		
	54:07 of the vehicle on their own, correct?		
	54:08 A. Yes.		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
54:21 - 55:12	Arellano, Alejandro 2022-05-09 54:21 Q. And -- go ahead. And then he told you? 54:22 A. And he told me that we were all fine? And I 54:23 told him yes. And that's when he went to go talk to his 54:24 brother, to Jose. 54:25 Q. When you get out of the vehicle, were you able 55:01 to look at the truck? 55:02 A. Yes. 55:03 Q. Was the truck in normal shape for the most 55:04 part? 55:05 A. Yes, it was only the bed that was bended a 55:06 little bit and the back bumper. 55:07 Q. Okay. The bumper had a little bend to it? 55:08 A. Yes. 55:09 Q. But the vehicle was still drivable? 55:10 A. Uh-huh. 55:11 Q. Is that a "yes"? 55:12 A. Yes, ma'am.	00:00:37	AAC2.72
57:03 - 58:04	Arellano, Alejandro 2022-05-09 57:03 Q. When everyone got out of the vehicle, is it 57:04 correct that there were -- no one had any -- let me ask 57:05 you this: Did anyone have broken bones after the 57:06 accident? 57:07 A. No, ma'am. 57:08 Q. Did anyone have blood on them after the 57:09 accident? 57:10 A. No. 57:11 Q. Did anyone seem like they had any, you know, 57:12 dislocation of anything that you could see visibly? 57:13 A. No. 57:14 Q. Did anyone have any bruising that you could 57:15 see? 57:16 A. No, not that I know. 57:17 Q. Okay. So for the most part everyone was fine 57:18 after the accident? 57:19 A. Yes. 57:20 Q. You mentioned that after the accident you went 57:21 to a nearby clinic that Diego took you to. Who found 57:22 that clinic? 57:23 A. I think it was Martin, Junior.	00:01:02	AAC2.73

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	57:24 Q. Was it your understanding that Martin, Junior, 57:25 was on the phone with Diego Salinas? 58:01 A. I think, yes. 58:02 Q. Do you think Martin, Junior, was the one that 58:03 said that you should -- you and the other passengers 58:04 should go to a clinic?		
58:06 - 58:06	Arellano, Alejandro 2022-05-09 58:06 A. Yes.	00:00:02	AAC2.74
58:07 - 58:17	Arellano, Alejandro 2022-05-09 58:07 Q. (By Ms. Pector) Did you feel like you needed to 58:08 go to a clinic or did you think you could go straight to 58:09 work? 58:10 A. Actually, my knee was hurting on that day, so 58:11 he took us just to go check ourselves at the clinic. 58:12 Q. Okay. When you got checked out at the clinic, 58:13 did the clinic release you to return to work? 58:14 A. No. No, they didn't release us to work. 58:15 Q. Okay. What did they -- what did they do? 58:16 A. They told us -- they gave us medications and 58:17 they told us to rest for the day.	00:00:34	AAC2.75
58:22 - 58:24	Arellano, Alejandro 2022-05-09 58:22 Q. Did your knee get better after a couple of 58:23 days? 58:24 A. Well, not really. It hurts once in a while.	00:00:08	AAC2.76
60:06 - 60:08	Arellano, Alejandro 2022-05-09 60:06 Q. (By Ms. Pector) Were any SpaceX vehicles 60:07 involved in the accident that you could see? 60:08 A. No.	00:00:05	AAC2.78
62:11 - 62:18	Arellano, Alejandro 2022-05-09 62:11 Q. Okay. Where did you -- where did you go after 62:12 you left the clinic? 62:13 A. After we left -- we left the clinic, we went to 62:14 Martin, Junior's -- what you call it -- lawyer's office. 62:15 Q. Who told you to go there? 62:16 A. Diego took us there. I think Martin, Junior, 62:17 was the one that told Diego to take us to sign some 62:18 papers.	00:00:27	AAC2.79
63:06 - 63:18	Arellano, Alejandro 2022-05-09 63:06 Q. When you were leaving Valley Day and Night, who	00:00:41	AAC2.80

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	63:07 was driving the vehicle?		
	63:08 A. Diego Salinas.		
	63:09 Q. What vehicle were you in?		
	63:10 A. It was a Camry.		
	63:11 Q. Toyota Camry?		
	63:12 A. Yes.		
	63:13 Q. Who was in the vehicle?		
	63:14 A. The driver was Diego, the passenger was Jose		
	63:15 and it was Hector, me and Humberto on the back.		
	63:16 Q. Okay. How long was the drive from the Valley		
	63:17 Day and Night clinic to the attorney's office?		
	63:18 A. I think it was like an hour and a half.		
64:16 - 64:18	Arellano, Alejandro 2022-05-09	00:00:07	AAC2.81
	64:16 Q. Were you surprised that you were being driven		
	64:17 to an attorney's office after leaving the clinic?		
	64:18 A. Yes.		
64:20 - 65:03	Arellano, Alejandro 2022-05-09	00:00:26	AAC2.82
	64:20 Q. (By Ms. Pector) Did you want to go or did you		
	64:21 prefer to go home?		
	64:22 A. No, actually, they just took us there. They		
	64:23 said we are going to go -- go talk to the lawyer about		
	64:24 the case, something like that. They told us.		
	64:25 Q. And when you say "they," who is they?		
	65:01 A. The company, Ruiz Erectors.		
	65:02 Q. Ruiz, Junior?		
	65:03 A. Yes.		
65:09 - 65:19	Arellano, Alejandro 2022-05-09	00:00:27	AAC2.83
	65:09 Q. Okay. Did you drive straight from the Valley		
	65:10 Day and Night to the attorney's office or did you make		
	65:11 any stops?		
	65:12 A. We made a stop to Stripes, because we had to do		
	65:13 a restroom break.		
	65:14 Q. Okay. How long do you think that that stop		
	65:15 was?		
	65:16 A. I think it was -- it was, like, a 20- or		
	65:17 30-minute stop.		
	65:18 Q. Did you get any food or drinks at that time?		
	65:19 A. We got drinks.		
66:05 - 66:08	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.84

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	66:05 Q. What happened once you arrived at the 66:06 attorney's office?		AAC2.84
	66:07 A. We were sitting in a conference -- I think it 66:08 was like a conference room, and they were asking		
66:15 - 66:25	Arellano, Alejandro 2022-05-09	00:00:36	AAC2.85
	66:15 Q. How long were you there?		
	66:16 A. We were there for, I think, 45 minutes to an 66:17 hour.		
	66:18 Q. Did Martin Ruiz ever come there?		
	66:19 A. Yes, he was already there when we got there.		
	66:20 Q. Okay. Was he doing most of the talking?		
	66:21 A. No.		
	66:22 Q. I mean to the attorney, when you first arrived?		
	66:23 A. He was talking to her but I'm not sure what 66:24 they were talking about. We got there and she just took 66:25 us to this little room where there was a lot of chairs		
67:13 - 67:15	Arellano, Alejandro 2022-05-09	00:00:07	AAC2.86
	67:13 Q. (By Ms. Pector) Mr. Arellano, did you ever ask 67:14 the attorney for legal advice for yourself?		
	67:15 A. No.		
67:22 - 68:02	Arellano, Alejandro 2022-05-09	00:00:10	AAC2.87
	67:22 Q. Did you ever ask the lawyer to send you to 67:23 therapy?		
	67:24 A. No.		
	67:25 Q. Did you ever ask to personally engage the 68:01 lawyer?		
	68:02 A. No.		
69:06 - 69:14	Arellano, Alejandro 2022-05-09	00:00:28	AAC2.88
	69:06 ever contact you -- well, let me ask you this: When you 69:07 left that day, what was the next thing that happened?		
	69:08 A. Well, we left from the lawyer, we went to -- 69:09 they took us to the -- I forgot the name of the company 69:10 to get a, like, therapy.		
	69:11 Q. Is it the Khit Chiropractor?		
	69:12 A. Yes, that one.		
	69:13 Q. Okay. So the lawyer picked the Khit 69:14 Chiropractor and told everyone to go there?		
69:16 - 69:20	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.89
	69:16 A. Yes.		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	69:17 Q. (By Ms. Pector) And you would not have gone to 69:18 the Khit Chiropractor but for the lawyer sending you 69:19 there with everyone else? 69:20 A. Yes.		
71:08 - 71:18	Arellano, Alejandro 2022-05-09	00:00:28	AAC2.90
	71:08 Q. (By Ms. Pector) What do you mean "fight the 71:09 case"? 71:10 A. For the accident. 71:11 Q. Did you agree with that? 71:12 A. No. 71:13 Q. Did you have a choice to go to Khit 71:14 Chiropractic or is that just the next place that they 71:15 took you to? 71:16 A. No. That was the next place they took me to. 71:17 Q. They didn't give you an option to drive you 71:18 straight home?		
71:20 - 71:24	Arellano, Alejandro 2022-05-09	00:00:13	AAC2.91
	71:20 A. No. 71:21 Q. (By Ms. Pector) When they took you to Khit 71:22 chiropractic, what happened? 71:23 A. We started doing the paperwork for -- to start 71:24 the sessions of the therapy.		
72:18 - 72:19	Arellano, Alejandro 2022-05-09	00:00:03	AAC2.92
	72:18 Q. (By Ms. Pector) So you had no choice but to go 72:19 to the therapy?		
72:22 - 72:22	Arellano, Alejandro 2022-05-09	00:00:01	AAC2.93
	72:22 A. Yes.		
74:23 - 75:02	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.94
	74:23 Q. Okay. So the therapy center refused to see 74:24 you? 74:25 A. Uh-huh. 75:01 Q. Is that a "yes"? 75:02 A. Yes.		
75:09 - 75:12	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.95
	75:09 Q. Okay. So, they refused to treat you? 75:10 A. Yes. 75:11 Q. And you didn't get any therapy after that? 75:12 A. No.		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
78:11 - 78:13	Arellano, Alejandro 2022-05-09 78:11 Q. And after that day that you left Khit 78:12 Chiropractic, you never got any other medical treatment? 78:13 A. No.	00:00:09	AAC2.98
80:03 - 80:09	Arellano, Alejandro 2022-05-09 80:03 Q. When you were going to the therapy at Khit 80:04 Chiropractic, was Jose Ruiz, Humberto Garcia and Hector 80:05 Garcia, Junior, also going to the same place? 80:06 A. Yes. But they had different -- they were going 80:07 different times. 80:08 Q. But that was the same place that the attorney 80:09 had directed everyone to go to?	00:00:21	AAC2.99
80:11 - 80:11	Arellano, Alejandro 2022-05-09 80:11 A. Yes.	00:00:02	AAC2.100
80:17 - 80:20	Arellano, Alejandro 2022-05-09 80:17 Q. Did you think it was strange that an attorney's 80:18 office was sending you to a therapy place you had never 80:19 known about? 80:20 A. Uh-huh. Yes.	00:00:14	AAC2.101
93:03 - 93:10	Arellano, Alejandro 2022-05-09 93:03 Q. Okay. Do you know if you gave them to Martin 93:04 Ruiz, Junior, or anybody else? 93:05 A. I think I sent them to Martin. I took photos 93:06 and actually I took videos, too. 93:07 Q. Oh, you took videos, as well? 93:08 A. Yes, ma'am. 93:09 Q. Do you remember what was in the videos? 93:10 A. The three cars involved in the accident.	00:00:28	AAC2.104
93:18 - 93:18	Arellano, Alejandro 2022-05-09 93:18 Q. Through text message or e-mail?	00:00:03	AAC2.105
94:02 - 94:09	Arellano, Alejandro 2022-05-09 94:02 Q. Do you remember when you sent those to him? 94:03 A. Yes. 94:04 Q. When was that? 94:05 A. I think a couple of days after the accident. 94:06 Q. What led you to sending him those videos and 94:07 photographs? 94:08 A. He texted me if I had any photos of the truck	00:00:28	AAC2.106

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	94:09 in the accident.		
94:14 - 94:20	Arellano, Alejandro 2022-05-09	00:00:24	AAC2.107
	94:14 A. No. I think it was less. There was like four		
	94:15 photos and two videos.		
	94:16 Q. Did the videos include what was surrounding the		
	94:17 Toyota Tundra?		
	94:18 A. Yes.		
	94:19 Q. And it would have included seeing people		
	94:20 walking in the videos?		
94:22 - 94:22	Arellano, Alejandro 2022-05-09	00:00:02	AAC2.108
	94:22 A. I think it is.		
100:12 - 100:19	Arellano, Alejandro 2022-05-09	00:00:21	AAC2.109
	100:12 Okay. Mr. Arellano, would you agree that		
	100:13 being a welder is strenuous labor?		
	100:14 A. No.		
	100:15 Q. "No"?		
	100:16 A. No.		
	100:17 Q. It's not a hard day's job to be a welder?		
	100:18 A. Well, sometimes it's not hard. Sometimes it		
	100:19 is.		
100:20 - 101:06	Arellano, Alejandro 2022-05-09	00:00:37	AAC2.110
	100:20 Q. Okay. On the days that the welder job is hard,		
	100:21 what makes it hard?		
	100:22 A. It depends on the -- sometimes on the spots		
	100:23 where you are pointing.		
	100:24 Q. Sometimes on the spots where you are working?		
	100:25 A. Yes.		
	101:01 Q. Okay. So can you give me some examples of hard		
	101:02 spots where it would be difficult to be a welder?		
	101:03 A. Like if there is, like, cardboard where -- like		
	101:04 you are up in the steel and there is cardboard in the		
	101:05 bottom or plastic things that are going to be burning		
	101:06 once you are welding.		
101:07 - 101:08	Arellano, Alejandro 2022-05-09	00:00:11	AAC2.111
	101:07 Q. Is welding a physical job?		
	101:08 A. No.		
101:09 - 101:14	Arellano, Alejandro 2022-05-09	00:00:23	AAC2.112
	101:09 Q. What do you -- what do you use to weld?		
	101:10 A. The welding helmet, gloves and your machine and		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	101:11 the rod.		
	101:12 Q. The machine that you use, how much does that		
	101:13 weigh?		
	101:14 A. I think it weighed 500 pounds.		
102:09 - 102:10	Arellano, Alejandro 2022-05-09	00:00:03	AAC2.113
	102:09 Q. (By Ms. Pector) Did you see SpaceX do anything		
	102:10 wrong at the accident?		
102:14 - 102:17	Arellano, Alejandro 2022-05-09	00:00:10	AAC2.114
	102:14 A. No.		
	102:15 Q. Does it surprise you, Mr. Arellano, that Jose		
	102:16 Ruiz, Hector Garcia, Junior, and Humberto Garcia have		
	102:17 sued SpaceX?		
102:19 - 102:22	Arellano, Alejandro 2022-05-09	00:00:10	AAC2.115
	102:19 A. Yes.		
	102:20 Q. (By Ms. Pector) Do you agree that a company		
	102:21 should not be sued when they didn't do anything wrong?		
	102:22 A. Yes.		
103:22 - 104:09	Arellano, Alejandro 2022-05-09	00:00:46	AAC2.116
	103:22 Mr. Arellano, in terms of your interaction with Jose		
	103:23 Ruiz since the accident, as far as you know, did he go		
	103:24 back to work every day for the remainder of the year		
	103:25 after the accident?		
	104:01 A. Yes, he did.		
	104:02 Q. And as far as you know, did Humberto Garcia go		
	104:03 back to work every day for the remainder of the year in		
	104:04 2020 after the accident?		
	104:05 A. Yes.		
	104:06 Q. And as far as you know, did Hector Garcia,		
	104:07 Junior, go back to work every day until he decided to		
	104:08 leave Ruiz Erectors?		
	104:09 A. Yes, he went to work every day.		
104:22 - 104:24	Arellano, Alejandro 2022-05-09	00:00:13	AAC2.117
	104:22 Q. Mr. Arellano, would you agree that you didn't		
	104:23 see anything that happened in the accident that would		
	104:24 warrant a lawsuit being filed against SpaceX?		
105:02 - 105:05	Arellano, Alejandro 2022-05-09	00:00:07	AAC2.118
	105:02 A. Yes.		
	105:03 Q. (By Ms. Pector) And would you also agree that		
	105:04 it surprises you that a lawsuit has been filed over this		

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DESIGNATION	SOURCE	DURATION	ID
	105:05 accident?		
105:23 - 105:25	Arellano, Alejandro 2022-05-09	00:00:11	AAC2.119
	105:23 Q. Mr. Arellano, since the accident, has your life		
	105:24 continued to be the same as it was before the accident?		
	105:25 A. Yes.		
106:01 - 106:06	Arellano, Alejandro 2022-05-09	00:00:19	AAC2.120
	106:01 Q. And have you continued to enjoy various		
	106:02 activities with your family after the accident?		
	106:03 A. Sometimes. If my knee is not swollen, then I		
	106:04 could do some activities. Once it gets swollen, it		
	106:05 takes, for me, a couple of days to, like, come back to		
	106:06 normal.		
107:21 - 107:23	Arellano, Alejandro 2022-05-09	00:00:08	AAC2.121
	107:21 Q. I'm just going to show you a few pictures,		
	107:22 Mr. Arellano, after the accident just to confirm if		
	107:23 these are correct. Hold on one moment.		
108:01 - 108:15	Arellano, Alejandro 2022-05-09	00:00:51	AAC2.122
	108:01 Q. (By Ms. Pector) Mr. Arellano, I'm now showing		
	108:02 you what has been marked as Exhibit No. 9 to your		
	108:03 deposition and this is a posting from your Facebook on		
	108:04 February 16th, 2020. Is this correct that this is a		
	108:05 picture of you and your wife as of February 16th, 2020		
	108:06 that you posted?		
	108:07 A. Yes, ma'am.		
	108:08 Q. Is this in your backyard?		
	108:09 A. That was at my mom's backward.		
	108:10 Q. Okay. And this period of time is after the		
	108:11 accident, correct?		
	108:12 A. Yes.		
	108:13 Q. Okay. And you and your wife were still		
	108:14 doing -- well, at this point in time you were doing fine		
	108:15 and still enjoying family activities, correct?		
108:17 - 108:17	Arellano, Alejandro 2022-05-09	00:00:01	AAC2.123
	108:17 A. Yes.		
108:21 - 109:12	Arellano, Alejandro 2022-05-09	00:00:44	AAC2.124
	108:21 Q. (By Ms. Pector) Okay. Mr. Arellano, I'm now		
	108:22 showing you what is being marked as Exhibit No. 10 to		
	108:23 your deposition. And this is another photograph from		
	108:24 your Facebook page and this one is dated March 1st,		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	108:25 Q. 2020. Do you recall making this posting?		
	109:01 A. Yes.		
	109:02 Q. And did you and your wife take a weekend		
	109:03 vacation to South Padre Island around this time?		
	109:04 A. Yes, ma'am.		
	109:05 Q. And so this would have been a little less,		
	109:06 Mr. Arellano, then one month after the accident. Do you		
	109:07 recall if you went there for the weekend?		
	109:08 A. We did go.		
	109:09 Q. I'm sorry?		
	109:10 A. Yes.		
	109:11 Q. And how many days did you stay?		
	109:12 A. Two nights.		
109:17 - 109:18	Arellano, Alejandro 2022-05-09	00:00:04	AAC2.160
	109:17 Q. Were you able to enjoy the beach?		
	109:18 A. Uh-huh.		
109:21 - 109:24	Arellano, Alejandro 2022-05-09	00:00:11	AAC2.125
	109:21 Q. What type of activities did you do on this		
	109:22 trip?		
	109:23 A. We got on the beach. We did walk around on the		
	109:24 sand and that's it.		
110:10 - 111:10	Arellano, Alejandro 2022-05-09	00:00:59	AAC2.126
	110:10 Q. (By Ms. Pector) Okay. Mr. Arellano, I'm now		
	110:11 showing you what I have marked as Exhibit 11 to your		
	110:12 deposition. And this is a photograph that was also		
	110:13 posted on your Facebook account on March 1st, 2020. Do		
	110:14 you recall this photograph being taken?		
	110:15 A. Yes.		
	110:16 Q. And do you recall this photograph being posted		
	110:17 by you to your Facebook page?		
	110:18 A. Yes, ma'am.		
	110:19 Q. Where are you and your wife in this picture?		
	110:20 A. We are at, actually, on the sand. It was like		
	110:21 a little mountain that they had.		
	110:22 Q. Okay. It looks like a mountain, I was going to		
	110:23 ask you about that. Is there a different -- different		
	110:24 areas in South Padre that some are kind of higher hills		
	110:25 than others?		
	111:01 A. Yes, there are.		
	111:02 Q. Is this a park at South Padre?		

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DESIGNATION	SOURCE	DURATION	ID
	111:03 A. No, it's -- it's a road they have in the back.		
	111:04 And it has a dead-end but it has mountains on the side		
	111:05 of the road.		
	111:06 Q. Oh.		
	111:07 A. Like sand mountains.		
	111:08 Q. And then did you and your wife go hiking in		
	111:09 these mountains?		
	111:10 A. Yes.		
119:10 - 119:22	Arellano, Alejandro 2022-05-09	00:00:38	AAC2.128
	119:10 Q. Mr. Arellano, after the lawsuit, did you file		
	119:11 any type of disability claim?		
	119:12 A. No.		
	119:13 Q. Did you -- did it ever come to your attention		
	119:14 that Jose Ruiz or Humberto Garcia filed any type of		
	119:15 disability claim?		
	119:16 A. No.		
	119:17 Q. Did it come to your attention that Hector		
	119:18 Garcia, Junior, filed any type of disability claim?		
	119:19 A. No.		
	119:20 Q. Mr. Arellano, from what you observed, do		
	119:21 Humberto Garcia and Hector Garcia, Junior, do they enjoy		
	119:22 working at Ruiz Erectors?		
119:24 - 120:03	Arellano, Alejandro 2022-05-09	00:00:07	AAC2.129
	119:24 A. Yes.		
	119:25 Q. (By Ms. Pector) Were they good at their jobs?		
	120:01 A. Yes, they were.		
	120:02 Q. And did they always show up on time after the		
	120:03 accident?		
120:05 - 120:08	Arellano, Alejandro 2022-05-09	00:00:04	AAC2.130
	120:05 A. They showed up on time.		
	120:06 Q. (By Ms. Pector) Did they always work a full day		
	120:07 after the accident?		
	120:08 A. Uh-huh.		
120:11 - 120:14	Arellano, Alejandro 2022-05-09	00:00:19	AAC2.131
	120:11 A. Yes.		
	120:12 Q. And did they always drive with you to work		
	120:13 while you were staffed on the same projects together?		
	120:14 A. Yes.		
122:16 - 123:02	Arellano, Alejandro 2022-05-09	00:00:40	AAC2.132

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	<p>122:16 And then the only other question from my</p> <p>122:17 end right now, Mr. Arellano, is has anyone offered to</p> <p>122:18 pay you anything for your testimony here today?</p> <p>122:19 A. No, ma'am.</p> <p>122:20 Q. Were you here today for your testimony pursuant</p> <p>122:21 to the subpoena?</p> <p>122:22 A. Yes.</p> <p>122:23 Q. And prior to me asking you these questions</p> <p>122:24 today, is the only communications that you have had with</p> <p>122:25 me just scheduling the deposition and providing you</p> <p>123:01 information on where to appear?</p> <p>123:02 A. Yes.</p>		AAC2.132
124:23 - 125:11	<p>Arellano, Alejandro 2022-05-09</p> <p>124:23 Q. (By Ms. Stribling) Just because you consider</p> <p>124:24 Jose Ruiz your friend, you wouldn't lie for him or say</p> <p>124:25 anything that wasn't true about him, would you?</p> <p>125:01 A. No.</p> <p>125:02 Q. And just because you consider Humberto your</p> <p>125:03 friend, you wouldn't lie for him either, right?</p> <p>125:04 A. No.</p> <p>125:05 Q. And you don't work for Ruiz Erectors anymore,</p> <p>125:06 do you?</p> <p>125:07 A. No, I don't.</p> <p>125:08 Q. And you don't have any reason to lie for them</p> <p>125:09 or you wouldn't -- you wouldn't lie for them either,</p> <p>125:10 would you?</p> <p>125:11 A. No, ma'am.</p>	00:00:43	AAC2.133
125:18 - 125:21	<p>Arellano, Alejandro 2022-05-09</p> <p>125:18 Q. (By Ms. Stribling) Before you -- any of y'all</p> <p>125:19 left the scene, did you have an injury to your knee from</p> <p>125:20 the crash?</p> <p>125:21 A. Yes, ma'am. I did.</p>	00:00:12	AAC2.134
126:11 - 126:19	<p>Arellano, Alejandro 2022-05-09</p> <p>126:11 Q. And your knee injury, you are not faking that,</p> <p>126:12 are you? That is a real injury you got in the crash,</p> <p>126:13 right?</p> <p>126:14 A. Yes, that's in -- that's in the accident that</p> <p>126:15 happened.</p> <p>126:16 Q. And you -- the treatment that you got because</p> <p>126:17 of your knee injury, you really needed that treatment?</p>	00:00:23	AAC2.135

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	126:18 It wasn't -- it wasn't fake or wrong to go to the doctor 126:19 for that injury, was it?		
126:21 - 127:03	Arellano, Alejandro 2022-05-09	00:00:26	AAC2.136
	126:21 A. No, that was from the accident. 126:22 Q. (By Ms. Stribling) And when you went to Khit 126:23 Chiropractic that was your choice to go each time you 126:24 went to therapy? Nobody forced you to go, did they? 126:25 A. No, nobody forced me. 127:01 Q. And the pain in your knee, it still causes you 127:02 pain and problems today, recently, right? 127:03 A. Yes, ma'am.		
127:22 - 127:24	Arellano, Alejandro 2022-05-09	00:00:05	AAC2.137
	127:22 Q. (By Ms. Stribling) Does it get in the way of 127:23 you doing what you want to do whenever you have these 127:24 problems?		
128:01 - 128:05	Arellano, Alejandro 2022-05-09	00:00:25	AAC2.138
	128:01 A. Yes. 128:02 Q. (By Ms. Stribling) And regardless of what the 128:03 truck looked like or what damage was done to the truck 128:04 you were hurt in this crash, right? 128:05 A. Yes, ma'am.		
135:08 - 135:12	Arellano, Alejandro 2022-05-09	00:00:18	AAC2.139
	135:08 Q. And you don't know, as you sit here today, 135:09 Mr. Arellano, what caused any of the symptoms that 135:10 either Mr. Ruiz, Humberto Garcia or Hector Garcia, 135:11 Junior, may be referring to in this lawsuit because you 135:12 are not with them every day, right?		
135:14 - 135:18	Arellano, Alejandro 2022-05-09	00:00:13	AAC2.140
	135:14 A. No. 135:15 Q. (By Ms. Pector) What was your answer? 135:16 A. Yes. 135:17 Q. You don't know if they fell one day or hurt 135:18 themselves in another way before the accident, right?		
135:21 - 136:13	Arellano, Alejandro 2022-05-09	00:00:53	AAC2.141
	135:21 A. No. 135:22 Q. (By Ms. Pector) And you can't sit here today 135:23 and tell the jury what caused their symptoms or their 135:24 alleged injuries because you don't know, right? 135:25 A. Yes.		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	136:01 Q. Mr. Arellano, your experience in the accident		
	136:02 has not caused you to have to have any kind of surgery,		
	136:03 right?		
	136:04 A. No.		
	136:05 Q. You are still able to live your daily life and		
	136:06 do the things that you enjoy doing, right?		
	136:07 A. Yes, ma'am.		
	136:08 Q. And you are still able to work and put in a		
	136:09 hard day's work every day of the week, right?		
	136:10 A. Yes, ma'am.		
	136:11 Q. And you haven't stopped working or asked for a		
	136:12 large amount of money because of the accident, right?		
	136:13 A. No.		
137:13 - 137:19	Arellano, Alejandro 2022-05-09	00:00:15	AAC2.142
	137:13 Q. And you don't know if Hector Garcia, Junior,		
	137:14 has any pain or not because you never go to any medical		
	137:15 appointments or see him, correct?		
	137:16 A. Correct.		
	137:17 Q. You also don't know if Humberto Garcia has any		
	137:18 pain because you don't go to any medical appointments		
	137:19 with him?		
137:22 - 138:18	Arellano, Alejandro 2022-05-09	00:01:00	AAC2.143
	137:22 Q. (By Ms. Pector) Is that correct, Mr. Arellano?		
	137:23 A. Yes.		
	137:24 Q. And, Mr. Arellano, in the type of work that you		
	137:25 do, even prior to the accident, sometimes you have good		
	138:01 days and sometimes you have bad days, right?		
	138:02 A. Yes, ma'am.		
	138:03 Q. Sometimes your body feels good and sometimes		
	138:04 your body doesn't feel good, right?		
	138:05 A. Yes.		
	138:06 Q. That's just part of life, correct?		
	138:07 A. Yes, ma'am.		
	138:08 Q. And even though some days before the accident		
	138:09 your body may not have felt that great, you are still		
	138:10 able then to get up and go to work, correct?		
	138:11 A. Yes.		
	138:12 Q. And even though you had some good days and some		
	138:13 bad days before the accident, you were still able to		
	138:14 enjoy things in life, right?		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
	138:15 A. Yes, ma'am.		
	138:16 Q. And since the accident, you have been able to		
	138:17 enjoy those same things in life, right?		
	138:18 A. Yes.		
139:10 - 139:13	Arellano, Alejandro 2022-05-09	00:00:20	AAC2.145
	139:10 Q. (By Ms. Pector) And, Mr. Arellano, do you agree		
	139:11 that lawsuits should not file -- do you agree that		
	139:12 lawsuits should not be filed against companies that were		
	139:13 not involved in the accident?		
139:15 - 139:20	Arellano, Alejandro 2022-05-09	00:00:16	AAC2.146
	139:15 A. Yes.		
	139:16 Q. (By Ms. Pector) And do you also agree,		
	139:17 Mr. Arellano, that just because someone is driving to		
	139:18 work on a given day, that doesn't automatically make		
	139:19 their employer responsible for their own personal		
	139:20 driving?		
139:23 - 139:23	Arellano, Alejandro 2022-05-09	00:00:02	AAC2.147
	139:23 A. Yes.		
142:24 - 143:19	Arellano, Alejandro 2022-05-09	00:01:02	AAC2.148
	142:24 Q. Mr. Arellano, Hector Garcia, Junior, was able		
	142:25 to show up to work and earn wages every day after the		
	143:01 car accident that you observed until you were		
	143:02 transferred to another project, right?		
	143:03 A. Yes, ma'am.		
	143:04 Q. Mr. Ruiz was able to show up every work, get up		
	143:05 at 5:30 in the morning and drive 240 miles to work every		
	143:06 day and earn wages for a full day of work after the		
	143:07 accident, right?		
	143:08 A. Correct.		
	143:09 Q. Humberto Garcia was also able to wake up at		
	143:10 5:30 every morning and drive 240 miles and go do a full		
	143:11 day's work that he was paid for, right?		
	143:12 A. Correct.		
	143:13 Q. From what you saw, each of those gentlemen were		
	143:14 able to go to work and be productive at work after the		
	143:15 accident, right?		
	143:16 A. Correct.		
	143:17 Q. And you also witnessed that they were able to		
	143:18 drive long distances after the accident without any		

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
143:21 - 143:25	143:19 problems at all, right? Arellano, Alejandro 2022-05-09 143:21 A. Yes. 143:22 Q. (By Ms. Pector) And, Mr. Arellano, you visually 143:23 observed Jose Ruiz doing different things at the job 143:24 site after the accident, right? 143:25 A. Yes.	00:00:13	AAC2.149
144:07 - 144:10	Arellano, Alejandro 2022-05-09 144:07 Q. (By Ms. Pector) And you would defer to the 144:08 images in those photographs to show the type of work 144:09 that Jose Ruiz was doing during that time, right? 144:10 A. Yes.	00:00:11	AAC2.150
144:15 - 144:17	Arellano, Alejandro 2022-05-09 144:15 Q. If there were pictures that were showing 144:16 Mr. Ruiz climbing a ladder and working on things, that 144:17 wouldn't surprise you, right?	00:00:08	AAC2.151
144:19 - 144:23	Arellano, Alejandro 2022-05-09 144:19 A. No. 144:20 Q. (By Ms. Pector) And if there were pictures that 144:21 were showing Humberto Garcia working at the job site in 144:22 his normal work gear, that wouldn't surprise you to see 144:23 either, right?	00:00:12	AAC2.152
144:25 - 145:13	Arellano, Alejandro 2022-05-09 144:25 A. Yeah. 145:01 Q. (By Ms. Pector) This accident didn't prevent 145:02 Jose Ruiz from earning a living, right? 145:03 A. Correct. 145:04 Q. And the accident didn't prevent Humberto Garcia 145:05 from earning a living, right? 145:06 A. Right. 145:07 Q. The accident didn't prevent Hector Garcia, 145:08 Junior, from earning a living, right? 145:09 A. Correct. 145:10 Q. And you did not personally see anything on the 145:11 day of the accident that would allow you to say one way 145:12 or the other what actually happened that lead to the 145:13 impact of the accident, right?	00:00:35	AAC2.153
145:16 - 145:22	Arellano, Alejandro 2022-05-09 145:16 A. Correct.	00:00:36	AAC2.154

AAC2 - Arellano Combined-Final

DESIGNATION	SOURCE	DURATION	ID
145:17	Q. And, Mr. Arellano, would you agree that if		
145:18	somebody says that they experienced an injury from the		
145:19	accident, it's fair to look at their prior medical		
145:20	history to see what other accidents or conditions they		
145:21	experienced before the accident?		
145:22	A. Yes.		

Defendant	00:42:57
Plaintiffs	00:09:01
TOTAL RUN TIME	00:51:58

CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA
JR.; AND HUMBERTO GARCIA,
Plaintiff,

v.

SPACE EXPLORATION TECHNOLOGIES
CORP. D/B/A SPACEX; LAUREN
ELIZABETH KRUEGER;
Defendants.

§
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§

IN THE DISTRICT COURT

of CAMERON COUNTY, TEXAS

444th DISTRICT COURT

EXHIBIT 6

TO

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL

Pector, Michelle

From: Pector, Michelle
Sent: Monday, July 31, 2023 11:13 PM
To: 'SaraNeil Stribling'
Subject: RE: Kanz Updated Designation Report
Attachments: JKC - Kanz Combined.pdf

Agree with both your changes except 78:1-4, which we agreed was okay.

We are ordering lunch tomorrow from McAllisters deli and we'll do bbq on Wednesday probably from Rudy's.

On the clips, we are going to ask the judge to play them together because some of the questions flow in transition with each other, so will be disjointed if you play your clips first. But we'll be prepared to go with whichever way he decides and will have full version ready.

I'll keep an eye out for the exhibits tonight and will send Arellano over tonight as well. We made some addition cuts to shorten it and incorporated all the agreements we reached today.

Michelle Pector

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From: SaraNeil Stribling <saraneil@cowenlaw.com>
Sent: Monday, July 31, 2023 10:56 PM
To: Pector, Michelle <michelle.pector@morganlewis.com>
Subject: Re: Kanz Updated Designation Report

[EXTERNAL EMAIL]

Michelle:

This is missing from our Kanz cuts:
68:6-68:16 (Should be IN)

This should be out since our "reckless" testimony is out:
77:12-78:04 (should be OUT)

Our plan is still just to present our cuts and then ya'll can play yours. I can't agree to play them all together.

Let me get a share link together for you on the exhibits and send it over.

The lunch plan sounds good—let me know when you have the places chosen so that we can plan not to duplicate lunch.



SaraNeil Stribling

Attorney

Cowen Rodriguez Peacock, P.C.



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From: Pector, Michelle <michelle.pector@morganlewis.com>

Sent: Monday, July 31, 2023 9:31 PM

To: SaraNeil Stribling <saraneil@cowenlaw.com>

Subject: Kanz Updated Designation Report

CAUTION: This email originated from outside the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

SaraNeil,

Here is the updated combined testimony on Kanz reflecting our combined cuts. This is 25 minutes now. We'll have the combined video cut for tomorrow. If you see anything that looks different than what we discussed, just let me know. We are working on Arellano next.

We also noticed that you renumbered exhibits and redacted some. Please send a drop file of the new exhibits you plan to use so we are all on the same page.

Also since the jurors were not sat for lunch today, we can take care of lunch tomorrow and Wednesday if you guys can take care of lunch Thursday and Friday?

Thanks,
Michelle

Michelle Pector

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Kanz Combined

Designation List Report



Kanz, James

2021-10-15

Defendant	00:19:13
Plaintiffs	00:05:56
TOTAL RUN TIME	00:25:09



Documents linked to video:

0_KANZ2

0_KANZ3

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
4:25 - 5:01	Kanz, James 2021-10-15 4:25 Q. Please state your name for the record. 5:01 A. James Ray Kanz, K-A-N-Z.	00:00:06	JKC.1
5:08 - 5:14	Kanz, James 2021-10-15 5:08 Do you understand that you are here today 5:09 to give your deposition in a case that was filed by Jose 5:10 Ruiz, Hector Garcia and Humberto Garcia? 5:11 A. Yes. 5:12 Q. Mr. Kanz, we're using a remote format here 5:13 today given the Covid pandemic that still is existing 5:14 within the community. If at any time during this	00:00:23	JKC.2
5:19 - 5:19	Kanz, James 2021-10-15 5:19 A. Okay.	00:00:01	JKC.3
6:07 - 6:16	Kanz, James 2021-10-15 6:07 was from the event. And we're taking a videotaped 6:08 deposition of your testimony here today so the jury 6:09 could hear it should this case go to trial and have the 6:10 opportunity to hear directly from you as to what you 6:11 saw. Do you understand that? 6:12 A. Yes. 6:13 Q. And you also understand, Mr. Kanz, that you 6:14 have been sworn in under oath to tell the truth and 6:15 nothing but the truth here today? 6:16 A. Yes.	00:00:21	JKC.4
7:07 - 7:09	Kanz, James 2021-10-15 7:07 Q. Mr. Kanz, can you tell me where you are 7:08 currently residing? 7:09 A. I'm currently residing in Brownsville, Texas.	00:00:09	JKC.5
7:14 - 7:15	Kanz, James 2021-10-15 7:14 Q. How long have you lived there? 7:15 A. Since 2010.	00:00:05	JKC.6
7:24 - 8:08	Kanz, James 2021-10-15 7:24 Q. Okay. And at the time on February of 2020, you 7:25 were currently living at that address? 8:01 A. Yes. 8:02 Q. Where were you working at that time? 8:03 A. A place called TRICO Products. 8:04 Q. What kind of business is that?	00:00:30	JKC.7

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	8:05 A. It's a manufacturing business of wiper systems		
	8:06 and windshield wipers.		
	8:07 Q. What was your job there?		
	8:08 A. Computer programmer.		
13:02 - 13:06	Kanz, James 2021-10-15	00:00:14	JKC.8
	13:02 Q. (By Ms. Pector) Did that shock you, Mr. Kanz?		
	13:03 A. Yes.		
	13:04 Q. Can you explain why?		
	13:05 A. I just thought that that was -- just a large		
	13:06 amount of money.		
14:10 - 14:18	Kanz, James 2021-10-15	00:00:33	JKC.9
	14:10 Q. How did you see them?		
	14:11 A. After the accident, I saw them outside of the		
	14:12 truck. And when I got outside of the truck -- excuse		
	14:13 me -- to walk around for a second, I saw them.		
	14:14 Q. Were they walking around as well?		
	14:15 A. From what I remember, they were pretty much --		
	14:16 everybody was just standing around.		
	14:17 Q. Did they seem to you that they were all capable		
	14:18 of walking without any issue?		
14:20 - 14:23	Kanz, James 2021-10-15	00:00:14	JKC.10
	14:20 A. From what I could see, yes.		
	14:21 Q. (By Ms. Pector) Is it fair to say that none of		
	14:22 the Plaintiffs were treated by any medical personnel at		
	14:23 the scene from what you saw?		
14:25 - 15:05	Kanz, James 2021-10-15	00:00:20	JKC.11
	14:25 A. Not while I was there at the scene.		
	15:01 Q. (By Ms. Pector) So let's back up for a moment,		
	15:02 Mr. Kanz, and talk about February 5th, 2020, the day of		
	15:03 the incident itself. Can you tell me where you were		
	15:04 headed that day?		
	15:05 A. I was driving into work.		
17:09 - 17:24	Kanz, James 2021-10-15	00:00:59	JKC.12
	17:09 Q. And were you approaching an intersection at the		
	17:10 time when the incident occurred?		
	17:11 A. I was stopped at an intersection, yes.		
	17:12 Q. What was at that intersection, was it a light		
	17:13 or a stop sign or something else?		
	17:14 A. It was a light.		

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	17:15 Q. What color was the light?		
	17:16 A. It was red.		
	17:17 Q. Was the light red at the time of the impact		
	17:18 between you and the vehicle in front of you or do you		
	17:19 believe it might have been a different color?		
	17:20 A. I don't know. I was three or four rows -- cars		
	17:21 back in the line and I don't remember what the -- what		
	17:22 status the light was in.		
	17:23 Q. Okay. Do you remember if the vehicle in front		
	17:24 of you stopped short at all with their brakes?		
18:01 - 19:03	Kanz, James 2021-10-15	00:01:39	JKC.13
	18:01 A. I do not -- don't remember anything like that.		
	18:02 Q. Was the vehicle in front of you traveling at		
	18:03 the time of the incident?		
	18:04 A. No, they were stopped.		
	18:05 Q. Is it right, Mr. Kanz, that there was three		
	18:06 vehicles involved in this incident?		
	18:07 A. Yes.		
	18:08 Q. Were all three vehicles trucks?		
	18:09 A. Yes.		
	18:10 Q. And on the day of the incident were you driving		
	18:11 a Ford F-150?		
	18:12 A. Yes.		
	18:13 Q. And the car in front of you, is it correct that		
	18:14 it was a Toyota Tundra truck?		
	18:15 A. I'm not -- I don't remember what the model was.		
	18:16 What model of truck it was.		
	18:17 Q. What do you recall in terms of visually what		
	18:18 did the vehicle in front of you look like?		
	18:19 A. From what I can remember, it was a truck that		
	18:20 was -- I believe, purple or dark red in color or		
	18:21 something like that, from what I can remember.		
	18:22 Q. Can you describe for me, Mr. Kanz, the sequence		
	18:23 of events that you recall on the day of the incident?		
	18:24 A. I was just driving into work at TRICO like I		
	18:25 normally do coming to the intersection and the traffic		
	19:01 was stopped in front of me because the light was red.		
	19:02 So I stopped next in line at the light and then the next		
	19:03 thing I knew I got hit from behind.		
18:10 - 18:12	Kanz, James 2021-10-15	00:00:06	JKC.14

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	18:10 Q. And on the day of the incident were you driving 18:11 a Ford F-150? 18:12 A. Yes.		JKC.14
19:04 - 19:06	Kanz, James 2021-10-15	00:00:07	JKC.15
	19:04 Q. When the impact happened, Mr. Kanz, did your 19:05 airbag go off? 19:06 A. No, it did not.		
19:25 - 20:16	Kanz, James 2021-10-15	00:01:07	JKC.16
	19:25 Q. So can you walk me through: After the contact 20:01 occurs and the three -- the three trucks are now in 20:02 contact with each other as a result of the incident, 20:03 what happened next? 20:04 A. I remember just trying to catch my breath, I 20:05 guess, and then just sitting there for a few seconds. 20:06 And then I remember this other vehicle had stopped and 20:07 people had come out to check on me, and I guess check on 20:08 the other drivers. And I remember getting out of the 20:09 truck for a few seconds just to walk around and that's 20:10 when I saw the guys in the truck -- from the truck in 20:11 front of me. And then after -- I was a little bit dizzy 20:12 so I just went back and sat back in my truck and waited 20:13 for the police to arrive. 20:14 Q. Do you recall how long it was before the police 20:15 arrived? 20:16 A. I don't remember. It was not very long at all.		
20:24 - 21:02	Kanz, James 2021-10-15	00:00:16	JKC.17
	20:24 Q. Mr. Kanz, approximately how long do you think 20:25 you were at the scene after the incident? 21:01 A. Probably I would say 30, 40 minutes, maybe, 21:02 something like that.		
21:08 - 21:12	Kanz, James 2021-10-15	00:00:10	JKC.18
	21:08 Q. Were you the first vehicle to leave? 21:09 A. Yes. 21:10 Q. Were you able to drive your vehicle away from 21:11 the scene? 21:12 A. Yes.		
21:19 - 22:18	Kanz, James 2021-10-15	00:01:01	JKC.19
	21:19 Q. (By Ms. Pector) Did you see any ambulance come 21:20 to the scene at any point in time?		

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	21:21 A. No.		
	21:22 Q. Did you hear anyone at the scene or request an		
	21:23 ambulance?		
	21:24 A. Not that I can recall, no.		
	21:25 Q. And you felt that you were capable of driving		
	22:01 away from the scene?		
	22:02 A. Yes.		
	22:03 Q. Okay. Did you have any injuries as a result of		
	22:04 the incident?		
	22:05 A. No. I -- the only thing I had was a little bit		
	22:06 of a sore shoulder, I guess, from when the seat belt		
	22:07 clamped down on my shoulder but that was it.		
	22:08 Q. And did that soreness go away after a few days?		
	22:09 A. Yes.		
	22:10 Q. Was there anything, Mr. Kanz, about this		
	22:11 incident that prevented you from being able to go back		
	22:12 to work?		
	22:13 A. No.		
	22:14 Q. Was there anything from this incident that		
	22:15 prevented you from being able to live your life in the		
	22:16 same way that you had lived your life prior to the		
	22:17 incident?		
	22:18 A. No.		
22:19 - 22:19	Kanz, James 2021-10-15	00:00:04	JKC.20
	22:19 Q. Was the incident relatively minor in nature?		
22:21 - 23:03	Kanz, James 2021-10-15	00:00:33	JKC.21
	22:21 A. I don't know what you mean by "minor" but there		
	22:22 was quite a bit of -- as far as price or cost-wise		
	22:23 damage to my truck, I know about what that was. So, to		
	22:24 me, that wouldn't be minor but I don't know.		
	22:25 Q. (By Ms. Pector) When I meant "minor," I meant		
	23:01 the actual impact on the collision when you looked at		
	23:02 the truck in front of you and your vehicle, was the		
	23:03 damage to the truck in front of you not significant?		
23:05 - 23:13	Kanz, James 2021-10-15	00:00:29	JKC.22
	23:05 A. I mean, I could see where I was pushed into the		
	23:06 truck in front of me and then there was damage, I		
	23:07 believe, to their bumper and I don't know what all else		
	23:08 might have been damaged on it. As far as the back-end		
	23:09 tailgate or whatever; that, I don't know.		



JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	23:10 Q. (By Ms. Pector) As far as the damage, Mr. Kanz, 23:11 to your vehicle, do you recall how much it cost to 23:12 repair your vehicle? 23:13 A. I believe it was a little over 10,000.		
24:03 - 24:12	Kanz, James 2021-10-15	00:00:33	JKC.23
	24:03 Q. Based upon your recollection of the truck in 24:04 front of you, do you know how many individuals were in 24:05 that truck? 24:06 A. I thought there was four but that -- I could be 24:07 mistaken there. I don't know. 24:08 Q. Our records show that there were four, as well, 24:09 but only three of the four are Plaintiffs in the 24:10 lawsuit. Are you aware of that? 24:11 A. Yes. I -- I'm just -- I remember that -- 24:12 seeing that on the paperwork, so yes.		
24:19 - 24:24	Kanz, James 2021-10-15	00:00:26	JKC.24
	24:19 Q. After the officers arrived at the scene, can 24:20 you tell us what -- what you observed them do? 24:21 A. I just -- like I said, I pretty much just 24:22 stayed in my truck. Just saw them going around talking, 24:23 I guess, to different witnesses and to the other drivers 24:24 that were involved.		
25:18 - 25:25	Kanz, James 2021-10-15	00:00:32	JKC.25
	25:18 Q. In terms of what you visually observed of the 25:19 Plaintiffs after the initial impact, can you describe to 25:20 me what you saw them doing? 25:21 A. Just basically -- just standing around in the 25:22 street there, I guess, with the other witnesses while 25:23 the officers were -- while we were waiting for the 25:24 officers and then while they were doing whatever they 25:25 were doing.		
26:03 - 26:05	Kanz, James 2021-10-15	00:00:11	JKC.26
	26:03 Q. Do you remember seeing anything in terms of 26:04 your visual observation that would suggest that any of 26:05 them were injured?		
26:07 - 26:09	Kanz, James 2021-10-15	00:00:15	JKC.27
	26:07 A. From what I could see, I didn't think so but 26:08 like I say, I didn't interact with them really that much 26:09 and I was just sitting in my truck waiting.		

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
29:07 - 29:09	Kanz, James 2021-10-15 29:07 Q. (By Ms. Pector) Do you recall seeing any blood 29:08 from any individuals or yourself at the scene? 29:09 A. No.	00:00:11	JKC.28
29:20 - 29:25	Kanz, James 2021-10-15 29:20 Q. Did you hear anyone at the scene, Mr. Kanz, 29:21 request medical care? 29:22 A. Not that I can recall, no. 29:23 Q. Did you request medical care? 29:24 A. No. 29:25 Q. Did you see an ambulance come to the scene?	00:00:17	JKC.29
30:02 - 30:02	Kanz, James 2021-10-15 30:02 A. No. I don't remember seeing one.	00:00:03	JKC.30
34:01 - 34:02	Kanz, James 2021-10-15 34:01 Q. (By Ms. Pector) Is it correct, Mr. Kanz, that 34:02 there was no cracking of any of the taillights?	00:00:05	JKC.31
34:04 - 34:04	Kanz, James 2021-10-15 34:04 A. I did not see any.	00:00:02	JKC.32
35:03 - 35:11	Kanz, James 2021-10-15 35:03 incident. But I'm going to stop here on Photograph 17 35:04 of Exhibit 3, this gives you a visual as to what the 35:05 full back of the Toyota Tundra looks like. Does this 35:06 appear to be a true and accurate depiction of what it 35:07 looked like at the scene when you left? 35:08 A. Yes. 35:09 Q. And would it be fair to say, based upon looking 35:10 at this photograph, there was no damage to either of the 35:11 taillights of the Tundra?	00:00:28	JKC.33
35:13 - 35:13	Kanz, James 2021-10-15 35:13 A. Yes.	00:00:02	JKC.34
36:08 - 36:10	Kanz, James 2021-10-15 36:08 Q. And, Mr. Kanz, how -- at what speed do you 36:09 believe you were traveling at the time when your vehicle 36:10 made contact with the Tundra?	00:00:10	JKC.35
36:12 - 36:15	Kanz, James 2021-10-15 36:12 A. I was sitting still at the light and was pushed 36:13 into the vehicle in front of me. 36:14 Q. (By Ms. Pector) So that your vehicle would have	00:00:12	JKC.36

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	36:15 tapped the Tundra in front of it?		
36:18 - 36:20	Kanz, James 2021-10-15	00:00:08	JKC.37
	36:18 A. I mean, it was -- I was pushed into it. I		
	36:19 don't know, you know, the force or the speed or anything		
	36:20 like that.		
38:01 - 38:06	Kanz, James 2021-10-15	00:00:19	JKC.38
	38:01 Q. And your bumper also remained connected to your		
	38:02 truck after the incident; is that right?		
	38:03 A. Yes.		
	38:04 Q. And your rear bumper remained connected as well		
	38:05 as your front bumper, correct?		
	38:06 A. Yes.		
39:01 - 39:08	Kanz, James 2021-10-15	00:00:30	JKC.39
 0_KANZ3.26	39:01 Q. I'm now scrolling, Mr. Kanz, to what you see as		
	39:02 Photograph 23 of Exhibit 3. Once again, you see that		
	39:03 there is three individuals that are standing by the		
	39:04 Toyota Tundra. Do you believe those are the Plaintiffs?		
	39:05 A. Yes.		
	39:06 Q. And based upon what you observed, is it fair to		
	39:07 say, Mr. Kanz, that you didn't see anybody who was on		
	39:08 the ground or in pain at the incident?		
39:10 - 39:13	Kanz, James 2021-10-15	00:00:09	JKC.40
	39:10 A. No, I did not.		
 Clear	39:11 Q. (By Ms. Pector) Did you see anybody at the		
	39:12 incident that you felt was visually injured based upon		
	39:13 what you saw?		
39:15 - 39:15	Kanz, James 2021-10-15	00:00:02	JKC.41
	39:15 A. No, I do not.		
40:08 - 41:01	Kanz, James 2021-10-15	00:00:50	JKC.42
	40:08 Q. And you were able to drive your vehicle away		
	40:09 from the scene, correct?		
	40:10 A. Correct.		
	40:11 Q. Where did you take your vehicle, Mr. Kanz,		
	40:12 after the scene?		
	40:13 A. I just went back -- I went to -- continued my		
	40:14 trip and went to work.		
	40:15 Q. So you went straight to work and worked a full		
	40:16 shift that day?		
	40:17 A. Yes.		


JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	40:18 Q. Did you seek any type of medical treatment at 40:19 all, Mr. Kanz, after the incident? 40:20 A. No. 40:21 Q. And did you miss any days of work because of 40:22 the incident? 40:23 A. No. 40:24 Q. Would you agree, Mr. Kanz, that your vehicle 40:25 experienced more of an impact than the vehicle in front 41:01 of you with respect to this incident?		
41:03 - 41:04	Kanz, James 2021-10-15	00:00:06	JKC.43
	41:03 A. I would assume so, since I had damage to the 41:04 front and back.		
42:15 - 42:25	Kanz, James 2021-10-15	00:00:42	JKC.44
	42:15 Q. Would you agree, Mr. Kanz, that based upon what 42:16 you visually saw at the scene that the Dodge Ram was the 42:17 vehicle with the most damage? 42:18 A. Yes. 42:19 Q. I'm now, Mr. Kanz, moving on to Photograph 26 42:20 of Exhibit 3. Again, you see three individuals in that 42:21 photograph? 42:22 A. Yes. 42:23 Q. Those three individuals did you -- do you 42:24 recall seeing any of these three individuals get medical 42:25 treatment at the scene?		
 0_KANZ3.26			
43:02 - 43:05	Kanz, James 2021-10-15	00:00:12	JKC.45
	43:02 A. I do not recall, no. 43:03 Q. (By Ms. Pector) Do you recall hearing any 43:04 comments by any of these three individuals that they 43:05 were in pain?		
43:07 - 43:10	Kanz, James 2021-10-15	00:00:11	JKC.46
	43:07 A. No, I do not. 43:08 Q. (By Ms. Pector) Do you recall seeing anything 43:09 about these three individuals at the scene that would 43:10 leave you to believe they were injured in any way?		
43:12 - 43:20	Kanz, James 2021-10-15	00:00:27	JKC.47
	43:12 A. No, I do not. 43:13 Q. (By Ms. Pector) I'm now scrolling down,  0_KANZ3.26 43:14 Mr. Kanz, to another photograph. You see there is a 43:15 gentleman, this is Photograph 27 of 37. Do you see		

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	43:16 there is a gentleman in a beige shirt that is standing 43:17 and leaning against the truck? 43:18 A. Yes. 43:19 Q. Based on your recollection, did that individual 43:20 look uninjured to you at the scene?		
43:22 - 43:22	Kanz, James 2021-10-15	00:00:02	JKC.48
	 Clear 43:22 A. From what I could see, yes.		
44:14 - 44:21	Kanz, James 2021-10-15	00:00:23	JKC.49
	44:14 Q. (By Ms. Pector) You mentioned, Mr. Kanz, that 44:15 you were at the scene, I believe you said, for at least 44:16 30 minutes; is that right? 44:17 A. Yes. That's correct. 44:18 Q. And during that 30 minutes, these three 0_KANZ3.26 44:19 individuals that we see in Photograph 26 of 37 in 44:20 Exhibit 3, did you see them generally moving around the 44:21 scene during that time when you were there?		
44:23 - 45:01	Kanz, James 2021-10-15	00:00:11	JKC.50
	44:23 A. Yes. 44:24 Q. (By Ms. Pector) And nothing would indicate to 44:25 you that they weren't capable of driving their vehicle 45:01 away after the scene?		
45:03 - 45:03	Kanz, James 2021-10-15	00:00:01	JKC.51
	 Clear 45:03 A. No.		
45:19 - 46:01	Kanz, James 2021-10-15	00:00:27	JKC.52
	45:19 Q. (By Ms. Pector) Can you just describe in your 45:20 own words, Mr. Kanz, what was the general state of your 45:21 vehicle in terms of drivability after the incident? 45:22 A. There was no issue driving it. There was 45:23 nothing mechanically wrong or anything like that. There 45:24 was no -- no problem being able to drive it. 45:25 Q. Okay. So was the damage that was done to your 46:01 vehicle mostly cosmetic?		
46:03 - 46:03	Kanz, James 2021-10-15	00:00:01	JKC.53
	46:03 A. Yes.		
46:06 - 46:16	Kanz, James 2021-10-15	00:00:35	JKC.54
	46:06 After you went to the work that day, did 46:07 you take your vehicle in for repair at some point? 46:08 A. Not at that point. I took it in for repair, I		

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	46:09 believe it was back in October of last year, October of 46:10 2020. 46:11 Q. Okay. So you were able to drive your vehicle 46:12 without any issue between February 5th, 2020, and 46:13 October of 2020? 46:14 A. Yes. 46:15 Q. And then some time in October, 2020, you took 46:16 your vehicle in to have the cosmetic damage repaired?		
46:18 - 47:10	Kanz, James 2021-10-15	00:00:53	JKC.55
	46:18 A. Yes. 46:19 Q. (By Ms. Pector) Prior to October of 2020, there 46:20 was no need to take your car in for a drivability 46:21 purpose; is that fair to say? 46:22 A. That's correct. 46:23 Q. Mr. Kanz, you mentioned that you went directly 46:24 to work after the incident. How long did it take you to 46:25 get to work from this location that we see in the 47:01 photographs? 47:02 A. Maybe five minutes. 47:03 Q. And once you got to work, how long did you stay 47:04 at work for the day? 47:05 A. Until my usual quitting time, which would be 47:06 4:00, I believe. 47:07 Q. 4:00 p.m.? 47:08 A. Yes. 47:09 Q. And then you went back to work the next day? 47:10 A. Yes.		
47:12 - 47:15	Kanz, James 2021-10-15	00:00:09	JKC.56
	47:12 Q. (By Ms. Pector) Was there any time, Mr. Kanz, 47:13 that you had to take off work as a result of this 47:14 incident? 47:15 A. No.		
49:13 - 49:17	Kanz, James 2021-10-15	00:00:24	JKC.57
 0_KANZ2.1.1	49:13 Q. At the time -- you see, Mr. Kanz, that Space 49:14 Exploration Technologies Corporation was also sued. Did 49:15 you see any signage on the Dodge Ram that you had 49:16 contact with that would suggest it was a SpaceX vehicle? 49:17 A. No, I did not.		
 Clear			
49:25 - 50:10	Kanz, James 2021-10-15	00:00:28	JKC.58

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
0_KANZ2.2.1	49:25 Q. In scrolling through this lawsuit, Mr. Kanz, I		JKC.58
	50:01 just want to stop on Page 2 for a moment, Paragraph 4.		
	50:02 Did you see that Paragraph 4 states (reading) Because of		
	50:03 the nature of the plaintiffs' injuries and the		
	50:04 negligence of Defendants, Plaintiffs state as required		
	50:05 by the Texas rule of civil procedure that Plaintiffs		
	50:06 seek monetary relief over \$1 million.		
	50:07 Do you see that amount?		
	50:08 A. Yes.		
	50:09 Q. Does that number seem excessive to you,		
50:10 Mr. Kanz, based upon what you saw at the incident?			
50:12 - 50:12	Kanz, James 2021-10-15	00:00:03	JKC.59
Clear	50:12 A. I would say so, yes.		
50:21 - 50:24	Kanz, James 2021-10-15	00:00:10	JKC.60
50:21 Q. Would you agree that your Ford F-150			
50:22 experienced more damage than the Toyota Tundra in front			
50:23 of it?			
50:24 A. Yes.			
52:01 - 52:07	Kanz, James 2021-10-15	00:00:22	JKC.61
0_KANZ2.4.1	52:01 Q. I also want to scroll down, Mr. Kanz, to		
	52:02 Paragraph 20. Do you see Paragraph 20, says, (reading)		
	52:03 Plaintiff suffered severe injuries as a result of the		
	52:04 collision?		
	52:05 A. Yes.		
	52:06 Q. Did you personally observe Plaintiffs suffer		
	52:07 severe injuries as a result of the collision?		
52:11 - 52:14	Kanz, James 2021-10-15	00:00:09	JKC.62
52:11 A. I did not see any, no.			
52:12 Q. (By Ms. Pector) Would it be correct to say you			
52:13 didn't see Plaintiffs suffer any injury as a result of			
52:14 the collision?			
52:16 - 52:16	Kanz, James 2021-10-15	00:00:03	JKC.63
Clear	52:16 A. From what I saw, that's correct.		
58:03 - 58:05	Kanz, James 2021-10-15	00:00:09	JKC.64
58:03 Q. (By Ms. Pector) Would it be fair to say,			
58:04 Mr. Kanz, that you disagree with the allegations that			
58:05 the Plaintiffs made in the lawsuit?			
58:07 - 58:10	Kanz, James 2021-10-15	00:00:12	JKC.65

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	58:07 A. Yes.		JKC.65
	58:08 Q. (By Ms. Pector) And would it be fair to say		
	58:09 that you disagreed with the amount of damages that they		
	58:10 were seeking to recover in the lawsuit?		
58:12 - 58:12	Kanz, James 2021-10-15	00:00:02	JKC.66
	58:12 A. Yes.		
58:16 - 58:18	Kanz, James 2021-10-15	00:00:10	JKC.67
	58:16 Q. And would it also be fair to say that you		
	58:17 believe that the Plaintiffs did not suffer injuries as		
	58:18 alleged in their petition?		
58:20 - 58:20	Kanz, James 2021-10-15	00:00:01	JKC.68
	58:20 A. Yes.		
59:03 - 59:06	Kanz, James 2021-10-15	00:00:11	JKC.69
	59:03 Q. (By Ms. Pector) And, as we sit here today,		
	59:04 would you agree that based upon what you saw, you don't		
	59:05 think it would be fair for the Plaintiffs to recover a		
	59:06 million dollars in connection with this incident?		
59:08 - 59:08	Kanz, James 2021-10-15	00:00:02	JKC.70
	59:08 A. Yes. That is correct.		
60:18 - 60:22	Kanz, James 2021-10-15	00:00:10	JKC.71
	60:18 Q. Mr. Kanz, have you understood all of my		
	60:19 questions here today?		
	60:20 A. Yes.		
	60:21 Q. Did you feel competent to testify?		
	60:22 A. Yes.		
68:06 - 68:16	Kanz, James 2021-10-15	00:00:30	JKC.72
	68:06 Q. When you -- when the SpaceX driver/employee hit		
	68:07 you in the back, did it feel like a tap?		
	68:08 A. Not to me, no.		
	68:09 Q. What did it feel like to you?		
	68:10 A. Pretty -- pretty big wallop. It felt pretty		
	68:11 hard to me.		
	68:12 Q. And I think earlier you testified it kind of --		
	68:13 it knocked your breath out, true?		
	68:14 A. Yes, it did.		
	68:15 Q. And you were dizzy for a bit?		
	68:16 A. Yes.		
70:20 - 70:22	Kanz, James 2021-10-15	00:00:10	JKC.73

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	70:20 Q. (By Ms. Pector) Mr. Kanz, what you do know, 70:21 though, is how to visually observe circumstances around 70:22 you, correct?		JKC.73
70:24 - 71:03	Kanz, James 2021-10-15 70:24 A. Yes. 70:25 Q. (By Ms. Pector) And if you saw something at the 71:01 scene that would be reflective of someone that was 71:02 injured, that would be something that you would 71:03 recognize, correct?	00:00:13	JKC.74
71:05 - 71:08	Kanz, James 2021-10-15 71:05 A. I would think so. 71:06 Q. (By Ms. Pector) If somebody was bleeding from 71:07 the arm down, that's something that you could visually 71:08 see, correct?	00:00:07	JKC.75
71:10 - 71:18	Kanz, James 2021-10-15 71:10 A. Correct. 71:11 Q. (By Ms. Pector) And you didn't see anything 71:12 like that with respect to any of the Plaintiffs, 71:13 correct? 71:14 A. Correct. 71:15 Q. If somebody had suffered a broken arm or a 71:16 broken leg and there was that break and they were 71:17 holding their body a certain way, that is something that 71:18 you could have visually observed, correct?	00:00:21	JKC.76
71:20 - 72:02	Kanz, James 2021-10-15 71:20 A. Correct. 71:21 Q. (By Ms. Pector) You didn't visually observe 71:22 anything like that for any of these Plaintiffs, correct? 71:23 A. Correct. 71:24 Q. And if a Plaintiff had been injured in the back 71:25 or in the neck in a way that they were unable to walk, 72:01 that is also something that you could have visually 72:02 observed at the scene, correct?	00:00:20	JKC.77
72:04 - 72:07	Kanz, James 2021-10-15 72:04 A. I would think so, yes. 72:05 Q. (By Ms. Pector) But you saw each of these 72:06 Plaintiffs standing up and capable of walking at the 72:07 scene, correct?	00:00:07	JKC.78
72:09 - 72:13	Kanz, James 2021-10-15	00:00:13	JKC.79

JKC - Kanz Combined

DESIGNATION	SOURCE	DURATION	ID
	72:09 A. Yes.		JKC.79
	72:10 Q. (By Ms. Pector) Now, the pictures that we went		
	72:11 through showed that visual depiction of what the		
	72:12 Plaintiffs actually looked like right after the		
	72:13 incident, correct?		
72:15 - 72:20	Kanz, James 2021-10-15	00:00:22	JKC.80
	72:15 A. Yes.		
	72:16 Q. (By Ms. Pector) And would it be fair to say,		
	72:17 Mr. Kanz, that at any time when you were at the scene		
	72:18 you didn't see anything that would be suggestive of		
	72:19 those Plaintiffs being dizzy or incapable of walking		
	72:20 because of a back injury?		
72:22 - 72:22	Kanz, James 2021-10-15	00:00:03	JKC.81
	72:22 A. No, I did not see anything like that.		
78:01 - 78:02	Kanz, James 2021-10-15	00:00:08	JKC.82
	78:01 Q. Would you expect, Mr. Kanz, a doctor to not		
	78:02 overtreating an individual for injuries?		
78:04 - 78:08	Kanz, James 2021-10-15	00:00:10	JKC.83
	78:04 A. I would think so, yes.		
	78:05 Q. (By Ms. Pector) And would it shock you,		
	78:06 Mr. Kanz, if one of the Plaintiffs were to tell you that		
	78:07 they can't work for the rest of their life because of		
	78:08 this incident?		
78:10 - 78:14	Kanz, James 2021-10-15	00:00:15	JKC.84
	78:10 A. Yes.		
	78:11 Q. (By Ms. Pector) Would it shock you if one of		
	78:12 the Plaintiffs were to tell you that they can't live		
	78:13 life normally for the rest of their life because of this		
	78:14 incident?		
78:16 - 78:20	Kanz, James 2021-10-15	00:00:19	JKC.85
	78:16 A. Yes.		
	78:17 Q. (By Ms. Pector) And just to be clear, Mr. Kanz,		
	78:18 you didn't see anything about that incident that would		
	78:19 give you any personal knowledge that SpaceX had any		
	78:20 involvement at all in the incident, correct?		
78:22 - 78:22	Kanz, James 2021-10-15	00:00:01	JKC.86
	78:22 A. Correct.		

Defendant	00:19:13
Plaintiffs	00:05:56
TOTAL RUN TIME	00:25:09



Documents linked to video:

0_KANZ2

0_KANZ3

CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA
JR.; AND HUMBERTO GARCIA,
Plaintiff,

v.

SPACE EXPLORATION TECHNOLOGIES
CORP. D/B/A SPACEX; LAUREN
ELIZABETH KRUEGER;
Defendants.

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IN THE DISTRICT COURT

of CAMERON COUNTY, TEXAS

444th DISTRICT COURT

EXHIBIT 7

TO

DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR NEW TRIAL

Pector, Michelle

From: SaraNeil Stribling <saraneil@cowenlaw.com>
Sent: Tuesday, August 1, 2023 12:16 AM
To: Pector, Michelle
Subject: Re: Kanz Updated Designation Report

[EXTERNAL EMAIL]

Here's a link to our video, which likewise incorporates our agreements from today.

<https://cowenlaw.filev.io/r/s/9a37ye6ekA7aojPO8tUymzQU3objb40INrp0xUQ4tPbqdmysfI0gVNdvU>



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From: Pector, Michelle <michelle.pector@morganlewis.com>
Sent: Monday, July 31, 2023 11:46 PM
To: SaraNeil Stribling <saraneil@cowenlaw.com>
Subject: RE: Kanz Updated Designation Report

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Here is the updated Arellano combined for your review, which incorporates are agreements from today.

Michelle Pector

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From: Pector, Michelle
Sent: Monday, July 31, 2023 11:13 PM
To: 'SaraNeil Stribling' <saraneil@cowenlaw.com>
Subject: RE: Kanz Updated Designation Report

Agree with both your changes except 78:1-4, which we agreed was okay.

We are ordering lunch tomorrow from McAllisters deli and we'll do bbq on Wednesday probably from Rudy's.

On the clips, we are going to ask the judge to play them together because some of the questions flow in transition with each other, so will be disjointed if you play your clips first. But we'll be prepared to go with whichever way he decides and will have full version ready.

I'll keep an eye out for the exhibits tonight and will send Arellano over tonight as well. We made some addition cuts to shorten it and incorporated all the agreements we reached today.

Michelle Pector

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Sent: Monday, July 31, 2023 10:56 PM
To: Pector, Michelle <michelle.pector@morganlewis.com>
Subject: Re: Kanz Updated Designation Report

[EXTERNAL EMAIL]

Michelle:

This is missing from our Kanz cuts:
68:6-68:16 (Should be IN)

This should be out since our "reckless" testimony is out:
77:12-78:04 (should be OUT)

Our plan is still just to present our cuts and then ya'll can play yours. I can't agree to play them all together.

Let me get a share link together for you on the exhibits and send it over.

The lunch plan sounds good—let me know when you have the places chosen so that we can plan not to duplicate lunch.



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From: Pector, Michelle <michelle.pector@morganlewis.com>
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Subject: Kanz Updated Designation Report

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SaraNeil,

Here is the updated combined testimony on Kanz reflecting our combined cuts. This is 25 minutes now. We'll have the combined video cut for tomorrow. If you see anything that looks different than what we discussed, just let me know. We are working on Arellano next.

We also noticed that you renumbered exhibits and redacted some. Please send a drop file of the new exhibits you plan to use so we are all on the same page.

Also since the jurors were not sat for lunch today, we can take care of lunch tomorrow and Wednesday if you guys can take care of lunch Thursday and Friday?

Thanks,
Michelle

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REPORTER'S RECORD
VOLUME 001 OF 001 VOLUME
TRIAL COURT CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA | IN THE DISTRICT COURT OF
JR.; AND HUMBERTO GARCIA |
VS |
SPACE EXPLORATION | CAMERON COUNTY, T E X A S
TECHNOLOGIES CORP. D/B/A |
SPACEX; LAUREN ELIZABETH |
KRUEGER; AND JAMES RAY KANZ | 444TH JUDICIAL DISTRICT

* * * * *

MOTION FOR NEW TRIAL PROCEEDINGS

December 11, A.D., 2023

* * * * *

On the 11th day of December, A.D., 2023, the foregoing
Proceedings came on to be heard outside the presence of a Jury,
in the above-entitled and -enumerated cause; and the following
proceedings were had before the Honorable David Sanchez, Judge
Presiding, held in Brownsville, Cameron County, Texas, USA:

Proceedings reported by COMPUTERIZED INTEGRATED
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1 DECEMBER 11, 2023

2 MORNING SESSION

3 THE COURT: 2020-DCL-3939, Jose Ruiz vs. Space
4 Exploration Technologies.

5 MR. COWEN: Michael Cowen for the Plaintiffs,
6 Your Honor.

7 MR. PETERSON: Your Honor, William Peterson and
8 Michelle Pector for SpaceX. I may be arguing on behalf of Ms.
9 Krueger as well.

10 MR. OLIVEIRA: And David Oliveira for SpaceX as
11 well.

12 MR. ERWIN: Alan Erwin for Defendant Krueger.

13 THE COURT: All right.

14 MR. COWEN: Your Honor, our main argument is that
15 the Court should grant a new trial because of SpaceX counsel's
16 repeated theme of attacking opposing counsel, which was
17 impermissible during the trial.

18 Specifically, Ms. Pector accused Mr. Orendain,
19 who has since passed away, of manufacturing evidence of
20 collaborating with doctors to do unnecessary medical treatment
21 and give false diagnosis. There was no evidence to support
22 that.

23 The mere fact that someone assists a client in
24 getting a doctor's appointment, or recommends a doctor is not
25 enough -- is not evidence that there's something that was

1 manufactured or put up.

2 She even used the term "shakedown" during trial,
3 during the closing argument. I objected to it; the Court
4 overruled my objection.

5 Some case law, some examples in the case law.
6 These are all cited in our motion, Cross v. Houston Belt &
7 Terminal Railway Company. An argument that a plaintiff had
8 financial interest and went shopping for doctors, he
9 manufactured testimony was enough for reversal.

10 Montgomery Ward v. Brewer. An argument that
11 opposing counsel manufactured evidence was sufficient for
12 reversal.

13 This is fundamental error, Your Honor. Although
14 we did object during closing, there is no need to object.
15 Southern Pacific v. Hubbard.

16 The Supreme Court recently reiterated that in
17 Gregory v. Chohan, that there are some arguments that are so
18 impermissible that they're automatic reversal. The courts are
19 actually supposed to stop them without -- without objection if
20 they're made.

21 If I was to argue that the jury should give one
22 dollar for every tweet that Elon Musk made, for example, that
23 would be it. That would be a new trial.

24 Same for attacking the integrity of opposing
25 counsel. It's been decades of case law. It's improper and it

1 shouldn't be done.

2 That's my first argument if the Judge -- if Your
3 Honor denies the Motion for New Trial, then I have a couple of
4 things to talk about court costs.

5 MR. PETERSON: So, Your Honor, with respect to
6 the new trial, there are two versions that my friend has to get
7 over. The first is showing that it was improper. The second is
8 showing that it was incurable. And the third is actually
9 showing that there's harm as a result of it.

10 With respect whether the arguments are proper,
11 this is governed by the Texas Supreme Court's decision in
12 Standard Fire Insurance Company v. Ruiz. It was a really quite
13 remarkably similar case.

14 There was evidence presented to the jury in that
15 case that plaintiffs attorney was involved in helping select
16 their medical treatment. The defense made precisely the same
17 type of argument that Ms. Pector did here. In fact, it was
18 probably far harsher language. The language used there was
19 arguing that there was a sham or a plot that was being used.
20 And the Texas Supreme Court held that because that argument was
21 based on the evidence that the jury heard and inferences from
22 the evidence that the jury heard, it was a proper closing
23 argument.

24 So the evidence that we have here is you have
25 Martin Ruiz testifying that he followed the lawyer's plan and

1 orders.

2 We have Jose Ruiz talking about how the lawyers
3 selected doctors and that he went to the doctors the lawyers
4 told him to.

5 We have Humberto Garcia's medical records,
6 including the notation with respect to the x-rays that his
7 attorney is on.

8 So there's no question that in this record there
9 was evidence that the attorneys were involved in selecting
10 medical treatment and that the attorneys had a plan that the
11 Plaintiffs followed.

12 And that's what Ms. Pector was arguing in the
13 closing argument.

14 Now, with respect to a couple of the specific
15 statements. There was no suggestion that they manufactured
16 evidence. The word manufacture was used once, and the reference
17 was to manufacturing an opportunity.

18 And I also think manufacturing needs to be
19 understood in context here. So it's one thing to suggest that a
20 lawyer manufactured evidence in a sense of making -- making up a
21 new document, creating a false medical record that didn't exist.
22 There is no suggestion, there was no argument, there was no
23 implication that that happened here.

24 The suggestion was, at most, that the lawyers
25 were involved in manufacturing evidence, creating evidence by

1 sending the Plaintiffs to particular doctors where they received
2 medical treatment.

3 So even if there were a reference to
4 manufacturing evidence in context, that's what the reference is
5 to.

6 Second, the shakedown. I think, my friend, as I
7 understand shakedown, it's simply asking for money, or demanding
8 money that you're not entitled to, which is certainly the
9 defense's argument here.

10 My friend does say he made an objection, and I
11 think an objection was raised. But two points to that. There
12 was no ruling that was secured on this objection. I believe
13 it's something that judges are taught occasionally to suggest
14 that counsel move on. That was this Court's ruling here.
15 That's not either sustaining the objection, it's not overruling
16 the objection, it's not securing a ruling on it.

17 And more significantly, my friend didn't ask for
18 any kind of curative instruction from this Court, didn't ask for
19 a reprimand, didn't ask that the statement be withdrawn.

20 And that means to recover based on improper
21 argument, he needs to show that this was an incurable error.

22 Now, that's possible, but what the Texas Supreme
23 Court said in Ruiz is that it is reserved for exceptional
24 circumstances. It is extremely rare.

25 There's one case, for example, where the

1 defendants attorney were compared to Nazis conducting
2 experiments when they denied the plaintiffs damages. That's the
3 level of argument that it takes to be incurable.

4 So the question is even if the argument were
5 improper, is there anything that this Court could have done that
6 would have fixed it contemporaneously? Yes, there is. This
7 Court certainly could have issued instructions, certainly could
8 have reprimanded counsel, certainly could have had it be
9 withdrawn.

10 That wasn't requested. And because it was not an
11 incurable argument, even if there were some impropriety, it was
12 forfeited by not being objected to at the time.

13 And then finally, and I think really on that
14 point, one of the cases my friend cited, although he didn't
15 discuss this morning, the Jones v. Republic Waste Services case,
16 truly egregious conduct in which a lawyer just invented a
17 conversation and talked about that conversation in closing
18 argument. That the plaintiff's lawyer and the plaintiff had a
19 specific conversation in which the plaintiff's lawyer directed
20 the plaintiff to claims certain things. The conversation was
21 wholly invented.

22 Nonetheless, the court of appeals said that was
23 absolutely improper, but it was curable, it could have been
24 cured at the time for contemporaneous objection and instruction,
25 and held it was not reversible as a result.

1 And then finally, the third prong he would need
2 to overcome is to show harm. And that's harm on the face of
3 this whole record to show that the jury's verdict here was more
4 likely than not resulting from the argument by Ms. Pector and
5 not as a result of the evidence that they heard over the lengthy
6 trial here.

7 So at the end of the day, Ms. Pector's arguments
8 were firmly grounded in the evidence that was presented to the
9 jury, and an inference from those arguments.

10 And under Ruiz, once that evidence is in the
11 record, it is absolutely fair for counsel to rely on it in
12 closing argument, even if it is argument that touches on the
13 conduct of prior counsel.

14 THE COURT: All right. So, I'm going to want to
15 read these cases before I make a decision. So to that extent
16 make all the arguments you-all want, please; then I will take it
17 under advisement and I will get you-all a ruling.

18 MR. COWEN: And, Your Honor, would you like
19 copies of the cases or?

20 THE COURT: That will be great.

21 MR. COWEN: Yes. May I approach?

22 These are all cited in our motion.

23 THE COURT: If you-all have copies as well, I
24 will be glad to look at your cases as well.

25 MR. PETERSON: Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 Anything else today?

3 MR. COWEN: Yes, Your Honor. Just in the -- out
4 of an abundance of caution, if you do not grant the Motion for
5 New Trial I believe it was inappropriate to settle my client
6 with court costs for the defense ordered copies of the record
7 everyday from the Court Reporter and that was not a necessary
8 expense. And that was a big part of the \$40,000 in court costs
9 that you assessed against these working men.

10 And I would ask that if the Court does not grant
11 the new trial, that it modifies the court costs and not allow
12 those unnecessary expenses. They weren't depositions. They
13 weren't needed. It's not necessary to get a daily record. That
14 was something done for the convenience of counsel and it's not
15 fair to saddle my clients with that.

16 And I would also ask the Court to reconsider its
17 decision as to Ms. Krueger to not assess court costs and order
18 these parties to bear their own costs.

19 So while we didn't get everything we wanted, we
20 did get a -- we did get a win, and I've tried about ninety
21 hundred cases in this county and it's the first time that's ever
22 happened.

23 MR. ERWIN: Your Honor, may I address that for a
24 minute?

25 THE COURT: Sure.

1 MR. ERWIN: Your Honor, this was well-briefed
2 whenever we had the Motion for Entry of Judgment, we argued this
3 and briefed this in front of you.

4 And I will tell you that I had handed you a case
5 that was Mobile Producing v. Cantor, 93 S.W.3d 916, that shows
6 that you have to have abused your discretion with your ruling,
7 which I don't think that you have done, Your Honor.

8 And the Mobile Producing case, and several other
9 cases that we cited and handed to you at that hearing that you
10 took into consideration making your decision, state very clearly
11 that the trial court does not abuse its discretion in taxing
12 costs against both sides where neither party was wholly
13 successful in that one expected to receive more while the other
14 expect to pay less.

15 You were well within your discretion in the
16 ruling that you made. It wasn't error. It wasn't abuse of
17 discretion.

18 Your Honor, you had one Plaintiff that asked for,
19 I think, 1.6 or 1.8 million that got \$10,000. Had another
20 fellow that asked for a million and a half that got 40,000;
21 another fellow that asked for six figures and he got 70,000.

22 I don't think that that can be considered a win
23 by Mr. Cowen in any case. Certainly, if you were to take a poll
24 as to who was happier with the verdict, I probably would have
25 won that.

1 Your Honor, we'd ask that you sustain your --
2 your previous ruling. If the Court wants me to, you know,
3 produce again that -- those -- that case law, I can do that.
4 But Your Honor, your ruling was -- was appropriate the first
5 time; it's appropriate now with regard to court costs.

6 MR. PETERSON: Thank you. And with respect to
7 SpaceX's costs, there's no question that Civil Practice &
8 Remedies Code allows court reporter fees under 37, or I'm sorry,
9 31.007.

10 So the only question is whether they were
11 necessary. SpaceX filed bill of cost seeking those fees
12 supported by a declaration by Ms. Pector. There was no response
13 to that. There was no evidence put on suggesting that these
14 were unnecessary for declaration explain their necessity that
15 they were used during trial.

16 And although my friend is simultaneously
17 complaining that he is -- that Ms. Pector made a closing
18 argument that was outside the evidence while saying she
19 shouldn't have had a transcript to ensure that her closing
20 argument was tied to the evidence.

21 One of the reasons she was able to make a closing
22 argument based on the evidence presented at trial was because
23 she had those transcripts to be able to fashion her closing
24 argument. And although, when I was here arguing the jury
25 charge, we were certainly looking to those transcripts as well

1 to see what kind -- what evidence was actually presented, what
2 was actually on the record and what instructions would be
3 supported. And I think that was certainly used by both sides
4 when those transcripts were presented for the argument on the
5 jury instructions. So they were certainly necessary for SpaceX
6 to present its case for defendants, and to some extent, the
7 Plaintiffs to argue the jury instructions as well.

8 MR. COWEN: Well, we didn't get a copy of them
9 and we didn't want to incur an unnecessary expense, so they
10 weren't necessary for us.

11 Your Honor, I was in another trial when the Court
12 held the hearing here, so the -- and Ms. Stribling was no longer
13 with my firm at that point, so we had to send a lawyer down that
14 wasn't in trial. And I owed it to my client because the Court
15 costs are about half of the judgment. Court costs assessed
16 against my client are about half of the judgment. I do believe
17 that I owe it to my client to object to the transcripts because
18 that's a huge portion. And they're not necessary. They are not
19 done in most cases. They're done for the convenience of
20 counsel. It wasn't like it was a deposition, or it was on
21 appeal and they needed the transcript.

22 And I would ask the Court -- well, first, I'm
23 hoping you grant the new trial, but if you don't grant the new
24 trial to at least take away that.

25 THE COURT: The daily transcript part of the

1 court costs?

2 MR. COWEN: Yes.

3 THE COURT: That fee? All right.

4 MS. PECTOR: Your Honor, if I may just to state
5 that court reporter was the court reporter that created the
6 trial transcript, so that cost did go into creating the final
7 transcript record. And Mr. Cowen could have participated in
8 that cost when it was actually used during trial. And I would
9 just also point out for the Court, if you need us to give you a
10 courtesy that we filed a response to the Motion for New Trial
11 and put in evidence to the Court, and there were no record
12 cites, no evidence attached to the Motion for New Trial.

13 And then Mr. Erwin also filed objections to the
14 Plaintiffs' movement for cost, which are articulated why neither
15 the Plaintiff nor Krueger were successful parties as ruled on
16 and each party incur those costs is correct.

17 THE COURT: All right. Anything else?

18 MR. COWEN: No, Your Honor.

19 THE COURT: All right. I will take it under
20 advisement. I'm going to read your cases and your argument,
21 everything, just give me each your proposed judgment on my
22 decision, or ruling, proposed ruling on this.

23 MR. COWEN: And I have to double check the
24 timetable, but it's ticking as far as your ability to rule on
25 this.

1 THE COURT: Do you know when my deadline is?

2 MR. COWEN: I have to look it up. It's -- I came
3 back from another trial and sobered up and then found out that
4 the judgment had been entered in this one, so, but they were
5 nice enough not to interrupt me during another trial.

6 THE COURT: Okay.

7 MR. COWEN: I believe, was it September?

8 MS. PECTOR: The final judgment was entered on
9 September 22nd, I believe.

10 MR. COWEN: So it would be September, October
11 November, sometime in the next couple of weeks. I will -- I
12 will submit something with the Court with the deadline.

13 THE COURT: Okay. Well, I can't promise to get
14 you a ruling this week, but I will get you one by next week one
15 way or the other, just because that man and these folks over
16 here are going to keep me busy this week.

17 MR. COWEN: Definitely next week. At some point
18 next week the Court's plenary power to do it will end.

19 THE COURT: Okay.

20 MR. COWEN: The 90 days will end.

21 THE COURT: I will do it -- by Monday I will make
22 a decision. How is that?

23 MR. COWEN: Thank you, Your Honor.

24 THE COURT: That gives me the weekend. Okay.

25 All right. Like I said, give me proposed orders because --

1 MR. COWEN: Yes, Your Honor.

2 THE COURT: -- you don't get me a proposed order,
3 then I can't sign it, right?

4 Make sure to stay on me about that.

5 THE COURT ADMINISTRATOR: Yes, I will.

6 THE COURT: So, yeah, Elva is the one that's
7 going to remind me to get that done, so you-all stay on her and
8 she'll stay on me. Okay.

9 (Proceedings adjourned.)

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1 THE STATE OF TEXAS §

2 COUNTY OF CAMERON §

3 I, JESSIE C. SALAZAR, Official Court Reporter in
4 and for the 444th Judicial District Court, Cameron County, State
5 of Texas, do hereby certify that the above and foregoing
6 contains a true and correct transcription of all portions of
7 evidence and other proceedings requested in writing by counsel
8 for the parties to be included in this volume of the Reporter's
9 Record, in the above-styled and numbered cause, all of which
10 occurred in open court or in chambers and were reported by me.

11 I further certify that this Reporter's Record of
12 the proceedings truly and correctly reflects the exhibits, if
13 any, offered by the respective parties.

14 I further certify that the total copy rate for
15 preparation of this Reporter's Record is \$150 and was paid.

16 WITNESS MY OFFICIAL HAND this 16th day
17 of December, A.D., 2023.

18

19

20

21

/s/ Jessie C. Salazar
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Expires: October 31, A.D., 2024

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**COURT'S RULING ON
MOTION IN LIMINE**

CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA, JR; AND HUMBERTO GARCIA	§	
	§	IN THE DISTRICT COURT OF
<i>Plaintiffs,</i>	§	
	§	
	§	
v.	§	CAMERON COUNTY, TEXAS
	§	
SPACE EXPLORATION TECHNOLOGIES CORP., D/B/A SPACEX; LAUREN ELIZABETH KRUEGER	§	
<i>Defendant.</i>	§	197 TH JUDICIAL DISTRICT

PLAINTIFF HECTOR GARCIA JR.'S ORDER IN LIMINE

During the trial of any civil jury case in the District Court, unless and except to the extent that the operation of this order shall have been suspended with reference to such specific trial, no attorney shall make mention, refer to or suggest any of the matters hereinafter set forth in the presence or hearing of the jury, the venire, or of any member of either without first approaching the bench and securing a ruling from the Court authorizing such reference. In addition, each attorney shall admonish the client, client's representatives and all non-adverse witnesses the attorney may call to testify similarly to refrain from any such statement, reference or suggestion unless same is essential to respond truthfully to a question asked by opposing counsel.

Failure to comply with the Court's orders in limine will be grounds for a mistrial or curative instruction.

The matters to which reference is prohibited by this order are as follows:

1. **Collateral Source.** That any portion of the damages sought by Plaintiff have been, could be, could have been, or will be paid by a collateral source. *Haygood v. De Escobedo*, 356 S.W.3d 390, 394-395 (Tex. 2011). This includes but is not limited to:
 - a) health and accident or disability insurance;
 - b) any employee benefit plan, formal or informal, including payment of wages for time not actually worked;
 - c) social security or welfare;
 - d) veterans or other benefits;

- e) provisions of medical services free of charge or for less than reasonable and customary charges, provided that the foregoing does not prohibit reference to unpaid charges of any health care provider who actually testifies for Plaintiffs (or whose medical records are offered by Plaintiffs).

GRANTED: _____ DENIED: _____ AGREED: _____

2. **Character Evidence.** Any reference to character evidence of any sort pertaining to the character of any party, witness, expert, or third party, including but not limited to:

- a) incarceration, arrests, and criminal background; *see* TEX. R. EVID. 609(b), (c)
- b) professional or workplace discipline;
- c) Honesty and character for truthfulness; *see Wiggins v. State*, 778 S.W.2d 877, 893 (Tex. App.—Dallas, 1989 pet. ref'd)
- d) evidence of specific instances of conduct on collateral matters, including filing prior suits or making prior claims; *see* TEX. R. EVID. 608; *Closs v. Goose Creek Consolidated ISD*, 874 S.W.2d 859, 870 n.7 (Tex. App.—Texarkana 1994, no writ)
- e) use of intoxicating substances, including alcohol, prescription medication, and illegal drugs. *See AlliedSignal, Inc. v. Moran*, 231 S.W.3d 16, 46 (Tex. App.—Corpus Christi 2007) (excluding evidence of drug and alcohol use absent evidence of consumption on the date of the incident that would affect the matters at issue).

GRANTED: _____ DENIED: _____ AGREED: _____

3. **Lay Witnesses As Expert Witnesses.** Any reference, mention, argument or inference to the jury that Plaintiff's medical records are unreliable or that Plaintiff's medical treatment was not necessary given the absence of expert testimony establishing same. Allowing such reference would amount to Defendant's attorney or a lay witness testifying as an expert medical witness without satisfying the criteria established in *Robinson* for expert and/or scientific evidence.

GRANTED: _____ DENIED: _____ AGREED: _____

4. **Spoliation Sanctions sought against Plaintiff.** Any reference to the Motion for Spoliation Sanctions brought by Defendants against Plaintiff Hector Garcia, Jr.. All

arguments of counsel were heard and a final ruling denying the motion was entered by the Court.

GRANTED: _____ DENIED: _____ AGREED:

5. **Prior Withdrawal of Counsel.** Any reference to Plaintiff Hector Garcia, Jr.'s prior hiring of Cowen Rodriguez Peacock, P.C as counsel in this case nor the subsequent withdrawal of Cowen Rodriguez Peacock, P.C as attorneys of record for Plaintiff Hector Garcia, Jr. in this case.

GRANTED: _____ DENIED: _____ AGREED:

6. **Economic Impact of Verdict on Defendant's Finances.** Counsel is prohibited from arguing that the verdict will negatively affect Defendant's business, increase insurance premiums, or otherwise have an adverse impact on SpaceX as a company or its shareholders. TEX. R. EVID. 401, 402.

GRANTED: _____ DENIED: _____ AGREED:

7. **Accusations of Medical Malpractice against any of Plaintiff's Treating Physicians.** Any reference to malpractice committed by any facility where Plaintiff sought medical care given the absence of expert testimony establishing same. These accusations have not been adjudicated and no claims have been brought against Dr. Parekh or any other treating physician of Plaintiff.

GRANTED: _____ DENIED: AGREED: _____

8. **Opinions about the Reasonableness or Necessity of Medical Expenses in the Absence of Properly Filed and Noticed Counter-Affidavits.** That Defendant or Defendant's counsel be prohibited from arguing or contesting that Plaintiff's medical treatment was excessive, unreasonable, or unnecessary given the absence of counter-affidavits under Section 18.001 of the Texas Civil Practice and Remedies Code. *Beauchamp v. Hambrick*, 901 S.W. 2d 747 (Tex.App.—Eastland, 1995, no writ) (“Section 18.001...allows for the admissibility, by affidavit, of evidence of the reasonableness and necessity of charges...and it provides for exclusion of evidence to the contrary, upon proper objection, in the absence of a properly filed counter affidavit.”) *Turner v. Peril*, 50 S.W.3d 742 (Tex.App. -- Dallas 2000, writ denied) (emphasis added).

GRANTED: _____ DENIED: _____ AGREED: _____

9. **Physician Referral.** Questioning about the source of a referral to a medical provider should be prohibited as violative of collateral source, attorney-client privileged, or both, as well as excluded under TEX. R. EVID. 403. In the case of an attorney referral, the details of

the referral and why the Plaintiff sought the advice of counsel prior to visiting any medical provider is protected by attorney-client privilege. *See In Re Avila*, 22 S.W. 3d 349 (Tex. 2000). Moreover, the Rule 403 objection specifically objects to the introduction of the fact of an attorney referral or an "in network" referral because it cannot be put into context. To address the reasons why the referral was made would violate collateral source, i.e. doctors through health insurance won't take private insurance in an auto accident case, or plaintiff is uninsured, or defendant has not made any settlement offers or payments, etc. Injecting an unexplained and yet highly prejudicial fact into the proceedings carries a dangerous and unnecessary risk of unfair prejudice.

GRANTED: _____ DENIED: AGREED: _____

10. **Reference to the Lottery and Games of Chance.** Counsel may not refer to the lottery or other games of chance or speculation. Such references are demeaning to the justice system, inflammatory, and prejudicial. Moreover, they suggest that the jury verdict may be based upon speculation, conjecture, and guess, rather than the evidence of the case. Reference to "jackpots," "paydays," and other such titles for the outcomes of games of chance are similarly prohibited.

GRANTED: _____ DENIED: AGREED: _____

11. **Conjectural References to the Amount of Money the Plaintiff May Request in Closing Argument.** Counsel for the Defendant may not speculate during voir dire or opening statement about the amount of money that the Plaintiff may ask for in closing argument. Such speculative references would amount to jury argument, which is prohibited during voir dire and opening.

GRANTED: _____ DENIED: _____ AGREED:

12. **Calling Fewer than All Experts or All Witnesses.** Plaintiff does not intend to call every single health care provider who has treated the Plaintiff, in part because their testimony would be repetitious, cumulative, and unnecessary. Calling each potential health care provider is also burdensome, expensive, and disruptive of the physicians' work. Furthermore, such witnesses are equally available to the Defendants through a subpoena.

It would set bad policy to force parties to call cumulative witnesses and draw trials out for weeks, lest the other party argue that a witness could have been called but was not, and therefore that the jury should infer that the witness would have said something damaging. There is no reason to waste the jury's time with repetitive witnesses. Plaintiff intends to call the witnesses reasonably necessary to present the case, but will not be presenting as many witnesses as Plaintiff conceivably could.

GRANTED: _____ DENIED: AGREED: _____

13. **Attorney's Fees.** Defense counsel is prohibited from mentioning that Plaintiff may have a contingency fee agreement with his attorney to obtain representation in this case. *Azar Nut Co. v. Caille*, 720 S.W.2d 685, 688 (Tex.App.—El Paso, 1986), *aff'd*, 734 S.W.2d 667 (Tex. 1987). Defense counsel is further prohibited from stating that the Plaintiff has already paid counsel any sum of money.

GRANTED: _____ DENIED: _____ AGREED: _____

14. **Request for Files or Inspections.** Counsel may not request files or inspections from opposing counsel or witnesses (including non-party witnesses) in the presence of the jury. Such issues should have been addressed during pre-trial discovery.

GRANTED: _____ DENIED: _____ AGREED: _____

15. **Reference to Unidentified, Pre-Existing or Unrelated Physical Conditions.** That Plaintiff has had any prior or subsequent unrelated injury, disease, or disability, where there is no relation between that medical condition and any claims being made by the Plaintiff. *Hardware Mutual Casualty Co. v. Wesbrooks*, 511 S.W.2d 406 (Tex.Civ.App.—Amarillo 1974, no writ); *Baird v. Texas Employers' Insurance Association*, 495 S.W.2d 207 (Tex. 1973).

GRANTED: _____ DENIED: _____ AGREED: _____

parties agreed on re-wording

16. **Superseded Pleadings.** That the Defendant should be prohibited from making any reference to any superseded pleading, including any former parties to this suit. Any claims or defenses that previously were pled but are no longer, are not relevant to any of the jury's questions. Furthermore, allowing reference to such matters will needlessly lengthen jury trials as well as confuse the genuine issues. This Order includes comments about suing the wrong party, and/or reference to someone as having been wrongfully and/or incorrectly sued and/or incorrectly named as a party in this lawsuit.

GRANTED: _____ DENIED: _____ AGREED: _____

17. **Requests for Stipulations.** Any request or demand in the presence of the jury for a stipulation to any fact, or that counsel admit or deny any fact, is prohibited.

GRANTED: _____ DENIED: _____ AGREED: _____

18. **Discovery Disputes.** Any reference to discovery disputes that arose during the preparation of the case for trial, any position taken by any party with respect thereto, or to the Court's rulings thereon, is prohibited. This includes reference to the timing of production of documents or information during the pre-trial phase of this lawsuit, as well as reference to a document not being produced during the pre-trial phase of this lawsuit.

GRANTED: _____ DENIED: _____ AGREED: _____

19. **Reference to the Jurors or Community as "Taxpayers".** Counsel may not refer to the jurors themselves or the members of the community at large as "taxpayers," or attempt to suggest in some way that the taxpayers will somehow bear some of the cost of the litigation or verdict. Such references will mislead the jurors into believing that they will bear some part of the cost of the jury verdict, and seeks to transform the jurors from lay people unaffiliated with any party to partisan participants in the lawsuit.

GRANTED: _____ DENIED: _____ AGREED: _____

20. **Witnesses, Expert Opinion, Documents, and Other Tangible Evidence Not Disclosed in Response to a Proper Discovery Request.** Defendants may not submit evidence to the jury that was not provided in response to a proper discovery request, nor may Defendants argue to the jury on the basis of any fact or opinion that was not disclosed in response to a proper discovery request. To allow otherwise would result in a trial by ambush where a party is unfairly surprised and has been deprived of a fair and reasonable opportunity to conduct discovery and prepare for trial.

GRANTED: _____ DENIED: _____ AGREED: _____

21. **Fraud and Intentional Misrepresentation.** There is nothing that could be more prejudicial to the outcome of this trial than the Defendant referring to the Plaintiff, his attorneys, his physicians, or his experts as engaged in fraud, "scams," or any such untoward activities. Defendant has not pled fraud as an affirmative defense. TEX. R. CIV. P. 94. Furthermore, fraud necessarily implies an intentional or reckless act of deception. In the absence of evidence of *scienter*, argument or implication that fraud has occurred is improper.

Counsel for Defendants should be prohibited from arguing during opening and voir dire that the medical bills are "grossly inflated," "fake," "bogus," or "unreasonably excessive," or that medical records are overstated, or otherwise making inflammatory comments that are tantamount to fraud accusations. Such jury argument is not proper in opening or voir dire and is not predicated on a reasonable belief of what the evidence in this trial will show.

GRANTED: _____ DENIED: _____ AGREED: _____

22. **Unredacted Contents of Evidence Exhibits That Violate This Order in Limine Do Not “Open the Door”**. This trial involves hundreds if not thousands of pages of evidence exhibits and documents. Many such documents include fine print. That a document admitted into evidence in this case in an unredacted state, contains information that would violate one of the Court’s Orders in Limine, does not open the door to argument or questioning about the material that is subject to an Order in Limine. Any unredacted content should either be redacted, or at least not addressed in court.

GRANTED: DENIED: AGREED:

23. **Any subsequent or prior accidents without the predicate first being shown that the same injuries were claimed**. Without further evidence establishing that Plaintiff complained of, or was diagnosed with, injuries similar to those in the present case, any discussion of such accidents is likely to prejudice the jury against Plaintiff’s testimony regarding their temporal onset of symptoms immediately following the accident.

Defendants have not produced such evidence to date. Without it, Defendants will have the ability to elicit prejudicial testimony from the Plaintiff before establishing the contextual relevance of its references to such subsequent or prior incidents.

GRANTED: DENIED: AGREED:

24. **Witness Preparation**. Questions about how counsel prepared witnesses who they represent for their trial testimony.

GRANTED: DENIED: AGREED:

25. **Other Proceedings**. References to other lawsuits, arbitrations, or other legal or administrative proceedings, unless shown to be relevant to this lawsuit.

GRANTED: DENIED: AGREED:

26. **Testimony of Absent Witnesses**. Any statement or suggestion as to the probable testimony of any non-party witness or alleged witness who is unavailable to testify, or whom the party suggesting such testimony does not, in good faith, expect to testify in the trial. If the party is expected to testify by deposition, this provision does not apply to testimony contained in the deposition expected to be offered.

GRANTED: DENIED: AGREED:

27. **Retention of Attorney**. The time or circumstances under which either party consulted or retained an attorney.

GRANTED: _____ DENIED: AGREED: _____

28. **Counsel's Opinion of Credibility.** Any expression of counsel's personal opinion regarding the credibility of any witness.

GRANTED: DENIED: _____ AGREED: _____

29. **Physician Letter of Protection.** Any references by Defendants to payment arrangements made between the Plaintiff and their treating physicians, including the existence or absence of letters of protection executed by the Plaintiff or his attorney in favor of the treating physician, if any or that the treating providers have been guaranteed payment out of settlement or verdict in this matter. Such evidence is not relevant to any of the contested issues in this case and will only serve to confuse and mislead the jury and will likely prejudice the jury. Plaintiff further asserts that such argument or testimony should be excluded in the absence of letters of protection admitted into evidence.

GRANTED: _____ DENIED: AGREED: _____

30. **Discounts of Medical Bills.** That Defendants not offer in the presence of the jury any evidence of the amounts which were discounted, received, or written off of any of Plaintiff's medical bills. *Gore v. Faye*, 253 S.W.3d 785 (Tex.App.—Amarillo 2008, no writ). Further, that Defendants not argue or solicit testimony in the presence of the jury to the effect that any portion of Plaintiff's medical expenses will not be paid except where evidence has been offered and admitted to that effect.

GRANTED: DENIED: _____ AGREED: _____

31. **Deposition Testimony.** Introduction of any deposition testimony where an objection was made without first obtaining a ruling from the Court on the admissibility of such evidence.

GRANTED: _____ DENIED: _____ AGREED:

32. **Plaintiff's Providers.** That Defendants be prohibited from offering any testimony, asking any questions, making any reference to, or arguing to the jury that any of Plaintiff's treating physicians are "lawsuit doctors" or "plaintiff's doctors." This is not only false in this case, such information is not relevant and any slight relevance is substantially outweighed by the danger of unfair prejudice. See TEX. R. EVID. 402 and 403. In addition, the information would constitute inadmissible character evidence. TEX. R. EVID. 404(b).

GRANTED: _____ DENIED: AGREED: _____

33. **Sole Proximate Cause Comments.** References or arguments implying or suggesting to the jury that Defendants' conduct must be the sole proximate cause of Plaintiff's damages or injuries in order for Defendants to be liable or for Plaintiff to recover damages. This argument would be a misstatement of the law and only calculated to falsely and incorrectly mislead the jury.

GRANTED: _____ DENIED: _____ AGREED:

34. **Frivolous Suit Comments.** That Defendants be prohibited from making any reference to the jury that anyone can "pay some money and make up a lawsuit against another without any legal basis" trying to imply that this lawsuit is "frivolous" or "without merit." Proper remedies and procedures of summary judgments, counter claims, dismissal for failing to state a claim upon which relief can be granted, etc. were all available to the Defendants. *See* Tex. R. Evid. 402 and 403.

GRANTED: _____ DENIED: AGREED: _____

35. **Unavoidable Accident.** That Defendants be prohibited from suggesting this accident was caused by an "unavoidable^{*} accident," unless evidentiary predicate has been offered supporting such a suggestion. The Defendants must present evidence that could support the conclusion that the occurrence in question was not caused by the negligence of any party. *See Bed, Bath & Beyond, Inc. v. Urista*, 211 S.W.3d 753, 755 (Tex. 2006). Unavoidable accident is furthermore an affirmative defense subject to a pleadings requirement.

GRANTED: _____ DENIED: _____ AGREED:

36. **"Free" Medical Care.** Any mention or innuendo that Plaintiff received free medical care. *See City of Fort Worth v. Barlow*, 313 S.W.2d 906, 911 (Tex. App.—Fort Worth 1958, writ ref'd n.r.e.). Tex. R. Evid. 403. The amounts of medical care expenses incurred and owed are proved up by TRE §803(6) and §902.10 affidavits and for the Defendant to argue or suggest that medical care was free is outside the record and improper argument.

GRANTED: _____ DENIED: _____ AGREED:

37. **Golden Rule as to Damages.** Any appeal to the jury that they should abandon their position as fair and impartial jurors and to assume the position of a partisan or claimant in the case on any question of damages, constitutes improper and impermissible jury argument. Dallas Ry. & Terminal Co. v. Smith, 42 S.W.2d 794, 795 (Tex. Civ. App.—Waco 1931, no writ).

GRANTED: _____ DENIED: _____ AGREED: /

38. **Unpled Affirmative Defenses.** Any argument, suggestion, solicitation of an inference, or other means of attempting to persuade the jury in favor of an affirmative defense that was subject to the Rule 94, Tex. R. Civ. P. pleadings requirement, and was not pled in this case.

GRANTED: _____ DENIED: _____ AGREED: /

7-26-23


HONORABLE JUDGE

FILED
2020-DCL-03939
July 27, 2023 8:38 am
LAURA PEREZ-REYES
CAMERON COUNTY DISTRICT CLERK
BY: Garcia, Vilma

DAVID SANCHEZ
444th District Judge

cc 07/27/2023
Hon. Michael H Geratoni
Hon. Derek Rodriguez
Hon. Michael R Cowen
Hon. David G Oliveira
Hon. Alar Erwin Jr

[10]

589
MR2192

No. 13-24-00042-CV

In the Thirteenth Court of Appeals
Corpus Christi, Texas

**In re SPACE EXPLORATION TECHNOLOGIES CORP. and
LAUREN KRUEGER,**
Relators.

Original Proceeding from the 444th District Court
Cameron County, Texas, Trial Court Cause No. 2020-DCL-03939,
Honorable David A. Sanchez, Presiding

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STATEMENT OF THE CASE

Nature of the Case: Minor car accident. At trial, the jury awarded Plaintiffs a portion of the millions of dollars in damages they sought from Lauren Krueger and found that she was not acting within the course and scope of her employment for Space Exploration Technologies Corp. (“SpaceX”) at the time of the accident.

After entry of final judgment, two of the three Plaintiffs moved for a new trial. No supporting evidence was referenced in or attached to that motion.

Respondent: Hon. David A. Sanchez, 444th Judicial District Court of Cameron County

Action from Which Relator Seeks Relief: On December 13, 2023, Respondent signed an order granting a new trial on the basis of unidentified “incurable” argument in closing by defense counsel.

STATEMENT OF JURISDICTION

This Court has jurisdiction over this original proceeding under Section 22.221 of the Texas Government Code.

ISSUES PRESENTED

1. Whether the order granting a new trial contains a sufficient explanation, including valid reasons supported by the record.
2. Whether SpaceX's closing argument—which addressed evidence (admitted without objection) that Plaintiffs followed their former lawyer's "plan" and orders in seeking medical treatment from doctors their lawyer selected—was improper and, if so, whether it was an incurable argument that justified a new trial.

INTRODUCTION

This petition concerns an erroneous grant of a new trial following a jury verdict reached after a one-week trial in Cameron County, Texas. The underlying case involves a low-impact car accident. Testimony and exhibits—admitted without objection—evidenced the role of Plaintiffs’ lawyers in directing their conduct and medical treatment after the accident. SpaceX’s closing argument properly argued this evidence, including, for example, that the lawyer (i) was called while Plaintiffs were at the scene of the accident, (ii) had Plaintiffs drive to his office an hour and a half from the scene after they were released to return to work by a nearby clinic, (iii) sent them to a medical provider for physical therapy that Plaintiffs otherwise would not have received, and (iv) directed Plaintiffs to go to other counsel-selected medical providers. After a well-run and hard-fought trial, the jury returned a reasonable verdict, based on all the evidence. Its verdict should not be disturbed.

Disturbing a jury’s verdict is “an unusually serious act that imperils a constitutional value of immense importance,” and mandamus should issue when a trial court erroneously orders a new trial. *In re Rudolph Auto., LLC*, 674 S.W.3d 289, 302 (Tex. 2023). The Texas Supreme Court requires that a trial court granting a new trial must provide a full explanation. *Id.* at 302.

Here, the trial court ordered a new trial in a one-page order that states only, “The Court finds that the incurable arguments by defense counsel more likely than not caused the rendition of the subject verdict.” Appx. 1.

The order is invalid on its face. It neither identifies any “incurable argument” nor evidence in support. This falls far short of the Texas Supreme Court’s strict requirements for orders granting new trials. *See Rudolph Auto.*, 674 S.W.3d at 299-302 (requiring analysis and explanation, including “valid reasons supported by the record” and identification of “how the evidence (or lack of evidence) undermines the jury’s findings”).

More critically, there is no basis for ordering a new trial because SpaceX’s closing argument was based on the evidence. Closing argument is proper when it is based on the evidence, even when that evidence includes attorneys’ conduct. TEX. R. CIV. P. 269(e). Nearly half a century ago, the Texas Supreme Court held that closing argument may properly rely on evidence that plaintiff’s lawyers were involved in their medical treatment, *Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 837 (Tex. 1979), and such evidence existed here.

Moreover, even if there had been any improper argument, Plaintiffs failed to properly object and obtain a ruling, so any improper argument could support a new trial only if it were incurable, and no argument made by SpaceX during closing comes close to meeting the strict standard for “incurable argument.” Even in the

“rare instances” where the Texas Supreme Court has found incurable argument, it has “emphasized how much of an exception to the rule it is.” *Rudolph Auto.*, 674 S.W.3d at 310-11. “Typically, retraction of the argument or instruction from the court can cure any probable harm[.]” *Id.* (quoting *Phillips v. Bramlett*, 288 S.W.3d 876, 882–83 (Tex. 2009)). Only an argument decoupled from the evidence and so egregious that it would be akin to “repeatedly telling jurors that they would align themselves with Nazis if they ruled for [the opposing side]” meets that standard. *Id.* Nothing of the sort occurred here.

Mandamus is warranted.

STATEMENT OF FACTS

On the morning of February 5, 2020, Lauren Krueger, a SpaceX engineer, was involved in a minor accident while commuting to work. MR552-53. Her vehicle contacted the vehicle in front of her, which in turn contacted the pickup truck containing Plaintiffs Jose Ruiz (“Jose”), Humberto Garcia (“Humberto”), and Hector Garcia, Jr. (“Hector”),¹ as well as an additional passenger who did not join the lawsuit, Alejandro Arellano (“Arellano”), all of whom were employed by Ruiz Erectors and were on their way to SpaceX’s facility in Boca Chica, Texas to perform work as contractors. MR1086-87, 1144.

Plaintiffs’ truck was bumped at about 7.5 miles per hour, creating almost no visible damage. MR734, 1596, 1778-87. Immediately after the accident, Plaintiffs exited the truck, walked around, did not ask for an ambulance or medical attention, and stayed at the scene for an hour. MR555-56, 783-87, 832-33, 1014, 1100, 1145, 1778-87. They told a police officer at the scene that they were unharmed. MR832-34, 1788-92.

But Martin Ruiz Jr. (“Martin Jr.”) who was Plaintiffs’ boss and Jose’s nephew, testified that he learned of the accident shortly after it happened and immediately spoke to a lawyer while Plaintiffs were at the scene. MR1098-1100. Following that

¹ First names are used because there were multiple witnesses with the surnames “Ruiz” and “Garcia.”

discussion, Martin Jr. ordered Jose to take the truck across the street so that it could be towed, even though it was drivable, a directive that Jose followed. MR830, 1102-03. At the instruction of the lawyer, Martin Jr. then told Plaintiffs to visit a nearby clinic despite being, in Humberto's word, "bored" (i.e., not injured) at the scene and, as Jose testified, not injured. MR835-36, 1010, 1074, 1147-49. While there, Humberto's medical intake form stated that an "attorney is on it" in response to whether he had undergone any tests. MR2014. The clinic took X-rays, which were "unremarkable" and showed "no significant acute abnormalities," and released Plaintiffs to work that same day. MR1951-53, 1955, 1993-1995, 1997, 2017-18, 2020.

Despite being aware that "they were all released to return to work" and that they could have "done some work for Ruiz Erectors or done something else," Plaintiffs were driven an hour and a half to see a lawyer at Orendain & Dominguez in McAllen. MR835-36, 1102, 1106. After signing paperwork, "they followed [the lawyer's] plan," MR1108-09, including being directed to obtain therapy at Khit Chiropractic, a provider the lawyer selected and that Plaintiffs did not request; indeed, they were not given the option of being driven home instead of going to Khit Chiropractic, which they then visited for weeks at the lawyer's direction. MR838-40, 1019, 1030, 1044. Arellano, who was in the vehicle with Plaintiffs, confirmed that he thought "it was strange that an attorney's office was sending him to a therapy

place he had never known about.” MR839-40. He also testified that he did not want to visit the lawyer but was taken there anyway. MR836. Arellano further verified that no one at the scene told the police that they needed medical attention, that Plaintiffs went back to work every day after the accident, and that he was “surprised” that he was being driven to an attorney’s office after being released from the initial clinic. MR836, 840.

Plaintiffs returned to their “usual jobs” the day after the accident and continued working; they completed the welding and erection job they had been doing at SpaceX and then continued on to other jobs when their employer had them available. MR828-830, 1019, 1034-35, 1038, 1080-82, 1085-87, 1122-23, 1154-56, 1390-91, 1473. After the accident, Jose drove approximately 240 miles every day from Mission, Texas to SpaceX’s facility and back with Humberto, Arellano, and Hector as passengers. MR 831-32.

Although objective evidence, including X-rays taken the day of the accident and MRIs taken within weeks, indicated that Plaintiffs suffered no traumatic injury as a result of the minor accident and had, at most, temporary soft-tissue conditions, *see, e.g.*, MR1281-1306, 1309-10, 1456-1458, 1462, 1469-1493, 1517-18, 1537-1572, 1604-1612, 1793-1937, Plaintiffs’ lawyers continued directing them to medical providers selected by the lawyers. *See, e.g.*, MR1029-30, 1107-09, 1165-66, 1274-75, 1369.

Plaintiffs sued Krueger and SpaceX in August 2020—more than six months after the accident but shortly after Ruiz Erectors completed its last job at SpaceX. MR1158, MR1.

The petition sought “monetary relief over \$1,000,000.” MR2. At the July 31-August 4, 2023 trial, Plaintiffs tried to leverage their subjective reports of pain and extensive medical treatment to ask the jury for more than \$3 million for conditions such as herniated discs, a torn rotator cuff and torn meniscus, and alleged pain, suffering, mental anguish, and physical impairment, all of which they claimed was caused by the fender bender and which Defendants contended were preexisting. *See, e.g.*, MR491, 493, 1691, 1695-96, 1705-09.

Orendain & Dominguez, the law firm involved on the day of the accident, was not involved at trial. By the time the case was filed, it had been transferred to Cowen Rodriguez Peacock, which filed suit for all three Plaintiffs. MR1. That firm withdrew from representing Hector in 2022 and represented only Jose and Humberto at trial. *See* MR1341-52. Hector was represented at trial by Michael Garatoni and Daniel Perez of the Daspit Law Firm.

Before trial, the trial court diligently held extensive pretrial hearings where significant time was spent addressing motions in limine, other pretrial motions and addressing admissibility of evidence prior to trial, during which Plaintiffs had a substantial opportunity to address their evidentiary positions. Following a detailed

review of the motions, briefing and arguments of counsel, the trial court attentively issued rulings. The trial court continued to be diligent throughout trial and fairly oversaw it.

Defendants Present Evidence of Plaintiffs' Attorneys' Involvement in Arguably Unnecessary Medical Treatment.

At trial, Defendants presented evidence of the lack of injury and the involvement of Plaintiffs' counsel in their medical treatment and medical referrals. Not one of Plaintiffs' numerous attorneys objected to the introduction of this evidence at trial.

The issue was covered extensively in motions in limine during pretrial. The court held a multi-hour hearing on July 17, 2023, at which the lawyers' involvement in Plaintiffs' medical treatments was discussed at length, MR84-93, 99-100, and on July 26, the week before trial, the trial court entered various rulings, denying motions in limine regarding evidence on lawyer-doctor referrals, references to "jackpots" and "paydays," characterizations of the suit as "frivolous" or a "scam," arguments regarding overstatement of medical treatment, characterizations of Plaintiffs' doctors as "lawsuit doctors," and the time or circumstances of Plaintiffs' hiring of counsel. MR270, 2185-86, 2188-91.

On July 31, 2023, during the final evidentiary discussion following voir dire, the trial court held that lawyer referrals for medical treatments would be allowed in evidence. MR472.

Representative examples of key testimony and evidence the jury heard at trial

include:

- Jose testified he only “went to see the doctors that the lawyers told [him] to see.” MR1029-30.
- According to Humberto, physical therapy was “a waste of time,” but Plaintiffs’ lawyers sent Plaintiffs to therapy anyway. MR1166-68. As he put it, “I don’t do those things, unless . . . my lawyer says so.” MR1168.
- Jose confirmed that Plaintiffs’ counsel selected, among others, their orthopedic surgeon, Dr. Pechero, who testified that he was in communication with their counsel during the course of their treatment. ML1030, 1274-75.
- Dr. Pechero admitted that he treated Jose and Humberto not for any injury caused by the car accident but instead for preexisting degenerative conditions that result from normal life, such as arthritis. MR1281-1306, 2032, 2034.
- Another of Plaintiffs’ doctors, Dr. Dones, testified that with regard to whether the accident caused injuries, his conclusion was based only on subjective statements from Plaintiffs. MR667-68. Another, Dr. Liu, testified similarly that she had to rely on subjective statements of Plaintiffs’ alleged pain. MR934, 964-65.
- Dr. Dannenbaum, a neurosurgeon, testified that Plaintiffs had no detectable trauma in their spines and, instead, merely had degeneration unrelated to the accident; accordingly, the treatments Plaintiffs received were unrelated to the accident. MR1456-1458, 1462, 1469-1493.
- Dr. Burns, an orthopedic surgeon, testified that Jose had no detectable trauma in his shoulder or his knee and, instead, merely had degeneration unrelated to the accident. MR1537-1572.
- Dr. Gwin, a physician and engineer, testified that the accident was highly unlikely to have caused any injury to Plaintiffs—i.e., the mechanisms to cause the injuries they claimed were simply not present in the minor accident. MR1604-12.

- James Kanz, who was driving the middle vehicle that took far more impact than Plaintiffs’, drove to work right after the accident, worked a full day, missed no time off work, was not injured, and observed Plaintiffs uninjured at the scene. MR783-791, 795-96, 799.
- Krueger, despite also experiencing far more impact than Plaintiffs, testified that she returned to work and needed no medical treatment after having a checkup on the day of the accident. She also saw that Plaintiffs were uninjured and standing around at the scene. MR555-56, 784-86.
- Arellano testified that he did not ask the lawyer to send him to treatment, but the lawyer did so anyway. He was not given the option to go home; he had no choice but to go to therapy. MR835-840.
- Humberto testified he knew after the accident that Krueger worked for SpaceX. MR1178-79.
- Plaintiffs delayed filing suit until their work with SpaceX was finished. MR1, 1112, 1158.

Plaintiffs did not object to any of the above at trial. The testimony of Arellano and Kanz was played at trial from their deposition videos, with agreements being reached between counsel prior to their testimony as to which portions each side would play for the jury. MR2104-2165.

In Closing Argument, SpaceX Discusses the Evidence that Plaintiffs Followed Their Former Attorney’s “Plan.”

During closing argument, SpaceX’s counsel relied on evidence—including the evidence cited above—to argue that Plaintiffs were following a lawyer-driven plan and attempting to profit from a minor car accident that did not injure them.

Consistent with the testimony of Martin Jr. that he followed the lawyer’s “plan” and “orders,” and the decision to be taken to another doctor was Orendain’s

“call,” counsel for SpaceX argued that “there was a lawyer-driven plan that was created and put into motion on the day of the accident to manufacture an opportunity to cash in once they realized Lauren was an employee of SpaceX.” MR1108-1111; 1710 (arguing that plaintiffs have the burden “to show you that there is a basis for their claim and that this lawyer-driven plan that was designed to create a shakedown was valid”).

SpaceX grounded its arguments in the evidence presented to the jury:

Humberto Garcia told you they knew that Lauren worked for SpaceX. And you heard Martin Ruiz testify under oath that he called the lawyer while the plaintiffs were still at the scene of the accident. He called the lawyer even before he called each of them to check on them and see if they were okay. Once the lawyer was in charge, Martin Ruiz told you the first order the lawyer gave was to get the truck towed from a nearby gas station, even if it was drivable.

MR1711.

The lawyer’s first step of the plan was, get checked out. That happened when they went to Valley Day & Night. The second step was to go straight to the lawyer’s office, which you-all heard the evidence. All the plaintiffs went after they left Valley Day & Night, even though they were released to return to work. They could have gone back to work that day, like Mr. Kanz and Ms. Krueger, but they didn’t. And you heard when they left Valley Day & Night, that they didn’t go get prescriptions, they didn’t go see their families, they didn’t go home and rest, they didn’t try and go to another hospital. They weren’t asking to see another medical provider at all. The third step was, create medical evidence with the long process of therapy by doctors assigned by the lawyer. Now, in this case, one of the things for you to decide is was all the treatment that the plaintiffs received reasonable and medically necessary because of this accident? And the piece of evidence you know to be able to help you to answer that is that Valley Day & Night, the one medical provider that was not hired by the lawyer, the objective

medical provider said that, at most, they had sprains and strains and were released to return to work.

But they all followed the instructions of the lawyer, and instead of going back to Valley Day & Night, they went to Khit Chiropractor, which was the medical provider chosen by the lawyer. But the plaintiffs had a problem. After they started this medical treatment, Ruiz Erectors, who was their employer, a subcontractor working for SpaceX, still wanted the revenue from the project that they were working on, so they waited until that project ended in July of 2020, and then they executed the next step of the lawyer's plan, file a lawsuit six months after the accident.

You know that when Humberto Garcia went to Valley Day & Night, he said immediately in his intake form, "The attorney is on it."

And over the course of the next several months, the plaintiffs did what the attorneys instructed them to do, went to their appointments with the litigation doctors that were selected for them, and that was a critical part of the lawyer's playbook.

MR1712-1714. As the above quotes demonstrate, SpaceX tied its closing arguments to specific evidence presented at trial, including the testimony of Martin Jr. that "they followed [the lawyer's] plan." MR1108-09.

During this closing argument, Plaintiff's counsel raised a single objection to the attorney reference but failed to secure a ruling on the objection (much less request a curative instruction or a mistrial):

MR. COWEN: Objection, Your Honor. This is crossing lines, improper attack on the integrity of counsel, which is fundamental –

MS. PECTOR: Your Honor, this is not a proper objection.

MR. COWEN: It's a proper objection. It's fundamental error. You can argue the evidence, but you cannot attack the integrity of opposing counsel without evidence.

MS. PECTOR: Your Honor, there's been no attack, and I think Mr. Cowen –

THE COURT: Let's move forward. Move on.

MR1712.

Plaintiffs Do Not Seek a Mistrial After Closing.

After the jury left the courtroom to deliberate, Plaintiffs' counsel approached the bench and waived any motion for mistrial: "I'm not moving at this moment for a mistrial, but if it doesn't go well, I'm reserving my right to move for a new trial on this and making a record that those things happened." MR1762. During this discussion at the bench, SpaceX's counsel specifically pointed Respondent to the *Reese* case. MR1766.

The Jury's Verdict and Judgment.

Following closing arguments, the jury returned a verdict on August 4, 2023, awarding Plaintiffs Jose Ruiz, Humberto Garcia, and Hector Garcia, Jr. significant damages in the amount of \$73,500, \$40,000, and \$10,000, respectively. MR2036-44. The jury also found that Krueger was not acting in the course and scope of her employment for SpaceX when the accident occurred. MR2039.

Following briefing and a hearing, the trial court entered Final Judgment on the verdict on September 22, 2023, including a take-nothing verdict as to SpaceX. MR2045-46.

One Plaintiff Appeals; the Other Two Conclusorily Move for New Trial.

Hector filed a notice of appeal on October 4, 2023. MR2049-50.

Humberto and Jose filed a two-and-a-half-page motion for new trial on October 23, 2023. It cited no evidence and attached no exhibits. MR2053-55.

The motion alleged in conclusory fashion that SpaceX's counsel:

Repeatedly argued that Plaintiffs' counsel manufactured evidence (injuries and medical diagnoses) and improperly twisted Plaintiffs' reliance on the advice and assistance of counsel into a grand conspiracy theory. . . . Over objection, SpaceX's counsel improperly referred to the entire case as an attorney-driven "shakedown" in closing arguments.

MR2053.

Defendants opposed the motion, pointing out that the closing argument was properly based on evidence in the record and that Plaintiffs could not satisfy the high bar for "incurable" argument. MR2059-2165. Defendants further pointed out that Plaintiffs' motion misstated the record, including because the words "manufacture" and "shakedown" were only used once (and not "repeatedly") in closing. MR2064-70. Following a hearing on December 11, 2023, MR2166-82, the trial court signed an order granting a new trial. Here is the full order:

ORDER GRANTING PLAINTIFFS' MOTION FOR NEW TRIAL

On this day came to be heard Plaintiffs' Motion for New Trial. After reviewing the pleadings, and responses thereto, and the arguments of counsel the Court finds the Motion should be GRANTED.

The Court finds that the incurable arguments by defense counsel more likely than not caused the rendition of the subject verdict.

It is therefore, ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for New Trial is GRANTED.

It is therefore, ORDERED, ADJUDGED, AND DECREED that a new trial should be GRANTED and that the original judgment in this case is declared null and void.

Appx. 1. Relators now petition for writ of mandamus.

STANDARD FOR MANDAMUS

Mandamus will lie when a district court issues an erroneous new-trial order because there is no adequate remedy by appeal. *Rudolph Auto.*, 674 S.W.3d at 299 n.5 (citing *In re Bent*, 487 S.W.3d 170, 177–78 (Tex. 2016) and *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 209–10 (Tex. 2009)).

In granting a new trial, a trial court must provide an order that contains an “explanation” of the basis therefor, with “valid reasons supported by the record.” *Id.* at 302. Mandamus is required when the order either fails to include a sufficient explanation or “if the order is predicated on legal error or lacks record support.” *Id.*

Error—including as to improper jury argument—must ordinarily be preserved by timely objection that is overruled. *Living Ctrs. of Tex., Inc. v. Penalver*, 256 S.W.3d 678, 680-81 (Tex. 2008). To obtain a new trial based on an incurable jury argument, a party must demonstrate an unprovoked argument that “by its nature, degree, and extent constituted such error that an instruction from the court or retraction of the argument could not remove its effects” because the argument was “reasonably calculated to cause such prejudice to the opposing litigant that a withdrawal by counsel or instruction by the court, or both, could not eliminate the probability that it resulted in an improper verdict.” *Id.* at 680-81.

The party claiming incurable harm must persuade the court that, based on the record as a whole, the offensive argument was so extreme that a “juror of ordinary

intelligence could have been persuaded by that argument to agree to a verdict contrary to that to which he would have agreed but for such argument.” *Phillips*, 288 S.W.3d at 883.

ARGUMENT AND AUTHORITIES

I. The Order Is Facially Invalid Under *Rudolph Automotive*.

“[I]t is an abuse of discretion to grant a new trial if the order is not accompanied by meaningful reasons.” *Rudolph Auto.*, 674 S.W.3d at 299. The order must contain “an adequate explanation that the appellate courts can review,” *id.* at 296, including “point[ing] to evidence that played a pivotal role in its decision.” *Id.* at 301 (citation omitted). “[O]rders that provide no basis for the parties and appellate courts to confirm that the court’s determination was the result of careful assessment of the actual evidence in the case are conclusory” and “facially insufficient.” *Id.* A new-trial order that points to no evidence is, as a matter of law, grounds for mandamus. *Id.*; *In re Bent*, 487 S.W.3d 170, 183 (Tex. 2016).

The Texas Supreme Court recognizes “how much of an exception to the rule” an incurable argument is. *Rudolph Auto.*, 674 S.W.3d at 310. When a statement has already been held to “be so incurably harmful as a matter of law that a new trial is inexorably required,” the trial court must “identify the statement, describe the context, and apply settled law deeming the statement incurably harmful.” *Id.* at 312. If a trial court concludes that “argument that is not inherently incurable [was] incurable in a particular trial,” then it “must explain **why** the otherwise-curable problem . . . was nonetheless not susceptible to cure.” *Id.* at 312-13. “That

explanation—like any explanation for a new trial—must satisfy the requirements of our cases.” *Id.* at 313.

The new trial order at issue satisfies none of those requirements. It does not even purport to “identify the statement” that constitutes incurable argument, much less contain sufficient analysis to demonstrate that the order “was the result of careful assessment of the actual evidence in the case,” point to any evidence, “describe the context,” or “apply settled law.” *Id.* at 312-13. Nor does the order even attempt to “explain why [an] otherwise-curable problem . . . was nonetheless not susceptible to cure.” *Id.* at 313. As a result, mandamus is necessary. *Id.*; *see also, e.g., Bent*, 487 S.W.3d at 178 (holding that mandamus was properly issued to require vacatur of new trial order because, *inter alia*, “the trial court’s explanation is insufficient on its face”); *In re Ramos*, No. 13-19-00039-CV, 2019 WL 1930111, at *3 (Tex. App.—Corpus Christi–Edinburg May 1, 2019, no pet.) (holding new trial order facially invalid because it “does not discuss any evidence, reference any specific facts, or explain how any evidence, facts, or testimony undermines the jury’s findings, thus warranting a new trial”).

The order is invalid on its face, and this Court should issue a writ of mandamus requiring withdrawal of the order.

II. No Ground for a New Trial Exists.

There is good reason that the trial court did not provide a sufficient explanation for granting a new trial: No explanation could be given because no valid basis for a new trial exists. SpaceX's closing argument was grounded in the evidence presented at trial and thus was entirely proper and, in any event, any impropriety could not have risen to the level of "incurable argument."

As in *Rudolph Automotive*, this Court should hold that the order here fails because of both (1) its "insufficiency of the explanation"; and (2) its "inability to satisfy merits review" for a new trial. 674 S.W.3d at 306 (addressing both grounds). No interests would be served—and significant resources of this Court, the trial court, and the parties would potentially be wasted—by issuing mandamus only because of the order's facial invalidity.

As detailed below, SpaceX's closing argument was properly grounded in the evidence (admitted without objection) before the jury. Both the argument and evidence are indistinguishable from those blessed in *Reese*, 584 S.W.2d 835. Nor is there any basis to argue that any improper argument rose to the extraordinary level of "incurable" argument, which allows a party to receive relief without contemporaneous objection. On this record, no amount of explanation by the trial court could conceivably justify a new trial. *See Rudolph Auto.*, 674 S.W.3d at 302 ("Because trial courts have no authority to grant a new trial without a valid reason,

if the order is predicated on legal error or lacks record support, mandamus should issue to require the withdrawal of the new-trial order.”).

The error was not simply granting a new trial without adequate explanation but was granting a new trial on grounds that the Texas Supreme Court has foreclosed. This Court’s order granting mandamus should address both the facial invalidity of the order and the substantive impropriety of a new trial on these grounds.

A. Counsel’s Argument Was Based on the Evidence.

Although the order granting the motion for a new trial does not contain any identification of any improper (much less incurable) argument, Plaintiffs’ motion for new trial contended that SpaceX’s counsel (i) argued that “Plaintiffs’ counsel manufactured evidence (injuries and medical diagnoses)”; (ii) “improperly twisted Plaintiffs’ reliance on the advice and assistance of counsel into a grand conspiracy theory”; and (iii) “improperly referred to the entire case as an attorney-driven ‘shakedown’ in closing arguments.” MR2053.

Plaintiffs’ contentions misstate the record and relate to arguments that were properly based on evidence presented at trial. *Reese*, 584 S.W.2d at 837-39 (arguments are proper if based on evidence); TEX. R. CIV. P. 269.

1. SpaceX properly argued that Plaintiffs and their former counsel “manufactured an opportunity” to obtain payment from SpaceX.

Plaintiffs’ first contention fails on its face. SpaceX’s counsel did not argue that Plaintiffs’ counsel “manufactured evidence.” The only reference to “manufacture” in closing was that an opportunity was manufactured to obtain payment through a lawsuit against SpaceX based on a minor accident: “[T]here was a lawyer-driven plan that was created and put into motion on the day of the accident to manufacture an opportunity to cash in once they realized Lauren was an employee of SpaceX.” MR1710. SpaceX’s counsel argued, as the evidence below showed, that part of the plan was to “create medical evidence with the long process of therapy by doctors assigned by the lawyer. Now, in this case, one of the things for you to decide is was all the treatment that the plaintiffs received reasonable and medically necessary because of this accident?” MR1713.

SpaceX’s argument directly aligned with the evidence, which demanded that the jury decide whether the fender bender at issue justified Plaintiffs’ request for millions of dollars: Were Plaintiffs truly severely injured and in need of the long process of therapy they received, or did they seize an opportunity to turn a minor car accident into a payday?

One answer to that question was that Plaintiffs’ lawyers selected medical providers and sent Plaintiffs to receive treatment not necessitated by the accident in

order to support large claims with medical evidence, even though Plaintiffs were not actually injured from the accident. The evidence for this conclusion was extensive, with a few of the examples being:

- Humberto, Jose, and Arellano testified that they received medical treatments at the direction of counsel that they did not ask for and otherwise would not have received, as they had already been released to return to work. MR835-40, 1029-30, 1034-35, 1044, 1166-68.
- Martin Jr. testified that it was the lawyer’s “call[,]” not a physician’s call, to have Plaintiffs taken to another doctor despite being released by the clinic to return to work. MR 1108. Plaintiffs therefore followed the lawyer’s “plan.” MR1108-09.
- Arellano testified that they were not even given a choice to go home—they were forced to go to the lawyer’s office and then to a chiropractor on the day of the accident, after being released to return to work by the clinic they initially went to after the accident. MR836-39.
- Jose and Humberto testified that counsel alone selected their medical providers. MR1029-30, 1165-66.
- Humberto testified that much of the treatment his lawyers sent him to was “a waste of time.” MR1167.
- Dr. Pechero, Plaintiffs’ surgeon, testified that his office coordinated with Plaintiffs’ counsel to operate on Jose’s arthritis (i.e., degeneration)—not an injury and not related to the car accident. MR1274-75, 1281-1306, 2032, 2034.
- Numerous witnesses testified—and the MRIs and X-rays showed—that Plaintiffs were uninjured at the scene, had pre-existing arthritis and other degenerative conditions, and did not have any trauma related to the accident. MR783-790, 795-96, 799, 1281-1306, 1309-10, 1456-1458, 1462, 1469-1493, 1517-18, 1537-1572, 1604-1612, 1806-1937.

The evidence supported the argument that Plaintiffs received treatments on counsel’s orders after being released to return to work, treatment they did not need and would

not otherwise have received.² SpaceX’s argument of lawyer involvement in “manufacturing an opportunity” for Plaintiffs to recover was proper and based on the evidence before the jury.

2. SpaceX made proper arguments based on witness testimony that Plaintiffs followed their lawyers’ “plan.”

Martin Jr., Plaintiffs’ boss, testified that Plaintiffs followed the lawyer’s “plan” and “orders” from the first day, when Humberto’s clinic intake form stated that the “attorney is on it” in response to a question regarding X-rays. MR 1106, 1108-11, 2014. And as noted above, Plaintiffs themselves testified that they indeed followed their lawyers’ orders, and they “just went to see the doctors that the lawyers told [them] to see,” even when they thought it was “a waste of time.” MR1029-30, 1166-68. As Humberto testified, “I don’t do those things, unless . . . my lawyer says so.” MR1168.

SpaceX properly relied on this evidence and testimony in its closing argument. And contrary to the misstatements in the motion for new trial, counsel for SpaceX never used the word “conspiracy” during closing.

² The evidence above dovetailed with evidence that, as the jury found, SpaceX should not have been at trial at all because Krueger was merely commuting—and therefore not in the course and scope of her employment. *See Cameron Int’l Corp. v. Martinez*, 662 S.W.3d 373, 376-77 (Tex. 2022); *Painter v. Amerimex Drilling I, Ltd.*, 561 S.W.3d 125, 138-39 (Tex. 2018); MR560-69, 2039.

3. SpaceX properly argued that the claims were a “shakedown.”

The record was replete with evidence that the claims for millions of dollars were a “shakedown”: an attempt to obtain funds to which Plaintiffs were not entitled. Again, as shown above, extensive evidence supported the argument that Plaintiffs followed their lawyers’ plan and directives to receive medical treatments that they otherwise would not have received at all, or that treated conditions unrelated to the accident.

Even if terms such as “manufacture” and “shakedown” were hyperbole, rather than purely descriptive, the use of hyperbole “has long been one of the figurative techniques of oral advocacy.” *Reese*, 584 S.W.2d at 836, 838. “Such arguments are a part of our legal heritage and language.”³ *Id.* (permissible hyperbole that, for example, plaintiff “drove by a thousand doctors between the Astrodome and Spring Branch”); *see also Wal-Mart Stores Tex., LLC v. Bishop*, 553 S.W.3d 648, 677–78 (Tex. App.—Dallas 2018, pet. granted, aff’d as modified) (no incurable argument in case involving falling box in store when counsel used the term “Walmart treatment,” referred to the opposing party’s witness as a “hit man,” and characterized plaintiff

³ Indeed, counsel for Jose and Humberto used hyperbole throughout closing—for example, they asserted that SpaceX did not “give a damn” about Arellano, that SpaceX “knows it owes them a debt,” “what SpaceX has taken is a hundred times more valuable than any kind of work,” SpaceX “want[s] a different set of rules,” and “SpaceX thinks it can get away with not paying.” MR1697, 1750, 1757.

as a “victim”); *Clark v. Bres*, 217 S.W.3d 501, 510 (Tex. App.—Houston [14th Dist.] 2006, pet. denied) (holding that, because evidence existed that party had lied, “stolen appellees’ money, cheated, and defrauded appellees,” the “repeated use of these terms . . . does not convert it into incurable error. Instead, such hyperbole for emphasis is an accepted technique of oral advocacy and is a part of our legal heritage and language.”). “During closing argument, attorneys . . . may use hyperbole and other figures of speech, and may attack the credibility of an opposing party’s witnesses, evidence, and positions.” *Belmarez v. Formosa Plastics Corp.*, No. 13-09-00536-CV, 2011 WL 4696750, at *6 (Tex. App.—Corpus Christi–Edinburg Sept. 30, 2011, pet. denied). Even if it were hyperbolic, using the term “shakedown” to characterize the evidence was proper.

4. *Reese confirms that SpaceX’s arguments were proper.*

The Texas Supreme Court’s decision in *Reese* is directly on point. In that case, the insurer’s counsel argued that plaintiff and plaintiff’s counsel were involved in a “combination,” “sham,” or “plot” to “pump” the “medical bills up real high”:

But that won’t **make this claim valuable enough**. So, we have to **run in Dr. Buning**. Enter Dr. Buning, April 8, 1975, approximately three and a half weeks after this incident. Dr. Buning in Spring Branch, Mr. Reese, Astrodome. He **drove by a thousand doctors** between the Astrodome and Spring Branch. Aren’t you curious as to why he went to Dr. Buning? Aren’t you curious as to why Mr. Mafrige sent him to Dr. Buning? Does not a **sham or a plot** evolve out of all of this? What does Buning do then? Let’s send him over to old Mort, give him the old 1-6-8-9-11-15 treatment. That’s good. That **looks good on paper**. We can **pump on him for about six or eight weeks, build those medical**

bills up real high. The higher the medical bills, obviously he has got to be hurt if he has got all of those medical bills. **It will look good in front of a jury.** Does that not make itself abundantly clear to you? Does that not eat away at the credibility of this entire situation?

584 S.W.2d at 836 (emphasis added). This argument aligned with the insurer's theory that "Reese had incurred unnecessary charges for physical therapy in the amount of \$1,458.00 even though the treatments were doing him no good." *Id.*

The Texas Supreme Court held that the insurer's argument "was not improper because there was direct evidence, as well as inferences from the evidence, which supported the argument." *Id.*

Thus, "arguing a close connection between a party and his attorney, even arguing the existence of a conspiracy between them, is not incurable argument." *Clark*, 217 S.W.3d at 511 (holding also that referring to counterparty as "thief," "liar," "fraud," and "cheat" was not improper argument because it was based on evidence admitted at trial) (citing *Reese*, 584 S.W.2d at 840). Arguments supported by evidence do not violate Texas Rule of Civil Procedure 269(e).

The defense theories and evidence from trial in this case are remarkably similar to those in *Reese*. In both cases, the evidence showed that counsel was involved in selecting medical treatments (that would not have otherwise occurred) and in making trial demands for payment based on those treatments, such that a defense in both cases was that the plaintiffs' "claim was a weak one and had almost no medical basis." 584 S.W.2d at 837-38, 841. In *Reese*, the Texas Supreme Court

recognized that there was “direct evidence of a close relationship between Reese’s attorney, Mr. Mafrige, and [the treating physicians],” *id.* at 838, similar to the evidence here that Plaintiffs’ attorneys were involved in selecting their medical treatment and treating physicians. In both cases, “advocacy” was a proper means of “weigh[ing], evaluat[ing], and test[ing]” “the relationship between witnesses and a party.” *Id.*

Unlike in *Reese*, SpaceX did not accuse plaintiffs of a “sham” or “plot.” SpaceX referred only to “manufacturing an opportunity” for recovery, or a “shakedown.” But the import of the arguments in both cases is the same: Plaintiffs’ lawyers’ involvement in their medical treatment, coupled with objective evidence that injuries caused by the accident either did not exist or were exaggerated, undermined the claimed necessity of that treatment and thus the credibility of large damages.

Reese controls, and SpaceX’s argument was proper because the record supported the argument that Plaintiffs’ medical treatment was directed by their lawyers. *See also, e.g., Tanguy v. Laux*, No. 01-13-00501-CV, 2015 WL 3908186, at *4 (Tex. App.—Houston [1st Dist.] June 25, 2015, pet. denied) (finding argument that opposing party and his counsel had engaged in criminal activity and a “scam” was supported by evidence); *NationsBank of Tex., N.A. v. Akin, Gump, Hauer & Feld, L.L.P.*, 979 S.W.2d 385, 398-400 (Tex. App.—Corpus Christi–Edinburg 1998,

pet. denied) (finding no error in closing argument that accused opposing counsel of fabrication of facts, accusing lawyer-witness and counsel of “shameful” conduct, attempts to “manipulate a jury,” “orchestrating this whole case,” and “tr[ying] to pass himself off as an independent witness” because evidence and inferences supported the argument).

Because SpaceX’s closing argument was grounded in the evidence presented at trial, it was proper under Rule 269(e) and there was no basis for a new trial.

B. Even If SpaceX’s Argument Were Improper, It Did Not Rise to the High Level of “Incurable.”

Even if SpaceX’s argument had been improper, Plaintiffs would have to show that the argument was incurable to receive a new trial, because they failed to object and request curative action by the trial court.⁴ *See Jones*, 236 S.W.3d at 402 (“The burden to prove that improper argument was incurable rests on the claimant.”).

⁴ The trial court granted a new trial based on “incurable argument.” This was necessary because an objection without securing a ruling is not sufficient to preserve an issue. *Phillips*, 288 S.W.3d at 883 (holding that error was not preserved as to allegedly improper jury argument because counsel objected but did not obtain a ruling on the objection); *Reese*, 584 S.W.2d at 841 (“Reese, by failing to object and press for an instruction at the time of the argument, waived his complaint”); *Tanguy*, 2015 WL 3908186, at *5 (“Because Tanguy did not, at the time of the complained-of arguments and testimony, request that the trial court instruct the jury to disregard the remarks, he did not preserve error.”); *LaBeth v. Pasadena Bayshore Hosp., Inc.*, No. 14-10-01237-CV, 2012 WL 113050, at *8 (Tex. App.—Houston [14th Dist.] Jan. 12, 2012, pet. denied) (holding that error in closing argument was waived when not objected to, even though the argument had “plainly mischaracterized” the record and was inflammatory and pejorative); *Dyer v. Cotton*, 333 S.W.3d 703, 716 (Tex.

Incurable arguments are “rare.” *Rudolph Auto.*, 674 S.W.3d at 310 (“[E]ven in the rare instances where we have found incurable argument, we have emphasized how much of an exception to the rule it is[.]”). They are limited to arguments that, by their nature and degree, constitute such error that an instruction from a court or retraction of the argument could not remove their effects. *Living Ctrs.*, 256 S.W.3d at 680–81.

An improper argument is incurable only if it “strikes at the very core of the judicial process” and, “based on the record as a whole, . . . was so extreme that a juror of ordinary intelligence could have been persuaded by that argument to agree

App.—Houston [1st Dist.] 2010, no pet.) (“Dyer objected to the references to the other lawsuits, but not until after the jury retired to begin deliberations [which was too late]. The record does not establish that Cotton’s closing arguments were incurable so as to warrant a new trial where no objection or request for a limiting instruction was made.”); *Jones v. Republic Waste Servs. of Tex., Ltd.*, 236 S.W.3d 390, 402-04 (Tex. App.—Houston [1st Dist.] 2007, pet. denied) (holding that closing argument that lawyer told witness to change testimony was unprovoked curable error and, because opposing counsel failed to object and seek an instruction, the error was waived).

Plaintiffs’ counsel did not preserve error. One relevant objection was made during SpaceX’s closing argument, but no ruling was obtained. MR1712. Plaintiffs’ counsel did not object again, and after the jury retired to deliberate he specifically stated that he was *not* seeking a mistrial, noting he was instead opting to wait for the jury’s verdict to determine whether he liked it, which is obviously impermissible. MR1762. See *Kittrell v. State*, 382 S.W.2d 273, 275 (Tex. App.—Dallas 1964, writ ref’d n.r.e.) (holding, in an eminent domain case, that “[i]t is well settled that a party cannot wait and take a chance with the jury and, following a verdict which is adverse, then move for a mistrial relating to improper argument”); *Hoover v. Barker*, 507 S.W.2d 299, 306 (Tex. App.—Austin 1974, writ ref’d n.r.e.) (holding that appellant was not entitled to a mistrial because “[b]y waiting until after the jury had returned its verdict, appellant waived any right of mistrial which he may have had”).

to a verdict contrary to that to which he would have agreed but for such argument.” *Phillips*, 288 S.W.3d at 883 (holding that repeated argument that jurors needed to send “a message” to county’s doctors in light of death following hysterectomy was curable and unpreserved; noting that cases finding incurable harm “typically involved unsubstantiated attacks on the integrity or veracity of a party or counsel, appeals to racial prejudice, or the like”) (citation omitted).

These principles are illustrated by two cases cited in Plaintiffs’ own motion for new trial. First, in *Jones v. Republic Waste Services of Texas, Ltd.*, defense counsel argued that plaintiff’s counsel had suborned perjury at a meeting with plaintiff. 236 S.W.3d at 400. But unlike here, there was “no evidence of any post-deposition meeting between [plaintiff] and his attorney.” *Id.* at 402. The argument was therefore “improper jury argumen[t]” because it was “not confined ‘to the evidence and to the argument of opposing counsel.’” *Id.* (quoting TEX. R. CIV. P. 269(e)).

Nonetheless, the court explained, “Improper argument regarding the alleged wrongful conduct by a lawyer is not *per se* incurable.” *Id.* at 402. “Only rarely will an improper argument so prejudicially influence the jury that the error cannot be cured.” *Id.* at 403. Although the comments were “reprehensible,” they “were not so inflammatory that their perceived prejudicial effect would have prevented the jury from following its oath with the proper instructions from the judge.” *Id.* at 403-404.

Because “the error was curable by an instruction, a prompt withdrawal of the statement, or a reprimand by the trial court, the appellants were required to object, request an instruction to disregard, and request a motion for mistrial,” and because they failed to object, the appellants “waived this error.” *Id.* at 405. The same is true here. Even if there had been improper argument by SpaceX, which was not the case, it was not so inflammatory that the jury could not have followed its oath with proper instructions from the judge. As in *Jones*, because the plaintiff failed to object, the error was waived.

Second, *Lumberman’s Lloyd’s v. Loper*, which long predated *Reese*, involved an argument “that counsel for the respondents . . . procured false testimony from [a witness].” 269 S.W.2d 367, 409 (Tex. 1954). Although the argument was improper, it was not a basis for reversal because it “probably did not cause the verdict and judgment[.]” *Id.* at 410. The court reiterated that “the error, to be reversible error, must be one that probably did cause the rendition of an improper judgment in the case.” *Id.* “If the evidence is such that we believe the jury would in all probability have rendered the same verdict that was rendered here, whatever the argument of the defendant’s counsel or lack of it, how can we logically say that the argument probably caused the rendition of an improper judgment based on that verdict?” *Id.* *Loper* supports mandamus because the jury awarded an amount between what Plaintiffs sought and Defendants sought, and there is no basis in Plaintiffs’ motion

for new trial, in the order granting new trial, or the record generally to believe that the judgment is either improper or that the jury more likely than not would have reached a different conclusion but for SpaceX's arguments.

Since *Reese*, almost no arguments have been found incurable, absent outrageous contentions entirely untethered to the record, such as racism or comparisons to Nazis. In *Rudolph Automotive*, the Texas Supreme Court discussed the extremely narrow circumstances in which an argument can be found incurable and noted that *Living Centers* and *Phillips* “illustrate the general boundary line” between curable and incurable argument: “Repeatedly telling jurors that they would align themselves with Nazis if they ruled for the defense could not have been cured; urging a jury to send a message responding to too-low verdicts could have been.” *Id.* at 311.

Because incurable arguments are rare, improper arguments (which are unsupported by the record) are regularly held to be curable. For example, in *LaBeth v. Pasadena Bayshore Hospital, Inc.*, No. 14-10-01237-CV, 2012 WL 113050, at *7-8 (Tex. App.—Houston [14th Dist.] Jan. 12, 2012, pet. denied), plaintiff contended that defense counsel improperly argued that plaintiff was not credible and that her own counsel had called her a “faker,” “liar,” “drug dealer,” “cheat,” “drug pusher,” “con man,” “thief,” “drunk,” “psychopath,” “sociopath,” “manipulative,” “sneaky,” and “mentally sick.” *Id.* at *7. The court of appeals held that this

argument “plainly mischaracterized” the record, and it “condemn[ed] defense counsel’s argument.” *Id.* at *8. Nonetheless, the court of appeals affirmed, holding that the argument “does not rise to the extreme level of being incurable.” *Id.* Because any error in the argument “could have been cured by instruction,” the error was waived “based on [plaintiffs’] failure to object.” *Id.*

Similarly, in *Hopkins v. Phillips*, No. 05-18-01143-CV, 2019 WL 5558585, at *1, *3-4 (Tex. App.—Dallas Oct. 29, 2019, pet. denied), a plaintiff contended on appeal that defense counsel’s closing argument improperly accused the plaintiffs’ counsel of dishonesty. The court of appeals held that although the argument was arguably improper, no incurable error occurred because the court could not “conclude that the probability that the argument caused harm is greater than the probability that the verdict was grounded on the proper proceedings and evidence.” *Id.* This lack of harm was demonstrated by the jury’s \$17,000 award, which—like the damages awarded here—was higher than what the defendants had proposed but lower than what plaintiffs had sought. This verdict demonstrated that the jury “exercised independent thought in light of the evidence” as opposed to being blindly led by the improper argument to side with defendants. *Id.* “[T]here [wa]s no basis for concluding that the argument was so unsupported and extreme as to strike at the core of the judicial process or that the average juror would have been persuaded to

vote differently as a result of the argument.” *Id.* The same is true here, where the jury awarded damages far exceeding those suggested by the defense.

Indeed, *Reese* confirms that a jury awarding damages despite the absence of objective injury is a strong indication “that the jury rendered a careful verdict upon the basis of the evidence” and thus that any error was harmless. *See* 584 S.W.2d at 841 (holding, in light of evidence from Reese’s doctor that he did not have “any symptom that could be called an objective one” and testimony from Reese that he went back to work, “[t]he probabilities are that the jury believed this testimony of Reese and his own doctor and that the jury rendered a careful verdict upon the basis of the evidence”).

LaBeth and *Hopkins* exemplify why the present case does not involve incurable argument: Any improper argument could have been addressed by curative instruction to the jury, but Plaintiffs’ counsel never secured a ruling on its objection, did not ask for a curative instruction, and explicitly waived a motion for mistrial. Numerous cases agree—consistent with the Texas Supreme Court’s holding in *Rudolph Automotive*—that even improper argument unsupported by the record will ordinarily be curable and that error will be waived when there is no objection and ruling.⁵

⁵ *See, e.g., Witt v. Michelin N. Am., Inc.*, No. 02-18-00390-CV, 2020 WL 5415228, at *7 (Tex. App.—Fort Worth Sept. 10, 2020, no pet.) (finding no incurable error

This case fits squarely within the general rule: Even if SpaceX’s arguments were improper, Plaintiffs failed to demonstrate that they were so extreme that they could not have been cured by action from the trial court. *Living Ctrs. of Tex.*, 256 S.W.3d at 680. Mandamus is proper on this ground.

when counsel argued opposing side’s position was “dishonest as the day is long”); *Metro. Transit Auth. v. McChristian*, 449 S.W.3d 846, 855 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding “What kind of snake oil is [opposing counsel] selling you?” was curable); *Perez v. Perez*, No. 13-11-00169-CV, 2013 WL 398932, at *13 (Tex. App.—Corpus Christi–Edinburg Jan. 31, 2013, no pet.) (holding “we cannot conclude the comments were so inflammatory that their perceived prejudicial effect would have prevented the members of the jury from following their oaths with proper instructions from the trial judge,” where argument included criticisms of witnesses’ credibility); *McKenzie v. Positive Action Int’l, Inc.*, No. 01-10-01073-CV, 2012 WL 1454478, at *29–30 (Tex. App.—Houston [1st Dist.] Apr. 26, 2012, pet. denied) (holding curable counsel’s accusation of “fabrication” of a “baseball bat made up out of attorneys’ fees...and she’s been hitting us over the head with that baseball bat for two years” and saying, “they can hide behind their lawyers, and they can hide behind their lie, but what they can’t hide from is the truth”); *Jones*, 236 S.W.3d at 402-04 (holding that closing argument accusing opposing counsel of suborning perjury as to a key element was not supported by evidence but was curable); *Clark*, 217 S.W.3d at 511 (holding curable plaintiff’s argument implying that defendant and his counsel engaged in conspiracy); *Brender v. Sanders Plumbing, Inc.*, No. 2-05-067-CV, 2006 WL 2034244, at *6 (Tex. App.—Fort Worth July 20, 2006, pet. denied) (holding that argument which called opposing counsel a “spinmeister” was supported by evidence); *UMLIC VP LLC v. T & M Sales & Envtl. Sys., Inc.*, 176 S.W.3d 595, 617 (Tex. App.—Corpus Christi–Edinburg 2005, pet. denied) (holding that six jury arguments—that, e.g., opposing party was a “vulture” coming to Texas to “pick on a carcass,” that counsel was misled by a letter from the opposing party, that, without supporting evidence, opposing party had treated other businesses poorly, etc.—were curable, and error was waived by failing to object); *Beavers on Behalf of Beavers v. Northrop Worldwide Aircraft Servs., Inc.*, 821 S.W.2d 669, 680 (Tex. App.—Amarillo 1991, writ denied) (finding no incurable error when counsel argued the other side was “twisting, turning, exaggerating, repeating over and over, misstatement of facts, until the hope is that some people of twelve will accept those as true facts”).

C. Plaintiffs' Cited Cases Do Not Justify a New Trial.

Not only do the cases cited in Plaintiffs' new trial motion generally predate the Texas Supreme Court's decision in *Reese* (and long predate current jurisprudence regarding incurable arguments), but they involved **improper** arguments that—unlike the argument made by SpaceX's counsel and the indistinguishable argument in *Reese*—were unsupported by the evidence at trial. *See S. Pac. v. Hubbard*, 297 S.W.2d 120 (Tex. 1956) (involving an argument that the defendant's employees “had intimidated [a witness] so that he changed his story and was afraid to tell the truth” that was “unsupported by the record” and “was in effect testimony by [plaintiff]'s attorney about matters not in the record”); *Am. Petrofina, Inc. v. PPG Indus., Inc.*, 679 S.W.2d 740, 755–56 (Tex. App.—Fort Worth 1984, writ dismissed) (involving more than \$25 million in punitive damages and arguments by opposing counsel of untruthfulness, “talking down” to the jury, and “trying to mislead the jurors with ‘corn pone,’ ‘snake oil,’ ‘another red herring,’ and ‘another untruth’” that “were unsupported by the evidence and inferences thereto”); *Montgomery Ward Co. v. Brewer*, 416 S.W.2d 837, 846 (Tex. App.—Waco 1967, writ refused n.r.e.) (involving repeated accusations of manufacturing multiple exhibits where the court of appeals “considered each part of the record very carefully and [found] nothing in the evidence . . . that even tends to support or provoke the statements and severe accusations”); *Cross v. Houston Belt & Terminal Ry. Co.*, 351

S.W.2d 84 (Tex. App.—Houston 1961, writ ref'd n.r.e.) (involving accusations that counsel had “manufactured testimony,” sued for “hundreds of thousands of dollars on manufactured evidence,” and “went out there and hire[d] any witnesses they can get to say things” and in which the court of appeals “read the entire statement of facts, consisting of more than 1,200 pages, and [found] nothing therein to justify the . . . argument”); *Stephens v. Smith*, 208 S.W.2d 689 (Tex. App.—Waco 1948, writ ref'd n.r.e.) (involving an objected-to argument that plaintiff’s counsel “deliberately plant[ed] a lie in the mouth of a witness, particularly in the mouth of a minor” that was supported by “no evidence or circumstance shown by the record”); *Texas Emps.’ Ins. Ass’n v. Butler*, 287 S.W.2d 198, 201 (Tex. App.—Fort Worth 1956, writ ref'd n.r.e.) (involving a sustained objection (and a denied request for curative instruction) to an argument that “was not justified” and for which “[t]he record does not support the accusation”).

Nor does *Texas Employer’s Insurance Association v. Jones*, which involved appeals to racial prejudice, remotely support Plaintiffs. In that pre-*Reese* case, the court held that three arguments by counsel were improper, including an epithet to describe a Jewish witness and an argument that a witness had falsified testimony because he was a Jew. 361 S.W.2d 725, 726 (Tex. App.—Waco 1962, writ ref'd n.r.e.). Invoking the epithet “was an appeal to racial and religious prejudice in language clear and strong,” and “it tied racial and religious prejudice in with the

charge that [the witness] would falsify for money.” *Id.* at 727. That argument, combined with the other improper arguments, created a “cumulative effect” that deprived the defendant of a fair trial. *Id.* at 728. Accordingly, the court of appeals reversed and remanded. Unlike this case, *Jones* involved arguments that not only did not have any evidentiary basis but that were of the type recognized as often incurable.

SpaceX’s closing arguments were properly based on the evidence admitted without objection at trial. And even if any argument in SpaceX’s closing were improper, it falls far, far short of any arguments that the Texas Supreme Court has deemed incurable. As a result, Plaintiffs waived any error by not objecting and seeking contemporaneous curative relief from the trial court. No authority supports a new trial, and mandamus is warranted.

CONCLUSION & PRAYER FOR RELIEF

For these reasons, Relators respectfully request that this Court grant a writ of mandamus directing the trial court to vacate its order signed on December 13, 2023, which vacated the September 22, 2023 judgment and ordered a new trial.

/s/ William R. Peterson

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RULE 52.3(J) CERTIFICATION

I certify, in accordance with Texas Rule of Civil Procedure 52.3(j), that I have reviewed the foregoing Petition for Writ of Mandamus and concluded that every factual statement in the petition is supported by competent evidence included in the Appendix or record.

Date: January 11, 2024

/s/ William R. Peterson
William R. Peterson

CERTIFICATE OF COMPLIANCE

I certify that the foregoing computer-generated document complies with the type-volume limitation of Texas Rule of Appellate Procedure 9.4(i), because it has 9,395 words, excluding the parts of the brief exempted by Texas Rule of Appellate Procedure 9.4(i)(2), which is less than the 15,000-word limit applicable to this document.

I certify that the foregoing document complies with the typeface requirements in Texas Rule of Appellate Procedure 9.4(e), because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman font.

Date: January 11, 2024

/s/ William R. Peterson
William R. Peterson

CERTIFICATE OF SERVICE

As required by Texas Rules of Appellate Procedure 6.3 and 9.5(b), (d), and (e) I certify that a copy of the foregoing document was served on all parties and counsel by email.

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Respondent

Date: January 11, 2024

/s/ William R. Peterson
William R. Peterson

No. _____

In the Thirteenth Court of Appeals
Corpus Christi, Texas

**In re SPACE EXPLORATION TECHNOLOGIES CORP. and
LAUREN KRUEGER,**
Relators.

Original Proceeding from the 444th District Court
Cameron County, Texas, Trial Court Cause No. 2020-DCL-03939,
Honorable David A. Sanchez, Presiding

APPENDIX TO PETITION FOR WRIT OF MANDAMUS

Appendix No.	Document	Date
1	Order Granting Plaintiffs' Motion for New Trial	12/13/2023
2	Declaration of Michelle Pector	1/10/2024

APPENDIX NO. 1

CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA, JR.;	§	IN THE DISTRICT COURT
AND HUMBERTO GARCIA	§	
	§	
v.	§	CAMERON COUNTY, TEXAS
	§	
SPACE EXPLORATION	§	
TECHNOLOGIES CORP D/B/A SPACEX;	§	
LAUREN ELIZABETH KRUEGER;	§	
AND JAMES RAY KANZ	§	444th JUDICIAL DISTRICT

ORDER GRANTING PLAINTIFFS' MOTION FOR NEW TRIAL

On this day came to be heard Plaintiffs' Motion for New Trial. After reviewing the pleadings, and responses thereto, and the arguments of counsel the Court finds the Motion should be GRANTED.

The Court finds that the incurable arguments by defense counsel more likely than not caused the rendition of the subject verdict.

It is therefore, ORDERED, ADJUDGED, AND DECREED that Plaintiffs' Motion for New Trial is GRANTED.

It is therefore, ORDERED, ADJUDGED, AND DECREED that a new trial should be GRANTED and that the original judgment in this case is declared null and void.

Signed this 13 day of December, 2023.


HONORABLE JUDGE PRESIDING

FILED
2020-DCL-03939
December 13, 2023 10:27 AM
LAURA PEREZ-REYES
CAMERON COUNTY DISTRICT CLERK
BY: Ramirez, Brenda

CC: 12/13/2023

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APPENDIX NO. 2

No. _____

In the Thirteenth Court of Appeals
Corpus Christi, Texas

**In re SPACE EXPLORATION TECHNOLOGIES CORP. and
LAUREN KRUEGER,**
Relators.

Original Proceeding from the 444th District Court
Cameron County, Texas, Trial Court Cause No. 2020-DCL-03939,
Honorable David A. Sanchez, Presiding

DECLARATION OF MICHELLE PECTOR

1. My name is Michelle Pector. I am over the age of 18 and am in all ways capable of making this declaration on personal knowledge.
2. I am counsel for Space Exploration Technologies Corp., which I represented at the trial related to this mandamus proceeding.
3. The appendix being submitted herewith contains a true and correct copy of the order for new trial signed by Respondent on December 13, 2023.
4. The record being submitted herewith contains 2192 pages, which are true and correct copies of the pleadings, transcripts, and exhibits stated in the indices thereof.

My address is 1000 Louisiana, Suite 4000, Houston, Texas 77002. My date of birth is August 11, 1975. Signed this 10th day of January 2024.



Michelle Pector

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Norma Orozco on behalf of William Peterson

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Envelope ID: 83350505

Filing Code Description: Original Proceeding Petition

Filing Description: SpaceX's and Krueger's Petition for Writ of Mandamus and Appendix

Status as of 1/12/2024 8:06 AM CST

Associated Case Party: Space Exploration Technologies Corp.

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Michelle Pector		michelle.pector@morganlewis.com	1/11/2024 9:25:37 PM	SENT
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Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
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Norma Orozco on behalf of William Peterson

Bar No. 24065901

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Envelope ID: 83350505

Filing Code Description: Original Proceeding Petition

Filing Description: SpaceX's and Krueger's Petition for Writ of Mandamus and Appendix

Status as of 1/12/2024 8:06 AM CST

Associated Case Party: Hector Garcia Jr.

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NUMBER 13-24-00042-CV

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KRUEGER**

On Petition for Writ of Mandamus.

ORDER

**Before Justices Longoria, Silva, and Peña
Order Per Curiam**

By petition for writ of mandamus, relators Space Exploration Technologies Corp. and Lauren Krueger assert that the trial court abused its discretion by granting a new trial. We request the real parties in interest, Jose Ruiz, Humberto Garcia, and Hector Garcia Jr., or any others whose interest would be directly affected by the relief sought, to file a

MR2257

response to the petition for writ of mandamus on or before the expiration of ten days from the date of this order. See TEX. R. APP. P. 52.2, 52.4, 52.8.

PER CURIAM

Delivered and filed on the
12th day of January, 2024.

**IN THE COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS**

**JOSE RUIZ, HECTOR GARCIA,
JR. and HUMBERTO GARCIA**

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Real Parties in Interest,

V.

13-24-00042-CV

**SPACE EXPLORATION
TECHNOLOGIES CORP D/B/A
SPACEX; LAUREN ELIZABETH;
KRUEGER**

Relator

APPEARANCE OF COUNSEL

To the Honorable Court of Appeals:

NOW COMES, Sarah Durham, and makes this appearance as retained counsel of record for HECTOR GARCIA, JR., Real Party in Interest.

Respectfully submitted,

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By: /s/ Sarah Durham

Sarah Durham

State Bar No. 24116309

**COUNSEL FOR HECTOR GARCIA
JR.**

CERTIFICATE OF SERVICE

I certify that a true and correct copy of this Appearance of Counsel was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on the David Oliveira and Michelle Pector, attorneys for Relator Space Exploration Technologies Corp. d/b/a SpaceX at: doliveira@roflp.com and michelle.pector@morganlewis.com, respectively on January 16, 2024 electronically by electronic filing manager.

/s/ Sarah Durham

Sarah Durham

**IN THE COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS**

**In Re SPACE EXPLORATION
TECHNOLOGIES CORP.
AND LAUREN KREUGER,**

Relator

§
§
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§
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§

No. 13-24-00042-cv

**REAL PARTY IN INTEREST HECTOR GARCIA, JR'S FIRST MOTION
FOR EXTENSION OF TIME TO FILE RESPONSE TO PETITION FOR
WRIT OF MANDAMUS PETITION**

**ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING**

TO THE HONORABLE JUSTICES OF THIS COURT:

Real Party in Interest, Hector Garcia, Jr. (hereinafter "Real Party"), files this motion for an extension of time to file his Response to the Mandamus Petition filed by Relators in this matter. Real Party respectfully shows:

On January 12, 2024, this Court requested a response to the Mandamus Petition filed by Relators within 10 days of the Court's order, making the response

due January 22, 2024. Real Party in Interest requests an additional 30 days to file his Response, making the response due February 21, 2024.

This is Real Party's first motion for an extension of time to file his Response. Undersigned appellate counsel ("Durham") conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. Durham also conferred with Michael Garatoni, trial counsel for Hector Garcia, Jr., who is unopposed to the motion. Mr. Garatoni and Durham agreed that she would file the present extension motion on behalf of Hector Garcia, Jr..

Durham also conferred with Brandy Voss, counsel for Real Parties in Interest Jose Ruiz and Humberto Garcia, who advised they do not oppose this extension. Durham did not receive a response from Relator Kreuger's counsel, D. Alan Erwin. Accordingly, it is unknown whether Relator Lauren Kreuger is opposed to this extension.

Durham relies on the following facts as good cause for the requested extension:

Counsel has been engaged in the preparation for and attendance of the Evidentiary Hearing held in *Ex Parte John Eric Garcia*; Cause Nos. 2006-CR-2946 and 2006-CR-2946, on January 5, 2024 in Bexar County, Texas. Counsel also prepared for and attended the Evidentiary Hearing held in *Ex Parte Zackary Keith*

Huddleston; Cause No. B-31,380, on January 11, 2024 in Ector County, Texas. Additionally, Counsel prepared the Appellant's Brief filed in *Kenneth Frank McCann vs. The State of Texas*; Cause Nos. 11-23-00166-CR and 11-23-00167-CR, timely submitted on January 18, 2024. Finally, Counsel prepared the Proposed Memorandum and Order Designating Issues in *Ex Parte Raymond Scott Duke*; Cause No. 27241-A, timely submitted on January 19, 2024. Due to researching and writing the foregoing, along with other briefs in various stages of completion, Counsel is requesting a 30-day extension.

This request is not sought for purposes of delay but so that Real Party's position can be adequately represented.

For the above reasons, Real Party respectfully requests that the Court grant this motion to extend the deadline for his Response to February 21, 2024.

Respectfully Submitted,
BLIZZARD & ZIMMERMAN, P.L.L.C.
1174 North 3rd St.
Abilene, Texas 79601
Tel: (325) 676.1000
Fax: (325) 455.8842

By: /s/Sarah Durham
Sarah Durham
State Bar No. 24116309

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. I certify that I conferred with counsel for Real Party in Interest Hector Garcia, Michael Garatoni, who advised that Real Party in Interest Hector Garcia does not oppose this extension. I certify that I attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, through e-mail on January 22, 2024, but Mr. Erwin did not return the e-mail.

By: /s/ Sarah Durham

Sarah Durham

CERTIFICATE OF SERVICE

I hereby certify that I have reviewed the above Extension of Time To File Response to Petition for Writ of Mandamus Petition was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, and doliveira@roflp.com, respectively, in addition to D. Alan Erwin, attorney for

Lauren Elizabeth Krueger, at aerwin@roflp.com, and Michael Garatoni, attorney for Hector Garcia at e-service@daspitlaw.com .

By: */s/ Sarah Durham* _____
Sarah Durham

No. 13-24-00042-CV

*In the Thirteenth Court of Appeals
Corpus Christi-Edinburg, Texas*

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER**

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTIES IN INTEREST JOSE RUIZ AND HUMBERTO GARCIA'S
FIRST MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO
MANDAMUS PETITION**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest, Jose Ruiz and Humberto Garcia (hereinafter “Real Parties”), file this motion for an extension of time to file their Response to the Mandamus Petition filed by Relators in this matter. Real Parties respectfully show:

On January 12, 2024, this Court requested a response to the Mandamus Petition filed by Relators within 10 days of the Court’s order, making the response due January 22, 2024. Real Parties respectfully request an additional 30 days to file their Response, making the response due February 21, 2024.

This is Real Parties' first motion for an extension of time to file their Response.

The undersigned counsel conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. The undersigned also counsel conferred with Michael Garatoni, counsel for Real Party in Interest Hector Garcia, who advised that Real Party in Interest Hector Garcia does not oppose this extension. The undersigned counsel attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, through e-mail on January 18, 2024 and phone calls on January 19, 2024 and January 22, 2024. The undersigned did not receive a response. Accordingly, it is unknown whether Relator Lauren Kreuger is opposed to this extension request.

The undersigned counsel is primarily responsible for preparing Real Parties' Response. The undersigned counsel was only recently hired as appellate counsel and requires time to study the record and Relator's Mandamus Petition. Additionally, the demands of other cases have made this extension necessary, and good cause exists for the extension. Specifically, and among other things, the undersigned counsel has been and will be occupied with the following:

- a) Preparing for and attending a jury trial commencing on January 8, 2024 and ending January 12, 2024 in Cause No. 153-297168-18, *Pachecano*

et al. v. Jackson Construction, Ltd., in the 153rd District Court of Tarrant County, Texas;

- b) Preparing a response to a Rule 91a motion to dismiss, plea to the jurisdiction, and plea in abatement set for hearing January 31, 2024 in Cause No. 2023CCV-61340-2, *Itabiricu Nacional de Pesquisa Mineral LTDA v. Vale SA et al.*, in the County Court at Law No. 2 of Nueces County, Texas;
- c) Preparing briefing for and attending a pretrial hearing on January 17, 2024 in Cause No. C-3664-19-G, *Martinez et. al. v. PGE Transport, Inc. et al.*, in the 370th District Court of Hidalgo County, Texas; and
- d) Numerous other matters.

This request is not sought for purposes of delay but so that Real Parties' positions can adequately be represented.

For all the foregoing reasons, Real Parties respectfully request that the Court grant this request to extend the deadline for Real Parties' Response to February 21, 2024 and any further relief to which they may be justly entitled.

Respectfully submitted,

/s/ Brandy Wingate Voss

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(956) 688-9033 main
(956) 331-2230 fax

brandy@brandyvosslaw.com

***Counsel for Real Parties in Interest Jose
Ruiz and Humberto Garcia***

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. I certify that I conferred with counsel for Real Party in Interest Hector Garcia, Michael Garatoni, who advised that Real Party in Interest Hector Garcia does not oppose this extension. I certify that I attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, through e-mail on January 18, 2024 and telephone on January 19, 2024 and January 22, 2024, but Mr. Erwin did not return the e-mail or the calls.

/s/ Brandy Wingate Voss

Brandy Wingate Voss

CERTIFICATE OF SERVICE

On January 22, 2024, in compliance with Texas Rule of Appellate Procedure 9.5, I served a copy of this notice upon all other parties proceeding by e-mail and/or facsimile as follows:

William R. Peterson
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Michelle D. Pector
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*Counsel for Relator Space
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*Counsel for Relator Lauren
Elizabeth Krueger*

Michael H. Garatoni
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Counsel for Hector Garcia, Jr.

/s/ Brandy Wingate Voss
Brandy Wingate Voss

**IN THE COURT OF APPEALS
THIRTEENTH DISTRICT OF TEXAS**

**In Re SPACE EXPLORATION
TECHNOLOGIES CORP.
AND LAUREN KREUGER,**

Relator

§
§
§
§
§
§
§

No. 13-24-00042-cv

**REAL PARTY IN INTEREST HECTOR GARCIA, JR'S AMENDED FIRST
MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO
PETITION FOR WRIT OF MANDAMUS PETITION**

**ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING**

TO THE HONORABLE JUSTICES OF THIS COURT:

Real Party in Interest, Hector Garcia, Jr. (hereinafter "Real Party"), files this motion for an extension of time to file his Response to the Mandamus Petition filed by Relators in this matter. Real Party respectfully shows:

On January 12, 2024, this Court requested a response to the Mandamus Petition filed by Relators within 10 days of the Court's order, making the response

due January 22, 2024. Real Party in Interest requests an additional 30 days to file his Response, making the response due February 21, 2024.

This is Real Party's first motion for an extension of time to file his Response. Undersigned appellate counsel ("Durham") initially noted in her January 22 Motion to Extend Time that she conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. That conferral did not take place until January 23, 2024, as noted in the revised Certificate of Conference below. Durham also conferred with Michael Garatoni, trial counsel for Hector Garcia, Jr., who is unopposed to the motion. Mr. Garatoni and Durham agreed that she would file the present extension motion on behalf of Hector Garcia, Jr..

Durham also conferred with Brandy Voss, counsel for Real Parties in Interest Jose Ruiz and Humberto Garcia, who advised they do not oppose this extension. Durham did not receive a response from Relator Kreuger's counsel, D. Alan Erwin. Accordingly, it is unknown whether Relator Lauren Kreuger is opposed to this extension.

Durham relies on the following facts as good cause for the requested extension:

Counsel has been engaged in the preparation for and attendance of the Evidentiary Hearing held in *Ex Parte John Eric Garcia*; Cause Nos. 2006-CR-2946

and 2006-CR-2946, on January 5, 2024 in Bexar County, Texas. Counsel also prepared for and attended the Evidentiary Hearing held in *Ex Parte Zackary Keith Huddleston*; Cause No. B-31,380, on January 11, 2024 in Ector County, Texas. Additionally, Counsel prepared the Appellant's Brief filed in *Kenneth Frank McCann vs. The State of Texas*; Cause Nos. 11-23-00166-CR and 11-23-00167-CR, timely submitted on January 18, 2024. Finally, Counsel prepared the Proposed Memorandum and Order Designating Issues in *Ex Parte Raymond Scott Duke*; Cause No. 27241-A, timely submitted on January 19, 2024. Due to researching and writing the foregoing, along with other briefs in various stages of completion, Counsel is requesting a 30-day extension.

This request is not sought for purposes of delay but so that Real Party's position can be adequately represented.

For the above reasons, Real Party respectfully requests that the Court grant this motion to extend the deadline for his Response to February 21, 2024.

Respectfully Submitted,
BLIZZARD & ZIMMERMAN, P.L.L.C.
1174 North 3rd St.
Abilene, Texas 79601
Tel: (325) 676.1000
Fax: (325) 455.8842

By: /s/Sarah Durham
Sarah Durham
State Bar No. 24116309

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson on January 23, 2024, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. does not oppose this extension. I certify that I conferred with counsel for Real Party in Interest Hector Garcia, Jr., Michael Garatoni, who advised that Real Party in Interest Hector Garcia does not oppose this extension. I certify that I attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, through e-mail on January 22, 2024, but Mr. Erwin did not return the e-mail.

By: /s/ Sarah Durham

Sarah Durham

CERTIFICATE OF SERVICE

I hereby certify that I have reviewed the above Amended Extension of Time To File Response to Petition for Writ of Mandamus Petition was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, and doliveira@roflp.com, respectively, in

addition to D. Alan Erwin, attorney for Lauren Elizabeth Krueger, at aerwin@roflp.com, and Michael Garatoni, attorney for Hector Garcia Jr. at e-service@daspitlaw.com .

By: /s/ Sarah Durham

Sarah Durham

No. 13-24-00042-CV

*In the Thirteenth Court of Appeals
Corpus Christi-Edinburg, Texas*

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER**

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTIES IN INTEREST JOSE RUIZ'S AND HUMBERTO
GARCIA'S MOTION TO ABATE**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest Jose Ruiz and Humberto Garcia file this motion to abate and respectfully show in support:

On January 11, 2024, Relators filed their petition for writ of mandamus challenging the issuance of a new trial order entered by the Honorable David A. Sanchez on December 12, 2023. On January 12, 2024, this Court requested a response be filed by January 22, 2024.

The first ground for Relators' petition is that the new trial order signed by the trial court is facially invalid because it does not sufficiently explain the reasons for granting the new trial. While the trial court's order articulates a legally valid reason

for granting a new trial, i.e., incurable jury argument, the order fails to refer to record support for its conclusion or to specify the arguments it found were incurable.

Texas Rule of Appellate Procedure 44.4 authorizes this Court to abate this proceeding to allow the trial court to issue a new order that specifically states the reasons for granting the new trial. It provides:

- (a) Generally. A court of appeals must not affirm or reverse a judgment or dismiss an appeal if:
 - (1) the trial court's erroneous action or failure or refusal to act prevents the proper presentation of a case to the court of appeals; and
 - (2) the trial court can correct its action or failure to act.
- (b) Court of Appeals Direction if Error Remediable. If the circumstances described in (a) exist, the court of appeals must direct the trial court to correct the error. The court of appeals will then proceed as if the erroneous action or failure to act had not occurred.

TEX. R. APP. P. 44.4; *see Bella Palma, LLC v. Young*, 601 S.W.3d 799, 801 (Tex. 2020) (allowing abatement to clarify intent of trial court's order); *Green v. State*, 906 S.W.2d 937, 940 (Tex. Crim. App. 1995) (abating appeal and directing trial court to issue statutorily required findings of fact and conclusions of law); *Gonzalez v. Gonzalez*, No. 13-20-00532-CV, 2022 WL 2163881, at *3 (Tex. App.—Corpus Christi—Edinburg June 16, 2022, pet. denied) (mem. op.) (noting court abated appeal to allow trial judge to clarify final judgment); *Stevens v. State*, No. 08-14-00042-CR, 2016 WL 3563977, at *1 (Tex. App.—El Paso June 29, 2016, pet. ref'd) (mem. op.;

not designated for publication) (noting court abated appeal to allow “the trial court to consider whether it should correct” its new trial orders); *In re A.P.*, No. 07-10-00481-CV, 2011 WL 780525, at *3 (Tex. App.—Amarillo Mar. 7, 2011, Order) (abating to allow trial court to determine whether orders accurately reflected court’s decision and whether orders could be corrected).

Because this Court is tasked with a merits-based review of the trial court’s order, good cause exists to abate this original proceeding to allow the trial court to amend its order to provide a sufficient explanation for its grant of a new trial. *See In re Rudolph Automotive, LLC*, 674 S.W.3d 289, 301 (Tex. 2023) (orig. proceeding) (order that provides no basis for parties and appellate court to confirm court’s determination was the result of careful assessment of actual evidence in case is conclusory).

Sarah Durham, counsel for Real Party in Interest Hector Garcia, Jr., has indicated she is not opposed to the relief requested in this motion. The undersigned counsel has also conferred with counsel for Relators, who stated they are opposed to an abatement. Counsel for Relators suggested that instead, the undersigned counsel should simply ask the Court to issue the extraordinary writ of mandamus against the trial court, which pursuant to the Rules of Appellate Procedure, would require this Court to issue a full written opinion. TEX. R. APP. P. 52.8(d). And the result would be to order the trial court to issue a revised order stating the reasons for granting a

new trial, followed by another mandamus proceeding challenging the reasons stated in the revised order. *In re Columbia Med. Ctr. of Las Colinas, Subsidiary, L.P.*, 290 S.W.3d 204, 215 (Tex. 2009) (orig. proceeding) (directing trial court to “specify the reasons it refused to enter judgment on the jury verdict and ordered a new trial as to Columbia”); *see, e.g., In re Kirby Offshore Marine Operating, LLC*, No. 13-22-00377-CV, 2023 WL 3568902, at *3 (Tex. App.—Corpus Christi—Edinburg May 19, 2023, orig. proceeding) (mem. op.) (second mandamus proceeding after court amended new trial order at Real Party In Interest’s request). In the interest of efficiency and judicial economy, this Court should instead abate this proceeding for 30 days to allow the trial court time to craft a revised order, and then proceed as directed in Texas Rule of Appellate Procedure 44.4. *See Meachum v. State*, 273 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding abatement was a more efficient remedy).

For the foregoing reasons, Real Parties in Interest respectfully request that the Court abate this proceeding and instruct the trial court to amend the new-trial order to state sufficient explanation for its reason granting a new trial.

Respectfully submitted,

/s/ Brandy Wingate Voss

Brandy Wingate Voss

State Bar No. 24037046

LAW OFFICES OF BRANDY WINGATE VOSS

208 W. Cano St.

Edinburg, Texas 78539

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San Antonio, Texas 78201
Telephone: (210) 941-1301
E-mail: efilings@cowenlaw.com
Counsel for Real Party in Interest

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson and D. Alan Erwin, Counsel for Relators, who advised that Relators oppose the relief requested in this Motion. Counsel for Real Party in Interest Hector Garcia, Jr. is not opposed to the relief requested in this Motion.

/s/ Brandy Wingate Voss
Brandy Wingate Voss

CERTIFICATE OF SERVICE

On February 14, 2024, in compliance with Texas Rule of Appellate Procedure

9.5, I served a copy of this Motion by e-service, e-mail, facsimile, or mail to:

William R. Peterson
william.peterson@morganlewis.com
Michelle D. Pector
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*Counsel for Relator Space
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Elizabeth Krueger*

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The Daspit Law Firm
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San Antonio, Texas 78216

Counsel for Hector Garcia, Jr.

/s/ Brandy Wingate Voss
Brandy Wingate Voss

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
brandy@brandyvosslaw.com
Envelope ID: 84524796
Filing Code Description: Motion
Filing Description: Motion
Status as of 2/14/2024 4:54 PM CST

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	2/14/2024 4:50:43 PM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	2/14/2024 4:50:43 PM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	2/14/2024 4:50:43 PM	SENT
Shana Elick		shana@brandyvosslaw.com	2/14/2024 4:50:43 PM	SENT
Julie Balovich		julie@brandyvosslaw.com	2/14/2024 4:50:43 PM	SENT

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@roflp.com	2/14/2024 4:50:43 PM	SENT
William R. Peterson		william.peterson@morganlewis.com	2/14/2024 4:50:43 PM	SENT
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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	2/14/2024 4:50:43 PM	SENT

Associated Case Party: LaurenElizabethKrueger

Name	BarNumber	Email	TimestampSubmitted	Status
Dan Alan Erwin	6653020	aerwin@roflp.com	2/14/2024 4:50:43 PM	SENT

Associated Case Party: Hector Garcia Jr.

MR2282

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Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
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Envelope ID: 84524796
Filing Code Description: Motion
Filing Description: Motion
Status as of 2/14/2024 4:54 PM CST

Associated Case Party: Hector Garcia Jr.

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Associated Case Party: Humberto Garcia

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Morgan Walker		Morgan@blizzardlawfirm.com	2/14/2024 4:50:43 PM	SENT

**IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI-EDINBURG, TEXAS**

IN RE SPACE EXPLORATION TECHNOLOGIES CORP. AND LAUREN KRUEGER

ORIGINAL PROCEEDING FROM CAUSE No. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTY IN INTEREST HECTOR GARCIA, JR'S
RESPONSE TO REAL PARTIES IN INTEREST JOSE RUIZ'S AND
HUMBERTO GARCIA'S MOTION TO ABATE**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Now comes HECTOR GARCIA, JR. (“Garcia, Jr.”), Real Party in Interest in the above cause, and submits this response to Real Parties in Interest, Jose Ruiz’s (“Ruiz”) and Humberto Garcia’s (“Garcia”) Motion to Abate.

On February 14, 2024, Ruiz and Garcia filed a Motion to Abate Relators’ pending Petition for Writ of Mandamus, filed in this Court on January 11, 2024. On February 15, 2024, this Court ordered Relators and Garcia, Jr. to file a response to that motion.

Garcia, Jr. agrees with and joins Ruiz’s and Garcia’s Motion to Abate because the reasons cited in the motion are legally and practically sound. *See* Tex. R. App.

P. 9.7. Without conceding that the trial court's new trial order is facially invalid here, if this Court determines it is facially invalid, a swifter remedy than issuing a writ of mandamus requiring a full written opinion is available. As stated in the Motion to Abate, Texas Rule of Appellate Procedure 44.4 authorizes this Court to abate the mandamus proceeding to allow the trial court to issue a new order. Ruiz and Garcia also cite extensive case law that supports the abatement. *See Motion to Abate*, 2-3.

For the reasons above, echoing those in Ruiz and Garcia's motion, Garcia, Jr. agrees with and joins in that motion and likewise requests that this Court abate the mandamus proceeding to allow the trial court to amend its order and provide a sufficient explanation for its grant of a new trial. *See In re Rudolph Automotive, LLC*, 674 S.W.3d 289, 301 (Tex. 2023).

Respectfully Submitted,

BLIZZARD & ZIMMERMAN, P.L.L.C.
1174 North 3rd St.
Abilene, Texas 79601
Tel: (325) 676.1000
Fax: (325) 455.8842

By: /s/Sarah Durham

Sarah Durham
State Bar No. 24116309

CERTIFICATE OF SERVICE

On February 16, 2024, in compliance with Texas Rule of Appellate Procedure 9.5, I served a copy of this Response by e-service to: William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, doliveira@roflp.com, respectively, in addition to D. Alan Erwin at aerwin@roflp.com, attorney for Lauren Elizabeth Krueger; trial counsel for Real Party in Interest, Hector Garcia, Jr., Michael H. Garatoni at e-service@dasplitlaw.com; and attorney for Real Parties in Interest Jose Ruiz and Humberto Garcia, Brandy Wingate Voss at brandy@brandyvosslaw.com.

By: */s/ Sarah Durham*

Sarah Durham

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Jacob Blizzard on behalf of Sarah Durham
Bar No. 24116309
Jacob.Blizzard@blizzardlawfirm.com
Envelope ID: 84589047
Filing Code Description: Response
Filing Description: Response to Motion to Abate
Status as of 2/16/2024 10:03 AM CST

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@rofllp.com	2/16/2024 10:01:49 AM	SENT
William R. Peterson		william.peterson@morganlewis.com	2/16/2024 10:01:49 AM	SENT
Michelle Pector		michelle.pector@morganlewis.com	2/16/2024 10:01:49 AM	SENT
Jared Wilkerson		jared.wilkerson@morganlewis.com	2/16/2024 10:01:49 AM	SENT

Associated Case Party: LaurenElizabethKrueger

Name	BarNumber	Email	TimestampSubmitted	Status
Dan Alan Erwin	6653020	aerwin@rofllp.com	2/16/2024 10:01:49 AM	SENT

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	2/16/2024 10:01:49 AM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	2/16/2024 10:01:49 AM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	2/16/2024 10:01:49 AM	SENT
Shana Elick		shana@brandyvosslaw.com	2/16/2024 10:01:49 AM	SENT
Julie Balovich		julie@brandyvosslaw.com	2/16/2024 10:01:49 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	2/16/2024 10:01:49 AM	SENT

Associated Case Party: Hector Garcia Jr.

MR2287

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Jacob Blizzard on behalf of Sarah Durham
Bar No. 24116309
Jacob.Blizzard@blizzardlawfirm.com
Envelope ID: 84589047
Filing Code Description: Response
Filing Description: Response to Motion to Abate
Status as of 2/16/2024 10:03 AM CST

Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Garatoni		e-service@daspitlaw.com	2/16/2024 10:01:49 AM	SENT

Associated Case Party: Humberto Garcia

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	2/16/2024 10:01:49 AM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	2/16/2024 10:01:49 AM	SENT
Sarah Durham		sarah@blizzardlawfirm.com	2/16/2024 10:01:49 AM	SENT
Morgan Walker		Morgan@blizzardlawfirm.com	2/16/2024 10:01:49 AM	SENT

**IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRISTI – EDINBURG, TEXAS**

**In Re SPACE EXPLORATION
TECHNOLOGIES CORP.
AND LAUREN KRUEGER,**

Relators

§
§
§
§
§
§
§

No. 13-24-00042-CV

**REAL PARTY IN INTEREST, HECTOR GARCIA, JR’S SECOND MOTION TO EXTEND
TIME TO FILE RESPONSE TO MANDAMUS PETITION**

ORIGINAL PROCEEDING FROM CAUSE No. 2020-DCL-03930
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

TO THE HONORABLE JUSTICES OF THIS COURT:

Real Party in Interest, Hector Garcia, Jr. (hereinafter “Real Party”), files this motion for an extension of time to file his Response to the Mandamus Petition filed by Relators in this matter. Real Party respectfully shows:

On January 12, 2024, this Court requested a response to the Mandamus Petition filed by Relators within 10 days of the Court’s order, making the response due January 22, 2024. Real Party in Interest filed a 30-day extension on January 23, 2024 which was granted, making this response due February 21, 2024. Real Party in

Interest requests an additional 14 days to file his Response, making the response due March 6, 2024.

This is Real Party's second motion for an extension of time to file his Response. Undersigned appellate counsel ("Durham") conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. is opposed to this extension. Durham also reached out to Michael Garatoni, trial counsel for Hector Garcia, Jr. but did not receive a response.

Durham also conferred with Brandy Voss, counsel for Real Parties in Interest Jose Ruiz and Humberto Garcia, who advised they are unopposed. Durham did not receive a response from Relator Krueger's counsel, D. Alan Erwin.

First and foremost, Real Party Hector Garcia, Jr. moves for a second extension to permit this Court to dispose of the February 14, 2024 Motion to Abate filed by Real Parties in Interest, Jose Ruiz and Humberto Garcia. On February 15, 2024, this Court ordered a response to the Motion to Abate and set the response deadline as February 26, 2024, which is after the deadline to file the response to the petition for writ of mandamus, resulting in a procedural conundrum. Real Party, Hector Garcia, Jr. filed his response—agreeing with and joining that Motion to Abate—on February 16, 2024. However, the remaining parties have not yet filed responses but have until February 26th to do so.

For those reasons, Real Party Hector Garcia, Jr. moves for this second extension to allow time for the parties to file ordered responses by February 26, 2024, and ultimately, to conserve resources of both the parties and the Court.

Also, Durham has been engaged in the following cases in their various stages, resulting in good cause for this second extension request:

1. the preparation of objections and supplemental objections following the Evidentiary Hearing held in *Ex Parte Zackary Keith Huddleston*; Cause No. B-31,380 on January 11, 2024 in Ector County, Texas;
2. the preparation of Appellant's Brief in *Kenneth Frank McCann vs. The State of Texas*; Cause Nos. 11-23-00166-CR and 11-23-00167-CR, timely submitted on January 18, 2024;
3. the preparation of the Supplemental 11.07 Writ Application and Brief in *Ex Parte Jeffrey Lee Patterson*; Cause No. W-1945392-A, submitted February 12, 2024.

Due to researching and writing the foregoing, along with other briefs in various stages of completion, Counsel is requesting a 14-day extension from the time that this Court either (1) grants the Motion to Abate and signs an amended new trial order; or (2) denies the Motion to Abate.

This request is not sought for purposes of delay but so that Real Party's position can be adequately represented.

For the above reasons, Real Party respectfully requests that the Court grant this motion as outlined above.

Respectfully Submitted,
BLIZZARD & ZIMMERMAN, P.L.L.C.
1174 North 3rd St.
Abilene, Texas 79601
Tel: (325) 676.1000
Fax: (325) 455.8842

By: /s/Sarah Durham
Sarah Durham
State Bar No. 24116309

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. is opposed to this extension. I certify that I conferred with counsel for Real Parties in Interest Jose Ruiz and Humberto Garcia, Brandy Voss, who advised that Real Parties in Interest Jose Ruiz and Humberto Garcia do not oppose this extension. I certify that I attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, and Michael Garatoni, trial counsel for Hector Garcia, Jr., through e-mail on February 20, 2024, but neither Mr. Erwin nor Mr. Garatoni responded to the e-mail.

By: /s/ Sarah Durham
Sarah Durham

CERTIFICATE OF SERVICE

I hereby certify that I have reviewed the above Second Extension of Time To File Response to Petition for Writ of Mandamus Petition was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, and doliveira@roflp.com, respectively, in addition to D. Alan Erwin, attorney for Lauren Elizabeth Krueger, at aerwin@roflp.com, Michael Garatoni, attorney for Hector Garcia at e-service@daspitlaw.com, and Brady Voss, attorney for Jose Ruiz and Humberto Garcia, at brandy@brandyvosslaw.com.

By: /s/ Sarah Durham
Sarah Durham

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Jacob Blizzard on behalf of Sarah Durham
Bar No. 24116309
Jacob.Blizzard@blizzardlawfirm.com
Envelope ID: 84747028
Filing Code Description: Motion
Filing Description: Motion to Extend Time to File Response to Mandamus Petition
Status as of 2/21/2024 2:28 PM CST

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@roflp.com	2/21/2024 2:20:04 PM	SENT
William R. Peterson		william.peterson@morganlewis.com	2/21/2024 2:20:04 PM	SENT
Michelle Pector		michelle.pector@morganlewis.com	2/21/2024 2:20:04 PM	SENT
Jared Wilkerson		jared.wilkerson@morganlewis.com	2/21/2024 2:20:04 PM	SENT

Associated Case Party: LaurenElizabethKrueger

Name	BarNumber	Email	TimestampSubmitted	Status
Dan Alan Erwin	6653020	aerwin@roflp.com	2/21/2024 2:20:04 PM	SENT

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	2/21/2024 2:20:04 PM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	2/21/2024 2:20:04 PM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	2/21/2024 2:20:04 PM	SENT
Shana Elick		shana@brandyvosslaw.com	2/21/2024 2:20:04 PM	SENT
Julie Balovich		julie@brandyvosslaw.com	2/21/2024 2:20:04 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	2/21/2024 2:20:04 PM	SENT

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Jacob Blizzard on behalf of Sarah Durham
Bar No. 24116309
Jacob.Blizzard@blizzardlawfirm.com
Envelope ID: 84747028
Filing Code Description: Motion
Filing Description: Motion to Extend Time to File Response to Mandamus Petition
Status as of 2/21/2024 2:28 PM CST

Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Garatoni		e-service@daspitlaw.com	2/21/2024 2:20:04 PM	SENT

Associated Case Party: Humberto Garcia

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	2/21/2024 2:20:04 PM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	2/21/2024 2:20:04 PM	SENT
Sarah Durham		sarah@blizzardlawfirm.com	2/21/2024 2:20:04 PM	SENT
Morgan Walker		Morgan@blizzardlawfirm.com	2/21/2024 2:20:04 PM	SENT

No. 13-24-00042-CV

*In the Thirteenth Court of Appeals
Corpus Christi-Edinburg, Texas*

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER**

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTIES IN INTEREST JOSE RUIZ AND HUMBERTO GARCIA'S
SECOND MOTION FOR EXTENSION OF TIME TO FILE RESPONSE TO
MANDAMUS PETITION**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest, Jose Ruiz and Humberto Garcia (hereinafter “Real Parties”), file this second motion for an extension of time to file their Response to the Mandamus Petition filed by Relators in this matter. Real Parties respectfully show:

On January 12, 2024, this Court requested a response to the Mandamus Petition filed by Relators within 10 days of the Court’s order, making the response due January 22, 2024. Real Parties requested and received an additional 30 days to file their Response, making the response due February 21, 2024.

This is Real Parties' second motion for an extension of time to file their Response.

On February 14, 2024, Real Parties filed a Motion to Abate this proceeding, which was opposed. Real Parties asserted that the Court should abate the proceeding to allow the trial court to issue a revised motion for new trial, which will moot the first issue raised in Relators' Petition and cure any failure by the trial court to adequately set out its reasons for granting a new trial—the subject of this proceeding. The next day, this Court requested a response to the motion, but set the deadline to respond as February 26, 2024—after the deadline to file the response to the petition (in accordance with Texas Rule of Appellate Procedure 10.3(a), which requires a 10-day response period for opposed motions).

Real Parties request that the Court extend the time to file Real Parties' response to Relator's petition to provide time for the Court to rule on the motion to abate and to conserve the resources of both the parties and the Court. Real Parties request the Court extend the deadline as follows: (1) if the Court grants the motion to abate, two weeks after the trial court signs an amended new trial order; or (2) two weeks after the Court denies the motion to abate. This request will allow time for Real Parties to determine which issues require a response, and to address a newly issued new trial order, if applicable.

The undersigned counsel conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. opposes this extension. The undersigned counsel conferred with Sarah Durham, counsel for Real Party in Interest Hector Garcia, Jr. who advised that Real Party in Interest Hector Garcia, Jr. does not oppose this extension (Ms. Durham has indicated that Hector Garcia, Jr. also intends to seek an extension). The undersigned counsel also attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, by two e-mails and by phone. The undersigned did not receive a response. Accordingly, it is unknown whether Relator Lauren Kreuger is opposed to this extension request.

Additionally, the undersigned counsel is primarily responsible for preparing Real Parties' Response. The demands of other cases have made this extension necessary, and good cause exists for the extension. Specifically, and among other things, the undersigned counsel has been and will be occupied with the following:

- a) Preparing the motion to abate in this Cause;
- b) Preparing a response to an amended Rule 91a motion to dismiss, plea to the jurisdiction, and plea in abatement, which are due February 21, 2024 in Cause No. 2023CCV-61340-2, *Itabiricu Nacional de Pesquisa Mineral LTDA v. Vale SA et al.*, in the County Court at Law No. 2 of Nueces County, Texas;

- c) Preparing Appellees' brief due and filed on February 20, 2024 in Cause No. 07-23-00424-CV, *Lubbock County Water Control and Improvement District No. 1 v. Rodriguez et al.*, in the Seventh Court of Appeals;
- d) Negotiating and documenting the settlement of Cause No. 13-23-00318-CV, *Litif v. Jimenez*, dismissed pursuant to settlement by this Court on February 15, 2024;
- e) Attending to numerous responsibilities as the Large Section Representative on the Board of the State Bar of Texas and as Treasurer of the State Bar Appellate Section; and
- f) Numerous other matters, including researching and preparing discovery, jury charges, and dispositive motions in cases set for trial in the coming months.

This request is not sought for purposes of delay but so that Real Parties' positions can adequately be represented.

For all the foregoing reasons, Real Parties respectfully request that the Court grant this request to extend the deadline as set forth above, and any further relief to which Real Parties are entitled.

Respectfully submitted,

/s/ Brandy Wingate Voss

Brandy Wingate Voss
State Bar No. 24037046
208 W. Cano St.
Edinburg, Texas 78539
(956) 688-9033 main
(956) 331-2230 fax

brandy@brandyvosslaw.com

*Counsel for Real Parties in Interest Jose
Ruiz and Humberto Garcia*

CERTIFICATE OF CONFERENCE

I certify that I conferred with William Peterson, counsel for Relator Space Exploration Technologies Corp., who advised that Relator Space Exploration Technologies Corp. is opposed to this extension. I certify that I conferred with counsel for Real Party in Interest Hector Garcia, Sarah Durham, who advised that Real Party in Interest Hector Garcia does not oppose this extension. I certify that I attempted to confer with D. Alan Erwin, counsel for Relator Lauren Kreuger, through e-mail and telephone, but he did not return the e-mails or the call.

/s/ Brandy Wingate Voss

Brandy Wingate Voss

CERTIFICATE OF SERVICE

On February 21, 2024, in compliance with Texas Rule of Appellate Procedure

9.5, I served a copy of this Motion by e-service, e-mail, facsimile, or mail to:

William R. Peterson
william.peterson@morganlewis.com
Michelle D. Pector
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*Counsel for Relator Space
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*Counsel for Relator Lauren
Elizabeth Krueger*

Sarah Durham
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Blizzard & Zimmerman Attorneys
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Michael H. Garatoni
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The Daspit Law Firm
9601 McAllister Freeway, Suite 916
San Antonio, Texas 78216

Counsel for Hector Garcia, Jr.

/s/ Brandy Wingate Voss
Brandy Wingate Voss

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Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
brandy@brandyvosslaw.com
Envelope ID: 84718332
Filing Code Description: Motion
Filing Description: Motion
Status as of 2/21/2024 7:55 AM CST

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	2/21/2024 1:38:55 AM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	2/21/2024 1:38:55 AM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	2/21/2024 1:38:55 AM	SENT
Shana Elick		shana@brandyvosslaw.com	2/21/2024 1:38:55 AM	SENT
Julie Balovich		julie@brandyvosslaw.com	2/21/2024 1:38:55 AM	SENT

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@roflp.com	2/21/2024 1:38:55 AM	SENT
William R. Peterson		william.peterson@morganlewis.com	2/21/2024 1:38:55 AM	SENT
Michelle Pector		michelle.pector@morganlewis.com	2/21/2024 1:38:55 AM	SENT
Jared Wilkerson		jared.wilkerson@morganlewis.com	2/21/2024 1:38:55 AM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	2/21/2024 1:38:55 AM	SENT

Associated Case Party: LaurenElizabethKrueger

Name	BarNumber	Email	TimestampSubmitted	Status
Dan Alan Erwin	6653020	aerwin@roflp.com	2/21/2024 1:38:55 AM	SENT

Associated Case Party: Hector Garcia Jr.

MR2302

Automated Certificate of eService

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Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
brandy@brandyvosslaw.com
Envelope ID: 84718332
Filing Code Description: Motion
Filing Description: Motion
Status as of 2/21/2024 7:55 AM CST

Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Garatoni		e-service@daspitlaw.com	2/21/2024 1:38:55 AM	SENT

Associated Case Party: Humberto Garcia

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	2/21/2024 1:38:55 AM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	2/21/2024 1:38:55 AM	SENT
Sarah Durham		sarah@blizzardlawfirm.com	2/21/2024 1:38:55 AM	SENT
Morgan Walker		Morgan@blizzardlawfirm.com	2/21/2024 1:38:55 AM	SENT

No. 13-24-00042-CV

In the Thirteenth Court of Appeals
Corpus Christi, Texas

**In re SPACE EXPLORATION TECHNOLOGIES CORP. and
LAUREN KRUEGER,**
Relators.

Original Proceeding from the 444th District Court
Cameron County, Texas, Trial Court Cause No. 2020-DCL-03939,
Honorable David A. Sanchez, Presiding

RELATORS' RESPONSE TO SECOND MOTIONS FOR EXTENSION

To the Honorable Justices of this Court:

This Court requested that Real Parties in Interest respond to the Petition for Writ of Mandamus in ten days. Relators did not oppose a thirty-day extension. Today, the day that their response is due, Real Parties in Interest Jose Ruiz and Humberto Garcia (collectively, "Plaintiffs") and Hector Garcia both filed motions seeking second extensions. In conferring on this motion, Plaintiffs explained that they seek an extension so that this Court can rule on their pending Motion to Abate.

Relators oppose the extension. Plaintiffs' response to the mandamus petition will confirm that their Motion to Abate should be denied. The resources of the parties and of this Court will be conserved by requiring Real Parties to take a position on Relators' entitlement to the writ of mandamus and allowing Relators to file a combined reply in support of the petition and response to Plaintiffs' motion.

In their Motion to Abate, Plaintiffs concede that the order granting a new trial is invalid. They agree that the order “fails to refer to record support for its conclusion” and fails “to specify the arguments it found were incurable.” Mot. Abate at 1.

Because of this concession, Plaintiffs have no good-faith basis to oppose the Petition for Writ of Mandamus. Where a new trial order is invalid, this Court and the Texas Supreme Court uniformly (conditionally) grant the writ and direct that the new trial order be vacated. *See, e.g., In re Rudolph Auto.*, 674 S.W.3d 289, 313–14 (Tex. 2023); *In re State Farm Mut. Auto. Ins. Co.*, No. 13-22-00589-CV, 2023 WL 418699, at *5 (Tex. App.—Corpus Christi–Edinburg Jan. 26, 2023, orig. proceeding) (mem. op.); *In re Torres*, No. 13-20-00019-CV, 2020 WL 1615667, at *5 (Tex. App.—Corpus Christi–Edinburg Apr. 2, 2020, orig. proceeding) (mem. op.); *In re Ramos*, No. 13-19-00039-CV, 2019 WL 1930111, at *3 (Tex. App.—Corpus Christi–Edinburg May 1, 2019, orig. proceeding) (mem. op.).¹

This authority and counsel’s duty of candor to this tribunal means that Plaintiffs’ only possible response to Relators’ petition is to admit that the writ should issue and the new trial order be vacated.

¹ *See also, e.g., In re Spotted Lakes, LLC*, No. 04-23-00815-CV, 2024 WL 463348, at *4 (Tex. App.—San Antonio Feb. 7, 2024, orig. proceeding); *In re Simms*, No. 14-19-00541-CV, 2019 WL 3822171, at *2 (Tex. App.—Houston [14th Dist.] Aug. 15, 2019, orig. proceeding) (per curiam).

Plaintiffs' Motion to Abate and Second Motion for Extension are simply an attempt to avoid acknowledging Relators' entitlement to the writ, which Plaintiffs have no good-faith basis to deny. Plaintiffs' response to Relators' petition will confirm that Relators are entitled to relief in their mandamus petition and thus that granting the writ (rather than abatement) is the proper remedy.

Real Parties' responses should have already been prepared—the deadline is today—and in any event, a response acknowledging Relators' entitlement to relief should require virtually no time to prepare.

CONCLUSION AND PRAYER

In light of the concessions in their Motion to Abate, Plaintiffs have no good-faith basis to oppose Relators' Petition for Writ of Mandamus. Plaintiffs should not be permitted to avoid taking a position on Relators' entitlement to the writ.

Because Plaintiffs' response to the petition will demonstrate that their Motion to Abate should be denied, the time and resources of this Court and the parties are best served by Real Parties responding to the petition before Relators respond to Plaintiffs' motion. For these reasons, this Court should deny Real Parties' Second Motions for Extension.

/s/ William R. Peterson

MORGAN, LEWIS & BOCKIUS LLP

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Houston, Texas 77002

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/s/ D. Alan Erwin

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***Counsel for Relator Lauren Elizabeth
Krueger***

ROERIG, OLIVEIRA & FISHER LLP

David Oliveira

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McAllen, TX 78504

956.393.6300

doliveira@roflp.com

***Counsel for Relator Space Exploration
Technologies Corp.***

CERTIFICATE OF SERVICE

I certify that, on February 21, 2024, a true and correct copy of this motion was forwarded to all counsel of record by the Electronic Service Provider.

Brandy Wingate Voss
brandy@brandyvosslaw.com
LAW OFFICES OF BRANDY WINGATE VOSS
208 W. Cano St.
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Sonia Rodriguez
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San Antonio, Texas 78201

Counsel for Real Party in Interest Jose Ruiz and Humberto Garcia

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Michael H. Garatoni
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THE DASPIT LAW FIRM
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San Antonio, Texas 78216
Counsel for Hector Garcia, Jr

Counsel for Real Party in Interest Hector Garcia, Jr.

/s/ William R. Peterson
William R. Peterson
Counsel for Relator Space Exploration
Technologies Corp.

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Norma Orozco on behalf of William Peterson

Bar No. 24065901

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Envelope ID: 84764511

Filing Code Description: Response

Filing Description: Relators' Response to Second Motions for Extension

Status as of 2/22/2024 7:41 AM CST

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	2/21/2024 5:00:29 PM	SENT
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Associated Case Party: Space Exploration Technologies Corp.

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No. 13-24-00042-CV

In the Thirteenth Court of Appeals
Corpus Christi, Texas

**In re SPACE EXPLORATION TECHNOLOGIES CORP. and
LAUREN KRUEGER,**
Relators.

Original Proceeding from the 444th District Court
Cameron County, Texas, Trial Court Cause No. 2020-DCL-03939,
Honorable David A. Sanchez, Presiding

RELATORS' RESPONSE TO MOTION TO ABATE

To the Honorable Justices of this Court:

Thirty-five days after Relators filed their petition for writ of mandamus, Real Parties in Interest Jose Ruiz and Humberto Garcia (collectively, "Plaintiffs"), belatedly conceded a readily apparent truth: The new trial order—which Plaintiffs drafted—is facially invalid and indefensible. Plaintiffs' concession confirms that this Court must conditionally grant the writ of mandamus and order its vacatur.

Regrettably, rather than agree to this relief, Plaintiffs filed a motion asking this Court instead to "abate" the mandamus and "instruct" the trial court. Relying on inapplicable rules of procedure, Plaintiffs ask this Court to grant unprecedented (and unavailable) relief, while failing to cite relevant authority from this Court. This Court should deny the motion to abate and grant the petition.

ARGUMENT

Plaintiffs’ “Motion to Abate” is, in substance, a concession that this Court must (conditionally) grant the writ of mandamus and order the vacatur of the new trial order. Despite drafting the order that the trial court signed without changes, Plaintiffs now acknowledge that their order “fails to refer to record support for its conclusion” and fails “to specify the arguments it found were incurable.” Mot. at 1.

Because the order granting a new trial is invalid, this Court must (conditionally) grant the writ and order the new trial order vacated. The only remaining disputable issue is the scope of this Court’s review and this Court’s decretal language.

In original proceedings where this Court has held only that a new trial order is facially invalid and not considered the order’s merits, this Court has conditionally granted the writ of mandamus and directed the trial court to vacate the new trial order and “conduct further proceedings consistent with th[e] opinion”:

Because the new trial order is facially invalid, we conditionally grant the petition for writ of mandamus and direct the trial court to vacate its new trial order and conduct further proceedings consistent with this opinion. The writ will issue only if the trial court fails to comply.

In re Torres, No. 13-20-00019-CV, 2020 WL 1615667, at *5 (Tex. App.—Corpus Christi–Edinburg Apr. 2, 2020, orig. proceeding) (mem. op.); *see also, e.g., In re State Farm Mut. Auto. Ins. Co.*, No. 13-22-00589-CV, 2023 WL 418699, at *5 (Tex. App.—Corpus Christi–Edinburg Jan. 26, 2023, orig. proceeding) (mem. op.)

(same);¹ *In re Ramos*, No. 13-19-00039-CV, 2019 WL 1930111, at *3 (Tex. App.—Corpus Christi–Edinburg May 1, 2019, orig. proceeding) (mem. op.) (same). Other courts of appeals do the same.² In light of this Court’s precedent, there can be no dispute that (conditional) issuance of the writ and directing vacatur is the correct remedy when a new trial order is facially invalid.

But as Relators explain in their Petition (at 20), this Court should not simply hold that the order is facially invalid. Following the approach of the Texas Supreme Court in *In re Rudolph Automotive* (which postdates *Torres* and *State Farm*), this Court should hold **both** (1) that the trial court’s explanation was insufficient—“We cannot accept such a conclusory statement[.]”—and (2) that the stated ground “does not support a new trial.” 674 S.W.3d 289, 313 (Tex. 2023). As in *Rudolph*, this Court should “direct the district court to vacate its new-trial order . . . and proceed in the normal course with the post-trial stages of litigation.” *Id.* at 314.

Plaintiffs cite *Rudolph* (at 3) but fail to acknowledge that the Supreme Court did not stop its analysis after noting the new trial order was “conclusory” but instead

¹ Despite being aware of these decisions, which were discussed when the parties conferred on the motion, Plaintiffs’ counsel fails to address them in the Motion to Abate.

² *E.g.*, *In re Spotted Lakes, LLC*, No. 04-23-00815-CV, 2024 WL 463348, at *4 (Tex. App.—San Antonio Feb. 7, 2024, orig. proceeding) (mem. op.); *In re Simms*, No. 14-19-00541-CV, 2019 WL 3822171, at *2 (Tex. App.—Houston [14th Dist.] Aug. 15, 2019, orig. proceeding) (“Because the new-trial order is facially invalid, we conditionally grant the requested mandamus relief.”).

considered (and rejected) the merits of the ground for a new trial. 674 S.W.3d at 313. The Petition explains why this Court should follow *Rudolph* here—where there is no serious argument that there was any improper closing argument, much less that any alleged improper argument could possibly have been “incurable,” Pet. 20-39—and address both the order’s facial and substantive invalidity.

In any event, because the new trial order is invalid, the proper remedy is conditionally granting the writ and directing the trial court to vacate the order.

In resisting this result, Plaintiffs rely on an inapplicable rule of appellate procedure: Texas Rule of Appellate Procedure 44.4. Plaintiffs fail to recognize that this is an original proceeding, not an appeal, in which different rules apply: “A petition for a writ of mandamus commences an original proceeding that is governed by different rules than the rules governing direct appeals.” *Pinnacle Gas Treating, Inc. v. Read*, 13 S.W.3d 126, 127 (Tex. App.—Waco 2000, no pet.); *accord Bowman v. Burks*, No. 01-10-00219-CV, 2011 WL 2418475, at *2 (Tex. App.—Houston [1st Dist.] May 26, 2011, no pet.) (mem. op.) (same).

Rule 44.4 appears in Section Two of the Texas Rules of Appellate Procedure, which governs “Appeals from Trial Court Judgments and Orders.” Tex. R. App. P. § 2. Rules governing original proceedings are found in Section Three, “Original Proceedings in the Supreme Court and the Courts of Appeals.” Tex. R. App. P. § 3.

And on its face, Rule 44.4 applies when a court of appeals is being asked to “affirm or reverse a judgment or dismiss an appeal”:

(a) *Generally*. A court of appeals must not affirm or reverse a judgment or dismiss an appeal if: . . .

Tex R. App. P. 44.4. Relators ask this Court to enter a writ of mandamus, not to “reverse a judgment.” Rule 44.4 simply has nothing to do with a petition for writ of mandamus.

Unsurprisingly, no court has committed the error that Plaintiffs urge this Court to commit. Plaintiffs cite no case in which a court of appeals erroneously applied Rule 44.4 in a mandamus proceeding, much less to a facially invalid new trial order. The cases cited by Plaintiffs in the motion all involve **appeals**, not original proceedings. *See* Mot. at 2-3 (citing cases in which courts abated appeals, not original proceedings).

In original proceedings, as detailed above, when a new trial order is invalid, whether facially, substantively, or both, the courts of appeals uniformly (conditionally) grant the writ of mandamus and direct the order to be vacated. *See supra* p. 2 & n.1. Plaintiffs offer no reason that there should be any different result in this proceeding.

CONCLUSION

Plaintiffs' Motion to Abate is, in substance, a concession that this Court should (conditionally) grant the writ of mandamus and direct the trial court to vacate the new trial order. The only good-faith dispute concerns whether (as in *Rudolph*) this Court should hold that the order fails both because of its facial invalidity and because of its substance or whether (as in pre-*Rudolph* cases) this Court should hold only that the order is facially invalid.

Rule 44.4 does not apply, and Petitioner offers no reason that Relators would be entitled to some lesser relief. For these reasons, this Court should deny the motion to abate and instead grant the petition for writ of mandamus, directing the trial court to vacate the new trial order.

/s/ William R. Peterson

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CERTIFICATE OF SERVICE

I certify that, on February 26, 2024, a true and correct copy of this motion was forwarded to all counsel of record by the Electronic Service Provider.

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MR2319

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No. 13-24-00042-CV

*In the Thirteenth Court of Appeals
Corpus Christi-Edinburg, Texas*

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER**

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTIES IN INTEREST JOSE RUIZ'S AND HUMBERTO
GARCIA'S REPLY IN SUPPORT OF MOTION TO ABATE**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest Jose Ruiz and Humberto Garcia (“Real Parties”) file this Reply in support of their motion to abate and respectfully show in support:

Contrary to SpaceX’s argument, Real Parties did not “concede” that mandamus is appropriate. In fact, Real Parties have several arguments against the issuance of the mandamus, including that the trial court stated a valid basis for the new trial, as stated in their motion to abate. Real Parties suggest this Court should move past the lack of specificity in the trial court’s order and simply grant mandamus on the merits. But a glaring reason to deny the mandamus petition is that Relators have provided an inadequate record.

Under similar circumstances, the Texas Supreme Court has denied mandamus relief. *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 690 (Tex. 2012). In *United Scaffolding*, the Texas Supreme Court held the trial court insufficiently articulated its reasoning and granted mandamus to require a corrected new trial order, but the Court refused to require rendition on the jury’s verdict because United Scaffolding failed to present a complete record of the trial:

First, as we have discussed, the actual basis for the trial court's order is unclear; if it rests on the greater-weight rationale, then our writ would compel the trial court to elaborate on that reasoning. The trial court's failure to properly state why it granted a new trial does not mandate a conclusion that it did not have a valid reason for doing so. And absent the trial court's having particularized its reason—or reasons—United would be entitled to mandamus directing the trial court to render judgment on the verdict only if it showed no valid basis exists for the new-trial order. It has not done so here—the record United has presented is only a partial one containing Levine's motion for new trial and the exhibits to that motion, such as deposition transcripts, and the transcript of the hearing on the motion for new trial.

Id. at 690 (citing TEX. R. APP. P. 52.7).

Under, Texas Rule of Appellate Procedure 52.7, “Relator must file with the petition . . . (2) a properly authenticated transcript of any relevant testimony from any underlying proceeding, *including any exhibits offered in evidence*, or a statement that no testimony was adduced in connection with the matter complained.” TEX. R. APP. P. 52.7(a)(2) (emphasis added). Generally, “[w]ithout a complete picture of what facts were before the trial court and how the court applied the law to those facts in reaching its decision, this Court does not have a basis on which to

conclude that the trial court abused its discretion.” *In re Approximately \$61,083.00*, No. 14-13-01059-CV, 2014 WL 866040, at *3 (Tex. App.—Houston [14th Dist.] Mar. 4, 2014, orig. proceeding) (mem. op.).

In reviewing improper jury argument, “[a]ll of the evidence must be closely examined to determine [] the argument’s probable effect on a material finding.” *Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 840 (Tex. 1979). Courts conduct “an evaluation of the whole case, which begins with the voir dire and ends with the closing argument.” *Id.* Where review of a ground in a new trial order requires consideration of the entire trial, the Court simply cannot evaluate the merits of that new trial ground without the complete trial transcript, including the exhibits. *See In re Tex. Fueling Servs., Inc.*, No. 13-18-00311-CV, 2018 WL 3386356, at *3 (Tex. App.—Corpus Christi–Edinburg July 12, 2018, orig. proceeding) (mem. op.) (holding record was inadequate to review new trial order based on juror misconduct in voir dire where record did not include complete trial transcript and exhibits); *In re Athans*, 458 S.W.3d 675, 679 (Tex. App.—Houston [14th Dist.] 2015, orig. proceeding) (holding record was inadequate to review new trial order on factual sufficiency grounds where relators filed a transcript of the trial but excluded the exhibits offered into evidence); *In re Wyatt Field Serv. Co.*, No. 14-13-00811-CV, 2013 WL 6506749, at *3 (Tex. App.—Houston [14th Dist.] Dec. 10, 2013, no pet.) (mem. op.).

What appear to be Defendants' trial exhibits are included in the record, but they are not part of an exhibit index certified by the court reporter, nor are they signed and dated by the court reporter. *See* Mandamus Record at 1778-2035. More importantly, Relators have not provided this Court with Real Parties' exhibits, although the trial transcript clearly refers to Real Parties' exhibits offered and admitted at trial. *See, e.g., id.* at 533-34, 591, 597, 600, 633, 645. Thus, this Court does not even have the tools it needs to decide this case. The mandamus petition could and should be denied outright for that reason, and certainly, the record is insufficient to order the trial court to vacate its new trial order and render judgment on the jury verdict. *In re United Scaffolding, Inc.*, 377 S.W.3d at 690.

Accordingly, Real Parties do not and have not conceded that mandamus is proper. If the Court is not inclined to abate at this juncture, it should not grant the mandamus petition, but *should deny* it for lack of a proper mandamus record. The fact is that once Relators obtain the official exhibit volume, they could refile their petition. An abatement is a clearly a more efficient remedy than dismissal to allow the trial court to issue an amended order, especially since Relators would benefit from the abatement as well. The Court could abate to allow the trial court to issue a new order and allow Relators to supplement their record with the Official Court Reporter's Exhibit Volume at the same time.

Moreover, Relators' hyper-technical reading of the appellate rules ignores that (1) under Rule 2, the Court can suspend the rules to "expedite a decision" and "order a different procedure," TEX. R. APP. P. 2; and (2) under Rule 52.10(b), the Court can issue "any just relief pending the court's action on the petition" for mandamus. TEX. R. APP. P. 52.10(b). Just as in an appeal, it is preferable to abate to allow a trial judge to amend an order than to grant the extraordinary writ of mandamus against that trial judge. In the interest of efficiency and judicial economy, this Court should either deny the petition outright or abate this proceeding for 30 days to allow the trial court time to craft a revised order, and then proceed as directed in Texas Rule of Appellate Procedure 44.4. *See Meachum v. State*, 273 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding abatement was a more efficient remedy).

Respectfully submitted,

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Associated Case Party: Hector Garcia Jr.

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No. 13-24-00042-CV

In the Thirteenth Court of Appeals
Corpus Christi-Edinburg, Texas

FILED IN
13th COURT OF APPEALS
CORPUS CHRISTI/EDINBURG, TEXAS
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**IN RE SPACE EXPLORATION TECHNOLOGIES CORP.
AND LAUREN KREUGER**

ORIGINAL PROCEEDING FROM CAUSE NO. 2020-DCL-03939
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

**REAL PARTIES IN INTEREST JOSE RUIZ'S AND HUMBERTO
GARCIA'S AMENDED REPLY IN SUPPORT OF MOTION TO ABATE**

TO THE HONORABLE THIRTEENTH COURT OF APPEALS:

Real Parties in Interest Jose Ruiz and Humberto Garcia (“Real Parties”) file this Reply in support of their motion to abate and respectfully show in support:

Contrary to Relators’ argument, Real Parties did not “concede” that mandamus is appropriate. In fact, Real Parties have several arguments against the issuance of the mandamus, including that the trial court stated a valid basis for the new trial, as stated in their motion to abate. Relators suggest this Court should move past the lack of specificity in the trial court’s order and simply grant mandamus on the merits. But a glaring reason to deny the mandamus petition is that Relators have provided an inadequate record.

Under similar circumstances, the Texas Supreme Court has denied mandamus relief. *In re United Scaffolding, Inc.*, 377 S.W.3d 685, 690 (Tex. 2012). In *United Scaffolding*, the Texas Supreme Court held the trial court insufficiently articulated its reasoning and granted mandamus to require a corrected new trial order, but the Court refused to require rendition on the jury’s verdict because United Scaffolding failed to present a complete record of the trial:

First, as we have discussed, the actual basis for the trial court's order is unclear; if it rests on the greater-weight rationale, then our writ would compel the trial court to elaborate on that reasoning. The trial court's failure to properly state why it granted a new trial does not mandate a conclusion that it did not have a valid reason for doing so. And absent the trial court's having particularized its reason—or reasons—United would be entitled to mandamus directing the trial court to render judgment on the verdict only if it showed no valid basis exists for the new-trial order. It has not done so here—the record United has presented is only a partial one containing Levine's motion for new trial and the exhibits to that motion, such as deposition transcripts, and the transcript of the hearing on the motion for new trial.

Id. at 690 (citing TEX. R. APP. P. 52.7).

Under, Texas Rule of Appellate Procedure 52.7, “Relator must file with the petition . . . (2) a properly authenticated transcript of any relevant testimony from any underlying proceeding, *including any exhibits offered in evidence*, or a statement that no testimony was adduced in connection with the matter complained.” TEX. R. APP. P. 52.7(a)(2) (emphasis added). Generally, “[w]ithout a complete picture of what facts were before the trial court and how the court applied the law to those facts in reaching its decision, this Court does not have a basis on which to

conclude that the trial court abused its discretion.” *In re Approximately \$61,083.00*, No. 14-13-01059-CV, 2014 WL 866040, at *3 (Tex. App.—Houston [14th Dist.] Mar. 4, 2014, orig. proceeding) (mem. op.).

In reviewing improper jury argument, “[a]ll of the evidence must be closely examined to determine [] the argument’s probable effect on a material finding.” *Standard Fire Ins. Co. v. Reese*, 584 S.W.2d 835, 840 (Tex. 1979). Courts conduct “an evaluation of the whole case, which begins with the voir dire and ends with the closing argument.” *Id.* Where review of a ground in a new trial order requires consideration of the entire trial, the Court simply cannot evaluate the merits of that new trial ground without the complete trial transcript, including the exhibits. *See In re Tex. Fueling Servs., Inc.*, No. 13-18-00311-CV, 2018 WL 3386356, at *3 (Tex. App.—Corpus Christi–Edinburg July 12, 2018, orig. proceeding) (mem. op.) (holding record was inadequate to review new trial order based on juror misconduct in voir dire where record did not include complete trial transcript and exhibits); *In re Athans*, 458 S.W.3d 675, 679 (Tex. App.—Houston [14th Dist.] 2015, orig. proceeding) (holding record was inadequate to review new trial order on factual sufficiency grounds where relators filed a transcript of the trial but excluded the exhibits offered into evidence); *In re Wyatt Field Serv. Co.*, No. 14-13-00811-CV, 2013 WL 6506749, at *3 (Tex. App.—Houston [14th Dist.] Dec. 10, 2013, no pet.) (mem. op.).

What appear to be Defendants' trial exhibits are included in the record, but they are not part of an exhibit index certified by the court reporter, nor are they signed and dated by the court reporter. *See* Mandamus Record at 1778-2035. More importantly, Relators have not provided this Court with Real Parties' exhibits, although the trial transcript clearly refers to Real Parties' exhibits offered and admitted at trial. *See, e.g., id.* at 533-34, 591, 597, 600, 633, 645. Thus, this Court does not even have the tools it needs to decide this case. The mandamus petition could and should be denied outright for that reason, and certainly, the record is insufficient to order the trial court to vacate its new trial order and render judgment on the jury verdict. *In re United Scaffolding, Inc.*, 377 S.W.3d at 690.

Accordingly, Real Parties do not and have not conceded that mandamus is proper. If the Court is not inclined to abate at this juncture, it should not grant the mandamus petition, but *should deny* it for lack of a proper mandamus record. The fact is that once Relators obtain the official exhibit volume, they could refile their petition. An abatement is a clearly a more efficient remedy than dismissal to allow the trial court to issue an amended order, especially since Relators would benefit from the abatement as well. The Court could abate to allow the trial court to issue a new order and allow Relators to supplement their record with the Official Court Reporter's Exhibit Volume at the same time.

Moreover, Relators' hyper-technical reading of the appellate rules ignores that (1) under Rule 2, the Court can suspend the rules to "expedite a decision" and "order a different procedure," TEX. R. APP. P. 2; and (2) under Rule 52.10(b), the Court can issue "any just relief pending the court's action on the petition" for mandamus. TEX. R. APP. P. 52.10(b). Just as in an appeal, it is preferable to abate to allow a trial judge to amend an order than to grant the extraordinary writ of mandamus against that trial judge. In the interest of efficiency and judicial economy, this Court should either deny the petition outright or abate this proceeding for 30 days to allow the trial court time to craft a revised order, and then proceed as directed in Texas Rule of Appellate Procedure 44.4. *See Meachum v. State*, 273 S.W.3d 803, 806 (Tex. App.—Houston [14th Dist.] 2008, no pet.) (holding abatement was a more efficient remedy).

Respectfully submitted,

/s/ Brandy Wingate Voss

Brandy Wingate Voss

State Bar No. 24037046

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Telephone: (210) 941-1301

E-mail: efilings@cowenlaw.com

Counsel for Real Party in Interest

CERTIFICATE OF SERVICE

On March 8, 2024, in compliance with Texas Rule of Appellate Procedure

9.5, I served a copy of this Motion by e-service, e-mail, facsimile, or mail to:

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Counsel for Hector Garcia, Jr.

/s/ Brandy Wingate Voss
Brandy Wingate Voss

Automated Certificate of eService

This automated certificate of service was created by the eFiling system. The filer served this document via email generated by the eFiling system on the date and to the persons listed below. The rules governing certificates of service have not changed. Filers must still provide a certificate of service that complies with all applicable rules.

Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
brandy@brandyvosslaw.com
Envelope ID: 85381569
Filing Code Description: Other Brief
Filing Description: Other Brief
Status as of 3/11/2024 7:32 AM CST

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	3/8/2024 5:06:45 PM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	3/8/2024 5:06:45 PM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	3/8/2024 5:06:45 PM	SENT
Shana Elick		shana@brandyvosslaw.com	3/8/2024 5:06:45 PM	SENT
Julie Balovich		julie@brandyvosslaw.com	3/8/2024 5:06:45 PM	SENT

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@rofllp.com	3/8/2024 5:06:45 PM	SENT
William R. Peterson		william.peterson@morganlewis.com	3/8/2024 5:06:45 PM	SENT
Michelle Pector		michelle.pector@morganlewis.com	3/8/2024 5:06:45 PM	SENT
Jared Wilkerson		jared.wilkerson@morganlewis.com	3/8/2024 5:06:45 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	3/8/2024 5:06:45 PM	SENT

Associated Case Party: LaurenElizabethKrueger

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Dan Alan Erwin	6653020	aerwin@rofllp.com	3/8/2024 5:06:45 PM	SENT

Associated Case Party: Hector Garcia Jr.

MR2337

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Brandy Wingate Voss on behalf of Brandy Wingate Voss
Bar No. 24037046
brandy@brandyvosslaw.com
Envelope ID: 85381569
Filing Code Description: Other Brief
Filing Description: Other Brief
Status as of 3/11/2024 7:32 AM CST

Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Garatoni		e-service@daspitlaw.com	3/8/2024 5:06:45 PM	SENT

Associated Case Party: Humberto Garcia

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	3/8/2024 5:06:45 PM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	3/8/2024 5:06:45 PM	SENT
Sarah Durham		sarah@blizzardlawfirm.com	3/8/2024 5:06:45 PM	SENT
Morgan Walker		Morgan@blizzardlawfirm.com	3/8/2024 5:06:45 PM	SENT

**IN THE THIRTEENTH COURT OF APPEALS
CORPUS CHRSTI – EDINBURG, TEXAS**

**In Re SPACE EXPLORATION
TECHNOLOGIES CORP.
AND LAUREN KRUEGER,**

Relator

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§
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§
§
§
§

No. 13-24-00042-CV

**REAL PARTY IN INTEREST, HECTOR GARCIA, JR'S AGREEMENT TO
REAL PARTIES IN INTEREST JOSE RUIZ'S AND HUMBERTO
GARCIA'S AMENDED REPLY IN SUPPORT OF MOTION TO ABATE**

ORIGINAL PROCEEDING FROM CAUSE No. 2020-DCL-03930
444TH DISTRICT COURT OF CAMERON COUNTY, TEXAS
HON. DAVID A. SANCHEZ, PRESIDING

TO THE HONORABLE JUSTICES OF THIS COURT:

Real Party in Interest, Hector Garcia, Jr. (hereinafter "Real Party"), files this Agreement to the Amended Reply in Support of Motion to Abate filed by Real Parties in Interest, Jose Ruiz and Humberto Garcia, ("Real Parties in Interest") in this matter. Real Party respectfully shows:

Real Parties in Interest filed their original Motion to Abate on February 14, 2024. Real Party filed his Response to Real Parties' Motion to Abate on February 16, 2024. Pending the resolution of the Motion to Abate, Real Parties

in Interest and Real Party each filed a Second Extension of Time to File their Responses to Petition for Writ of Mandamus on February 21, 2024. Space Exploration Technologies Corp., (“Relator”) filed its Response to Second Motions for Extension of Time on February 21, 2024 and later filed its Response to the Motion to Abate on February 26, 2024. Real Parties in Interest filed their Reply in Support of the Motion to Abate on March 7, 2024 and amended it on March 8, 2024.

In their reply, Real Parties in Interest asserted two main points: I. Relator failed to present a complete record of the trial along with the petition. II. Abatement is clearly a more efficient remedy than dismissal to allow the trial court to issue an amended order. Real Party in Interest, Hector Garcia, Jr. agrees with and joins to assert each of those points in his present reply.

Respectfully Submitted,
BLIZZARD & ZIMMERMAN, P.L.L.C.
1174 North 3rd St.
Abilene, Texas 79601
Tel: (325) 676.1000
Fax: (325) 455.8842

By: /s/Sarah Durham
Sarah Durham
State Bar No. 24116309

CERTIFICATE OF SERVICE

I hereby certify that I have reviewed the above Agreement to Real Parties in Interest, Jose Ruiz's and Humberto Garcia's, Reply in Support of Motion to Abate and that it was served in accordance with Rule 9.5 of the Texas Rules of Appellate Procedure on William Peterson, Michelle Pector, Jared Wilkerson, and David Oliveira, attorneys for Space Exploration Technologies Corp. d/b/a SpaceX, at: William.peterson@morganlewis.com, michelle.pector@morganlewis.com, jared.wilkerson@morganlewis.com, and doliveira@roflp.com, respectively, in addition to D. Alan Erwin, attorney for Lauren Elizabeth Krueger, at aerwin@roflp.com, Michael Garatoni, attorney for Hector Garcia at e-service@daspitlaw.com, and Brady Voss, attorney for Jose Ruiz and Humberto Garcia, at brandy@brandyvosslaw.com.

By: /s/ Sarah Durham
Sarah Durham

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Jacob Blizzard on behalf of Sarah Durham

Bar No. 24116309

Jacob.Blizzard@blizzardlawfirm.com

Envelope ID: 85381913

Filing Code Description: Response

Filing Description: Real Party in Interest's Agreement to Real Parties in Interests' Amended Reply in Support of Motion to Abate

Status as of 3/11/2024 7:33 AM CST

Associated Case Party: Space Exploration Technologies Corp.

Name	BarNumber	Email	TimestampSubmitted	Status
David G. Oliveira	15254675	doliveira@roflp.com	3/8/2024 5:18:30 PM	SENT
William R. Peterson		william.peterson@morganlewis.com	3/8/2024 5:18:30 PM	SENT
Michelle Pector		michelle.pector@morganlewis.com	3/8/2024 5:18:30 PM	SENT
Jared Wilkerson		jared.wilkerson@morganlewis.com	3/8/2024 5:18:30 PM	SENT

Associated Case Party: LaurenElizabethKrueger

Name	BarNumber	Email	TimestampSubmitted	Status
Dan Alan Erwin	6653020	aerwin@roflp.com	3/8/2024 5:18:30 PM	SENT

Associated Case Party: Jose Ruiz

Name	BarNumber	Email	TimestampSubmitted	Status
Brandy Wingate Voss		brandy@brandyvosslaw.com	3/8/2024 5:18:30 PM	SENT
Michael Raphael Cowen	795306	efilings@cowenlaw.com	3/8/2024 5:18:30 PM	SENT
Melissa Thrailkill		melissa@brandyvosslaw.com	3/8/2024 5:18:30 PM	SENT
Shana Elick		shana@brandyvosslaw.com	3/8/2024 5:18:30 PM	SENT
Julie Balovich		julie@brandyvosslaw.com	3/8/2024 5:18:30 PM	SENT

Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Norma Orozco		norma.orozco@morganlewis.com	3/8/2024 5:18:30 PM	SENT

MR2342

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Jacob Blizzard on behalf of Sarah Durham

Bar No. 24116309

Jacob.Blizzard@blizzardlawfirm.com

Envelope ID: 85381913

Filing Code Description: Response

Filing Description: Real Party in Interest's Agreement to Real Parties in Interests' Amended Reply in Support of Motion to Abate

Status as of 3/11/2024 7:33 AM CST

Associated Case Party: Hector Garcia Jr.

Name	BarNumber	Email	TimestampSubmitted	Status
Michael Garatoni		e-service@daspitlaw.com	3/8/2024 5:18:30 PM	SENT

Associated Case Party: Humberto Garcia

Name	BarNumber	Email	TimestampSubmitted	Status
Yazmin Campbell		yazmin@blizzardlawfirm.com	3/8/2024 5:18:30 PM	SENT
Terry Reeves		terry.reeves@blizzardlawfirm.com	3/8/2024 5:18:30 PM	SENT
Sarah Durham		sarah@blizzardlawfirm.com	3/8/2024 5:18:30 PM	SENT
Morgan Walker		Morgan@blizzardlawfirm.com	3/8/2024 5:18:30 PM	SENT

Michelle Pector

Partner
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December 13, 2023

VIA E-FILING

The Honorable Judge David Sanchez
444th Judicial District Court
Cameron County Courthouse
974 E. Harrison Street
Brownsville, Texas 78520

Re: Case No. 2020-DCL-03939; *Jose Ruiz, et al. v. Space Exploration Technologies Corporation, et al.*; In the 444th Judicial District Court of Cameron County, Texas

Dear Judge Sanchez:

In connection with the Court's request for the Parties to submit their proposed orders to the Court this week, Defendants have filed their proposed order denying Plaintiffs' Motion for New Trial. In support of this Order, Defendants refer the Court to Defendants' Response to Plaintiffs' Motion for New Trial filed on December 8, 2023, along with the supporting Declaration of Michelle Pector and corresponding exhibits. Attached as Exhibit A is a courtesy copy of Defendants' Response and supporting evidence.

Additionally, we write to address Plaintiffs' counsel's statement to the Court during the hearing that the court reporter's trial record represented approximately \$40,000 in costs. Specifically, we would direct the Court to SpaceX's Bill of Costs and the Declaration of Michelle D. Pector with supporting exhibits, which were filed with the Court on September 18, 2023. Attached hereto as Exhibit B is courtesy copy for the Court's convenience.

As SpaceX's Bill of Costs shows, the total amount of costs that SpaceX proved and the Court correctly awarded was \$40,252.33. Of that amount, \$31,217.95 was for court reporter and interpreter fees, but those included reporting and interpreting for depositions and trial. And as Exhibit 2 to the supporting Declaration of Mrs. Pector shows, court reporter's fees to transcribe the trial record was only \$14,976.00, not \$40,000.00. Further, these transcripts prepared by the court reporter, for which this fee was paid, represent the only transcribed record of the trial and were therefore clearly both reasonable and necessary. The fees of the court reporter for the trial transcript are expressly recoverable under TEX. CIV. PRAC. & REM. CODE § 31.007(b)(2).

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MR2344

Honorable Judge David Sanchez
December 13, 2023
Page 2

In light of the above, the Final Judgment of this Court was correctly entered on September 22, 2023 and was clearly supported by the jury's verdict, the law and the evidence admitted at trial. Accordingly, the Final Judgment should not be disturbed and Plaintiff's Motion for New Trial must be denied.

Sincerely,



Michelle Pector

Cc: David Oliveira [via email]
Alan Erwin [via email]
Will Peterson [via email]
Michael Cowen [via email]

CAUSE NO. 2020-DCL-03939

JOSE RUIZ; HECTOR GARCIA
JR.; AND HUMBERTO GARCIA,
Plaintiff,

v.

SPACE EXPLORATION TECHNOLOGIES
CORP. D/B/A SPACEX; LAUREN
ELIZABETH KRUEGER,
Defendants.

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IN THE DISTRICT COURT

of CAMERON COUNTY, TEXAS

444th DISTRICT COURT

ORDER DENYING PLAINTIFFS' MOTION FOR NEW TRIAL

Before the Court is Plaintiffs Jose Ruiz and Humberto Garcia's ("Plaintiffs") Motion for New Trial (the "Motion"). After reviewing the Motion, Defendants' Response, the evidence submitted by Defendants, Defendants' prior briefing, Space Exploration Technologies Corporation's Bill of Costs and the arguments of counsel, the Court finds the Motion should be DENIED.

The Court further finds that there is no legal or evidentiary basis for a new trial and that Final Judgment was properly entered by the Court on September 22, 2023.

IT IS THEREFORE, ORDERED, ADJUDGED, AND DECREED that Plaintiff's Motion for New Trial is DENIED in its entirety.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Final Judgment entered by the Court on September 22, 2023 is and shall remain the Final Judgment of the above-referenced matter.

SO ORDERED this ____ day of _____, 2023.

Honorable Presiding Judge

Orozco, Norma A.

From: Orozco, Norma A. <norma.orozco@morganlewis.com>
Sent: Friday, January 12, 2024 9:07 AM
To: elva.olivo01@co.cameron.tx.us
Cc: Pector, Michelle; Wilkerson, Jared; Peterson, William R.; doliveira@rofllp.com; aerwin@rofllp.com; sarah@blizzardlawfirm.com; e-service@daspitlaw.com; efilings@cowenlaw.com
Subject: No. 13-24-00042-CV; In Re Space Exploration Technologies Corp. and Lauren Krueger
Follow Up Flag: Follow up
Flag Status: Flagged
FilingDate: 1/12/2024 9:28:00 AM



norma.orozco@morganlewis.com sent you a secure message

[Access message](#)

Dear Elva,

Attached for service, please find a courtesy copy for Judge Sanchez of documents filed yesterday in the Thirteenth Court of Appeals in regards to Trial Court Cause No. 2020-DCL-03939.

- Space Exploration Technologies Corp. and Lauren Krueger's Petition for Writ of Mandamus; and
- Space Exploration Technologies Corp. and Lauren Krueger's Record to Petition for Writ of Mandamus.

Regards,
Norma

Norma Orozco

Senior Paralegal

Morgan, Lewis & Bockius LLP

1000 Louisiana Street, Suite 4000 | Houston, TX 77002-5005

Direct: +1.713.890.5473 | Main: +1.713.890.5000 | Fax: +1.713.890.5001

norma.orozco@morganlewis.com | www.morganlewis.com



Attachments expire on Feb 11, 2024



2 PDFs

2024-01-11 SpaceX's and Krueger's Petition for Writ of Mandamus and Appendix.pdf, 2024-01-11 SpaceX's and Krueger's Record to Petition for Writ of Mandamus.pdf

This message requires that you sign in to access the message and any file attachments.



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REPORTER'S RECORD
VOLUME 1 OF 11 VOLUMES
TRIAL COURT CAUSE NO. 2020-DCL-03939
APPELLATE CAUSE NO. 13-23-00422-CV

JOSE RUIZ, HECTOR GARCIA,) (IN THE DISTRICT COURT OF
JR., AND HUMBERTO GARCIA,) (
Plaintiffs) (
) (
VS.) (
) (CAMERON COUNTY, TEXAS
SPACE EXPLORATION) (
TECHNOLOGIES CORP. D/B/A) (
SPACEX, LAUREN ELIZABETH) (
KRUEGER; AND JAMES RAY) (
KANZ,) (
Defendants) (444TH JUDICIAL DISTRICT

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TRIAL ON THE MERITS)**

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ELIZABETH F. TORRES, CSR, CRR

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22					239		3
23	MICHAEL FREEMAN	240	279	297	300		3
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ELIZABETH F. TORRES, CSR, CRR

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13					239		3
14	FREEMAN, MICHAEL	240	279	297	300		3
15	KANZ, JAMES	302	307				3
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22	Witnesses are sworn in.....	6	4

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WITNESSES:							
<u>NAME OF WITNESS</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>VDX</u>	<u>VOL</u>	
ALEJANDRO ARELLANO (cont.)		10					4
MARIA RUIZ-MARIN	42	52	68	70			4
YIXIANG LIU	74	116					4
		126					4
JONNATHAN ROJAS	167	175	177	178			4
BRIANNA NEZ	179						4
JOSE RUIZ	182	189					4
		211	225	227			4
JOHN PRUITT	230	236					4
MARTIN ALBERTO RUIZ	245	249					4
MARTIN RUIZ	258	265	305	306			4
						PAGE	VOL
Adjournment.....						308	4
Certificate of Court Reporter.....						309	4

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WITNESSES:							
<u>NAME OF WITNESS</u>	<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>VDX</u>	<u>VOL</u>	
ARELLANO, ALEJANDRO		10					4
LIU, YIXIANG	74	116					4
		126					4
NEZ, BRIANNA	179						4
PRUITT, JOHN	230	236					4
ROJAS, JONNATHAN	167	175	177	178			4

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WITNESSES:

<u>NAME OF WITNESS</u>	DX	CX	RDX	RCX	VDX	VOL
RUIZ, JOSE	182	189				4
RUIZ-MARIN, MARIA	42	52	225	227		4
RUIZ, MARTIN	258	265	305	306		4
RUIZ, MARTIN ALBERTO	245	249				4

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<u>NAME OF WITNESS</u>	DX	CX	RDX	RCX	VDX	VOL
HUMBERTO GARCIA	13	28				5
		61	72	74		5
CLAUDIA ROJAS	79	86	104			5
GUILLERMO PECHERO	106	152				5

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1	Toyota Tundra Bumper	199	5
2	Photo - Crash scene from the right	199	5

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PLAINTIFFS' EXHIBIT BINDER 1 OF 3				
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>	
1				
2				
3	Photo - Tundra rear detail IMG_4735	199	5	
4	Photo - Tundra rear with bent mount	199	5	
5	Photo - Ram & Ford impact	199	5	
6	Photo - Ford & Tundra impact	199	5	
7	Krueger call log	199	5	
8	Photo - KruegerRuiz00079	199	5	
9	Photo - KruegerRuiz00087	199	5	
10	Photo - KruegerRuiz00086	199	5	
11	Photo - KruegerRuiz00085	199	5	
12	Photo - KruegerRuiz00084	199	5	
13	Photo - KruegerRuiz00083	199	5	
14	Photo - KruegerRuiz00082	199	5	
15	Photo - KruegerRuiz00081	199	5	
16	Photo - KruegerRuiz00080	199	5	
17	Photo - KruegerRuiz00079	199	5	
18	Photo - Jose Ruiz fishing	199	5	
19	Photo - Jose Ruiz catching	199	5	
20	Photo - Jose Ruiz hitting	199	5	
21	Photo - Jose Ruiz with baby	199	5	
22	Photo - Jose Ruiz home project	199	5	
23	Photo - Jose Ruiz work 1	199	5	
24	Photo - Jose Ruiz work 2	199	5	
25	Photo - Jose Ruiz - post-surgery	199	5	

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PLAINTIFFS' EXHIBIT BINDER 1 OF 3			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
28	Photo - (Humberto Garcia) Skate park IMG_1969	199	5
29	Photo - (Humberto Garcia) Skate park IMG_1963	199	5
30	Photo - Jose's bed IMG_1977	199	5
31	Photo - (Humberto Garcia) ATX trip	199	5
32	Photo - (Humberto Garcia) Cooking before	199	5
33	Photo - (Humberto Garcia) Father's Day	199	5
34	Photo - (Humberto Garcia) Grilling	199	5
35	Photo - (Humberto Garcia) Sons	199	5
36	Photo - (Humberto Garcia) Grilling before	199	5
37	Photo - (Humberto Garcia) Holding son before	199	5
39	Photo - Detail Tundra bumper IMG_4741	199	5
40	Photo - Detail vehicle damage IMG_4736	199	5
41	Photo - Ford & Tundra with officer	199	5
42	Photo - Ford front detail	199	5
43	Photo - Ford front right detail	199	5
44	Photo - Ford front	199	5
45	Photo - Ford LP front	199	5
46	Photo - Rear Tundra back left IMG_4728	199	5

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PLAINTIFFS' EXHIBIT BINDER 1 OF 3				
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>	
1				
2	47	Photo - Tundra & Ford at scene	199	5
3				
4	48	Photo - Tundra bent bumper detail IMG_4729	199	5
5	49	Photo - Tundra bumper detail IMG_4740	199	5
6				
7	50	Photo - Tundra bumper side detail IMG_4730	199	5
8	51	Photo - Tundra bumper side IMG_4738	199	5
9				
10	52	Photo - Tundra bumper back right IMG_4734	199	5
11	53	Photo - Tundra bumper side view IMG_4739	199	5
12				
13	54	Photo - Tundra bumper side view IMG_4742	199	5
14	55	Photo - Tundra hitch IMG_4737	199	5
15	56	Photo - Tundra left rear low IMG_4727	199	5
16				
17	57	Photo - Tundra paint transfer	199	5
18	58	Photo - Tundra rear bumper Displacement IMG_4732	199	5
19	59	Photo - Tundra rear high angle	199	5
20	60	Photo - Tundra rear IMG_4733	199	5
21	61	Photo - Tundra rear IMG_4743	199	5
22	62	Photo - Tundra rear IMG_4744	199	5
23	63	Photo - Tundra rear IMG_4746	199	5
24	64	Photo - Tundra rear IMG_4747	199	5
25				

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PLAINTIFFS' EXHIBIT BINDER 1 OF 3			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
1			
2			
3	65 Photo - Tundra rear left low angle IMG_4731	199	5
4	66 Photo - Tundra right rear detail	199	5
5	67 Photo - Tundra rear	199	5
6	68 Photo - Tundra rear	199	5
7	69 Photo - Tundra side IMG_4745	199	5
8	70 Photo - Tundra with occupants	199	5
9	71 Krueger log	199	5
10	72 2018 Distracted Driver Crashes and Injuries by County	199	5
11			
12	73 Urgent Care 4U medical records (Jose Ruiz)	199	5
13	74 Medical Records - 911 Pain Management (Jose Ruiz)	199	5
14			
15	PLAINTIFFS' EXHIBIT(S) BINDER 2 OF 3		
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
16			
17	75 Medical Records - Cornerstone Regional Hospital (Jose Ruiz)	199	5
18	76 Medical Records - Doctors Hospital at Renaissance (Jose Ruiz)	199	5
19			
20	77 Medical Records - Rio Grande Valley (Jose Ruiz)	Ortho 199	5
21	PLAINTIFFS' EXHIBIT(S) BINDER 3 OF 3		
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
22			
23	78 Medical Records - Dr. Jose Doñes (Jose Ruiz)	199	5
24	79 Medical Records - Free Run Monitoring (Jose Ruiz)	199	5
25			

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PLAINTIFFS' EXHIBIT(S) BINDER 3 OF 3			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
1			
2			
3	81 Medical Records - Khit Chiropractic & Wellness (Jose Ruiz)	199	5
4			
5	82 Medical Records - Miramar Interventional Pain Management (Jose Ruiz)	199	5
6			
7	83 Medical Records - Open MRI of McAllen (Jose Ruiz)	199	5
8			
9	84 Medical Records - Southern Texas MRI Center (Jose Ruiz)	199	5
10			
11	85 Medical Records - Valley Day & Night Clinic (Jose Ruiz)	199	5
12			
13	86 Medical Records - 911 Pain Management (Humberto Garcia)	199	5
14			
15	87 Medical Records - Dr. Jose Doñes (Humberto Garcia)	199	5
16			
17	88 Medical Records - Khit Chiropractic & Wellness (Humberto Garcia)	199	5
18			
19	89 Medical Records - Miramar Interventional Pain Management (Humberto Garcia)	199	5
20			
21	90 Medical Records - Open MRI of McAllen (Humberto Garcia)	199	5
22			
23	91 Medical Records - Physicians Injury Clinic (Humberto Garcia)	199	5
24			
25	92 Medical Records - Rio Grande Valley Ortho (Humberto Garcia)	199	5
	93 Medical Records - Southern Texas MRI (Humberto Garcia)	199	5
	97 Medical Records - Open MRI of McAllen-Films (Jose Ruiz)	199	5

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PLAINTIFFS' EXHIBIT(S) BINDER 3 OF 3							
<u>NO.</u>	<u>DESCRIPTION</u>				<u>O&A</u>	<u>VOL</u>	
98	Medical Records - Open MRI of McAllen-Films (Humberto Garcia)				199	5	
					<u>PAGE</u>	<u>VOL</u>	
	Plaintiffs Jose Ruiz and Humberto Garcia rest.....				199	5	
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<u>NAME OF WITNESS</u>		<u>DX</u>	<u>CX</u>	<u>RDX</u>	<u>RCX</u>	<u>VDX</u>	<u>VOL</u>
HECTOR GARCIA, JR.		200					5
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<u>NO.</u>	<u>DESCRIPTION</u>				<u>O&A</u>	<u>VOL</u>	
64	Affidavit of Elizabeth Gomez, Custodian of Records for Valley Day and Night Clinic, dated July 3, 2020, and associated medical records for Plaintiff Hector Garcia				201	5	
67	Affidavit of Luis Khit, Custodian of Records for Khit Chiropractic & Wellness, dated May 25, 2021, and associated medical records for Plaintiff Hector Garcia				201	5	
69	Affidavit of Luis Khit, Custodian of Records for Spinal Decompression & Remodeling Clinic, dated December 15, 2020, and associated medical records for Plaintiff Hector Garcia				201	5	

PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER II			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
71	Affidavit of Lilibiana Garcia, Custodian of Records for Open MRI of McAllen, dated July 7, 2022, and associated medical and radiology records for Plaintiff Hector Garcia	201	5
74	Affidavit of Laura Hernandez, Custodian of Records for Physicians Injury Clinic, dated July 24, 2020, and associated medical billing records for Plaintiff Hector Garcia	201	5
76	Affidavit of Stephanie Solis, Custodian of Records for Jose G. Doñes, dated December 7, 2020, and associated medical records for Plaintiff Hector Garcia	201	5
78	Affidavit of Herbert A. Guinup, Custodian of Records for Universal Spine & Joint Specialists, dated March 18, 2022, and associated medical billing records for Plaintiff Hector Garcia	201	5
80	Affidavit of Yadi Taylor, Custodian of Records for Park Place MRI, dated May 14, 2021, and associated medical and radiology records for Plaintiff Hector Garcia	201	5

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PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER II			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
82	Affidavit of Hellen Allen, Custodian of Records for Center for Advanced Surgical Specialists, dated May 9, 2020, and associated medical records for Plaintiff Hector Garcia	201	5
88	Affidavit of Brooke Pagan, Custodian of Records for Medicus Spine & Joint, dated June 2, 2023, and associated medical records for Plaintiff Hector Garcia	201	5
90	Affidavit of the Custodian of Records for Neurology and Physical Therapy Centers of Tampa Bay, dated June 2, 2023, and associated medical records for Plaintiff Hector Garcia	201	5
PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER III			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
92	Affidavit of the Custodian of Records for Optimal Performance & Physical Therapies, and associated medical records for Plaintiff Hector Garcia	201	5
97	Affidavit of the Custodian of Records for Excel Pain & Spine, and associated medical records for Plaintiff Hector Garcia	201	5
99	Affidavit of the Custodian of Records for 911 Pain Management and associated medical records for Plaintiff Hector Garcia	201	5

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1	WITNESSES:						
2	<u>NAME OF WITNESS</u>	DX	CX	RDX	RCX	VDX	VOL
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8	Motion for Directed Verdict by Defendant Lauren Krueger.....				324		5
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10	<u>NAME OF WITNESS</u>	DX	CX	RDX	RCX	VDX	VOL
11	MARK DANNENBAUM	334	378				5
12			395	401	404		5
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17	WITNESSES:						
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21					407		5
22	GARCIA, JR., HECTOR	200	225				5
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	PECHERO, GUILLERMO	106	152				5
	ROJAS, CLAUDIA	79	86	104			5

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<u>NAME OF WITNESS</u>	DX	CX	RDX	RCX	VDX	VOL
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Plaintiff closes.....	127	6
Defense closes.....	127	6
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2	Jose Ruiz Facebook postings	139	6
3	Martin Ruiz, Jr. Facebook postings	139	6
4	Alejandro Arellano Facebook postings	139	6
5	Ruiz Erectors Facebook postings	139	6
6	Excerpts from Ruiz Erectors website	139	6

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DEFENDANTS' EXHIBIT BINDER 1 of 2			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
7	Krueger photos	139	6
8	Police Reporter for Accident	139	6
9	Hector Garcia, Jr. deposition exhibits	139	6
10	Humberto Garcia deposition exhibits	139	6
11	Jose Ruiz deposition exhibits	139	6
12	Alejandro Arellano deposition exhibits	139	6
13	Martin Ruiz, Jr. deposition exhibits	139	6
14	Hector Garcia Jr. texts regarding July 2021 accident	139	6
15	Pechero Deposition Exhibit 7	139	6
16	Pechero Deposition Exhibit 8	139	6
17	Pechero Deposition Exhibit 9	139	6
18	Pechero Deposition Exhibit 10	139	6
19	Pechero Deposition Exhibit 11	139	6
20	Pechero Deposition Exhibit 12	139	6
21	Pechero - June 4, 2021 Notes (Jose Ruiz)	139	6
22	Video of Humberto Garcia mowing yard	139	6
23	Photo of Humberto Garcia mowing yard	139	6
24	Ruiz Erectors payroll records (Jose Ruiz)	139	6
25	Ruiz Erectors payroll records (Humberto Garcia)	139	6

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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36	Krueger National Reservation	139	6
37	National Car Rental Past Trip Details	139	6
38	Southwest Airlines boarding pass of Hector Garcia from Harlingen Valley to Tampa International Airport dated April 4, 2021	139	6
40	NATIVE Videos of Humberto Garcia working	139	6
75	Urgent Care 4U Medical Records regarding Jose Ruiz	139	6
92	CV of Mark Dannenbaum, M.D.	139	6
104	Burns Trial Deposition Exhibit 1	139	6
105	Burns Trial Deposition Exhibit 2	139	6
106	Burns Trial Deposition Exhibit 3	139	6
107	Burns Trial Deposition Exhibit 4	139	6
108	Burns Trial Deposition Exhibit 5	139	6
109	Burns Trial Deposition Exhibit 6	139	6
110	Burns Trial Deposition Exhibit 7	139	6
111	Burns Trial Deposition Exhibit 8	139	6
112	Burns Trial Deposition Demonstrative 1	139	6
113	Curriculum Vitae of Lisa P. Gwin, DO, BSEE, BSSN	139	6

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115	BRC Radkeys Report regarding Hector Garcia	139	6
116	BRC Radkeys Report regarding Jose Ruiz	139	6
123	Burns Trial Deposition Exhibit 9	139	6
140	2015 Police Report Pertaining to Hector Garcia, Jr.	139	6
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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143	Open MRI records (Jose Ruiz)	139	6
144	Southern Texas MRI Center records (Jose Ruiz)	139	6
145	Medical referrals (Hector Garcia, Jr.)	139	6
146	Valley Day & Night Clinic records (Hector Garcia, Jr.)	139	6
147	Open MRI of McAllen records (Hector Garcia, Jr.)	139	6
148	Medicus Spine & Joint records (Hector Garcia, Jr.)	139	6
149	Park Place MRI records (Hector Garcia, Jr.)	139	6
150	Excel Pain & Spine record excerpts (Hector Garcia, Jr.)	139	6
152	Exhibit 10 to Hector Garcia, Jr.'s Deposition	139	6

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<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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155	Southern MRI Center (Humberto Garcia)	139	6
156	Valley Day & Night Clinic (Humberto Garcia)	139	6
178	Claudia Edith Garcia Facebook Posting: Photo of daughter's birthday	139	6
179	Claudia Edith Garcia Facebook Posting: Cover collage	139	6
180	Khit Chiropractic records (Humberto Garcia)	139	6
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28 DENIED	IRS Wage and Income Tax Return Transcripts for 2017-2020 regarding Jose Ruiz	146	6
29 DENIED	IRS Wage and Income Tax Return Transcripts for 2018-2020 regarding Hector Garcia	146	6
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168 (DENIED)	Dr. Doñes DWQ questions - Hector Garcia, Jr.	146	6
169 (DENIED)	Dr. Doñes DWQ questions - Jose Ruiz	146	6

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7	Closing Statements by Mr. Cowen.....	227	6
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9	Jury Note.....	247	6
10	Jury verdict.....	249	6
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2	Photo - Crash scene from the right	199	5
3	Photo - Tundra rear detail IMG_4735	199	5
4	Photo - Tundra rear with bent mount	199	5
5	Photo - Ram & Ford impact	199	5
6	Photo - Ford & Tundra impact	199	5
8	Krueger call log	199	5
9	Photo - KruegerRuiz00079	199	5
10	Photo - KruegerRuiz00087	199	5
11	Photo - KruegerRuiz00086	199	5
12	Photo - KruegerRuiz00085	199	5
13	Photo - KruegerRuiz00084	199	5
14	Photo - KruegerRuiz00083	199	5
15	Photo - KruegerRuiz00082	199	5
16	Photo - KruegerRuiz00081	199	5
17	Photo - KruegerRuiz00080	199	5
18	Photo - KruegerRuiz00079	199	5
19	Photo - Jose Ruiz fishing	199	5
20	Photo - Jose Ruiz catching	199	5
21	Photo - Jose Ruiz hitting	199	5

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PLAINTIFFS' EXHIBIT BINDER 1 OF 3				
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>	
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2	22	Photo - Jose Ruiz with baby	199	5
3				
4	23	Photo - Jose Ruiz home project	199	5
5				
6	24	Photo - Jose Ruiz work 1	199	5
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8	25	Photo - Jose Ruiz work 2	199	5
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10	26	Photo - Jose Ruiz - post-surgery	199	5
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12	28	Photo - (Humberto Garcia) Skate park IMG_1969	199	5
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14	29	Photo - (Humberto Garcia) Skate park IMG_1963	199	5
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16	30	Photo - Jose's bed IMG_1977	199	5
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22	33	Photo - (Humberto Garcia) Father's Day	199	5
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24	34	Photo - (Humberto Garcia) Grilling	199	5
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5	45	Photo - Ford LP front	199 5
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7		IMG_4728	199 5
8	47	Photo - Tundra & Ford at scene	199 5
9	48	Photo - Tundra bent bumper detail	
10		IMG_4729	199 5
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12		IMG_4740	199 5
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		Displacement IMG_4732	199 5
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ELIZABETH F. TORRES, CSR, CRR

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64	Photo - Tundra rear IMG_4747	199	5	
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66	Photo - Tundra right rear detail	199	5	
67	Photo - Tundra rear	199	5	
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70	Photo - Tundra with occupants	199	5	
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73	Urgent Care 4U medical records (Jose Ruiz)	199	5	
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ELIZABETH F. TORRES, CSR, CRR

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**VOLUME 8 OF 11
I N D E X
(EXHIBIT VOLUME)**

EXHIBITS FROM TRIAL ON THE MERITS:

PLAINTIFFS' EXHIBIT(S) BINDER 2 OF 3

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PLAINTIFFS' EXHIBIT(S) BINDER 3 OF 3

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85	Medical Records - Valley Day & Night Clinic (Jose Ruiz)	199	5
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ELIZABETH F. TORRES, CSR, CRR

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**VOLUME 9 OF 11
I N D E X
(EXHIBIT VOLUME)**

EXHIBITS FROM TRIAL ON THE MERITS:

PLAINTIFFS' EXHIBIT(S) BINDER 3 OF 3

<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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90	Medical Records - Open MRI of McAllen (Humberto Garcia)	199	5
91	Medical Records - Physicians Injury Clinic (Humberto Garcia)	199	5
92	Medical Records - Rio Grande Valley Ortho (Humberto Garcia)	199	5
93	Medical Records - Southern Texas MRI (Humberto Garcia)	199	5
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ELIZABETH F. TORRES, CSR, CRR

MR2376

PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER II			
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6 7 8 9	69 Affidavit of Luis Khit, Custodian of Records for Spinal Decompression & Remodeling Clinic, dated December 15, 2020, and associated medical records for Plaintiff Hector Garcia	201	5
10 11 12 13	71 Affidavit of Liliana Garcia, Custodian of Records for Open MRI of McAllen, dated July 7, 2022, and associated medical and radiology records for Plaintiff Hector Garcia	201	5
14 15 16 17	74 Affidavit of Laura Hernandez, Custodian of Records for Physicians Injury Clinic, dated July 24, 2020, and associated medical billing records for Plaintiff Hector Garcia	201	5
18 19 20 21	76 Affidavit of Stephanie Solis, Custodian of Records for Jose G. Doñes, dated December 7, 2020, and associated medical records for Plaintiff Hector Garcia	201	5
22 23 24 25	78 Affidavit of Herbert A. Guinup, Custodian of Records for Universal Spine & Joint Specialists, dated March 18, 2022, and associated medical billing records for Plaintiff Hector Garcia	201	5

ELIZABETH F. TORRES, CSR, CRR

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PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER II			
<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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90	Affidavit of the Custodian of Records for Neurology and Physical Therapy Centers of Tampa Bay, dated June 2, 2023, and associated medical records for Plaintiff Hector Garcia	201	5
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<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
92	Affidavit of the Custodian of Records for Optimal Performance & Physical Therapies, and associated medical records for Plaintiff Hector Garcia	201	5

ELIZABETH F. TORRES, CSR, CRR

MR2378

PLAINTIFF'S HGJ REDACTED EXHIBIT BINDER III

<u>NO.</u>	<u>DESCRIPTION</u>	<u>O&A</u>	<u>VOL</u>
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99	Affidavit of the Custodian of Records for 911 Pain Management and associated medical records for Plaintiff Hector Garcia	201	5

**VOLUME 10 OF 11
I N D E X
(EXHIBIT VOLUME)**

EXHIBITS FROM TRIAL ON THE MERITS:**DEFENDANTS' EXHIBIT BINDER 1 of 2**

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4	Alejandro Arellano Facebook postings	139	6
5	Ruiz Erectors Facebook postings	139	6
6	Excerpts from Ruiz Erectors website	139	6
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11	Jose Ruiz deposition exhibits	139	6

ELIZABETH F. TORRES, CSR, CRR

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DEFENDANTS' EXHIBIT BINDER 1 of 2			
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15	Pechero Deposition Exhibit 7	139	6
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17	Pechero Deposition Exhibit 9	139	6
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20	Pechero Deposition Exhibit 12	139	6
21	Pechero - June 4, 2021 Notes (Jose Ruiz)	139	6
22	Video of Humberto Garcia mowing yard	139	6
23	Photo of Humberto Garcia mowing yard	139	6
24	Ruiz Erectors payroll records (Jose Ruiz)	139	6
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ELIZABETH F. TORRES, CSR, CRR

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DEFENDANTS' EXHIBIT BINDER 1 of 2			
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ELIZABETH F. TORRES, CSR, CRR

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DEFENDANTS' EXHIBIT BINDER 1 of 2				
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ELIZABETH F. TORRES, CSR, CRR

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DEFENDANTS' EXHIBIT BINDER 2 OF 2			
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148	Medicus Spine & Joint records (Hector Garcia, Jr.)	139	6
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ELIZABETH F. TORRES, CSR, CRR

MR2383

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ELIZABETH F. TORRES, CSR, CRR

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ELIZABETH F. TORRES, CSR, CRR

MR2385

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

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CERTIFICATE OF COURT REPORTER

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I, ELIZABETH F. TORRES, Official Court Reporter in and for the 197th Judicial District Court of Cameron County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of the Voir Dire Proceedings from the Trial on the Merits, which were held before the 444th Judicial District Court, Cameron County, Texas, on July 31, 2023, which was requested by parties to be included in this volume of the Reporter's Record, all of which occurred in open court and were reported by me.

WITNESS MY OFFICIAL HAND on this the 18th day of January, 2024.

/s/ ELIZABETH F. TORRES
ELIZABETH F. TORRES, CSR, CRR
Official Court Reporter
197th Judicial District Court
974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

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THE STATE OF TEXAS:

COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, ELIZABETH F. TORRES, Official Court Reporter in and for the 197th Judicial District Court of Cameron County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of the proceedings from the Trial on the Merits, which were held before the 444th Judicial District Court, Cameron County, Texas, on August 1, 2023, which was requested by parties to be included in this volume of the Reporter's Record, all of which occurred in open court and were reported by me.

WITNESS MY OFFICIAL HAND on this the 18th day of January, 2024.

/s/ ELIZABETH F. TORRES
ELIZABETH F. TORRES, CSR, CRR
Official Court Reporter
197th Judicial District Court
974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

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THE STATE OF TEXAS:

COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, ELIZABETH F. TORRES, Official Court Reporter in and for the 197th Judicial District Court of Cameron County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of the proceedings from the Trial on the Merits, which were held before the 444th Judicial District Court, Cameron County, Texas, on August 2, 2023, which was requested by parties to be included in this volume of the Reporter's Record, all of which occurred in open court and were reported by me.

WITNESS MY OFFICIAL HAND on this the 18th day of January, 2024.

/s/ ELIZABETH F. TORRES
ELIZABETH F. TORRES, CSR, CRR
Official Court Reporter
197th Judicial District Court
974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

3
4 CERTIFICATE OF COURT REPORTER

5 I, ELIZABETH F. TORRES, Official Court
6 Reporter in and for the 197th Judicial District Court
7 of Cameron County, State of Texas, do hereby certify
8 that the above and foregoing contains a true and
9 correct transcription of the proceedings from the Trial
10 on the Merits, which were held before the 444th
11 Judicial District Court, Cameron County, Texas, on
12 August 3rd, 2023, which was requested by parties to be
13 included in this volume of the Reporter's Record, all
14 of which occurred in open court and were reported by
15 me.

16 WITNESS MY OFFICIAL HAND on this the 18th
17 day of January, 2024.

18
19
20 /s/ ELIZABETH F. TORRES
21 ELIZABETH F. TORRES, CSR, CRR
22 Official Court Reporter
23 197th Judicial District Court
24 974 East Harrison Street
25 Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

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THE STATE OF TEXAS:

COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, ELIZABETH F. TORRES, Official Court Reporter in and for the 197th Judicial District Court of Cameron County, State of Texas, do hereby certify that the above and foregoing contains a true and correct transcription of the proceedings from the Trial on the Merits, which were held before the 444th Judicial District Court, Cameron County, Texas, on August 4, 2023, which was requested by parties to be included in this volume of the Reporter's Record, all of which occurred in open court and were reported by me.

WITNESS MY OFFICIAL HAND on this the 18th day of January, 2024.

/s/ ELIZABETH F. TORRES
ELIZABETH F. TORRES, CSR, CRR
Official Court Reporter
197th Judicial District Court
974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

3
4 CERTIFICATE OF COURT REPORTER

5
6 I, ELIZABETH F. TORRES, Official Court
7 Reporter in and for the 197th Judicial District Court
8 of Cameron County, State of Texas, do hereby certify
9 that the foregoing exhibit(s) constitute true and
10 complete duplicates of the original exhibit(s),
11 excluding physical evidence, admitted, tendered in an
12 offer of proof, or offered into evidence, as set out
13 herein before the Honorable David Sanchez, Presiding
14 Judge of the 444th District Court of Cameron County,
15 State of Texas.

16 WITNESS MY OFFICIAL HAND on this the 18th
17 day of January, 2024.

18
19
20
21 /s/ ELIZABETH F. TORRES
22 ELIZABETH F. TORRES, CSR, CRR
23 Official Court Reporter
24 197th Judicial District Court
25 974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

MR2391

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

3
4 CERTIFICATE OF COURT REPORTER

5
6 I, ELIZABETH F. TORRES, Official Court
7 Reporter in and for the 197th Judicial District Court
8 of Cameron County, State of Texas, do hereby certify
9 that the foregoing exhibit(s) constitute true and
10 complete duplicates of the original exhibit(s),
11 excluding physical evidence, admitted, tendered in an
12 offer of proof, or offered into evidence, as set out
13 herein before the Honorable David Sanchez, Presiding
14 Judge of the 444th District Court of Cameron County,
15 State of Texas.

16 WITNESS MY OFFICIAL HAND on this the 18th
17 day of January, 2024.

18
19
20
21 /s/ ELIZABETH F. TORRES
22 ELIZABETH F. TORRES, CSR, CRR
23 Official Court Reporter
24 197th Judicial District Court
25 974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

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THE STATE OF TEXAS:

COUNTY OF CAMERON:

CERTIFICATE OF COURT REPORTER

I, ELIZABETH F. TORRES, Official Court Reporter in and for the 197th Judicial District Court of Cameron County, State of Texas, do hereby certify that the foregoing exhibit(s) constitute true and complete duplicates of the original exhibit(s), excluding physical evidence, admitted, tendered in an offer of proof, or offered into evidence, as set out herein before the Honorable David Sanchez, Presiding Judge of the 444th District Court of Cameron County, State of Texas.

WITNESS MY OFFICIAL HAND on this the 18th day of January, 2024.

/s/ ELIZABETH F. TORRES
ELIZABETH F. TORRES, CSR, CRR
Official Court Reporter
197th Judicial District Court
974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

1 THE STATE OF TEXAS:

2 COUNTY OF CAMERON:

3
4 CERTIFICATE OF COURT REPORTER

5
6 I, ELIZABETH F. TORRES, Official Court
7 Reporter in and for the 197th Judicial District Court
8 of Cameron County, State of Texas, do hereby certify
9 that the foregoing exhibit(s) constitute true and
10 complete duplicates of the original exhibit(s),
11 excluding physical evidence, admitted, tendered in an
12 offer of proof, or offered into evidence, as set out
13 herein before the Honorable David Sanchez, Presiding
14 Judge of the 444th District Court of Cameron County,
15 State of Texas.

16 WITNESS MY OFFICIAL HAND on this the 18th
17 day of January, 2024.

18
19
20
21 /s/ ELIZABETH F. TORRES
22 ELIZABETH F. TORRES, CSR, CRR
23 Official Court Reporter
24 197th Judicial District Court
25 974 East Harrison Street
Brownsville, Texas 78520
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Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

1 THE STATE OF TEXAS:
2 COUNTY OF CAMERON:

3 CERTIFICATE OF COURT REPORTER

4 I, ELIZABETH F. TORRES, Official Court
5 Reporter in and for the 197th Judicial District Court
6 of Cameron County, State of Texas, do hereby certify
7 that the foregoing exhibit(s) constitute true and
8 complete duplicates of the original exhibit(s),
9 excluding physical evidence, admitted, tendered in an
10 offer of proof, or offered into evidence, as set out
11 herein before the Honorable David Sanchez, Presiding
12 Judge of the 444th District Court of Cameron County,
13 State of Texas.

14 I further certify that the total cost for
15 the preparation of all volumes and exhibit(s) for this
16 Reporter's Record on appeal is \$ 14,388 and was paid/is
17 to be paid by the Appellant.

18 WITNESS MY OFFICIAL HAND on this the 18th
19 day of January, 2024.

20
21 /s/ ELIZABETH F. TORRES
22 ELIZABETH F. TORRES, CSR, CRR
23 Official Court Reporter
24 197th Judicial District Court
25 974 East Harrison Street
Brownsville, Texas 78520
Phone: (956) 550-1485
Certificate No: 5516
Expiration Date: 10/31/25

ELIZABETH F. TORRES, CSR, CRR

MR2395

No. _____

In the Supreme Court of Texas

**IN RE SPACE EXPLORATION TECHNOLOGIES CORP. AND LAUREN
KRUEGER,**
Relators.

Original Proceeding from the
444th District Court Cameron County, Texas
No. 2020-DCL-03939
Following denial of mandamus relief by
Thirteenth Court of Appeals at Corpus Christi, Texas
No. 13-24-00042-CV

DECLARATION OF MICHELLE PECTOR

1. My name is Michelle Pector. I am over the age of 18 and am in all ways capable of making this declaration on personal knowledge.
2. I am counsel for Space Exploration Technologies Corp., which I represented at the trial related to this mandamus proceeding.
3. The appendix being submitted herewith contains a true and correct copy of (i) the order for new trial signed by Respondent on December 13, 2023; and (ii) the memorandum opinion of the 13th Court of Appeals on March 28, 2024.
4. The record being submitted herewith contains 2397 pages, which are true and correct copies of the pleadings, transcripts, communications, exhibits stated

in the indices thereof, and the court reporter's certifications of the trial transcripts and exhibits.

My address is 1000 Louisiana, Suite 4000, Houston, Texas 77002. My date of birth is August 11, 1975. Signed this 12th day of April 2024.



Michelle Pector

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Norma Orozco on behalf of William Peterson

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5 of 5

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