IN THE SUPREME COURT OF THE STATE OF NEVADA

BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants/Cross-Respondents, vs. TITINA FARRIS and PATRICK FARRIS, Respondents/Cross-Appellants.	Case No. 80271
BARRY JAMES RIVES, M.D.; and LAPAROSCOPIC SURGERY OF NEVADA, LLC, Appellants, vs. TITINA FARRIS and PATRICK FARRIS, Respondents.	Case No. 81052

APPELLANTS' APPENDIX
VOLUME 15

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CHRONOLOGICAL INDEX TO APPELLANTS' APPENDIX

[1] These additional documents were added after the first 29 volumes of the appendix were complete and already numbered (6,493 pages).

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DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS, Plaintiffs, vs. BARRY RIVES, M.D.; LAPAROSCOPIC SURGERY OF NEVADA, LLC., ET AL., Defendants.	CASE#: A-16-739464-C DEPT. XXXI

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
THURSDAY, OCTOBER 10, 2019

RECORDER'S TRANSCRIPT OF PENDING MOTIONS

APPEARANCES:

For the Plaintiffs: KIMBALL JONES, ESQ.
JACOB G. LEAVITT, ESQ.

For the Defendants: THOMAS J. DOYLE, ESQ.
CHAD C. COUCHOT, ESQ.
AIMEE LEA CLARK NEWBERRY, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER

Case Number: A-16-739464-C

Las Vegas, Nevada, Thursday, October 10, 2019

[Case called at 1:27 p.m.]

THE COURT RECORDER: On the record.

THE COURT: I do appreciate it. Thank you so very much. We're on the record in case number 739464; Farris v. Rives. Counsel, can I have your appearances, please?

MR. LEAVITT: Yes, Your Honor. Jacob Leavitt on behalf of Plaintiff.

MR. JONES: Kimball Jones for the Plaintiffs.

MR. DOYLE: Tom Doyle for the Defendants.

THE COURT: Okay.

MR. COUCHOT: Chad Couchot for Defendants.

MS. CLARK-NEWBERRY: And Aimee Clark-Newberry for the Defendants.

THE COURT: Okay. Counsel, first thing, which we said we were going to deal with is -- as you all specifically know, everything that was due at or before the calendar call, pursuant to EDCR 2.67 through 2.69, but the Court's rules for trial. And the Court gave you all a specific accommodation because you did not have some things. I actually gave you two. One was we re-called you during the day of the hearing -- let you go into the anteroom and re-called, and the second thing was at the joint request of all the parties, because Exhibit 1 -- there was some document confusion on Exhibit 1, so additional pages, that provided that those pages came to the clerk in the appropriate format by the end of

business on Tuesday, October 8, they would be able to be included.

And also there was, with regards to Plaintiffs' proposed exhibits, the photographs, which I believe that was Plaintiffs' Exhibit 8, photographs that were on the jump drive that were not in the individualized one photograph per page. They instead were somewhere on a jump drive, somewhere in the exhibit binder. If those also came in by end of business day on Tuesday, October 8th, they could be included in the proposed exhibits.

What I understand, from speaking with every member of my team, absolutely zero came in by end of day on Tuesday, October 8th. So that means no -- nothing can get added to Exhibit 1, and none of the Exhibit 8 proposed that was not in the hard bound comes in. So that was -- you all were given extra accommodation. You chose not to utilize it. Nope, there is no if, ands, or buts. You were specifically supposed to do that, Counsel.

MR. DOYLE: Right.

THE COURT: There was no if, ands, or buts from either side. We gave you that extra accommodation. You chose not to utilize it. Nothing came in to the Clerk. I checked with the clerk, I checked with the recorder, I checked with the JEA, I checked with my law clerk, and there was no request by anyone, no one told us about any emergency, any anything. We even waited an extra day yesterday to see if, by chance, somebody had some issue. There was absolutely nothing from anyone. And today -- nothing even today, the 10th. It is now, as we know, 1:30 on the 10th. No one chose to comply in any manner whatsoever.

So the exhibit binders, as presented to the Court in their proposed format at the time of the calendar call is the only things that can potentially be brought in as proposed exhibits. And that does not include the jump drive pictures, because the agreement was that the jump drive pictures --

MR. LEAVITT: Yes.

THE COURT: -- Plaintiffs' proposed 8, had to be in the hard copy format. So when I say, what was presented to the Court, I meant the binders subject to the -- and I may be confusing 8 and 9, because 8 may have --

MR. LEAVITT: You are.

THE COURT: -- been the images and 9 may have been the pictures, and I may have miss -- transposed those two.

Did I just transpose those two?

MR. LEAVITT: You did, Your Honor. And that's understood. Plaintiff was --

THE COURT: I'm doing this from memory, so --

MR. LEAVITT: The -- right. For -- yes, Your Honor, the pictures on the jump drive, we're fine with that, and that's why we didn't bring them in.

THE COURT: Okay.

MR. LEAVITT: Thank you.

THE COURT: But there was a specific agreement. You all had to get those to the court.

MR. LEAVITT: Correct.

THE COURT: It was you all's responsibility to get them to the court. You chose not to do so. So --

MR. LEAVITT: Yes.

THE COURT: -- it is what it is. And I'm sure you all can appreciate this is the -- I think I have lost count on the number of rules that have been violated, the number of times this Court had granted additional accommodations to the parties, the number of orders that this Court has done, the number of memos this Court has done, the number of times this Court has reminded you in open court of rules that you all continue to disregard a number of times.

So, really, I've told you even the day before, when you were here on Monday, that everything had to be provided on Tuesday, compliant. I had you all even affirmatively agree to that --

MR. LEAVITT: Uh-huh.

THE COURT: -- by voice of affirmation so that there was no if, ands, or buts. You still didn't have it. I still gave you additional time until the end of the day on Tuesday, even after that affirmation on Monday, that you would have everything on Tuesday. You still didn't do it, you still didn't do it on Wednesday. It is now Thursday at 1:30. You can appreciate trial starts on Monday. There is no way possible anyone can have any reason why you didn't do it. So it is what it is, what you presented on Tuesday.

We are now moving forward with the motion to strike.

MR. DOYLE: Your Honor --

THE COURT: The motion to strike --

Counsel, what?

MR. DOYLE: If I -- if I may be heard at least --

THE COURT: No, you may not.

MR. DOYLE: -- to make a --

THE COURT: This is done.

MR. DOYLE: -- at least to make a --

THE COURT: This is done. No.

MR. DOYLE: -- record.

THE COURT: Counsel, you may not. The record is done. You were given additional accommodation. You didn't provide it. You provided no letter, no anything. It is done. I have to move on. The idea that you can keep on saying things after the fact and not complying with the rules is done. We are moving forward with the motion to strike. Motion to strike. Motion to strike is the next item up.

So if you choose to continue to disregard the rules, that's really your choice, Counsel. The Court keeps on giving you accommodations, and they keep on getting ignored. So we're moving forward with the motion to strike.

The motion to strike is the next thing up. And we've got -- one second, please. Let me get that in front of me. This is the -- one moment, please.

Jimmy, can you do me a favor and -- oh, wait a second. Sorry. Never mind. It was in my other pile. Thank you. Never mind. Thank you, Jimmy. I appreciate it. Sorry about that.

So this is Plaintiffs' motion to strike Defendants' fourth and

fifth supplement to NRCP 16.1, disclosure of witnesses and documents on order shortening time. And the Court did sign the order shortening time because it did comply with the EDCR. As you know, this was originally set to be on 10/7, but because, unfortunately, of the additional noncompliance by Defense counsel of filing the additional brief on the Friday before the last judicial day, which took all that additional time, and since you all had agreed to one hour for the evidentiary hearing, I gave you the one hour, as the court recorder specifically timed; you got your one hour, as you specifically agreed. So that meant we could not do Plaintiffs' motion, which is why we continued it to today. Now we're hearing it today.

Obviously there's no prejudice to either side because the only party that potentially can even say that they're prejudiced is Plaintiff, and you didn't raise it as any prejudice, so you waived it. So we're hearing it today.

Today is the day. The Court's inclination is as follows: The Court's inclination with Plaintiffs' motion to strike the 16.1 disclosure of -- I'm going to go to the witnesses first, is -- the Court's inclination is to grant it because the -- all the witnesses -- well, some of the witnesses were specifically conceded by Defense counsel. So that's not even before the Court. On those that are conceded would not be before the Court because they were conceded. To the other ones that were not conceded, the Court's inclined to grant because they were presumably known in the medical records. There's been absolutely no good cause presented anywhere in the pleadings that they -- for anyone reason not

to have disclosed them timely during the discovery.

The Court then evaluates whether there's prejudice. Well, of course there's prejudice because they were not disclosed until way after discovery had been extended. And there had been -- I don't know if you want to call it 7, 8, 9, because the numbering was incorrect so many different times on the extensions that the Court can't really take the numbering as being the correct number because there was at least three number 9s, three, maybe four. I -- you know, they were so many times incorrect. Let's just say there is at least more than seven extensions in this case. And so there was more than enough time, that if anyone felt that they needed to add extra witnesses, they could have done it through all of those multiple extensions of time.

Defense counsel chose not to do it. They have given no good reason why they couldn't have done it. So, all of those witnesses would be prejudicial. You all have trial starting on the 14th. So even if the Court heard this on the 7th versus today, meaning Monday versus Thursday, the same amount of prejudice fully exists because there would be no way for Plaintiff to be able to do any of the necessary discovery.

Remember, discovery was closed back on July 24th pursuant to the latest stipulation. You all have known about this trial date since at least January of this year. It's always been this date. It didn't get continued. The fact that you all -- without rehashing, the fact that you all in -- let's see -- whether you want to call it -- well, I can't even count, as you know, the potential documents because those documents could not have even been submitted to the court because they were per se

violations of the EDCR because they were per se, submitted to the court in violation of Rule 11, in violation of EDCR 2.35, in violation of NRCP 16. I don't need to go into the violation of all the number of rules. Rules of professional conduct.

I mean, there's just so many of them. So they should not have even been submitted to the court. So they can't be counted. ROE documents submitted in violation of so many different rules. Because, as you know, they were more than 20 days after discovery. So they couldn't have been even submitted. They have so many other issues with them, which the Court's not going to rehash, see, i.e., all the transcripts that you've ordered, okay, all the hearings, all the memos, all the orders that the Court's done since that time, for all those reasons stated therein. So the Court does not see any good cause. The Court does see specific prejudice to Plaintiffs with regard to all of the witnesses set forth therein.

To the extent that Defense says, well, hey, if Plaintiff named two individuals, so therefore we should be able to name these other individuals, well, the point is Defense counsel didn't submit to this Court any proper pleading objecting to that. So just because they're saying it in opposition doesn't mean that they can name a whole bunch of people, because if they wished to properly contest that, they had the same opportunity as Plaintiffs took to file a proper motion to be heard by the Court. And if they chose to do so, this Court would have been more than glad to hear it. But they chose not to. So that's the Court's inclination on splitting the witnesses and documents up. That's the Court's inclination

on the witnesses.

Counsel for Plaintiff, it's your motion. Go ahead.

MR. LEAVITT: Yes, Your Honor. I'm not going to belabor it. What -- in the moving papers it says what it is. It's beyond the time for discovery. They were objected to timely. That's where we stand. I'm not going to add any more to it. Unless you have specific questions for counsel, me, I have nothing further to add, Your Honor.

THE COURT: So my question would be really just that -- the objection -- well, the position raised in the opposition about that you named two, why don't they get to name 18 or -- you named two additional people after the deadline. So why shouldn't they be able to name additional people?

MR. LEAVITT: Right. We did. We put them in. Mary Cane [phonetic], she came in when we were going through the records. She wasn't -- she wasn't -- she was not in the records specifically. Mary Jane, sorry. I said Mary Cane. I meant Mary Jane. Mary Jane wasn't in the records. We found her through speaking to our client. She -- well, Kimball actually spoke to her, so I'll defer to him.

THE COURT: Okay. So --

MR. JONES: Your Honor --

THE COURT: Let's -- we're going to have to do this one way or another. One horse, one rider on a motion, right, because otherwise we will be here -- in fairness. So whoever's going to take the motion, I think, in fairness, it's one or the other.

MR. LEAVITT: Yeah.

MR. JONES: Sure.

THE COURT: So --

MR. LEAVITT: He spoke. I'll concede. Thank you. Your Honor.

MR. JONES: Your Honor, our client found out that Mary Jane had information that would be relevant to this case late in the process. I don't know exactly what day. I know my meeting with her was late in the process. Mary Jane was not listed anywhere in the records. She is a respiratory therapist that treated my client, and that they subsequently ran into each other and had a conversation. And then I found out about her and added her.

The other is Vicky Center [phonetic], and we have dealt with that. That's been a significant issue. Vicky Center was the plaintiff in the other case that we've talked about. And I can tell you her importance was not clear to me until pretty late in the game.

THE COURT: Okay. Okay. Who's taking the opposition from this side? Okay.

MR. COUCHOT: Your Honor, the only witness that is important to us that we intend to call at trial of those 18 is Gregg Ripplinger -- Dr. Ripplinger. Dr. Ripplinger is differently situated than all of the other witnesses that have been disclosed. He was -- his role in this matter has been prominently featured and well-known by both Defendants and Plaintiffs since the time of expert disclosure. And I can see that that is not -- that that weighs against -- the fact that we have known that for quite some time weighs against us. But this is where we

are with the motion to strike. And this is why the *Southern State* factors exist, to determine whether late disclosure should be permitted despite the fact that it is late.

Dr. Ripplinger's role in this case is a prominent -- is prominently featured in two of Plaintiffs' expert reports. He's quoted by their general surgeon as saying that he suspects -- so to put this into context, Dr. Ripplinger is a second-opinion surgery -- surgeon, who saw Mrs. Farris in the several days, it may have been a week, after the initial surgery by Dr. Rives. And so he was consulted to give an opinion as to whether he believed Dr. Rives was on the right track or not, and whether or not different care would be appropriate at that time.

In Dr. Horowitz' expert report, Dr. Horowitz essentially quotes Dr. Ripplinger as saying that he -- saying that Dr. Ripplinger suspected a bowel leak and stated that there should be a fairly low threshold for reoperation.

THE COURT: Uh-huh.

MR. COUCHOT: Dr. Stein, their infectious disease specialist, uses those exact same words. What Dr. Ripplinger actually said was significantly different. What he said is,

> "I think there should be a fairly low threshold for at least a diagnostic laparoscopy or a" -- "even laparotomy. If there are any significant abnormalities noted on the CT scan, especially if there is an increase in fluid in the abdomen, I would be concerned for a possible leak."

So in contrast to what their experts are saying, he's not

saying that, "I think there should be a low threshold for returning to surgery." He's saying, "I think there should be a low threshold for returning to surgery depending on the outcome of the subsequent CT scan."

THE COURT: So, Dr. Ripplinger was known to you when?

MR. COUCHOT: When initial expert disclosures took place. And I would have to review the pleadings. I don't know that date off the top of my head. I'm sure it is in here.

THE COURT: So he was known to you way within the discovery period, correct?

MR. COUCHOT: Correct. Absolutely, Your Honor.

THE COURT: And you didn't --

MR. COUCHOT: Neglected to add him as a witness, Your Honor.

THE COURT: Despite how many stipulations to extend discovery after he was first known to you?

MR. COUCHOT: Several, at least.

THE COURT: Okay. And so how would he come in?

MR. COUCHOT: Because the *Southern States* --

THE COURT: Fourth Circuit. Nothing to do with the Nevada law, right?

MR. COUCHOT: It's the same test that's utilized in the Ninth Circuit, Your Honor, and which --

THE COURT: And we're State Court, not the Ninth Circuit.

MR. COUCHOT: I appreciate that. But as Plaintiff cited in

their moving papers, I think that the balancing test is applicable because of the similarities between the disclosure requirements in federal law and the disclosure requirements in Nevada court. So I recognize that it is not a Nevada State Supreme Court case.

THE COURT: How would he possibly come in? He would fall within the experts. So, he's even double harmful, right? Because if you ever wanted him, he would have the additional aspect if he would have only come in as an expert, right?

MR. COUCHOT: No. I disagree, Your Honor.

THE COURT: So how would he possibly come in?

MR. COUCHOT: He would come in to express his -- I'm sorry. Is the question what would the purpose of his testimony be?

THE COURT: How would he possibly come in?

MR. COUCHOT: Meaning what --

THE COURT: In what role?

MR. COUCHOT: -- what would he --

THE COURT: In what role?

MR. COUCHOT: -- testify?

THE COURT: What role?

MR. COUCHOT: To speak about his observations and his thought process at the time of the case -- of the care, which I do not believe requires an expert report or is a -- or is the type of expert that needs --

THE COURT: So the time of the care. So he was in the initial medical records, right? The --

MR. COUCHOT: Yes, Your Honor.

THE COURT: -- initial medical records? So it wasn't even an expert disclosure. He was in the initial medical records which your client was aware of because he was there at the time of the initial medical procedure. So it's not even initial experts. It goes way back, doesn't it?

MR. COUCHOT: Absolutely, Your Honor. I understand that. He -- I understand he should have been disclosed earlier. I'm conceding that point.

THE COURT: Okay. But I thought you said you found out about him at initial experts.

MR. COUCHOT: No.

THE COURT: I thought he was --

MR. COUCHOT: No.

THE COURT: -- way back at the time of the actual procedure. So he's pre-complaint. He's -- he was there the day of --

MR. COUCHOT: My --

THE COURT: -- the weeks of?

MR. COUCHOT: The point I was trying to make, Your Honor, is that there is no surprise to Plaintiffs about Dr. Ripplinger's involvement and our intent to take his deposition and to use him as a witness.

And Dr. Ripplinger's deposition was noticed initially for August 2nd, 2019 when the parties were under the now clearly mistaken impression that --

THE COURT: There is --

MR. COUCHOT: -- discovery would be closed.

THE COURT: Counsel, there is no way you can ever claim anything candor to the court, under the rules of professional conduct, that you could ever, ever, ever say you were under any mistaken belief. Okay, Counsel? You know that, I know that, and there's clearly JAVS statements in open court. Okay? You did not ever file anything in compliance with the rules that ever said the parties agreed to any extension past July 24th, 2019.

So, Counsel, please stop saying that. It is a blatant misstatement. Your declaration that you filed is a blatant misstatement of what happened in July. You weren't even here. So please stop saying it on personal knowledge, because you weren't here. Okay? The attorney that was here didn't say it. The JAVS recording clearly says it was not stated. Okay? So please do stop saying something that is blatantly untrue, because it is just not true.

MR. COUCHOT: I'm sorry, Your Honor. I need --

THE COURT: So I don't -- so if you keep saying it -- you know it's not true.

MR. COUCHOT: I'm not entirely clear what specific thing the Court believes I'm representing. That -- the fact that we were under -- that --

THE COURT: That you -- anyone who keeps saying that at the hearing in July, that there was an agreement among the parties, is clearly misstating what was stated in open court.

MR. COUCHOT: Okay. I --

THE COURT: Okay? Read your own transcript. You have it.

So as of that date -- and you never ever submitted to this Court anything properly that ever said there was an agreement. EDCR is very clear, right, the court shall not sign anything 20 days before discovery cutoff, okay, unless it shows excusable neglect. You never submitted anything to this Court that ever said the parties were in agreement in compliance with the rules.

So if you all have some internal viewpoint among yourselves -- don't ever say that there was anything ever communicated to this Court, because it wasn't ever properly ever communicated to this Court.

MR. COUCHOT: I --

THE COURT: So whatever you may have in your own mind, maybe what's in your own mind. But it's always been this trial date since January of this year. It's never been changed. It's never been submitted to this court that it has been changed. So you can't have any reasonable belief, because that would be a per se violation of the rules for you to have such a belief. Because in order to have a reasonable belief, you have to comply with the rules.

You have to submit something to the Court. You have to have the Court approval in order to change a date. And you can't, in any way, ever think that you would have court approval when you, under Rule 11, have to submit something that you have to have it in compliance with the rules, and you never did. So please, do stop saying that because you know that's not true.

MR. COUCHOT: Your Honor --

THE COURT: Are you going to say you submitted anything to this Court in compliance with the rules?

MR. COUCHOT: No, Your Honor. I'm not.

THE COURT: Okay. So please don't say you did.

MR. COUCHOT: Your Honor, I did not intend to represent --

THE COURT: You filed a declaration that said -- did. And that's the first time that the Court said -- told you all that you didn't have it in September, which is a blatant untruth.

MR. COUCHOT: Your Honor --

THE COURT: And then another attorney from your firm said the same thing in a declaration more recently.

MR. COUCHOT: Your Honor, Dr. Horowitz's deposition was noticed and agreed upon date by the parties. That deposition was vacated because the party -- because Plaintiffs' counsel and I spoke about taking Dr. Ripplinger's deposition before the date of Dr. Horowitz's deposition. The point I'm trying to make is that Plaintiffs knew of our interest in utilizing Dr. Ripplinger as a witness. That is the point I'm trying to make, Your Honor.

THE COURT: When did they know that? On what date?

MR. COUCHOT: They knew that as of August 2nd. Now, I appreciate that there wasn't a proper motion in front of the Court, and I appreciate the Court's position that we didn't have a reasonable expectation that that would be allowed to proceed. But that was the conversation I had with Plaintiffs' counsel at that time.

THE COURT: Who from Plaintiffs' counsel?

MR. COUCHOT: Mr. Hand. Because Mr. Hand and I had discussed the possibility of continuing this action. And Dr. Horowitz's deposition was set for a specific date. We specifically agreed that we would take it off calendar and move it so that we could depose Dr. Ripplinger first because we both understood the importance of Dr. Ripplinger's testimony, especially with regard to his experts because they, in my opinion, don't properly take his comments into context.

THE COURT: Do you understand no one from Plaintiffs' counsel has agreed with you on that position? I have not heard anything from Plaintiffs' counsel they agree with you on that position.

MR. COUCHOT: Well, I can tell you --

THE COURT: I'm just saying, you understand the Court can't take hearsay. And you're representing what supposedly Mr. Hand said. Mr. Hand's not here. No one has ever said that to this Court from the firsthand knowledge from anyone from Plaintiffs' counsel. So you understand no one has ever represented it to this Court in any firsthand capacity?

MR. COUCHOT: Well, Your Honor, I wish Mr. Hand was here. I'm confident he would confirm that. I don't know what I can do, Your Honor. I didn't record the conversation. I can assure the Court that it did take place.

The first time we heard from Plaintiffs' counsel that they would not agree to the deposition of Dr. Ripplinger was at the 2.67 conference. They later agreed -- at that point, they expressed that they

would not agree to the depositions of Dr. Horowitz. Their expert --

THE COURT: What was the date of the 2.67?

MR. COUCHOT: September 11th, 2009 -- I'm sorry, 2000 --

THE COURT: September 11th?

MR. COUCHOT: Yes, September 11, 2019.

THE COURT: Wait, but you didn't take it on August 2nd?

MR. COUCHOT: No, we did not. It was taken off the calendar because counsel for Dr. Ripplinger requested that it be continued. So the treating physician's counsel asked -- said that that date didn't work for them and the doctor.

THE COURT: But you did a notice of deposition, not a subpoena?

MR. COUCHOT: Yes. I don't know, Your Honor. I would imagine it was a subpoena, but we were asked for the professional courtesy of coordinating it on a date that worked for his counsel. And so he took it off calendar to be re-noticed for a date that worked for his counsel. And it was during that same time frame that I had the conversation that I told the Court about with Mr. Hand where we agreed to proceed with -- we agreed to vacate Dr. Horowitz's scheduled deposition so that we could do Ripplinger first.

THE COURT: Okay. The reason why the Court's asking because if you had a subpoena out there for Dr. Ripplinger, why wouldn't you have just taken his depo pursuant to the subpoena? That's what -- you have to realize the Court doesn't know about whether you had subpoenas or notice of depos. But if you had a subpoena out there,

you could have -- why didn't you just take his depo pursuant to the subpoena?

MR. COUCHOT: Well, I don't recall specifically, but I can tell you based on my experience it was either one of two things. It was either that date didn't work for him that we noticed for it because he's a busy person, or it didn't work for his counsel. Or it could have been a combination of both. But I'm certain it was one of those two reasons. Because if it was a date that was convenient for Dr. Ripplinger and his counsel, we would have proceeded as scheduled. But it is our practice, when a party is represented by an attorney, to coordinate with that attorney on a mutually agreeable date, rather than proceed with the date that we cold set.

THE COURT: But you still could have taken his deposition at a later date if you had a subpoena, right? Did you release him from the subpoena?

MR. COUCHOT: No, we did not. I -- Your Honor, at this point, I don't know the answer to that question, Your Honor.

THE COURT: Okay.

MR. COUCHOT: And the purpose of these comments, Your Honor, is to -- is because the primary reason why a witness is to be stricken under Rule 37, from my understanding of the analogous federal case law, is that it has to do with prejudice to the other party. And the Southern Hills factors, which I think are persuasive because they analyze the analogous federal law and federal rules for exclusion, FRCB 37, they weigh in favor of allowing us to be able to proceed with this witness

even though he wasn't timely disclosed.

The first factor is surprise. And this is my point with regard to his role having been known. There is no surprise. We have talked to Plaintiffs' about the fact that we wanted his deposition. We had arranged Dr. Horowitz's deposition to be postponed so that we could continue with Dr. Ripplinger's deposition. He played a prominent role in their expert's reports.

The second factor is the ability to cure surprise. That's the same as the first. There's no surprise here. The third factor is to the extent which allowing the evidence would disrupt trial. This evidence would not disrupt trial, Your Honor. In fact, it would make trial more efficient because we wouldn't have to be arguing about what Dr. Ripplinger meant when he said certain things. Dr. Ripplinger can tell us himself what his thought process was. And so in that sense, this would -- it would be more efficient to have Dr. Ripplinger testify than to have the experts from both sides opine as to what exactly Dr. Ripplinger was saying and what he meant at the time.

The next factor is importance of the evidence. This is very important. It's a second opinion by a surgeon during a critical time where Plaintiffs' counsel argues Mrs. Farris should have been returned to surgery. Dr. Ripplinger agreed with Dr. Rives' recommendations to wait and see if the CT scan showed evidence of a perforation. Plaintiffs' experts take his comments out of context, and neglect to mention that his comment was dependent on the results of a subsequent CT scan. It's vitally important that the truth regarding his opinions and his

assessments be known in this case.

The fifth factor is the only factor that weighs against us. It's the non -- the party's explanation for nondisclosure. I conceded we do not have a good reason for not disclosing him at an earlier date. The only point I can make in that regard is that Plaintiffs did disclose two additional witnesses the day before. While we did not file a motion to strike, we did file an objection to those witnesses.

THE COURT: Uh-huh.

MR. COUCHOT: We did file a timely objection, and we believe we preserved our right to make the argument that they should not be called based on that time objection to the disclosure.

The purpose of 37(c)(1) is to prevent surprise, Your Honor. There's absolutely no surprise here when it comes to Dr. Ripplinger. In fact, Plaintiffs were well-aware of the fact that Dr. Ripplinger played a critical role in this care and that we wanted to take his deposition. The mere fact that they've -- that we neglected to include him on our NRCP 16.1 disclosure before the close of discovery changes nothing. It is a violation of the duty to disclose witnesses. I understand that, Your Honor. But the fact is, it would not have changed anything in this case, and his inclusion as a witness is not a surprise to Plaintiffs and it would not prejudice Plaintiffs.

THE COURT: But counsel, you understand you're not using the right standard. That's what the Court was trying to tell you. Right? Did you read 37(c)(1)?

MR. COUCHOT: Yes, Your Honor.

THE COURT: You're not using the right standard. It's your burden. Okay. The right standard is by the pure language of 37(c)(1), right?

"Failure to disclose or supplement. If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e) or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial, unless the failure was substantially justified or is harmless. In addition to, or instead of this sanction, the Court, on motion, after giving an opportunity to be heard."

Okay. The second part doesn't apply because you didn't do a motion. Okay. So the motion's not coming from you, so that second part doesn't apply. You have the burden, unless the failure was substantially justified or harmless. You're not doing the right standard.

MR. COUCHOT: Your Honor, I --

THE COURT: You have the affirmative burden to show that it was substantially justified or harmless. You have -- that's what I was trying to ask it nicely to say look, can you focus the Court to meet the very standards that Nevada requires? It's nice what the Fourth Circuit may require. It's nice what maybe the Ninth Circuit requires in different things. But I'm talking straight NRCP, Nevada Rules of Civil Procedure. Nevada case law. What Nevada requires.

MR. COUCHOT: Your Honor, I thought --

THE COURT: And Nevada requires that you have to show if

you cannot use it, is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at trial unless the failure was substantially justified or is harmless.

MR. COUCHOT: I understand that, Your Honor. And I thought I was making an argument that it's harmless, and that is the point that I'm trying to make because the measure, in my opinion, or the harm, has to be prejudice to Plaintiffs.

THE COURT: Today is Thursday. Trial starts on Monday. How is it harmless?

MR. COUCHOT: It's harmless because they were well aware of the fact that we intended to take his deposition. They expressed -- they've expressed no interest in taking his deposition despite the fact that they knew that we were interested in his deposition.

THE COURT: But that argument would be an August argument, wouldn't it be? It's not an October 7th or an October 10th. I'm treating it as if this hearing would have happened on the 7th because I want to make sure that everyone gets the same benefit of the doubt, whether it was the 7th or today. And the reason why it's today is because of what you all did last Friday was took all that extra time, so I didn't have the extra time to handle this motion on Monday. But I'm not holding that against you. I'm treating this as if it was Monday, you know what I mean? To give you all the extra benefit of the doubt.

But it's -- how is it harmless because Dr. Ripplinger's, by you all -- you've told me you had a subpoena to Dr. Ripplinger. You chose, not because of any actions because of Plaintiff, but you understand

because of an action of Dr. Ripplinger's own counsel, you chose not to enforce your own subpoena on Dr. Ripplinger. And then you chose, I guess, not to reassert your own subpoena against Dr. Ripplinger, once again, not because of anything by Plaintiffs, but you chose not to do it any time after August 2nd.

MR. COUCHOT: Well, we did file a motion to compel his deposition, which is currently scheduled for the second day of trial.

THE COURT: But that was your own choice if you didn't do a proper OST. That's your own choice if you don't do a proper order shortening time. That's called follow the rules. Do it properly. That was your own choice.

MR. COUCHOT: Your Honor --

THE COURT: So --

MR. COUCHOT: -- I believe it is substantially justified. I believe it is harmless.

THE COURT: Okay. How though? That's what this Court is trying to get some understanding from you because you told this Court, right, August 2nd you had a date. You had a subpoena. So if you had a subpoena, you had a right to take a deposition. You chose not to take it on that date. Whether it was outside of discovery or not, that's a different issue because that would have been -- the Court's not even going there, but whatever.

So maybe you had an EDCR 7.50 agreement. Whatever. The Court's not even going there, but you're telling this Court you had a subpoena to take a deposition on August 2nd, and you chose not to take

it because of Dr. Ripplinger's counsel's request. And then after August 2nd until some unknown time, you still chose not to take that deposition. So you don't even have the "information" and then the next thing that comes up is their motion to strike.

And so there's still not anything that you have done that somehow is meeting your burden for substantially justified for why you didn't disclose it. Because presumably, on August 2nd, you knew if you were going to take his deposition that you still hadn't disclosed him and you could have disclosed him August 2nd, August 3rd. You could have even disclosed him, hypothetically, right, as of the day of their motion to strike, and you still didn't disclose him. So there's still nothing that you've even disclosed him at any point whatsoever.

MR. COUCHOT: I'm sorry. Could have disclosed him on ours?

THE COURT: Hypothetically, you still never disclosed Dr. Ripplinger, right?

MR. COUCHOT: No, we did disclose Dr. Ripplinger. That's the subject of this motion.

THE COURT: Excuse me. Excuse me. You didn't -- sorry. You didn't do it August 2nd, you didn't do it any time in August?

MR. COUCHOT: No, we didn't do it until August 12 -- August 13th.

THE COURT: Okay. So you knew enough that you needed to depose him, but you still didn't disclose him?

MR. COUCHOT: Yes, Your Honor. I agree with that, Your

Honor.

THE COURT: But you understand the challenge for a Court to somehow say how is that substantially justified or harmless if you knew enough that you needed to depose him, but you still chose not to disclose him?

MR. COUCHOT: Because -- well, Your Honor, the best I've got, the truth is that it didn't occur to us until we -- until the 13th. When I was reviewing Plaintiffs' disclosure of their additional witnesses, it dawned on me that I needed to review ours, as well. Ripplinger wasn't there. There were additional people who were involved in the hospital care. Okay. That's the explanation, Your Honor. That's the truth.

Now, the point that I've been trying to make is that I believe this is harmless, regardless of whether it's substantially justified. And the reason why it's harmless, Your Honor, is because Dr. Ripplinger is not some obscure physician who's role was unknown to the parties. He's been prominently featured in this action by their expert witnesses and our expert witnesses.

Now, I should have, if I could turn back the wheels of time, I would have, as soon as I got their disclosure and realized that his comments were taken out of context, I should have slapped him onto our 16.1 disclosure and supplemented it. I should have done that.

THE COURT: Shouldn't he have been in your initial disclosures?

MR. COUCHOT: My initial -- my practice for initial disclosures is not to name everyone under the sun. It's to use the -- to

name the people that I think that are going to have a role, that are actually going to testify at trial.

THE COURT: Well, feel free to please read NRCP 16, but okay.

Counsel for Plaintiff, you get last word. It's your motion.

MR. JONES: Your Honor, just very quickly.

THE COURT: It says it's not harmless --

MR. JONES: We believe it is extraordinarily --

THE COURT: -- so explain to me --

MR. JONES: -- harmful.

THE COURT: -- so they say it's not harmless because you've known about Ripplinger. Your own experts say it, so do you agree or disagree? And if you disagree, why?

MR. JONES: Absolutely disagree, Your Honor. To begin with --

THE COURT: Then please point out to the Court why.

MR. JONES: -- he's an expert who will come to trial. What his state of mind on that day, frankly, is not particularly important now. It's what it meant to the Defendant at that time. But Dr. Ripplinger, what he put in his medical records, is the record that we have that everybody has been going off of. He's to come to trial and offer new expert opinions as a surgeon and what he thinks about this or that, that's something I would have wanted to have at the expert disclosure deadline.

We, very much, plan our case for trial based on what we

believe the Defense is going to do and who they're going to call. The first time that I ever, even though I came into the case in July or June, the first time I ever knew that the Defense had an interest in Dr. Ripplinger was after the close of discovery. When we did not have a stipulation that had been signed by everybody, I heard that they unilaterally noticed the deposition after discovery of Dr. Ripplinger.

I was not okay with it then. I've never been okay with it. So there's a question in terms of a conversation --

THE COURT: I'm going to have to interrupt you before because I can't take the I. I got to take Plaintiffs as a whole --

MR. JONES: Absolutely.

THE COURT: -- the whole table. So I've got to ask you the question from --

MR. JONES: Yeah.

THE COURT: -- all three. And I appreciate Mr. Hand is not here, but you can't have what one Plaintiffs' counsel, a different Plaintiffs' counsel, it's got to be the combined. Is there anyone from Plaintiffs' counsels side who's agreed, acquiesced, waived, whatever word you want to use, with regards to Dr. Ripplinger? Because that's not fair to Defense if anyone at that table, whether they're physically here today or not, right, has agreed and they relied on it. Let's be fair for the whole table, right?

MR. JONES: I couldn't agree with you more, Your Honor. I will tell you my conversations with Mr. Hand, unquestionably, it was not something that he was interested in having go forward. At our 2.67

conference, we specifically confronted this issue with Mr. Doyle, with Mr. Hand present, and Mr. Doyle stated that Mr. Hand had made certain agreements with respect to Dr. Ripplinger. And Mr. Hand said, no, I didn't, but did with respect to Dr. Horowitz, in terms of depositions after the close of discovery.

THE COURT: Okay.

MR. JONES: And so that was Mr. Hand's position. It's the only one I have seen him take. That he never was agreeable, with respect to Ripplinger, outside the close of discovery. And so --

THE COURT: So you have a difference of opinion of a person who's not here. You realize, I would love to be a fly on the wall. But I'm not. I don't have a crystal ball. I don't know all and see all. I know what you all tell me in court. I know what's on JAVS. I know what's in pleadings. I'm --

MR. JONES: Of course.

THE COURT: -- you know what I mean?

MR. JONES: Yeah.

THE COURT: So I have to ask you all, in fairness, what each of you all do outside the Court's presence. And that's the only way I can ask. That's why I'm asking you not just what one person, I'm asking all Plaintiffs, all Defense counsel. So your statement is there was no representation by any of the Plaintiffs' counsel as stated by Defense counsel?

MR. JONES: That's right. That's my understanding, Your Honor.

THE COURT: Like I said, I'm just trying to get a clarity in case -- like I said, I wasn't there. I'm asking each of you your positions. Okay.

MR. JONES: With respect to Dr. Ripplinger. With respect to Dr. Horowitz, my understanding is there was; that there was an agreement, and that deposition did go forward.

My understanding also is that Dr. Ripplinger was not even noticed until after the close of discovery. So discovery had closed prior to an effort being made to set up his deposition. And so any -- which on its own just identifies how can we prepare for something like that when it's not even requested until after discovery is over. And certainly as Your Honor knows, I was open to the idea of extending discovery, and I wouldn't have complained about taking Dr. Ripplinger's deposition in those circumstances, where we would have an opportunity to prepare for that and everything else.

But now to be ambushed at trial with a new witness who was involved in the care, who's going to offer expert opinions and potentially turn the case on its head based on who knows what he's going to say that is not contained within the records. That's very troubling.

If the Defense wanted that and wanted to risk that, they should have done it at the right time, and they should have brought him into the case at the right time. And then we could've evaluated it and planned for it. But we didn't because they didn't.

And so for them to try to bring him in now just because we knew who his name was, and we knew his involvement in the care, it

would be substantially prejudicial for us because we have no idea what conversations have happened behind closed doors. We haven't been able to have his deposition taken. I mean, there's all sorts of things.

We simply were not in any position to know that the Defense cared about him or would want to bring him in until after the close of discovery. And that's just not fair, Your Honor. He should've been disclosed earlier so that we could have evaluated it and prepared.

THE COURT: Was it from your understanding a joint decision to take Dr. Ripplinger?

MR. JONES: It was not. It was unilateral, Your Honor, after the close of discovery.

THE COURT: So I'm going back to the harmless, right. If he's just testifying as to his notes that are already in records, how is that not harmless? What's your understanding of how that would or would not be harmless?

MR. JONES: If he's restating what he stated in his notes, that -- by itself that alone I think would be harmless. But that's not what they're seeking. What they're seeking is to try to have him now, four years later, in the context of a medical malpractice case, go back and say what his state of mind was there. And he didn't have a conversation with Dr. Rives about it. And so -- and that would be hearsay anyway. So we now have the possibility of him changing what the meaning of any of that was.

What actually is important is what he put in the medical records, and what Dr. Rives took from that in his actions. So I -- I've

never seen a case where someone was brought in and literally restricted just to what they had said within their records. That I think would be harmless. But I don't think that's what the Defense is looking for.

THE COURT: Let's find out.

Are you asking for Dr. Ripplinger only to authenticate that that's what he wrote in the records, or are you asking him to interpret what he meant by what he wrote? I'm trying to ask -- the difference is, say he wrote see spot run. Are you asking him to say, Dr. Ripplinger, did you write see spot run? Or are you ask -- going to ask a follow-up question, what did you mean by see spot run?

MR. COUCHOT: It's what did you mean.

THE COURT: What did you mean?

MR. COUCHOT: It is absolutely what did you mean. And Your Honor --

THE COURT: They get last word; it's their motion.

MR. COUCHOT: Well --

THE COURT: I had to ask that one question in fairness to get an understanding of what the two answers are because there is a difference between the two, because one, if it's an authentication issue on a potential hearsay document, that's potentially one thing. If it's interpretation, that's something else. Okay.

MR. JONES: As Your Honor can see, you know, that second question opens up the entire universe of possible answers. And how could that not be prejudicial? We have no idea what's coming; what would hit us from that, because we haven't had a chance to evaluate it.

THE COURT: Therein lies the problem. Okay. And -- let's see. I'm going back to your opposition, counsel. I want to make sure I've taken everything into account. Just double checking.

Counsel, I think -- you said August 12th. Do you mean September 12th he disclosed these 18 witnesses?

MR. COUCHOT: Yes, Your Honor.

THE COURT: Okay. That's what I thought.

MR. COUCHOT: When I was speaking of August, I was speaking of -- I think the only references to August were when we had initially scheduled his deposition to be taken.

THE COURT: August 2nd. Okay. Because I thought -- because I said September, and I thought you corrected me and said no, you disclosed these on August 13th, the 18 witnesses. So I just was making sure because in your opposition I read that it was September 12th, and that's why I wanted to make sure I was correct. September 12th is just -- yeah. You say September 12th in your opposition. Electronically service is --

MR. COUCHOT: You said September 12th or September 13th? I have to look to be --

THE COURT: Right. But September 12th or 13th, it's September. It's the -- I have to grant the motion to strike on the witnesses. I've heard the analysis. It's just -- the Court has to look as the Nevada standard. Defendant had more than enough time. I mean, Dr. Ripplinger was there as part of Defendants' own -- I mean, he really would have been an initial -- at the very, very beginning. He's an initial

16.1 person. He's not even a supplemental person. But that's a non-sequitur. He definitely is a during discovery person.

He's no way -- the Court does not find that the Defendant has met that it is justified. It just does not meet any of the standards. The Court listened to everything that you said. You had a full opportunity to be heard. It's definitely not harmless because it's -- the Court's clarified that it wasn't just stating what he said to do it from an authentication standpoint or from a hearsay standpoint; it's actually explaining. Explaining is going to change and go through everything. In order to explain, both sides have to fully be prepared. Explaining is a potential -- whether you want to call it ambush, or you want to call it fully new information. It does not give Plaintiff any opportunity to have an understanding of what he's going to say.

It's particularly concerning because parties acknowledge that look, if Ripplinger should've -- could've -- he was fully known. He was in the medical records. He was there from the get-go. He should've been disclosed. This constant failure to even look at your own case and your own witnesses, okay, is really Defense counsel's issue. It's their own witness if they wanted to have him. If they felt that he was important, he could've easily been disclosed in this case since 2016. It wasn't a new witness. It wasn't someone who all of a sudden appeared in any medical records. His name's been there. He could easily have been brought up.

The fact that they chose not to utilize them -- Plaintiff has the ability to rely on the fact that they didn't think Ripplinger wasn't going to come in. The fact that -- Defense counsel wants to rely on the fact that

they noticed a deposition unilaterally, it appears, for August 2nd, which is after the close of discovery.

And the Court will even note there was not any stipulation signed by the Court; not even a proper one even submitted to the Court. And the last word that this Court had was what the parties said in open court, which was that Defense had not agreed; they were still checking. They could not agree as of open court in July. So there was nothing. There was -- trial since January was always going to be when it was going to be, in October 14th. The discovery deadline was July 24th. The parties knew that they had not submitted anything properly to the Court.

There's no way this could happen, a unilateral improper notice of a doctor's deposition. Even the noticing of it would've put people clearly on notice that the person could've been disclosed. And not even disclosing them for another month -- or I guess almost six weeks thereafter, whether it was September 13th or September 12th, and noticed his deposition for August 2nd. Definitely there's no -- the failure's not substantially justified by any stretch of imagination. Utilizing whatever test people represented to the Court, doesn't make. It's definitely not harmless.

And so the motion to strike has to be granted. And the Court's even evaluated the context of whether Dr. Ripplinger can come in for some purpose. And since Defense has made it clear that they want his interpretation of his notes, that is going to be incredibly prejudicial, as Plaintiff has explained, and they've explained to the Court. And so therefore, the other options of what the Court could potentially even look

at about reasonable expenses, or informing the jury, or other appropriate sanctions, none of those options will work because the fact is, he's going to be doing on the very crux of the issue which is before the -- what is going to be before the jury on the medical malpractice.

So the payment of reasonable expenses is not going to work. The other sanctions aren't going to work. And the parties' failure to disclose is not going to work. None of those options really are available to the Court. And so not only has Defense not met its burden to show substantially justified that it's harmless, the Court's evaluated the other options, and none of those will be met here.

And so the Court has to grant Plaintiffs' motion for all the reasons stated, incorporating the briefs after taking everything into consideration. And Defendant had lots of options, and lots of knowledge.

And I mean, the Court does note that the Court's even been reminding counsel -- now, this part is really a non-sequitur, but the Court even was trying to give counsel the full benefit of the doubt if this had been even a single situation. But even giving counsel the benefit of the doubt, this is just another situation where they keep saying -- they're not paying attention to the case. They're not reading the rules. They're not paying attention to any of the rules, or any of the deadlines, or anything that they need to take into account.

So I can't even give you the benefit of the doubt and say this is a one-time oops because I look at the pattern in this case and it's not a one-time oops; it's not a two-time oops; it's not a three-time oops; it's

not even a four-time oops. So I can't even give you the benefit of the doubt there if I'm trying to give you that, which isn't even specifically in the rules. But I can't even give you that. So it's granted.

Now let's look at the documents. The documents is a couple different issues. One is whether or not the report is a supplemental report or if it's a new opinion. So let's go to Dr. Jewell.

Counsel, your view on Dr. Jewell, please?

MR. JONES: Yes, Your Honor. As you can see, they provided the supplemental report of Dr. Jewell, along with new studies. These are entirely new opinions. They --

THE COURT: Did they say it's based on documents that you provided at the deposition, and was only reports to respond to yours?

MR. JONES: No. I think the -- I think they have actually brand new studies that have never been shown in the case, is my understand. And Dr. Jewell makes comments on those.

THE COURT: Where is -- I think you all might be a little bit -- at least as presented to this Court, it looks like you all are on different pages because their opposition said that there were certain things that were requested and back and forth. So I need a clarification on that point because --

MR. JONES: Yeah. I --

THE COURT: So let me let you finish, but that's where I saw a disconnect between the two of you all.

MR. JONES: Okay. The -- and I apologize, I don't have the study in front of me that -- and I should. There's no excuse for that, Your

Honor.

THE COURT: Thank you.

MR. JONES: My understanding is it's an entirely different study that I believe I have never seen.

THE COURT: Well, then do you want me to let Defense counsel go first and see what his clarification point is, and then you respond, because --

MR. JONES: That's fair, Your Honor. Absolutely.

THE COURT: -- if they're responding to -- on this one, I was heading the other way because it looked like they were responding to something that you asked, and you gave it to them and said that he needed to address your witnesses bringing something out. But that's why I need to -- your motion and your opposition were very different on this one.

Counsel?

MR. COUCHOT: Your Honor, we may be confusing the two expert reports here.

THE COURT: Okay.

MR. COUCHOT: So Dr. Jewell is a general surgeon. During his deposition, he made some comments about imaging studies that were not included in his initial report, and he also made some comments about SIRS, which is a precursor to sepsis, which --

THE COURT: Right.

MR. COUCHOT: -- which were not -- which were touched upon, but not as much as he did in his deposition. So what we did after

his deposition pursuant to FRCP 26(e), is we had a -- we had him do an updated report.

THE COURT: NRCP; not FRCP.

MR. COUCHOT: I'm sorry, did I say FRCP?

THE COURT: Please.

MR. COUCHOT: I apologize, Your Honor. NRCP 26(e). We had him do an updated report to conform with the opinions offered during his deposition as required by that rule.

THE COURT: That's not our NRCP standard though. That's an FRCP standard not adopted by the Nevada Supreme Court in our NRCP.

MR. COUCHOT: Your Honor, my understanding from reading NRCP 26 is that the duty to supplement reports extends to opinions offered during the deposition.

THE COURT: Go ahead, counsel.

MR. COUCHOT: And so that supplemental report was made to describe opinions he offered during his deposition. And it was disclosed timely pursuant to NRCP 26(e) because it was produced the date that pre-trial disclosures were due; the day after his -- that report was produced. And I believe Plaintiffs' opposition conceded that that was a timely supplemental report.

Now, there's another report where we talk -- which is Dr. Arredondo's report, which was in our subsequent disclosure which was done after that date. And that was in response to articles that were produced by Plaintiffs on the last day of discovery.

THE COURT: Okay.

MR. COUCHOT: So Plaintiffs produced four articles, I believe, about critical illness polyneuropathy. They were sent to our expert. They were produced after the deposition of our expert. They were produced after the deposition of their expert. And when we received them, we sent them off to our expert, and we asked him to write a supplemental report. He wrote a supplemental report where he commented on those articles. And he also said, and here's an article that I think is germane to that -- to the issue that is raised by the presentation of these articles.

So those were produced approximately 58 days after we got those articles which were given to us on the last date of discovery. So that's the reason for the Arredondo report. So I don't think there's any problem with the Jewell report. I don't think there is any -- I think their opposition conceded it was a timely report.

THE COURT: Okay.

MR. COUCHOT: And so that's the explanation. And --

THE COURT: Sure.

MR. COUCHOT: -- there's also a document of his website profile. And I can talk about that now, or I can talk about that later --

THE COURT: No worries.

MR. COUCHOT: -- the Court's preference.

THE COURT: No worries. Okay. So -- okay. So the Court flipped Arredondo and Jewell, correct?

MR. COUCHOT: Yeah.

THE COURT: Okay. So oops there. So --

MR. JONES: I'm ready, Your Honor. And I --

THE COURT: Okay. So --

MR. JONES: I apologize. I got mixed up myself.

THE COURT: Okay. No worries. So my apologies. When I said Jewell, counsel for Defense has correctly articulated I was thinking Arredondo. I said Jewell, so my apologies.

So do you concede on Jewell?

MR. JONES: Your Honor, to -- that was not the purpose of our motion; Jewell was not. We don't necessarily concede that that's okay, that -- the opinions he has. But that was not part of our motion.

THE COURT: Okay. So Jewell is not part of your motion?

MR. JONES: That is correct, Your Honor.

THE COURT: Okay. So thank you. Jewell's off the table. So Arredondo, the articles in response.

MR. JONES: Correct.

THE COURT: So you agree or disagree that theirs -- they needed theirs because they asked your witness, who was not -- did not bring them to the dep?

MR. JONES: No, I don't think that's correct, Your Honor. That's not my understanding of how it transpired. Now, I would say to some degree I think that's a bit of a red herring issue. I think if they feel that they need to have something stricken that we provide that is improper, they need to move to have something stricken that they think we provided that's improper.

THE COURT: Or object timely on 16.1A3. But yeah, okay.

MR. JONES: Exactly, Your Honor. And so to me, that's not before the Court. If they think that we have produced some articles that were produced late, and they should have been produced at a different time, then they need to move and try and get those stricken if they're improper. The thing that is not okay to do is then after the close of discovery, give your expert not just the articles that we produced and have them comment on them, but have him go dig up a whole bunch of different articles on the topic, for example, of SIRS, which came up for the first time that I ever saw it in this case during the deposition of Dr. Horowitz I think in September, where Defense counsel asked him some questions on it. Then after that deposition, spontaneously his neurology expert has this big article on SIRS, and then provides a new report on SIRS.

Now they're saying that's in response to something we did. I think that's nonsense. I don't think it's even close to being accurate. However, if they feel that we disclosed something that was improper, bring a motion to strike it, and we won't be able to bring it in court. And that's perfectly appropriate. But what is not appropriate is to have your expert come up with brand new, completely new opinions that he has never offered in report or deposition based on new articles that we have never seen two months after the close of discovery, which is my understanding of what has happened here, Your Honor.

And so if they feel that we produced something that they didn't like, they know the right channel to deal with that.

THE COURT: But didn't they do a 30-day before trial --

MR. JONES: Absolute --

THE COURT: -- supplement? That's what they're calling it. You're saying it's not a 30-day before trial supplement --

MR. JONES: Oh I --

THE COURT: -- on this one?

MR. JONES: I think it's absolutely fair to call it a 30-day before trial supplement. And I have no problem with someone supplementing their expert report 30 days before trial. But they can't have brand new opinions 30 days -- less than 30 days before -- or 30 days before trial. You can't come in after the close of discovery with brand new opinions on topics that you've never opined about before. That's what happened here.

THE COURT: Okay.

MR. JONES: And so we don't mind if he said hey, I received this article, and here's my thought about it. Right. But for him to come in with a new article, to take a new position, which is what he actually did, that is totally inappropriate. There's nothing I can do to protect myself against that.

Also, because it was so close to the 30-day mark, I can't even give it to my experts for them to take shots at that. And so there's nothing I can do at all to protect myself against these brand new opinions based on brand new medicine that was never disclosed before.

THE COURT: Okay. Let's walk through a couple things first. Okay. The date Arredondo's -- because one part you say it's three weeks

and one part you say it's 30 days. Arredondo's supplemental report submitted on what date? Was it 30 days before trial or not? Let's just focus on the date first and then we'll go to the substance.

MR. COUCHOT: No, Arredondo's report was the -- was not submitted 30 days before trial. Jewell's report was --

THE COURT: Okay. That's why -- since I was a little confused on the two, that's why I'm trying to get -- circle back on the chronology. So --

MR. COUCHOT: And I think counsel is making -- is conflating the two to the extent that Jewell doesn't talk about articles. Jewell's report is about things he said during his deposition that he wanted to make -- that he wanted to put in writing in a report.

THE COURT: But since Plaintiff has said Jewell's not part of his motion, I have moved on --

MR. COUCHOT: Okay.

THE COURT: -- and I'm on Arredondo.

MR. COUCHOT: Okay. I'm sorry. All right. I'm sorry.

THE COURT: So I'm -- I've moved past Jewell. He said Jewell's not part of his motion --

MR. COUCHOT: Okay.

THE COURT: -- and that's not before the Court, so I'm on Arredondo. So I'm focusing on the date of Arredondo's supplemental report. I'm trying to see if it can fall within NRCP. Right. Supplemental report; is it 30 days before trial?

MR. COUCHOT: No, Your Honor, it's not. And I'll give you --

let me --

THE COURT: So that's --

MR. COUCHOT: -- let me find the date.

THE COURT: That's why I'm trying to confirm the date.

MR. COUCHOT: And -- let's see.

THE COURT: Because first is does it meet the 30 days before? If it doesn't meet the 30 days before, then that's problem one. If it does, then I move on to substance.

MR. COUCHOT: Okay. So it was in our fifth, so it was September 23rd.

THE COURT: Okay.

MR. COUCHOT: So it was ten days --

THE COURT: Ten days --

MR. COUCHOT: -- tardy.

THE COURT: Okay. So --

MR. COUCHOT: And --

THE COURT: -- the date that you got the articles from Plaintiff, which is your basis on why you say that you needed to respond. Is that also your reasoning why it's ten days late? And if so, what date did you get the articles from Plaintiff?

MR. COUCHOT: Well, that -- we got the -- yes. And the articles from Plaintiff we got on -- I believe they came on their July 24, eighth supplemental disclosure.

THE COURT: So then you know what the Court's question is going to be. July 24th math to September 23rd sounds like a long time,

right; 60 -- almost 60 days. What's your reasoning on why it would take 60 days to respond to some articles? Unless you're telling me it's thousands of pages, you can appreciate I'm going to have a question on that, right?

MR. COUCHOT: Yes. I appreciate that. I don't know. It's 58 days.

THE COURT: That's why I said almost 60. I didn't say 60. That's why I said almost 60.

MR. COUCHOT: My position is that's not unreasonable for an expert report turnaround.

THE COURT: It is when it's ten days past the 30 days before trial because per se, you can't do it. And so if you're asking the Court to somehow say that there's some reasonable justification for you to be so untimely, right -- 30 days is not a day late, right. 30 days, ten days, that makes it not a day late, right. Not ten percent late because it's not three days. If you were to do it somewhat in percentages, right, it's one-third of the time late, which raises a huge challenge for deadlines because it's no longer oops, it's a day late, or maybe it's two days late; it's ten days late. And when you're talking about a 30-day time period, that's one-third of the time before trial, right?

MR. COUCHOT: Yes, Your Honor.

THE COURT: 20 versus 30 is one-third of the time before trial. So that makes it a huge challenge on why so late. So that's when you look at -- when it's that late, you then have to look at what's the reason why it's that late. And then you look at the timeframe between

when you received the information to see if there is some justification. If it had been thousands of pages that you got a week before, one analysis, right.

When you're talking 58 days, I'm looking at the number of pages and the concepts, right, and the number of concepts. If we're talking a few articles, four or five articles that are not thousands of pages, it presents a huge challenge to say why it would be ten days late, which is what I'm trying to give you the benefit of the doubt to get to some explanation of why it would be ten days late because usually, per se, that would be excluded without even getting to the substance aspect of it, whether it's a supplemental report or not per se ten days late less than 30 days before trial means it doesn't come in.

Anything?

MR. COUCHOT: No, Your Honor. No.

THE COURT: Okay. Well, purely procedurally, right, without any good cause, excusable, you know what I mean, your computer's not broken, expert didn't have some medical emergency or a huge amount of papers, you know, something like that, if we're just talking some general articles, then I'm not seeing or hearing any good cause for that delay. I'm just really seeing yet another violation of a clear articulable deadline that you just decided not to provide it on time, and I don't see how it would come in. Is there something I'm missing?

MR. COUCHOT: No, Your Honor. I mean, the only thing that I can say is that at this point we're past the time of expert -- if I had -- I don't know what Plaintiff could have done differently if I had given it to

them ten days earlier. That's my only --

THE COURT: Okay. But you understand they potentially could have, right?

MR. COUCHOT: Well --

THE COURT: They'd have one less thing to be telling the Court why it should be precluded. Then I'd be dealing with the substance. I would've -- right, you've got to deal with procedural first before you get to substance.

MR. COUCHOT: Well, Your Honor --

THE COURT: And if it's that late on procedure, if there's not some good cause, how do you even get to the substance of it? Because the procedural aspect, if it's that late -- and then they have an argument on the substance, too. I mean, I'm going to look at the substance. But the substance they've got a good argument on it, as well, because there's new things that he's addressing.

MR. COUCHOT: Well --

THE COURT: It's not just the articles -- him responding to the articles, right. He brought in new articles, and he brought in SIRS versus sepsis.

MR. COUCHOT: No. This is not SIRS versus sepsis. That's Jewell. That's why --

THE COURT: That was Jewell. Okay.

MR. COUCHOT: That's Jewell. There's no SIRS versus sepsis here.

THE COURT: Okay. So let's look at -- so --

MR. COUCHOT: I don't think. And Your Honor, can I just have one minute to confirm that that's true, because that's my understanding, but I --

THE COURT: And you --

MR. COUCHOT: -- do not misrepresent anything to this Court ever.

THE COURT: Okay. Sure.

MR. COUCHOT: And while I'm looking for that, Your Honor -- yes, Your Honor, it's a one-paragraph report that just comments on the four articles provided by Plaintiffs' counsel about critical illness polyneuropathy. So it's not this -- frankly, this is not that big of a deal. And if Plaintiff had --

THE COURT: 60 days for one paragraph. You realize that doesn't help you on the procedural aspect?

MR. COUCHOT: No, I understand that. I understand that, Your Honor. But if Plaintiffs' expert had had the articles with him during his deposition, we would've -- that would've been before the deposition of Dr. Arredondo, there wouldn't have been any need for any of this. We asked him -- in our depo notice, we asked him specifically to bring those documents. He showed up to his deposition without those documents. I cited the portion of the deposition transcript and I attached it --

THE COURT: Uh-huh.

MR. COUCHOT: -- where we had asked him to provide those to Mr. Hand. He apparently did provide them to Mr. Hand, but they were provided after the deposition of our expert took place, which is the

reason why this necessitated an expert report.

THE COURT: Granted all of that. That's what I said. Those were all the gimmies. It was just until you got to the ten days later. That's the challenge, okay, and the 60-day time period. If you got the articles on July 24th, and your expert doesn't give it until ten days after the supplement, there's the challenge, right, because that's the -- it looks like another -- because remember, the Court has to look at this two different ways, right. I look at it in the aspect of this one in and of itself, and then I have to look at the bigger picture.

Once again, if this is a single isolated incident, the Court gives the benefit of the doubt. When this keeps on piling on, right, to one after another, after another, after another, you've got the pattern against, you know what I mean? It's just --

MR. COUCHOT: I understand, Your Honor.

THE COURT: And the ten days, I mean, if it was one day, or two days, that's one thing, right. A lot of articles -- that's why I was asking you, was it lots of articles, lots of pages. That's one thing. I'm trying to look for all the benefit of the doubt things. Looking for the number of days, looking for the number of pages, looking for all sorts of different things. What's the time period, all those factors. Was there any issues, emergencies; I asked you all of those, if there's any of those factors. In the absence of all of that, ten days late when it's a 30-day deadline, 20 days before trial, that's a huge challenge to say why he waited that long. Okay.

And the other challenge is, you know, I don't know when he

got it. That's another thing; whether he got it late, or he sat on it. I hadn't gotten there. But -- okay.

So substantive; I'm going to scoot it back to -- and folks, I don't -- okay.

Plaintiffs' counsel, did you take a look at his actual report dated September 20th? What's the harm to you? That's another factor I've got to look at pointing to the substance. We're looking at the same thing, right; Bruce Arredondo Neurology to Chad Couchot, dated September 20th, 2019, a two-page document? The second page only has a one-liner on it.

MR. JONES: Yes. Yeah.

THE COURT: It's attached to the declaration of Chad Couchot?

MR. JONES: Yup. Absolutely, Your Honor.

THE COURT: Okay. Just making sure everyone's looking at the same thing.

And that's the one you're referencing, right, Mr. Couchot?

MR. COUCHOT: Absolutely.

THE COURT: Okay. Just making sure.

MR. COUCHOT: Thank you.

MR. JONES: Right, Your Honor. And so let's see. Well, Your Honor, there's a couple of things that are problematic. I mean, there's -- to some degree, the opinions that -- one of the opinions that's laid out here, it's -- and I wasn't sure exactly how to bring this out. So the motion to strike is really based primarily on the procedural issues and us

having to prepare for anything else that might be within the report.

Substantively, if you look, he gives some opinions such as he essentially indicates that the Plaintiff is -- would debilitate and essentially become a person who couldn't walk anyway.

THE COURT: Where does he say that?

MR. JONES: Let's see. It says, had a preexisting painful -- well, right here with Dr. Rives, which would be expected to worsen with time. What is he going to say with that exactly? I'm not entirely sure.

THE COURT: But he starts out with this paper primarily offered by Coats [phonetic] specifically excludes patients, right? So doesn't he reference the paper by your reference by your client in his dep? My short-handed version of deposition. It's been a long day.

MR. JONES: Yes, Your Honor, absolutely. And frankly, as I look at this right now, I'm not even sure what he's referencing. It's unclear to me what it is that he's talking about, or how he will try -- attempt at trial to spin that out into something else. I don't know. And so for us to even have to prepare for any additional opinions beyond what his deposition was -- and I'm not sure what these opinions might be frankly when they're fully explained, is something that I -- that -- anyways, it is still problematic for us.

THE COURT: Okay. Here's the challenge for this Court, right. If your doctor didn't bring it to his deposition, right, the four papers, despite the fact he had that 60 days and 10 days late, isn't that something this Court should be balancing?

MR. JONES: Well, I think something that's very important

there is that the depositions that were brought to my doctor's deposition happened prior to this deposition. And I mentioned those papers because they had been disclosed and attached as exhibits at that deposition that happened before Arredondo's deposition.

THE COURT: Are we clear --

MR. JONES: Are we --

THE COURT: Are we on the same -- are you all in agreement on that, or are you in a disagreement on that?

MR. JONES: See, and to me, that's part of the issue. I'm not sure what he's referencing here.

THE COURT: Okay. Here's what the Court's going to do on this one, okay. I'm going to -- because I need to move this along folks because this is -- because I've got differences and I've got lack of clarity here. I'm going to give you a tentative ruling subject to if somebody can show that one of the two of you are -- due to the timing or whatever, can show me something different.

I'm going to give you a tentative ruling, and if somebody shows me that something from a chronology is provided to me, how we say, needs clarification, right. Okay. I am going to allow this in as written. No further explanations. Are we clear? Okay. As written, meaning he doesn't get to go and give 20-minute explanations of what each of these sentences means, okay.

And the reason why the Court's going to find that that's an appropriate balance is based on the fact that I've been told that these articles were not provided at Plaintiffs' expert's deposition. I'm taking

into account the 60 days of delay. I'm taking in account the ten days late. And I'm taking into account that this is referencing the articles in the last -- all paragraphs other than the last paragraph.

But the last paragraph does reference a June 2019, which would generally be an appropriate supplemental sentence for something that would come in 30 days before trial because that's new -- it's not a new opinion; it is a supplemental record that would be subsequent to an expert report in its narrow sense. Okay.

So that's why this Court's going to find -- that I'm going to allow this in. But that is not expanding. So before questions get asked of Dr. Arredondo regarding this, if somebody needs any clarification of the narrow scope in which this Court is allowing it in, please contact the Court, okay, before we start asking questions, because I am allowing it in a very narrow, small context as written. This is not an open invitation to expand on new opinions.

Everybody's clear on that?

MR. JONES: Yes, Your Honor.

MR. COUCHOT: Yes, Your Honor.

THE COURT: And if for some reason what I understand to be the situation right now is different, you need to tell me before he testifies, okay, because we can't keep going back and forth on what people's potential perceptions are at this juncture. So that's why I'm letting that in.

So have we now taken care of everything in Plaintiffs' motion to strike; yes or no, Plaintiff?

MR. JONES: Yes, Your Honor.

THE COURT: Okay. So now -- that's Plaintiffs' motion to strike. I have now taken care of every pleading this Court understands that has been before this Court. So what is left is the Court's orders that had to be continued due to the timing with regards to the conduct, mostly of Defense counsel, and somewhat of Plaintiffs' counsel, in continuously violating rules and Court's orders.

Okay. So -- and continuing the sanction, I should say. Let me deal with the -- finishing up the sanction. I said I would finish up the sanction ruling. So let me finish up the sanction ruling; determining the sanction.

It was Plaintiffs' motion for sanctions under Rule 37 for Defendants' intentional concealment of Defendant Rivas' history of negligence and litigation. The Court already gave you a partial ruling, and I did that as you all know why so that people could be fully prepared for the calendar call. Okay. So the Court already ruled in part. Two of the requested aspects of relief were requested by Plaintiffs. One was terminating sanctions and striking the answer.

The Court gave its explanation already with regards to why it did not strike the answer, although the Court found that both the conduct of counsel and Defendant was egregious for the reasons stated. Okay. Independently between the two, the Court went through its reasoning to -- under *Johnny Ribeiro*, going through -- I'm going to look at these and get my other -- let's see. It reminds that the Court has specifically cautioned the parties and ensured that before Dr. Rives testified, the

Court has specifically got assurances from Defense counsel. They've been fully advised of *State Farm v. Hansen*, 131 Nev. Adv. Op. 74, 2015. Okay. And the Court had before even saying this talked about *Valley Health Systems v. Doe*, 134 Nev. Adv. Op. 76. The Court had also -- okay.

So with regards to -- does anyone wish me to restate the conduct of Dr. Rives versus the conduct of counsel, and the analysis? I'll be glad to do so if either party wishes me to do so. Does anyone wish me --

MR. DOYLE: If the Court feels you covered it the other day, that -- we're satisfied with that.

THE COURT: Counsel for Plaintiff, should we restate?

MR. JONES: We're satisfied, Your Honor.

THE COURT: Okay. And I went through -- there was a listing of the conduct, which both Dr. Rives engaged in with regards to his complete disregard of this case and signing the verification under penalty of perjury. Looking at not doing his deposition, particularly noting the fact that he -- and even on the stand, I mean, he states he knows all about interrogatory number three, but then somehow has no knowledge about certain other aspects.

He was able to answer all of Defense counsel's question but none of Plaintiffs' counsel's questions during the evidentiary hearing. He specifically recalls specific questions, but then doesn't have general recall of other questions. He clearly stated he knew the verification, thought the verification was covering everything, and had no regard

whatsoever to even look at the underlying information that was being asked for him, a complete disregard of this case, and a complete disregard of even looking at the underlying information at the time back when he was given all the interrogatories, a complete disregard in his deposition of even really evaluating the questions at the time of, or even to look at his deposition. And then, a complete disregard of thinking through a case which he knew he had had, the *Center* case, and then having to have his counsel at the time of his deposition, et cetera.

Defense counsel -- we went through all of those at the first hearing. We went through all those; all the interrogatories, all the affirmative obligations incorporating both hearings with regards to Defense counsel, all of the obligations for the affirmative duties to supplement interrogatories, duty to ensure that his clients had filed everything appropriately, only getting one -- it was actually interesting, first saying that there was no verifications, and then saying that a verification seemed to have popped up.

And then on the analysis thereon, not looking at the depositions in any way, providing and ensuring that there's accurate information provided, both under the rules of professional conduct, see *Valley Health Systems*, see Rules of Professional Conduct 3.3(a)(1), et cetera. All of those obligations, the egregious conduct thereon.

However, as the Court mentioned with regards to the timing thereof, a lot -- some of that harm could have been mitigated by Plaintiffs' counsel, which is why the Court didn't find that a terminating sanction was appropriate because some of the information was available

and could've been mitigated if it would've been brought to the attention not so close to the time of trial.

The Court also had a prior -- two hearings prior, a September 26th hearing, and said that it was not going to impose punitive damages because punitive damage is not really a sanction that is available under Rule 37, EDCR 7.60, the Court's inherent discretionary power because that's not a -- not to use the punitive in two different concepts, but I can't really think of a better word right now.

But it is not a sanction available for a motion for sanctions. That is something that has to be merited on its own and through a pleading type standard. So it wouldn't be appropriate to "impose" punitive damages that would've had to have been appropriately pled. And so that would not have been an appropriate section.

So now the Court looks at all the other sanctions that have been requested and are available. I will tell you the Court's inclination under NRCP, EDCR, the Court's inherent power, the rules of professional conduct, et cetera. Cited in this -- just to be clear, this motion was under 37. So that's really the rubric that the Court's looking at when the Court also says with the Court's inherent discretionary power.

So let's walk through the different requests that were made. And I'm just going to go, kind of, through the subtitling, A, okay. So --

MR. DOYLE: And I'm sorry, Your Honor, what are you look -- what are you specifically looking at so I can get there?

THE COURT: I'm looking at the motion. Motion for sanctions under Rule 37 for Defendants' intentional concealment of Defendant

Rives' history of negligence and litigation, and motion for leave to amend complaints asking for punitive damages on an order shortening time.

MR. DOYLE: I just wanted to be able to follow along.

THE COURT: Sure. No worries. Filed on 9/18, 3:19.

MR. DOYLE: And Your Honor --

THE COURT: So the Court had already addressed the alternative relief for leave to amend, and I already addressed that I had to deny that without prejudice because that can't be imposed from a sanction type component. So I addressed that portion.

I already addressed the striking, which was sub (b) request on page 14 of 18. Okay. So now I'm looking at the alternative relief, which starts really on page 15. Okay. The alternative relief requested. So the alternative relief should -- this Court should strike the affirmative defense and find liable -- I'm not doing that.

So at minimum, jury instructions, the pattern of behavior is warranted. And then there's monetary relief sought in the form of attorney's fees and general sanctions. That's where the Court's inclined to go. The Court's inclined to do both a jury instruction, as well as monetary sanctions. Okay. The Court's incline from a jury instruction is that I would like the parties to first really, kind of -- parties first to, kind of, draft what they think would be an appropriate sanction of a jury instruction.

I think Plaintiffs' counsel should have an opportunity first to create the jury instruction, have it reviewed by Defense, and have the

Court review it. And if it's not agreed upon by the parties what that jury instruction should be, then the Court would revise, recreate, however you'd like to phrase, an appropriate jury instruction. I think the jury instruction has to make it clear that -- the nature of the conduct, because there is information that is not going to be made available to the jury because of the lack of candor by Dr. Rives. Okay.

And so I think this sanction is clearly warranted. I think Dr. Rives in his answers during the evidentiary hearing made it clear that he didn't look at the discovery. And so well, these have been -- some of these had been -- some of the admissions, they would've all been deemed admitted. But since these were interrogatories and his -- he can't hide behind the idea that if I don't really look at them, then I really can't be held accountable for them. That is not appropriate. The rules specifically preclude such a result. Case law specifically precludes such a result. Just testimony precludes such a result.

He clearly has stated he has had multiple cases. He has clearly stated that he has seen prior discovery. He's clearly stated that he knows what a verification is. He knew -- he said he looked at the truncated -- and I'm paraphrasing -- the truncated indications on the email he received from counsel to find what the verification was. Now, he stated -- I'm paraphrasing once again -- that he thought it was a verification for all of them. That was after some questioning by counsel for Plaintiff, and then the follow-up question by the Court that all parties said was okay for the Court to ask just so the Court could have a better understanding of what he meant when he looked for the verification, is

he knew what to look for, and he knew what he was signing. Counsel for Plaintiff asked him several times, you understand this was under penalty of perjury.

He even said he went and found the person at the hospital, because it was identified who that individual was who signed the verification, that she had signed other things for him in the past. And so he went, he got it notarized, he knew what he needed to do, and sent it back to counsel.

He also stated he had had his deposition taken on other occasions. He knew the importance of a deposition. He knew it was under penalty of perjury. It's not somebody who was a first time litigant, who had no idea what discovery was, and had no idea what a deposition was. He knew the importance of that. He knew the fact that he was involved in the *Center* case. So he didn't in any way indicate that he didn't know about the case. Instead, in the very directed and subject to objections, which the Court sustained, leading questions by his own counsel, clearly seemed to answer some of the very direct issues brought up on September 26th, including the very succinct question of what it meant on the fact of whether he had the papers in front of him that was brought up on September 26th.

He seemed to have very distinct answers on those. But clearly, had a full understanding of the deposition process, a full understanding of the importance to fully disclose things, tell the whole truth, not just give minute answers to the very specific question asked, but you know, to explain the different things.

He knew about his prior cases because he was the doctor on them. So for him to have not mentioned the *Center* case, then -- it's up to him. He decided not to read his deposition. The Court's not saying that he should or should not have, but then he's held accountable. For him to have to have his counsel jump in and mention another case -- well, he clearly knew about that case. That case had been from a recent timeframe. He indicated, you know, it was a recent case in his mind. And his only response was well, he, kind of, wasn't asked specifically about that case. I think he phrased it as well, he was, kind of, asked more about depositions. It's a challenge for this Court in how he was responding to that. So it's clear with regards to his conduct, also clear.

So if that information had been presented more clearly, it goes -- I'm paralleling this to a Bass Davis type instruction, that if this information had been more clearly set forth, it would have been -- you know, because it appears he views it would've been more harmful to him. So it would be met, kind of, in a parallel light. So a jury instruction would be appropriate. The timing of whether this jury instruction would be at a pre-instruction phase earlier in the trial, or during opening statements, or whether it comes at the conclusion is something you all will have an opportunity to present to the Court, and the Court will evaluate it unless there's an agreement among the parties on when it comes in, because as you know, specifically under the new NRCP rules, it clearly gives a lot of provisions on pre-instructions that weren't in the old versions of the NRCP.

So that's something for the Court to consider if the parties

bring it to the Court's attention. If you don't, then that's your choice. Okay. But if it gets brought to the Court's attention, the Court will evaluate that.

With regards to counsel's conduct -- similarly with regards to counsel's conduct, without going back through everything I said on the 26th, and then that came out as well in the second hearing, and it's come out since then with regards to all the failure to disclose the verifications. You can't hide behind not having your client verify something to say that he can't be held accountable or that counsel shouldn't be held accountable for those answers. Okay. There was clearly -- it was clear if it was -- A, every attorney has to look before they submit to the other side.

You know, that's -- I just swore in two brand new members of our bar. They got sworn in. Okay. They passed the bar and I got to swear them in today. It was very nice. Okay. Check with them. Okay. My law clerk just passed. Okay. That's bar exam 101. That's -- you know, right out of law school you know that you have to dot your Is and cross your Ts with discovery responses and check those right off the bat before you send it to the other side. Make sure before your name's on that because remember, the attorney only signs as to objections. The attorney doesn't sign as to the answers.

The fact that an attorney prepares things, and the answers, and doesn't ensure that the client signed a verification is a huge challenge not to ensure that verification is there because then the attorney is signing off as to all those answers and putting the attorney,

him or herself, in a very interesting situation as to all the answers, right, not just the objections. But that has to be looked at it. It has to be checked. It can't just be oh, we didn't do it, we didn't look, we didn't bother to check the whole case, until it gets brought out in a sanctions hearing close to the time of trial.

This isn't -- this is from 2017. And it clearly -- even if it wasn't the first go around, then it's the second go around. And the fact that all of a sudden these came up later -- plus the deposition. The deposition clearly -- if it wasn't earlier on by -- the deposition in 2018, clearly, it was clear that the *Center* case hadn't been brought up. That should have rang a huge bell. Any attorney should have gone back and made sure of the discovery.

Plus, there is affirmative obligations under Nevada Rules of Civil Procedure that no attorney can ignore and pretend that they don't exist, to always check on those. There's affirmative deadlines. Every single extension request would've been a huge bell to go and check before you submit anything to the Court to extend discovery. There's things to look at the outstanding discoveries there. Deposition -- as I mentioned a moment ago, it's huge on the *Center* case not being there.

So to go back and look because those rogs were right there -- page 2 was referenced right there. Now, whether that was in front of the witness or not, those interrogatories were specifically discussed at the deposition. The interrogatories were right there. It was very clear that the verification was not attached. It should've been looked at. Any diligent attorney should have looked at it and had an affirmative

obligation to supplement and assure. Huge issue.

Then not looking at the deposition of -- the firm's practice is don't look at a deposition until the time of trial. That's at the firm's own risk, okay. But since the client had already not mentioned it, to not go back and look at a deposition to ensure that's taken care of, that needs to be done. That affirmatively needs to be done. So that is a very large issue with regard to that case.

And then with the fact that it still wasn't done even after the motion and had to wait until way after the motion was filed until the purported verification came in, but then that wasn't even a verification because it really was a different verification that had been presented. It raises its own challenges. And so the Court under Johnny Ribeiro, Valley Health Systems, NRCP 37, which is how this was brought, looking at the Court's inherent power, even if we just stick with NRCP 37, but all the applicable case law finds that both counsels' conduct and Dr. Rives' conduct independently merit the sanctions that the Court's saying.

So those are independent grounds. Whether you take Dr. Rives, whether you take counsel, independently would merit those sanctions, and combine the merit. So those are three separate grounds to merit those sanctions.

So there's documentary evidence, there's deposition transcripts. The Court did a full evidentiary hearing. I gave you the time that you all requested. The Court had offered that, even though that was not even requested in the opposition. And after giving you extensive argument on the 26th, nobody requested at the time of the 26th, or

between the 26th and when the second hearing occurred, any additional oral argument.

Now, I appreciate the fact that you all knew that this Court was specifically setting other special settings, you know. So that's why I asked you how much time you needed because you knew I was going back to back with other hearings. So no one prior to that day ever requested any additional time, knowing full well that this Court was setting other hearings based on giving you first shot of how much time you needed, and then was setting things right after back to back to get everyone taken care of on that day.

And given the amount of time I gave you for oral argument on the 26th, and since that hearing was supposed to be concluded on that day but for the fact that the Court offered -- and it wasn't even accepted that day -- the idea of an evidentiary hearing. Defense counsel wanted to have a full opportunity -- well, defense counsel wanted to check with the partner that was going to potentially be doing it. So the Court once again gave full opportunity to check with any other counsel, to check with the client to ensure that all conflicts of interest under the RCP, et cetera, under *State Farm v. Hansen*, like I mentioned, 131 Nev. Adv. Op. 74, 2015, got fully taken care of so that nobody had any issues on going on the stand, et cetera, and anyone could call whatever witnesses they wanted to. All fully taken into account, the Court finds that that is the appropriate level of sanctions in addition to monetary fees.

Now, monetary fees. The Court -- on monetary fees, the

Court's going to find that the fee amount is -- I'm going to have Plaintiffs' counsel submit what they feel is an appropriate reasonable fee broken down. We'll have defense counsel look at that first. If defense counsel agrees, then the Court would potentially sign off on it. If defense counsel disagrees, then you all are going to be able to present it to the Court. I will tell you that the Court's general inclination is the fee amount would count for Monday's hearing, part of today's hearing, but not the part that we had to do the motion to strike because that was independently having to be done.

But part -- the continuation of the sanction hearing for today, and part of the hearing -- and then the time for the hearing on the 26th is really where the Court was inclined to go, the reasonable breaking down of that. But not the time that we otherwise had to do for your motion to strike, and not for the calendar call items obviously, because the calendar call was separate and apart. Okay.

So I'm looking for reasonable attorney's fees, and not for multiple attorneys. I mean, the fact that she chose to have three attorneys at some point and multiple attorneys at other points. The Court wasn't inclined to give -- I'm not saying that means one. Just reasonable attorney's fees. Look at it, talk to defense counsel, evaluate it. And then the Court's going to look at it. Okay.

MR. JONES: The preparation of the motion, Your Honor?

THE COURT: Including potentially the preparation of the motion. Once again, I'm going to see what you have. Go to defense counsel first. See what you object to. And then present it to the Court,

right.

MR. JONES: Thank you, Your Honor.

THE COURT: With the Brunzell analysis, you know, in a shortened version. And the reason why I'm saying shortened version is because I'm not expecting you to spend 40 hours on a fee motion that's going to create more fees. So I would talk to defense counsel first to see if you all have "an agreed upon number", to see if you even need a full on motion, right, because you might, "agree" on a number, save yourself some additional costs and fees that may be heading towards defense counsel anyways.

So sometimes people "agree" on a number, or sometimes people defer on a number until the end of trial; however people want to do it. So the Court's going to be fine with it, okay, but you've just got to let me know if this number is going to be presented to me before trial if people want for particular reasons, or if there's some agreement that it's going to wait for the end of trial that people may want for particular reasons. The Court's going to be fine with either. But you know, you've got to let me know so we block appropriate time. Okay. That's it.

Any of the parties have any questions on that?

MR. DOYLE: No questions.

MR. JONES: No, Your Honor.

THE COURT: Okay. So that's the Court's ruling on that. So I am going to defer you having to give me an order on this. Do you want me to defer it to the end of the trial? That gives everyone the most flexibility that they can focus on the trial. And then if Plaintiff wants it

beforehand, then you get it to me beforehand?

MR. DOYLE: That would be our request.

THE COURT: But what I'm saying is if Plaintiff wants it beforehand, they have an opportunity to give it to me beforehand to get this taken care of. What I'm trying to do is I'm trying to -- to the extent that both parties want to focus on prepping for the trial and not address this right now, that's going to be fine. But I'm in no way limiting that if Plaintiffs want to address it sooner rather than later, subject to -- well, the jury instruction you've got to address sooner than later.

MR. JONES: Right. That's --

THE COURT: But I'm talking about the monetary aspect. If you want to address that after trial, the Court's going to be fine with it in a short time period after trial. But I'm not preventing you from addressing it beforehand. If you all are doing whatever strategic thing that you're doing, and people want to address it sooner, the Court's going to be fine with either. Okay. But just let me know so you don't give me one day's notice and say Judge, please take care of this --

MR. JONES: Absolutely, Your Honor.

THE COURT: -- because I do have a few other things on my docket that I also need to take care of. Okay. So the Court's going to be fine with either. But the jury instruction, if you think it's going to take some time to argue that, I do need a little heads up, so we don't have jurors waiting. Okay. Particularly if you're thinking of a pre-instruction versus post, towards the end. Okay.

MR. JONES: And we would -- that would be our preference.

And we will try to have it over to counsel today.

THE COURT: I'm just saying, we just need to schedule some time, okay.

MR. JONES: Okay.

THE COURT: We have different things that need to be taken care of for everyone, so we can take care of everything for everyone.

Okay. So now we need to get to the Court's order. And when I say the Court's order, as you know, I am referring to -- give me two seconds to get to my other pile. Okay.

Okay. Do you all need a few moment break before I get to the Court's order?

MR. DOYLE: If you only have a few minutes, I mean, we're fine. It's up to your staff.

THE COURT: I think my staff would probably appreciate a few moment break.

MR. JONES: Sure.

MR. DOYLE: Yeah.

THE COURT: Because I have a tendency to keep going until I realize the time, and I always make sure that my team gets an appropriate break because like I said, I have a tendency to keep going. But I still have that old private practice idea of I go until 4:00 in the morning without a stop. So -- I don't do that to them ever. I always make sure they get all their state and federally mandated breaks; put that in all caps and bold. But let's take a brief ten-minute break and come back at 3:20. Thank you so much. 3:25. Thank you.

THE MARSHAL: The Court is in recess.

[Recess at 3:13 p.m., recommencing at 3:25 p.m.]

THE COURT: Okay. We're back on the record. All parties ready. Okay. We're back on the record.

One thing, with regards -- obviously, Plaintiff, with regards to your motion, I need detailed findings, obviously, with your 137 motion.

MR. HAND: Absolutely, Your Honor.

THE COURT: I presumed you knew that, but I --

MR. HAND: We'll order the transcript. I took notes, but we'll order the transcript.

THE COURT: Sure. No worries. I just wanted to make sure for that. And also, your motion to strike, right. Okay.

MR. HAND: Yes.

THE COURT: Okay. So, we've got two separate issues. I'm going to start with the order that addressed both parties, then I'm going to go into Defendants, okay. Because, Plaintiff you're only subject to -- kind of subject to one of them and Defendants, you're subject to that one and a lot more.

So, on 9/19 at 3:48, the parties both received the Court's order denying the stipulation regarding motions in limine and order setting hearing for September 26, 2019 at 10:00 a.m., to address counsel submitting multiple impermissible documents that are not compliant with the rules and orders. And that, as you all know, contained in that order addressed several issues which some overlap what the Court's doing regarding some conduct of both parties, counsel, and then

additionally -- I'm sorry. We're on the record, are we not, madam clerk?

THE CLERK: Yes, Judge.

THE COURT: Okay. Just want to make sure since she just walked in.

THE CLERK: Sorry, Your Honor.

THE COURT: No worries. Thank you so much.

So, it's going to overlap with some of the conduct of Defense counsel in and of itself, but I'm not going to be somewhat repetitive. Okay.

So, as you all know, and you know what I'm referencing because the Court took the time to draft a six page order that outlined that. You both counsel, received that, correct?

MR. DOYLE: Yes, Your Honor. We have.

MR. HAND: Yes, Your Honor.

THE COURT: Okay. So, as you know, kind of went over in summary fashion with regards to that most recent. At that time, you all had submitted to the Court, a motion in limine. But that wasn't the first thing that you had submitted regarding motions in limine.

And just for a quick little background without being extensive, because you all have ordered all the trans- -- well, not all the transcripts. Actually, you didn't order the July transcript, interestingly enough. But you ordered many of the transcripts. But, as you know, back in January 2019, based on a conference call, and based on the fact that Defense would only do a three year waiver until November 10th, 2019, this -- and that was a conference call. Originally this case was set

to go to trial March 18, 2019. It was vacated and reset to October 14, 2019, based on a conference call with all the parties on January 7, 2019. When I use the term all the parties, I mean the parties, although I'm appreciative that some new counsel came in since then, but I'm using the term parties.

And since the three year rule under 41A.061 was only waived through November 10th, that's why the trial got set for October 14th, 2019 because that's as far as Defense counsel would waive the three year rule. So, then you got a trial order on 1/22/2019 that's consistent therewith. So, the trial was October 14, 2019. Pretrial conference September 12, 2019, calendar call October 8, 2019. And, of course, the motion in limine date is eight weeks prior to that trial. That's on page 2.

Since that January 7th, this trial date has never changed. The pretrial, the calendar calls never changed, the motion in limine dates never changed. There's never been anything submitted to the Court in any proper format that's ever changed any of that. Nevertheless, as you know, since that time the parties submitted some discovery extensions, which the Court signed, including a 6/26/2019 stipulation order to extend the discovery deadline, which was your title -- that was titled the seventh request, although it truly wasn't the seventh request. And in that one, the Court even handwrote in -- on that 6/16, that one, the parties specifically had typed in the trial date of October 14, 2019 stands. So, that's as of June 26th, obviously.

The close of discovery July 24th, 2019. That was the extended date by the parties agreement. And the Court handwrote in, all

other dates closed per prior orders other than motions in limine, which are due eight weeks before trial. I signed that. So, everybody knew trial date remained. Motions in limine, everything else was closed, other than you all requested that discovery copy to July 24th.

After that date, of course, we had the hearing in July. In July, there was the July hearing, which as the court minutes clearly stated -- let me get to those court minutes. That was the July 16th hearing. There was a request by Mr. Jones, but there was Defense is not in a position to move the trial date, Defense is evaluating the request. So, there was not an agreement by both parties as of July 16th, as stated in open court, which has been verified by JAVS, gosh or gollies, how many times, okay.

So, for those people who were here that day, you know that's what was said. There was not an agreement as of July 16th. So, all subsequent declarations, that somehow state that there was an agreement by the parties on July 16th, you all know those declarations are inaccurate, per se. As stated in open court, there was not, at least as represented to this Court in open court. And if anyone would like to play back that DVD, be glad to show it to you, okay.

So, there was not any agreement. Which meant as of July 16th, of course, since the close of discovery would be July 24th, any said stipulation, motion, et cetera under EDCR, would, of course, have required to be in writing with EDCR 2.35, as modified, by administrative order 1903, would have required, not only the stipulation to be in writing, and since it was within 20 days before the discovery cutoff date, any

extension thereof, shall not be granted unless the moving party, attorney or other person demonstrates that the failure to act was the result of excusable neglect.

So that means, of course, no stipulation could ever be presented to this, or any other court, or the discovery commissioner because it can't go to the discovery commissioner because for a year since prior to that, these don't go to the discovery commissioner because, of course, everybody has to comply with the administrative order 1903, which has been in effect since at least March 12, 2019. But the practice and policy going to the district court judges have been in practice for way before then had to go to the district court judges. It has to include excusable neglect.

Any other document would be a ROE [phonetic] document shall not be signed by the Court, could not even be provided to the court. Shall not is shall not. The Court cannot sign it. I'm sure no one -- anyone trying to submit to the court a document such, of course, would be asking the Court to violate its oath of office, and no attorney could ever do that under Rule 11 because that would be per se impermissible.

So, contrary to that, you all tried to submit different things to the court and were told that you could not do so. Said was rejected because it was noncompliant for multiple reasons, including under EDCR 2.35, NRCP 16 and of course, medical malpractice cases you can never submit the stipulation anyway unless you have specific new, firm trial dates, or you come into court and provide for a new trial date.

So, anyone's discussions about any other concept or

perceptions are in no way compliant with Nevada law, and could not have even been provided to the Court because that would be a per se Rule 11 violation.

So, despite that, obviously, things were submitted and had to be rejected. Shall not be submitted means shall not, shall not be signed, cannot be signed, shall not be done.

So, thereafter, as you know, because of that submission and because the Court reached out to the parties multiple times to try and find out what was going on and the parties would not respond to the Court, the Court had to set a mandatory in person hearing on September 5th. September 4th, somehow despite the clear rule, and despite being specifically put on notice of those clear violations, the parties tried to submit on September 4th, a noncompliant stipulation, which was discussed specifically on September 5th.

Once again, parties are put specifically on notice again of all those noncompliant things and why the Court shall not -- not the Court's rule, EDCR, Court can't sign it, Court's not allowed to sign it, can't ask the Court to sign something and violate its oath. Should never been submitted to the Court, Court couldn't sign it, Court was explaining it.

At that same hearing, and since you all have the transcript, you know on page 18, the Court did specifically explain that your availability is different. First off, the availability is never mentioned anywhere. The Court is not in any way precluding -- let me be clear, the parties from conducting your own experts, doing things you need to do, the Court is saying you can do all that by agreement of the parties.

There is nothing that precludes you from doing that. The Court's just stating your trial date remains, your calendar call remains, your motion in limine date remains, and your dispositive motion date remains. To the extent the parties have an agreement to conduct those various things outside of the schedules, other than, of course, what the Court just stated, right, that can be done by agreement of the parties, EDCR 7.50. The Court even cites the specific EDCR for your benefit. The Court's not precluding from you doing any of that.

The Court is saying, and I repeat again, I said this again, line 18, your trial date remains. As the parties requested a firm trial setting way back in January. The Court has granted several extensions and underlying dates at the parties request. But what was provided yesterday, right, on September 4th is a stipulation. There is not good cause under the NRCP, blah, blah, blah, can't sign its name. I repeat it again and then I repeat again about the motion in limine dates, dispositive motion dates, the calendar call date and the trial date. Okay.

Clearly -- I have trial counsel there that date clearly say motion in limine date, dispositive motion date, et cetera. What then happens, after clearly saying that, on September 5th, the very next day, on September 6, somehow this Court receives impermissibly -- just one moment.

[Pause]

THE COURT: Now the Court had repeated itself. The Court kind of felt like it was just talking to the wind. Because the very next day, September 6, 2019, a fax comes. And you all know you can't fax any

agreements, right. You know EDCR specifically says things have to come by stipulation, with proposed order. The very next day,

> "Dear Judge Kishner, as the Court knows, the parties had anticipated continuing the trial in this matter. The Court just said the day before you hadn't but, accordingly, the parties did not file motions in limine which were due pursuant to the previous scheduling order on August 19, 2019. In light of the fact that the trial is proceeding, we respectfully request the Court issue a briefing schedule for any motions in limine or other pretrial motions. I spoke to George Hand regarding this request this afternoon and he is in agreement. Very truly yours, Schuering Zimmerman, Doyle, Chad Couchot."

How that letter possibly anyone could view as being permissible to this Court, after the Court had said multiple times the very day before, motion in limine date remains, dispositive motion date remains, calendar call date remains, and trial date remains, no idea. Since the EDCR specifically precludes any written communications to the Court by letter format, don't know how that happened. Of course, that would be in addition to all the impermissible pleadings and documents the Court's already mentioned earlier today and all the different hearings.

Thereafter somehow, doesn't stop there. Then, the Court gets, and I may be missing one because there was so many. Then I get on September -- I'm going to do these somewhat in chronological and then I'm going to circle back on which ones are Defendants' versus

Plaintiffs'. Then I get -- that I don't get. Then it gets filed, but never submitted to the Court, a motion to compel a deposition, but never gets submitted to the Court. So, of course, that's totally impermissible. So, the Court -- it's Defense's motion to compel so, of course, the Court never gets it so the Court can't do anything about something it never gets. But that would be another impermissible document. I guess that's the one that got set for 10/15. Okay.

So, then it gets a -- another document gets filed on 9/16. It's called an application, but it never gets submitted to the Court. So, the Court can't ever address that. It's also filed by Defense. It's called application for an order shortening time. But since it never got provided to the Court, you can't just file things, order for shortening times. EDCR specifically requires it has to be provided to the Court. You can't just file them. It's per se impermissible to ever file an order shortening time without a judge's signature on it. The Rule is clear. Order shortening time specifically require that a judge must sign it. It must be provided to the Court.

EDCR 2.26. Ex parte motion in order to shorten time, may not be granted, except upon an unsworn declaration under penalty of perjury or affidavit of counsel describing the circumstances claimed to constitute good cause and justify shortening of time. Motion to shorten time is granted, it must be served upon -- if it's granted, see. That means it's got to come to the Court first, the judge first, for signature. You can't file these. They're per se impermissible.

So then, what does the Court do, nicely, it ends up seeing it

because then after that gets filed without being submitted to the Court, another one then comes to the Court. Then the Court on September 18th gets one. But then the Court gets this one called application. And the Court -- it was so convoluted that the Court had to draft a memo and the memo is e-served to both the Plaintiff and Defendant, dated September 18th, saying -- the memo specifically e-served says it does not comply and the Court -- EDCR 2.26, I even put the provision in there, the whole provision.

Then it says does not set forth when the party would like the matter heard. However, it appears to involve issues that are occurring today because it talked about a deposition or something that was happening that very day, which is a per se violation because you have to give at least a judicial day. And it was only submitted at 11:00 on the 18th, but yet it referenced things that were supposedly happening on the 18th. So, the Court had no idea what was going on.

And then it also didn't comply with various provisions of EDCR 2.20, including, but not limited to that there was no points and authorities. It was like a gobbly, gook of different things provided to the Court. And then the Court even nicely attached the relevant portions of EDCR 2.20. So, there was no question about what the rules were. So, people could just read the memo, didn't even have to go to the EDCR. And then the document is captioned an application, but in the body it was called a motion to compel. So, the Court wasn't even sure if it was a draft document or it was a combination of different documents. And then the Court attached the document. I rejected it. Never got a new

OST. So, the Court can't do -- if nobody resubmits anything to it in any proper format.

So then, we move on. The very next day on September 19th, even though the Court had said what it said on September 5th -- even though the Court had rejected the letter that was impermissible and stated what it said on September 6th, you all don't give up. Then the Court gets, again, another document. Stipulation and order regarding motions in limine. Wasn't enough that the Court said it twice during the hearing, wasn't enough that the Court rejected the letter, you all then sent it to the Court.

Again, stipulation order regarding motions in limine. Somehow wanting to do motions in limine so that you could file things up to October 2nd with a trial on October 14th. Don't know how the Court was going to deal with that when you all had a calendar call on the 8th and everything was due. I don't know. But, once again, the Court already said you can't do the motions in limine. Told you that the month before. But, once again, looks like no one's listening to anything the Court is saying, just keep filing things. But at least this one we actually got.

So then, unfortunately, that prompted the Court to have to do its order of September 19th, where the Court said the Court has received the parties attached purported stipulation. The Court not only needs to deny it because of the impermissible stipulation, because it's per se noncompliance with the rules and orders, but the Court, unfortunately, must set this matter for hearing due to the ongoing

conduct of counsel. As counsel is aware, they have continued to submit impermissible documents, request the Court, which per se cannot be granted by the Court because they run afoul of various rules and orders which the parties have -- counsel disregarded. This has continued to occur in some cases, including the present one, even after the Court has already informed the parties that they have failed to comply with the rules and standards at issue unfortunately, the conduct of counsel, et cetera. I then cite NRS, NRCP, EDCR and the trial order to no avail.

And then the Court even nicely provides you with the sections of the trial order which specifically set forth the date the motions and limine were due, sets forth that you all didn't cite any emergency or anything like why you needed this. And then, specifically cite the fact that it would disrupt the ability of the parties to conduct your EDCR 2.67 conference. Because how could you possibly do that if you still have all these pending motions. 2.68, 2.69. And that would, of course, violate the NRCP. And then Section E, amended trial order. Of course, your pretrial memorandum was due on September 30th, so how could you possibly comply with that, based on your own dates. So, it looked like it was a de facto way to try and continue the trial impermissibly, but whatever.

And then, the Court specifically recites again, EDCR 2.25, which says shall not be granted unless you have excusable neglect. So, even though I had already said it the day before, in another memo e-served to all parties, even though I'd already said it a couple weeks before, even though you're supposed to know the rules and never

submit it to the Court anyway, once again, since no one wanted to listen to my memo, I now had to do it as an order. Okay. And then I cite EDCR again right there for you. Dropped the footnote again that this is the third time the parties have provided a stipulation that doesn't address the excusable neglect so didn't even provide it when you did the August or the other September stipulation.

How many times do you want me to -- I waited three, four stipulations on one side, three stipulations on the other side -- excuse me, four orders on one side, including three of them being stipulations, three stipulations on the other side before I finally do an order. It's like how many rules do you want to violate. And this is before I even knew about all the interrogatory issues and the failure to do all of those, before I even knew about the deposition stuff. So, I didn't even know about all those rule violations at this juncture.

So, then I talk about all those. And then I even cite the times at the September 5th hearing where I had told you about the motions in limine, saying I needed to address this. So, I figured that if I did this order on 9/19, people would actually start reading the rules, but I was wrong. Because I continued to get -- yes, you in the gallery are surprised I continued to get these.

So then what happens, and of course, we still are having -- then the next day, of course, I get the sanction hearing finding out more issues, more violations. Then we're setting that up meanwhile. Then we get -- so that sanction motion is the same day that the Court's doing this order so. Then I get the motion to strike that same day on the 9/19, as

well. Then I have to do another one. Because then, I get incorrect pretrial memoranda, I get -- I don't even want to go where your objections are wrong. I'm not even going there. I got tired of drafting this. I was spending way too many hours trying to -- full time job trying to draft on this case.

So, then we get another one. Now, after the Court has specifically explained what needed to be done on an order shortening time, I thought maybe that one -- three times, right. Because I dropped the footnote about the three times on the order shortening times, I thought maybe that one had been fixed, but no. I get another shortening time. And this one, it looks like they try and go around me by setting it in front of the discovery commissioner instead of this Court. It says to be heard by the discovery commissioner, which you can't set something in front of the discovery commissioner less than two weeks before the trial date, after the Court has already told you that it will not extend the close of discovery, because the Court told you that in July. So, you can't try and file it in front of the discovery commissioner on October 2nd on an order shortening time to get around the district court judge, because there was two problems with that.

One, you inadvertently had the messenger drop it off. But the discovery commissioner would have sent it my way anyway. But you can't try and send it to the discovery commissioner less than two weeks before trial and ask for a ninth request to extend discovery on an order shortening time. Really. Okay. You know how that looks to the district court judge. After the district court judge has told you in July and

August and September multiple times and then you try and go to the discovery commissioner by putting it on the front page. To be heard by the discovery commissioner. No.

So, then the Court has to do another order. Order denying Defendants' order shortening time request on Defendant, Barry Rives, M.D. and Laparoscopic Surgery, motion to extend the close of discovery, ninth request. By the way, this isn't the ninth request. This is the third ninth request. I don't know what number ninth request it is. And order setting the hearing at 8:30 to address counsel's continued submission of impermissible pleadings, proposed orders, even after receiving notification and the Court setting a prior hearing submitting -- regarding submitting multiple impermissible documents that are not compliant with the rules.

So, this is after there's already a pending motion for terminating sanctions under Rule 37, after the Court has already done its prior order about the impermissible, after the memo, after the motion to strike is already set on the OST, and after, like I said, after terminating sanctions are still pending against Defense counsel, then you try and submit this to the discovery commissioner.

So, then the Court did this other order. Of course, this one is shorter than the last one because I really, you can appreciate by this time, citing each of the orders and citing all the rules in detail so that they wouldn't be violated again, didn't seem to work, so I stopped typing them myself because it wasn't working. So, I just said, which is on the face of the pleading it is impermissibly sought to be heard before the

discovery commissioner, although discovery has been over since July 2019, but was provided to this Court. The Court cannot sign its name to an order shortening time due to the, once again, per se noncompliance with the rules, including that the declaration, now this was interesting -- the declaration included in the purported quote facts and statements that are contrary to the record of the hearing. Because the declaration that was attached hereto said, interestingly -- let's go to paragraph six.

> "On July 16, 2019, the parties appeared before The Honorable Joanna Kishner to request a continuance of the trial at the scheduled status check conference. The parties both agreed to continue the trial."

For those of you were here on July 16th, you know that is blatantly not true. I already just read you the minutes of July 16th. For those of you who were here on July 16th, you know the parties both agreed to continue to trial, is not an accurate statement. And the attorney that signed that under penalty of perjury

> "I am an attorney at law licensed to practice in the State of Nevada and affiliated with the law firm of Schuering Zimmerman and Doyle, attorneys of record for Defendants, I make this declaration in support of Defendants' motion to extend the close of discovery and order shortening of time, ninth request. I am making this declaration on my personal knowledge and called to testify could competently do so."

Okay. And then would you like to see where it says under penalty of perjury in the paragraph. "I declare under penalty of perjury

under the laws of the State of Nevada, that the foregoing is true and correct and if called to testify I could competently do so." Penalty of perjury.

Now, that was interesting. Because the Court, upon reading that, went back and listened to the JAVS hearing yet again, just in case, giving the benefit of the doubt. Because when I see something under penalty of perjury by an attorney licensed in the State of Nevada. Okay. And you can appreciate the Court, if you look at the time of when this order went out, it was 2:28 p.m.

So, you can appreciate that the Court waited until after I got the notification from the senior judge's department to make sure that this case did not resolve before I sent this order out, giving everyone again the benefit of the doubt, just in case the matter got resolved and I didn't have to send this order out. And you can see the way the Court tried to phrase this in the nicest most neutral manner about saying facts and statement are contrary to the record. I didn't specifically point out the paragraph under penalty of perjury.

This presents a huge challenge to this Court. Then if I were to look at the other affidavit under penalty of perjury, it has similar concerns. So then one would ask this Court, did you maybe happen to check to see if those same declarations maybe had been filed by another attorney in the same office, with that same paragraph in it, under penalty of perjury. And you would say, hmmm, yes, it had. And that attorney wouldn't have even been present on July hearing 2019. Which would raise an additional issue. How another attorney from the same office can

file under penalty of perjury. Would you like to know the date of that one. That would be one of those ones that was not filed to the Court. Let's go back to that one.

[Pause]

THE COURT: Oh, I was supposed to be in another matter. Well, the attorneys know who I'm talking about and the attorneys know what they said. It's the same paragraph six. You can find it. You know which one I'm talking about that was one of the rejected.

So, herein lies what should this Court do. Okay. Do you want me to continue. There's another one.

MS. JORDAN: Your Honor, would --

THE COURT: The Court's not finished. Unfortunately, I've got more. Then I have, even after this, because this isn't the last thing I get from the Defense firm.

We then get -- part of this we've already gone over. We went over this at the last hearing, but I have to mention it. Because this is part of the Court's order and part of the filings. You all know that after September 26, after we did the hearing on Plaintiffs' Rule 37 motion, the Court continued it, only for the purpose to give Defense counsel, since they had not requested an evidentiary hearing on behalf of their client, yet they had also not filed any affidavit or any declaration on behalf of Dr. Rives.

The Court offered that they could, if they wished to, have an evidentiary hearing and have Dr. Rives, or any other witnesses they wished to testify. And that the parties had then said that they only

needed a total of one hour, and it was only going to be witnesses, and potentially only Dr. Rives but the Court wanted to make sure because the Court was concerned under *State Farm v. Hanson*, RPC, rules of professional conduct, and wanted to give, because the counsel that were there on the 26th weren't sure if Mr. Doyle was going to be the one doing the evidentiary hearing, check with him first.

So the Court then continued it to October 7th, but made it specifically clear that it was only going to be if they wished a witness or witnesses to testify. Nothing else was going to be able to be done.

But contrary to that specific statement by the Court, then, although the Court has since stricken it on September 30th, contrary to the Court's specific directive, Defense counsel then filed a supplemental, Defendants filed a supplemental opposition to the motion for sanctions under Rule 37 for intentional concealment, specifically contrary to the Court's specific directive, without the Court's permission, without seeking leave from the Court, as is specifically required under the rules, that you cannot file any supplemental pleadings without the Court's specific leave.

And then attached thereto yet was another issue with the declaration. Because that declaration attached thereto, had, in addition to the per se noncompliance supplement, which all it had to do was request the supplement from the Court, but nobody requested it, nobody sought it, they just filed what they wanted to file. And it was filed, unfortunately filed on -- the Court already went through this, but some people weren't here, filed on Friday, October 4th. So, it was less than a

judicial day before the hearing on Monday the 7th.

So, it gave Plaintiffs' counsel no opportunity to respond. And as the Court already noted on October 7th -- well, the benefit of the doubt to Defense counsel, maybe they don't remember that Plaintiffs' counsel was going to be out of town on the 4th. But everyone knew because my JA came in and reminded everyone that both the Court and Plaintiffs' counsel were at a CLE with several justices and things like that. It was a CLE that a lot of people attend. It's an annual CLE that a lot of people attend. But even regarding the fact, whether they're out of town or not, they're still responsible for the caseload, still responsible. Don't even know who exactly was out of town or wasn't out of town. So the out of town path doesn't really matter.

But filing it on the 4th without leave, less than a judicial day and included a declaration that included hearsay per se impermissible declaration. Because hearsay is, of course, not allowed.

So, that's where we were, that's where we are. It's way after -- it's unfortunately the 4:00 hour, which the Court was supposed to be somewhere else. But the Court now has to consider, because of all this additional conduct, what to do about this case. I will -- the egregious conduct, obviously, is Defense counsel. Because you can hear from what the Court's saying, the declarations are incredibly concerning. The repeated continuing of filing things after the Court provided the order as to both parties to continue to file things which required the Court to do another order. And then still even after that second order, still filing another supplement with another declaration with hearsay is a new one

on this Court. Being on the bench for a decade, I've never seen conduct like this.

So, the Court is trying to think of what the remedy is. Because realistically because this is Bar reportable 101. This is -- if you look at -- and I even put on that second order, I clearly put everyone on notice, *Valley Health Systems v. The State of Jane Doe* and the Rules of Professional Conduct 3.3. I fully put everyone on notice about this and have strong concerns on this. This is not candor to the Court. This can't be a oops, I forgot about it. I mean, even taking these in isolation and not taking the additional verifications of the interrogatory oopsies and all the other quote oopsies, in addition to all the other oopsies discussed earlier today on the motion to strike and forgetting about all these witnesses and other things, it's -- taking these issues in isolation, this is an incredibly large pattern under a short period of time. Which is incredibly concerning to the Court.

So, the Court really is thinking -- and this is from Defense counsel. From Plaintiffs' counsel, the Court is concerned about the motions in limine. But it stopped after I did the order. So, I don't see it as bad on Plaintiffs' counsel by any stretch of the imagination. Because first letter came from Defense counsel and the motions in limine, then the stipulation came from Plaintiffs' counsel.

So, if it was just an issue of the motions in limine, I would give people the benefit of the doubt. But I had different counsel -- I keep trying to find ways to give you all the benefit of the doubt. I would try and give the benefit of the doubt that I had some different counsel

maybe here on the September 5th hearing, and that the letter and then maybe thought they needed to do a stipulation because they thought the letter maybe was the incorrect way of doing it. You all just weren't listening in court.

I don't see how you can say you're not listening once you order a transcript and still provide things to the Court, but at least it stopped on one end when I got the order. So, it's really the continued pattern of just throwing all these pleadings to this Court. And then declarations and it's a challenge here.

So, the Court's got two choices. One, I can make a determination today -- and then the calendar call, folks. Still not even prepared even after I tell you, okay, remind you last week, make sure everything is ready for the calendar, Monday, make sure everything is ready for the calendar call. Calendar call, still not ready. Still don't have everything. And then say, okay fine. I'll even give you till end of day. And then you still don't provide things. So, you know, the calendar call stuff, you know, there's no basis for not providing the stuff by the end of the day. It's so easy. No basis.

Now, this conduct, whether I should hold your client accountable for all the multitude of conduct on behalf of his counsel and strike his answer for all your conduct, in addition to the conduct that he had, pursuant to Plaintiffs' motion. There's more than enough here. There's way more than enough. I mean, *Valley Health Systems* gives me more than enough. I can take *Wilson Malzowich [phonetic] v. The Eighth Judicial District*, petition for writ of mandamus. I mean you can look at a

whole series of writs where various firms are trying to appeal district court orders. This is easily supportable. I have looked at so many of these just to see, and this one is so far above those, that gosh, oh golly, there's more than enough support for it. But the Court can't believe that really you all did all this. It's just incomprehensible.

So, I guess I'm somewhat inclined to think about it and see what happens on the first day of trial and decide what to do. But this can't continue. This is so egregious on so many different levels and experienced counsel. Come on. And I'm really mostly talking to Defense counsel. This is 90 some odd percent Defense counsel, this is less than 10 percent Plaintiffs' counsel. But I just can't explain what's happening here. It's really -- I can take a lot of oopsies, I can give a lot of benefits of the doubt. But this is just way too much. I mean oops, I forgot about this, or oops this or oops that or I mean.

Come on, even today, keep on trying to say that somehow you thought the case would be continued and this makes up for all of this is just blatantly inaccurate, untrue and way -- this is not doing the case from the get-go, and continues to file all these things. I mean, it's just -- I cite you every single rule. I cite the rules in court, and you don't bother to listen to them. I give you the rules and memos, you don't bother. I type it myself, the whole rule. Okay. It's not my -- remember our staff is me, my JA and my clerk.

Who do you think is typing all this stuff to try and give you the benefit of the doubt? And you just don't follow it, you just keep on doing it. And then I even got from Mr. Doyle on Monday, I didn't know

that we could ask for a request for -- to file a supplement -- of course, you did. That's exactly what you do. You don't just, you know, file what you want to file. Then, you know, try and say oops, we'll see if the Court cares about it. Of course you know you seek permission before you file supplementals. Experienced litigator such as yourself knows that. Okay.

And it's not the first case you've litigated in this court and it's not the first time you've had an issue like that in this court. So, you know, the suit case. So, you know. And I'm not holding anything in that case in any manner, I'm just saying the rules and these rules that this court has had, and it's not this court's rules. This is the EDCR, it's the NRCP, it's the NRS, okay. It's the Rules of Professional Conduct. Declarations under the penalty of perjury mean just that. Okay.

Parties are not in agreement when people say that they're not in agreement and they're checking things out. Particularly when other counsel on September 5th said they're still checking this out. Subsequent meetings with counsel, different things. And I'm giving you all the benefit of the doubt on differences of opinion, what an attorney who is not here today may or may not have said. It has nothing to do with that. Those are differences of opinion.

But continuing to file things, putting in declarations and continuing not to do verifications and saying then you can't be held accountable for it, and putting in pleadings that the other side should just be looking in the docket to find out about intentional other cases that aren't disclosed. I mean there's just a whole pattern here that is so deeply concerning. And then the client getting on the stand and

knowing all about interrogatory number three that he knew nothing about and then doesn't know about the rest of the cases. Somehow knows about that one interrogatory but knows nothing else. That was very lack of credibility. And somehow knows about the page 2, which I specifically mentioned on 9/26. Well, it looks like he was looking at the interrogatories. I mentioned that specifically and somehow he knows that he handed it back, but knows several -- doesn't know several other things that happened during his deposition.

The lack of credibility in that testimony, his specific knowledge on certain key things that are asked pursuant to leading questions, that he only looks at his deposition the week before and seems very primed and knowledgeable and then doesn't know most all the questions asked by Plaintiffs' counsel, is very concerning.

And the leading questions and the Court says if you ask another leading question you're going to be sanctioned and somehow there's a lot more leading questions. Oh, I'm sorry, Your Honor. The greatest litigators know not to keep asking leading questions after several objections. There's a lot of oopsies and I'm sorrys. So, that's very concerning to this Court, after giving huge amounts of benefit of the doubt.

So, I'm going to -- should I strike their answer, Plaintiffs' counsel, what should I do. I'm going to ask Defense counsel what I should do. What should I do. What should I do for you, what should I do for them? Or should I hold everything in abeyance and see what happens in the trial? What should I do?

MR. LEAVITT: Your Honor, Plaintiff still stands by striking the answer based upon briefs, conduct, everything else.

As far as our involvement, like you said, 10 percent less than 10 percent, honestly a donation to the Legal Aid center or even the library, whatever this Court feels.

Like Mr. Jones said when we first came in, we thought this -- we get it. We did the stipulation. We're willing to take that sanction on the chin. We've never said otherwise.

So whatever this Court's inclined to do, I guess -- not against for the behavior of the plaintiffs, which I take full responsibility for, so be it.

THE COURT: Okay. Defense, what should I do?

MR. DOYLE: The Court should impose a substantial monetary sanction against the Defendants to punish and deter, if you will, but not strike the answer.

And I think it would be in everyone's best interest to know what the Court is going to do in advance of us commencing trial, because if the Court were to strike the answer, then that would require certain steps on my part.

I would need to request a continuance in the trial so that my client can evaluate whether they need to retain new counsel, whether there is a need for writ. I mean, there's various things that we would have to do if that's what the Court ends up doing.

And I don't think it would be very efficient for purposes of the jury and trial and continuing to incur fees and expenses to make this

decision in the middle of the trial.

THE COURT: And he was fully informed under *State Farm v. Hanson* on the conflict of interest issues before he got on that stand on the 7th?

MR. DOYLE: He understood.

THE COURT: Okay. You know I said it multiple times. I just get real concerned when there's not another attorney here on behalf of him personally, which is why I said it over and over and I'm mentioning it again today. I just -- okay.

MR. DOYLE: Well --

THE COURT: That's all -- I don't ask about any attorney client communications. I just wanted to be sure everybody was fully taken care of and protected.

MR. DOYLE: Well, if the answer is stricken, then he will retain personal counsel --

THE COURT: Okay.

MR. DOYLE: -- and the necessary steps.

THE COURT: Okay.

MS. CLARK NEWBERRY: Your Honor, may I address your concerns that I've perjured myself?

THE COURT: I didn't mention any attorneys. I just mentioned declarations. I did not -- I just mentioned that there's declarations that were inconsistent with what was stated, and I intentionally did not mention any attorney's names. And I'm still not mentioning any attorneys names. I mentioned declarations, and I

intentionally did not mention names.

MS. CLARK NEWBERRY: I appreciate that, Your Honor. I take very seriously the oath that I took as an attorney and every time I sign a declaration, there is a reasonable explanation. And I think that a misreading of paragraph 6 and I would like the opportunity to explain that to the Court because I would never perjure myself or be sloppy in my declarations and advance something which was untrue before the Court.

THE COURT: Okay, sure. As you can tell, I try to give every benefit of doubt and that's why --

MS. CLARK NEWBERRY: Yes.

THE COURT: -- I waited and everything. But I relistened to it and --

MS. CLARK NEWBERRY: I completely understand why the Court in reading paragraph 6, which includes sentences that relate to various time periods, would read it to say -- to read it and understand that it would be saying that on July 16, 2019, the parties both agree to continue trial.

Paragraph 6 says on July 16, 2019, the parties appeared before the Honorable Joanna Kishner to request a continuance of the trial date at the scheduled status check conference period.

The parties both agreed to continue trial period. The parties went back and forth in an attempt to formalize the continuance with the Court. An extension of the discovery deadlines was discussed amongst the parties. The parties agreed to the deposition of Dr. Horowitz could

be accomplished within an extended discovery period to be established once the Court officially continued trial.

Paragraph 6 references several different periods of time. While I understand the Court is reading the second sentence to say that at the status check conference, we both agreed. I know that was not what happened at the status check conference.

What it should have said is, subsequent to the status check conference, because again, I'm referencing several different periods of time in this paragraph. That's what it should have said.

But I in no way was trying to represent to the Court that we stood before you on the 16th and said, well, yes, we want a continuance also. Let's work that out. I'm very sorry for the confusion that that has caused to the Court.

THE COURT: Do you realize that same language is used in another declaration?

MS. CLARK NEWBERRY: Yes, Your Honor, I do believe that that language was used in other declarations. Each of those individual sentences to the best -- based on my personal knowledge, was, in fact true, but I now see as they're read together that there could be confusion.

THE COURT: Do you realize that same language is used to restrict Couchot's declaration previously filed with the Court? That same language is used.

MS. CLARK NEWBERRY: Your Honor, I have knowledge of everything that's in this if you're saying that I don't have personal

knowledge of --

THE COURT: No. I'm talking about, counsel, I'm not sure if you're aware, those same sentences were used in declaration by Mr. Couchot on September 13th, 2019.

MR. COUCHOT: Are you asking for my explanation, Your Honor?

THE COURT: I'm saying that those same sentences were used in paragraph 6 of your September 13th declaration.

MR. COUCHOT: Your Honor, and I was not present at the hearing that the Court has referenced and transcript that the Court has cited. I understand that is consistent with my understanding of the timeline that Plaintiffs had approached us to continue the case.

We had said we didn't know and --

THE COURT: No, you didn't say you didn't know. Counsel, that is dead bang inaccurate. You understand what this Court is saying? Okay.

MR. COUCHOT: I'm sorry, Your Honor.

THE COURT: You didn't say you didn't know. Okay. You two may want to talk and you may actually -- I intentionally did not mention counsel's name. I intentionally tried to indirectly infer it was in another declaration. So the counsel involved can talk with one another. Take a look at the two declarations and realize that that same language is used.

And so for one person to say that they're interpreting is their own words, when it had previously been used with somebody else's

name on it.

I'm hearing what you're saying, but you understand it's a challenge for this Court to say it's your words when those exact same words in that same pattern of sentences is used by your colleague previously. That's what this Court was saying. And I was trying not to put either of you on the spot and saying this in open Court, which is why this Court was trying to be very careful about just generally stating it and not having anyone speak specifically.

Which is why when you even stood up I was saying, you might want to take a look at it with your colleague first. You may still wish to do that before anybody says anything else. You may both wish to do that.

MR. COUCHOT: Thank you, Your Honor.

MS. CLARK NEWBERRY: Thank you.

THE COURT: I'm not in any way cutting you -- let me be clear, if either of you wish to speak further on this, I'm in no way cutting you off. I am trying to give you both the benefit of the doubt that you may wish to speak with each other first and look at the pleadings before you speak.

If you wish to speak now before the Court considers anything, I would fully give you that opportunity. Do you understand the difference of what I'm saying?

MR. COUCHOT: I understand, Your Honor.

THE COURT: So if you wish to explain it before you physically look at each your declarations and wish to explain it without

looking at your declarations and speaking among yourself, I will give you that opportunity.

If you want to not explain it right now to the Court and prefer to look at your declarations and see their similarities and talk among yourselves before explaining it to the Court, then that's fine too.

MR. COUCHOT: Okay. That would be --

THE COURT: I'm not requiring anyone explaining it to the Court right now. The Court was taking a generic, giving everyone the benefit of the doubt, generic statement of just a concern about declarations in a general sense from the firm in general. Not pointing out the attorney.

However, I'm in no way precluding you that if either of you wish to say something on your own behalf, feel free to do so. I'm just not requiring it.

MR. COUCHOT: We'll take an opportunity -- we'll take that opportunity, Your Honor. Thank you for allowing it.

THE COURT: Do you also wish to take that?

MS. CLARK NEWBERRY: Yes, Your Honor. Thank you for providing us with that opportunity.

THE COURT: Okay. So would you both prefer that this Court defer that this Court evaluate how this trial goes and then determine if there's any further conduct that would tilt the balance towards striking? Right now, very serious monetary sanctions and defer about anything else including whether I have to report anything to the bar until I see and hopefully things do a 180 during the course of the trial. Is that what

Defense counsel -- Not to you. Plaintiffs' counsel.

MR. LEAVITT: We understand, Your Honor.

THE COURT: I think you're saying you're making a donation, and I think that's what you voluntarily wish to do. That's fine. I don't see this in a similar context.

If Defense counsel wishes me to evaluate how the trial goes before, you know what I mean, that you think is more of a monetary sanction, you'd like the Court to consider how the trial goes before making a final determination, I will do so.

MR. DOYLE: I will take that opportunity.

THE COURT: On behalf of your firm?

MR. DOYLE: Yes, thank you.

THE COURT: Okay. That's what we will do. Okay.

MR. DOYLE: Your Honor, I had a couple of miscellaneous things about the trial, but I suspect --

THE COURT: I would be glad -- well --

MR. DOYLE: -- you need to be somewhere.

THE COURT: I have already missed what I needed to do. So let's walk through and ensure you're taking care for your trial. Okay. So you take in for your trial. We're going to get you 70 jurors is what you all requested. Okay. With regards to the 70 jurors, what we do --

Did we get some printed, like I asked about, the sheets, the long sheets?

MR. LEAVITT: You provided those.

MR. DOYLE: You provided those, Your Honor.

THE COURT: Oh, you did. Okay. You got them? Okay. I'm sorry. Thank you. I wanted to make sure you got those. Did they get the questions? The Court's standing questions?

MR. LEAVITT: Yes.

THE COURT: Yes?

THE CLERK: I had calendar call.

THE COURT: Oh, you did get them in calendar call? Okay. Great.

GROUP RESPONSE: Yes.

THE COURT: So let's first -- did you all have a chance to look at the standard questions and are you okay or any of them you not wish to ask? Either is fine. What you have is --

MR. DOYLE: That would be good, Your Honor.

MR. LEAVITT: They're fine.

THE COURT: Let me walk through what we do with voir dire, okay? What we do with voir dire is once the jury comes in, the first 20 get seated. You see three seats in front. We'll actually have a fourth seat. What will happen is that fourth seat, the one that we right now have in the back is generally our ADA accommodation seat if we have somebody who's rather large and needs an ADA accommodation, we usually put them in that seat. But we'll put in the front.

So we have 20 people, next 50. Number 21 will be behind Plaintiffs' counsel. Okay. And it'll go and then we'll go here. So if you have any people here for viewing purposes, we ask that they sit right hand side, far back, okay? At least during voir dire and then they can sit

wherever afterwards.

Friendly reminder that if you have laptops or things or visuals, you need to put them in the manner that no one in the jury or no one in the voir dire can see, okay?

So what we do is, Number 1, that chart that we gave you, Number 1 is the far left seat. Number 20 is the front seat. Okay. So they'll come in and we normally have the people what we call the box, will come in up the side and through here, unless we have an ADA accommodation issue, then we'll just deal with it as we need to deal with it. And the reason why we do that is because usually people like to have your stuff kind of here in the middle and we'll try and take care of you that way. Then the other 50 will come in through the double doors.

Once they're seated, we give them a general introduction to the modified Arizona method. I double check just to make sure that they're qualified jurors, that they basically , you know, are citizens. Perfectly fine if they got their citizenship the day before they got the jury notice. And to make sure that if they are a convicted felon, that they've had their voting rights reinstated. Okay.

After we go through that, then we go through hardship. And based on length of this trial, we show you two weeks, right?

MR. DOYLE: Our estimate was -- well , that second Friday is --

THE COURT: The 25th, Nevada Day. Yes. The following Monday.

MR. DOYLE: So having communicated with one another in

terms of when Plaintiff finish their case in chief and number of days, it may be 10 to 12 days rather than --

THE COURT: That would be concerning if it's 12 days, because we've estimated it, and we've started our next trial based on what you all told us. So let me see what you told us.

MR. JONES: Your Honor, we should be good.

THE COURT: You told us until Monday, the 28th. So we have something else estimated to start, probably the 29th.

MR. JONES: Yes.

THE COURT: Are you thinking longer than that?

MR. DOYLE: Yes, Your Honor. Because --

THE COURT: I really would be very not happy if you all of a sudden did that to the Court on the Thursday before trial we've asked you multiple times.

Now you did tell us because Friday being Nevada day, that you might need to go over to that Monday. So we did block that out. But if you're now adding more days, two more days, you can appreciate that that would cause a great concern to our trial schedule because we run our trials based on what attorneys tell us and we run them back to back because, of course, we ensure that everyone gets their full trial time.

So why would you need two extra days? You're going to pick a jury in a day, at most part of a little bit of Tuesday. We told you what our trial schedule were and presumably you have all of your witnesses lined up and there's no gap in time, because we move -- we

told you what our Tuesdays, Thursdays, Mondays, Wednesdays and Fridays were, and you would have no gap in your schedule because you have all of your witnesses lined up to be ready to go.

So why would there be additional two days?

MR. DOYLE: Because Plaintiffs' estimate that they have given me is that they would finish their case in chief on that Tuesday of the second week. So I have been scheduling my, I mean, I have my client, I have a percipient witness or two and the various experts because we have experts on standard of care, cause and damages.

THE COURT: But why was this not taken care of in the 2.67? This is exactly what you all were supposed to do to 2.67.

MR. DOYLE: We did discuss this at the --

THE COURT: Not discuss. It was supposed to be taking care of at a 2.67 before you ever come, right? Because --

MR. DOYLE: And in our pretrial -- in our separate pretrial memorandum, I explained the time that we needed to put on our case based upon when Plaintiff anticipates finishing their case in chief. So that was in our pretrial memo.

THE COURT: But that's -- at your 2.67 did you not state, Plaintiff will be done by X, Defendant will be done by Y?

MR. DOYLE: At the 2.67 Plaintiff indicated at that time that they would finish their case in chief on Tuesday. So I began scheduling my experts for Wednesday and Thursday. And given the length of those days and the number of expert witnesses required by the Defense, I am scheduling witnesses on Monday as well because I can't get everybody

in, in those two days.

Plus I have my client and as I said --

THE COURT: Why are you all the way through Tuesday? You're all the way through Tuesday for how many --

MR. LEAVITT: No, if we bled over, it would be Tuesday in the morning.

MR. JONES: At the maximum.

MR. LEAVITT: We anticipate --

MR. JONES: We're trying to get it all done by Monday.

MR. LEAVITT: Yeah. We should be done by Monday.

THE COURT: Okay.

MR. DOYLE: Well, that's not what I have been told repeatedly before this moment in time.

THE COURT: Okay. You all are really making me reconsider -- I mean, you appreciate this is Thursday at 4:30 and you're now telling me two extra days. And you do realize I've had two other trials on hold with you all. Okay. Okay. This is incredibly concerning.

If you knew this at the calendar call, you could have told the Court, right?

MR. DOYLE: Right.

THE COURT: If you knew it last week, you could have told the Court. I mean, you all did your --

MR. LEAVITT: We haven't change, Your Honor, anything.

MR. JONES: Right. Like he said, at the 2.67 we told him, he said, the Tuesday? We told him, that's -- if we bleed over, that's it.

MR. DOYLE: That's not what I was told, Your Honor.

MR. JONES: Well, counsel, even if it was the 22nd --

THE COURT: Okay.

MR. JONES: -- you just told the Court.

MR. DOYLE: And that's why I made the statement that I did and in our pretrial memorandum, based upon the representations of Plaintiffs' counsel.

THE COURT: And no one chose to tell the Court for all the different days that you all have been here, that this is an issue?

MR. JONES: Your Honor, we didn't even realize we had an issue.

THE COURT: Well, I guess you're going to be very efficient in picking your jury, aren't you? You're going to be picking that jury in less -- I mean --

MR. JONES: I mean, Your Honor, if we finish on Monday, we're only taking four days for our case in chief.

MR. LEAVITT: Right.

MR. JONES: I mean, that's assuming that the Tuesday -- I don't see, you know, why the Defense would need more than we would need.

THE COURT: I mean, how many witnesses -- okay. Given everybody that you all really didn't disclose, I mean, how many witnesses are there here folks? Okay. Plaintiff?

MR. JONES: We have 16, Your Honor.

THE COURT: Huh?

MR. JONES: We have 16 witnesses.

THE COURT: Oh.

MR. JONES: But we think we'll go through those in three or four days, I think we'll be done.

MR. LEAVITT: Most of them are just witnesses --

THE COURT: You don't have that many before and after's.

MR. JONES: We have like three before and after's I think, Your Honor.

THE COURT: Okay.

MR. LEAVITT: Yeah.

MR. JONES: And we have a couple of family members.

THE COURT: And they're not going to be nonrepetitive, noncumulative or they're not on.

MR. JONES: Right. Exactly. And frankly, they won't be long.

MR. LEAVITT: Right.

THE COURT: So docs and your client?

MR. JONES: Yeah. We know that we need at least Monday because we have a doctor, our lifecare planner is Monday morning.

THE COURT: Okay. Okay. Well -- fine. I -- okay.

MR. DOYLE: I mean, I know the Court --

THE COURT: What other surprises, folks? Just tell me now.

MR. DOYLE: All right.

THE COURT: You're really trying to -- okay.

MR. DOYLE: Apparently, we have a motion scheduled for next Tuesday concerning Dr. Ripplinger which we would withdraw.

THE COURT: Okay. Sure. Withdrawn then. October 15th motion withdrawn. Okay. Thank you.

MR. DOYLE: And then in Plaintiffs' Exhibit 1, which was presented to the Court on Tuesday, when I left here, I didn't have -- I didn't bring the binder. And so when I looked at Exhibit 1 on Wednesday morning, I noticed that pages 1 and 2 of Exhibit 1 are medical bill information which counsel has known all along is an issue in this case.

The exhibit was represented as being the medical records from St. Rose Dominican Hospital.

THE COURT: Counsel, that's what you're 2.67 was for. You all provided -- you all said to this Court, Exhibit 1 was stipulated, admitted. The Court asked you multiple times. If you don't bother to look at the document, that really is your own issue, isn't it?

MR. DOYLE: It was represented --

THE COURT: The Court -- counsel? The Court, if you recall, specifically allowed you all to go into the anteroom for as long as you wanted and the Court continued on with its motion calendar to give you all a full opportunity to look at whatever you wish to look at with regards to your exhibits, because you all had some issues with regards to your exhibits. In particular, you had some issues with regards to Exhibit 1, because there was an issue that you all stated that you thought there was some different pages that had not been included.

If you chose to only look at the end pages versus the first pages, that really is your own issue. This Court required way in advance that you all needed to do at your 2.67, exchange exhibits. Would you

like me to read EDCR 2.67 or should I just add that to the list and tip the scales as far as noncompliance?

Let's look at EDCR 2.67.

MR. DOYLE: I know what --

THE COURT: Counsel, please let the Court finish, all right?

MR. DOYLE: Okay.

THE COURT: Feel free to get out your golden rods, right. EDCR 2.67 is also stated in there. What does EDCR 2.67 say? It says, you must exchange exhibits, right?

So if you choose not to exchange exhibits and violate EDCR 2.67, you do it at your own risk because if you choose not to exchange them and you say in front of the Court multiple times, we have stipulated and admitted all of Exhibit 1, then this Court has to take you at your word.

If you choose not to look at them, even after the Court gives you an opportunity to go into the anteroom for as long as you wish, your tech person's going to have to come back another day. This is not going to be done today and I can't keep my staff past 5:00. Okay. You're going to have to come back another day. Sorry. They're not prepared. Your very people that you wanted you, if they're not prepared, that's your issue. Sorry, counsel. Well, it doesn't matter. The firm that hired him is not prepared and so unfortunately, he's going to come back because the firm that hired him is not organized, and this is taking a lot more. I've already missed where I needed to be an hour ago because you are not prepared.

Okay, so unfortunately, I gave you a chance in the anteroom for you all to go over every single thing --

MR. DOYLE: That --

THE COURT: -- and you chose not to look at the beginning pages of Exhibit 1, that was your own choice.

MR. DOYLE: No, Your Honor. We met the day before the calendar call at Ms. Clark Newberry's office to exchange our exhibit binders.

THE COURT: And did you -- did you get an exhibit binder on that day?

MR. DOYLE: I did not. And Plaintiffs said they would bring it to the calendar call, and I said, okay. We gave them our exhibit binder.

Until the moment -- until 45 minutes before the calendar call on Tuesday, it was my impression and belief based upon my conversations with Plaintiffs' counsel, that Exhibit 1 was going to be the entire medical record for St. Rose Dominican Hospital.

When they showed up Tuesday morning with a binder that was only several inches thick, then I realized for the first time that they were not going to be including the entire record as Exhibit 1.

I asked what was in Exhibit 1, and I was told, well, it's mostly progress notes and some other things. We had to start, so I didn't have time --

THE COURT: You didn't have time? I gave you all as much time as you wanted in the anteroom. This Court's specific words were, you are all not prepared. Go spend as much time as you need in the

anteroom and I will call other matters in the interim. And when you're done, you can come back in and I will call you again.

I had a full motion calendar for other times. Okay. When you all came back in, Lily fit you back in. You could have been there as long as you wanted to. Did you notice I called matters after you? Because I had 9:30s and 10:00s. So you could've been there as long as you wanted.

What I don't understand, counsel, is you chose not to exchange exhibits at the 2.67. Was that by agreement of counsel or not?

MR. DOYLE: It's an 8,600 some page exhibits. So we did not --

THE COURT: So --

MR. DOYLE: -- we did not physically exchange a paper copy, but we agreed that it would be an exhibit.

THE COURT: Did you exchange it electronically?

MR. DOYLE: But we didn't need to because we were working on the copy the Plaintiff had produced, which is identified by pagination in their 16.1 disclosure.

THE COURT: Okay.

MR. DOYLE: Their pretrial disclosures.

THE COURT: Does the bate stamp numbers that are in their pretrial memo, is it consistent with what was in the binder?

MR. DOYLE: As we discussed the other day, they changed it to conform to the Court's rule. Well --

THE COURT: No, they did not change -- the Court's rule

doesn't tell you to do it any particular -- Court's rule doesn't tell you to do it in any particular way, counsel, so I'm not sure what you're saying.

MR. DOYLE: The records were produced as PLTF 1 through 8,600 and --

THE COURT: Which is perfectly fine.

MR. DOYLE: Right. And so that was how it was identified in their pretrial disclosure and in their pretrial memorandum.

Then when we arrived in Court on Tuesday and I'm given the binder just before calendar call, they had deleted those Bate stamp numbers. I understand why they did. And they then bate stamped them A1 through whatever is the last page of their numbers.

It was physically impossible for me because I didn't have my set of the records available to me to go through and figure out in sitting in the anteroom, what records they had decided not to include and which ones I needed to include.

I spent a significant amount of time Wednesday morning compiling those records. I have them in a binder here that I was planning on presenting to the Court as to tack on to the end of Exhibit 1.

THE COURT: No, no, no, no, you're not. We told everybody end of day Tuesday, anything you wanted added to Exhibit 1 or Exhibit 9 had to be by end of day Monday, agreement of both -- excuse me. End of day Tuesday, agreement of parties. That was it. That was your last and final.

We told you both. If you chose not to do it, that's your own decision. We gave you both the same deadline. Clear, unambiguous,

end of day Tuesday. And no one wanted anything else on Exhibit 1 and Exhibit 9.

I misspoke this morning when I said Exhibit 8 and then corrected that it was Exhibit 9, but it was Exhibit 1 and Exhibit 9, and that was clear, unambiguous. Nobody asked for anything different. Nobody contacted the Court. The Court never gave any other date. If you just ignore it and do what you want to do, it's at your own risk counsel. And I bet --

Seriously, did nothing I just say for the last several hours sink in at all? Did none of my orders, did nothing happen, you just blatantly just show up with whatever you want and think it's going to be fine? No, it's not. It was Tuesday, end of day. You are out of luck. And that's what this Court said, because you were supposed to have it on Tuesday.

If you will choose not to exchange the documents, you do it at your own risk. The Court gave you all another chance by going to the anteroom. If you choose not to look through the documents or you choose to come back into court without looking at everything, that's your own decision.

If you choose not to before the calendar call to make sure you have the binder with the appropriate documents and you show up to Court unprepared, that's your own risk.

The Court then gave you, like I said, another chance, go into the anteroom. Spend as much time as you want. I will call other cases. I continued to call other cases. I said, come back when you were done. Didn't rush you. I was doing other cases. I still had other cases to call

after you. You came back. I asked if you were ready. When you all came back, if you'd said you needed more time, I would have given you more time. The Court didn't care. I was doing other calendar cases. It really was perfectly fine.

MR. DOYLE: We went into the anteroom because Plaintiffs had certain objections to certain pages in the binder we had provided them the day before. I did not have a fair and reasonable opportunity to review their binder, which I was expecting to get the day before --

THE COURT: Did you tell the Court that on Tuesday? No.

MR. DOYLE: No. I didn't realize -- I did not realize the extent of what they had done and changed.

THE COURT: But you had an obligation to have done this at the time of your 2.67 conference. If you chose not to do it at the time of your 2.67 conference and you chose not to do it in a timely manner before the calendar call, okay. And if you gave them some documents the day before and they had some objections and you didn't check to see that they'd given you everything you needed beforehand and then you relied on theirs, that's really at you all's own risk. Okay.

That's what the challenge here is, is that people that are not paying attention to their case is really at their own risk. The Court even gave you all extra time. If you chose not to get it done by Tuesday night, you left here and you went wherever you went and didn't do it, you had plenty of time from the time you left here in court until the end of the day, Tuesday.

If you feel you -- I don't know what you did after you left here

on Tuesday, but you had from whatever time you left here Tuesday until 5:00 in the evening to get it back to us, you chose not to do it.

And if you'd had some emergency or some issue and you needed more time, you could have let the Court know, you chose not to do so. You even had all day Wednesday to possibly let the Court know, you chose not to do so. You chose to come in here at 1:30 on Thursday with the, I've got more documents I want to submit to the Court, with nothing provided to the Court, any requested extension.

This is the same thing I warned you about on Monday, when you filed your supplement without a notice. I warned you all about that you got to get the Court's permission.

I warned you in the memo of September 18th. I warned you in a memo -- the order on September 19th. I told you again in the order of October 2nd. I told you in court on September 5th. I shouldn't have to keep telling you.

I told you the hearing on September 5th. I mean, I told you over and over. I've done it verbally. I've done it in writing. I've done it memos. I've done it orders. I've done it by sanctioning you. I don't know how else to get it across to you.

If you choose not to comply, then you lose out. I gave you an extension until the end of the day on Tuesday. You chose not to do it. You choose not to have any proposed exhibits because you chose not to comply.

MR. DOYLE: I understand. And then I ask for the opportunity to mark these exhibits as a clerk's exhibit for the record on appeal, and I

asked for an opportunity --

THE COURT: Why? Why? For what purpose?

MR. DOYLE: To preserve the record on appeal.

THE COURT: there's no record on appeal. Counsel, you personally violated --

MR. DOYLE: If you tell me no, that's fine then. My next request is that I be able to submit a declaration explaining the circumstances that had put me in this predicament for purposes of the record on appeal.

THE COURT: Counsel, I'm not sure what you're saying. You're telling me that you violated more rules. You're basically saying, Judge, reconsider your ruling and not striking my client's answer for violating the rules because I'm now telling you I violated a lot more rules and completely disregarded everything you said in court.

MR. DOYLE: No, Your Honor. My mistake was relying on Plaintiffs' counsel and what Plaintiffs' counsel told me. I have tried many cases in this jurisdiction, in your Court and in other courts as well and I've always been able to rely on statements and representations by counsel, which in this case I have not been able to do. And now I and my client are being prejudiced by my naive, perhaps reliance on representations --

THE COURT: But counsel, did you have 8,000 exhibits?

MR. DOYLE: Yes.

THE COURT: Okay.

MR. DOYLE: They were at my home --

THE COURT: Did you provide them at the EDCR 2.67 conference?

MR. DOYLE: We agreed not to because of the voluminous nature of them.

THE COURT: Okay.

MR. DOYLE: -- but we were going to work with the ones the Plaintiff had produced.

THE COURT: So the short answer is, you chose not to provide them at the EDCR 2.67, so that meant you didn't have an opportunity to provide them. Okay. Did you list them in your pretrial memorandum?

MR. DOYLE: I believe so. Either we --

THE COURT: I didn't see him. But okay. I don't see them. But if you say you did, I would have to double check.

MR. DOYLE: Well, if I didn't list them as a Defendant exhibit, the reason I didn't was because Plaintiff was listing them as a Plaintiffs' exhibit.

THE COURT: I would have to double check, but okay. So that's the first question. The next question is, did you in time for the calendar call, ensure that you looked at all the Plaintiffs' exhibits before the calendar call to make sure that had everything that you wanted for the calendar call?

MR. DOYLE: No, because I was not provided the binder. The day before when we met to exchange binders and I was given the binder about 30 minutes before the calendar call and we were talking about

various.

THE COURT: Okay. So --

MR. DOYLE: So, no. I did not have --

THE COURT: So you're given the binder 8:30 on Tuesday morning, correct?

MR. DOYLE: Thereabouts.

THE COURT: Okay. So you had from 8:30 Tuesday morning until 5:00 p.m. Tuesday night to get the additional exhibits pages in, right?

MR. DOYLE: No.

THE COURT: Why not?

MR. DOYLE: Because the records were in my office and in my home. I flew home that afternoon. I woke up very early on Wednesday morning and started going through the exhibits.

THE COURT: But, excuse me. You had until 5:00 p.m. Tuesday night. You knew the Court's directive. You had until 5:00 p.m. Tuesday night to add whatever pages you needed to add to Exhibit 1 to include what you needed, correct? You knew it was 5:00 p.m. Tuesday?

MR. DOYLE: I don't have a memory of that, but I'm not going to dispute the Court's memory. But no, frankly, I was surprised today when I heard that I had until 5:00 o'clock. Others heard that --

THE COURT: Mr. Couchot, did you hear the Court say specifically you had until end of day Tuesday to get whatever pages were missing for Exhibit 1 and Exhibit 9?

MR. COUCHOT: I was not here at calendar call, Your Honor.

THE COURT: I'm sorry. Ms. Newberry, you were here.

MS. CLARK-NEWBERRY: Yes, Your Honor. That was my understanding of the Court order.

THE COURT: Yes. Okay. I mean, it was clear to both of you all. So if you have from 8:30 to 5:00 p.m., the same timeframe that Plaintiff had, that's what the Court's trying to say, is that if you chose to fly home, that's your choice. Right. If you chose not to have your office contacted and get those documents, if you chose to do other things, that's your own choice.

If you choose not to bring those documents in an electronic method or in a hardcopy method from your offices out of state, that's really your choice. Okay. If you choose not to ask Plaintiff to provide bate stamp number blank to blank, to add them in, that's your choice.

If you choose not to take notes in Court. Okay. If you choose not to listen to anything that I'm saying to then, you know, that's really your choice. Okay. Because I tell you directly exactly deadlines. Okay. Just like I told you the EDCR 7.50 that you all could do the discovery as long as you didn't do the motion in limine and the dispositive motion.

If you choose just to ignore me, then really that's at your peril because if you notice, I repeat myself, I clearly mention the rules. I clearly see what it is. I repeat myself so that everybody knows exactly what's going on. I gave a clear deadline of end of day Tuesday, after giving people a chance to go in the anteroom for as much time as they wanted. So I don't understand why you keep a thinking that you can just create your own deadlines and do things whenever you want to do them.

That's not the way it works.

And I even said -- in fairness to poor Madam Clerk, you need to do these by end of day. And we walked through it. And we walked through what was missing and walked through those two exceptions of what needed to be done. And the third exception was an Exhibit 8, because Exhibit 8 both was in Plaintiffs' -- had it on the jump drive, and Exhibit 8 from the Defendants was in the hard copy paper. And you all were supposed to agree among yourselves which way you were going to do it. And the -- yours was the -- in fact, I made the joke about the J through Z with regards to part of Defendants' exhibits.

So those -- and I'm doing this by memory. There was a couple of other things, but -- I can go back and look at my notes, we can listen to the JAVS. But we specifically had those carve-outs, repeated the carve-outs. And remember, there was supposed to be the letter? And then Ms. Newberry at the end specifically asked the Court, "Did you want the stipulation and a letter, or just a stipulation? Did you want those combined?" And the deadlines. So, once again, clear, concise rules so that everyone's on the same page.

MR. DOYLE: What I'm asking is the opportunity to submit a declaration to explain what happened, and I'm asking for the opportunity, perhaps because of my excusable neglect. There's nothing willful about this. The Court's --

THE COURT: How is it not willful, Counsel, because -- with your pattern of doing things whenever you want on whatever deadline? You left the court. You decided to fly home. You've chose not to do

anything Tuesday by the deadline, you chose not to go anything Wednesday, you chose not to do anything this morning. You chose that, right?

MR. DOYLE: I'm simply -- if you say no, that's fine. I'm just simply asking for the opportunity to submit a declaration explaining the circumstances, and to request the opportunity to add these exhibits at the beginning of trial --

THE COURT: But --

MR. DOYLE: -- before we get started.

THE COURT: But is there anything different in your declaration than what you've already said to the Court?

MR. DOYLE: Yes. There's a lot more detail, which I will need notes to create the declaration. And I can submit that tomorrow.

THE COURT: But, Counsel, the point is, I've given you a full opportunity to explain everything, okay, and you haven't explained anything other than the fact that you brought them today.

MR. DOYLE: No.

THE COURT: I've asked you if you did the 2.67, and you chose not to comply with the rule by exchanging exhibits in the 2.67. I'd asked between the 2.67 and the calendar call, did you ensure that you had everything. Okay? I asked whether you put them in your pretrial memorandum. I've asked whether or not you did it at the time of the calendar call. I'd asked whether you looked at them in the anteroom. Okay? I've asked whether you've asked any additional time from the Court Tuesday, Wednesday, or before you showed up here on Thursday.

The answer to all that's no.

There's no other explanation -- okay. Even assuming Plaintiffs' counsel said that they were going to provide these additional documents to you, I'm giving you all that benefit of the doubt. Okay? Because that's why I allowed the additional documents to come in for Exhibit 1 in the first place is because you said in open court there was a difference of opinion between Plaintiff and Defendant what Exhibit 1 was supposed to contain. That's why I gave you all until the end of the day to get it in. Because I gave Defendant the full benefit of the doubt that you thought there was going to be additional documents. That's why I gave you the end of the day in the first place. Otherwise, it would have been just as it was, because they were due at the calendar call.

And I even gave you all the reminder on Monday they were due, I gave you the reminder the week before that everything was going to be due. And I explained to you why I gave you part of the ruling on Monday, so that everyone understood everything was due on Tuesday, and that please don't show up the following day with partial exhibits, and say, because there was this pending motion.

So if you chose not to do any of that, that's really your choice, Counsel. So I see no basis to -- there could be anything that a declaration would say anything different, because I've gone over all the time periods with you, I've gone over the fact that I gave you the full benefit of the doubt to give you until the end of the day Tuesday, and there's nothing you can say differently, because you chose not to give it by the end of the day Tuesday, you chose not to seek relief from the

Court, you chose not to provide anything to the court Tuesday, Wednesday, or earlier Thursday. And I said it in open court.

You didn't seek any additional relief. And so there is no basis, there can't be any good cause, there can't be any excusable neglect. You've told me there's not been any medical condition, anything -- an emergency. You just got up early on Wednesday and you looked at it -- and you chose to look at it on Wednesday, after the deadline had past.

MR. DOYLE: All right. And I understand the Court will not allow me to submit a declaration with -- with additional facts and circumstances. That's --

THE COURT: Okay.

MR. DOYLE: -- all -- that's all -- that's fine.

THE COURT: Because you've not told me that there are any additional facts or circumstances that possibly the Court could consider.

MR. DOYLE: There are a lot more facts and circumstances, but I need to --

THE COURT: What --

MR. DOYLE: -- sit down and --

THE COURT: What facts or circumstances --

MR. DOYLE: -- put pen --

THE COURT: -- Counsel?

MR. DOYLE: Well, my reliance on counsel.

THE COURT: You've told me that and explained that. And I've taken that fully into consideration.

MR. DOYLE: So when I left here on Tuesday, I had a set of the records. But because of everything that was going on, I realized when I got to the airport that I didn't have the binder. So I asked Plaintiffs' counsel later that day to email me Exhibit 1 so that I could look at what's in Exhibit 1 and compare it to the entire chart to see what additional records I needed. I can't tell you the time of day that that was sent to me, but it was still business hours, but toward the end of the day on Tuesday. And then the first thing I did Monday morning -- or Wednesday morning is I got up and I had to make an index of what was in Exhibit A [sic], I had to create an index of what I wanted to add to that, because the Court didn't want us to have duplication --

THE COURT: Counsel, you told me that it was going to be like 20, 30 pages. Do you remember you saying that to the Court?

MR. DOYLE: Based upon their statement that -- that what was in there was mostly progress notes, when, in fact, a significant number of pages were not included as progress notes. Again, they -- I said, what is this? And they said, well, it's -- it's the progress notes, or mainly the progress notes.

THE COURT: Well, what did you look at in the anteroom then? I guess I --

MR. DOYLE: We were looking at our exhibits because they had had -- they had had them the day before, and there were some pages in Dr. Rives' office chart, I think it was, that they -- that weren't properly redacted, in their opinion, and they wanted us to deal with. And we -- the only thing we dealt with in the anteroom were their objections

-- or comments about what was in our exhibit binder. At that point in time, I did not look at their binder -- I did not have a fair opportunity to look at their binder and consider what needed to be added without being duplicative, given the sheer volume of the records.

THE COURT: But --

MR. DOYLE: My binder, I forget the exact number, but picking up where we left off, at page 6 -- my --

THE COURT: 600 and something.

MR. DOYLE: Yeah.

THE COURT: But that's why I sent you to the anteroom. It was for Exhibit 1. I didn't send you to the anteroom for Defendants' exhibits. I sent you to the anteroom because the specific request was that there were documents that you thought should have been included in Exhibit 1 that weren't included in Exhibit 1, which is why I suggested you all go to the anteroom.

MR. DOYLE: No. It was their objection to records contained in our binder. That was the only reason we went to the anteroom.

And, Your Honor, the additional records go from page 614 to 1014. So it's another --

THE COURT: Wait.

MR. DOYLE: -- 400 pages --

THE COURT: You told me 20 to 30 pages.

MR. DOYLE: That's right, based upon their representation that the -- their binder was essentially all the progress notes. When, in fact -- when, in fact, their -- they did not include probably 25 or

30 percent of the progress notes, which I couldn't figure out until I got the copy of Exhibit 1, and then sat down with the main set of records and created the index of what they included. They don't even include all of Dr. Rives' progress notes. They skip days. I mean --

THE COURT: Okay. Let me ask.

So, you never gave Defendant Exhibit 1?

MR. LEAVITT: Yes, Your Honor. We gave -- we gave Defendant Exhibit 1. He had it.

THE COURT: When?

MR. LEAVITT: That's what he said. He forgot to take it with him on the airplane. We then emailed it to him, as he said --

THE COURT: Wait. He forgot to take --

MR. LEAVITT: -- in business days.

THE COURT: He left it with somebody. Okay. I've got to get an understanding here. 2.67; you were supposed to exchange documents --

MR. DOYLE: Right.

THE COURT: -- either electronically or hard pieces of paper. So you either did or you didn't.

MR. JONES: We didn't. We --

THE COURT: Okay.

MR. JONES: We --

THE COURT: But my mutual agreement?

MR. JONES: Yes, Your Honor.

MR. LEAVITT: Yes.

MR. JONES: That's right.

THE COURT: So at --

MR. DOYLE: Yeah.

THE COURT: -- your own risk if you don't do it. But --

MR. DOYLE: Correct.

THE COURT: Okay. So then --

MR. JONES: We came to the 2.67 and we said, we're agreeable to have everything in. That was -- that was our position. And they said, we're not agreeable to agree to anything.

MR. DOYLE: No, no, no, no, no.

THE COURT: Okay.

MR. DOYLE: I had --

MR. JONES: That's --

THE COURT: Well, let's not rehash --

MR. JONES: Okay.

THE COURT: -- the whole thing.

MR. DOYLE: I had two specific objections -- I had a specific objection to two specific aspects of the chart, not the entire chart.

MR. JONES: Okay. Well, that -- that's not my recollection.

In any case, it -- so that was the situation at the 2.67. We clearly had a disagreement about what it was. The next day, we reached an agreement that, hey, anyone will be able to use the St. Rose records at trial.

MR. DOYLE: And it would be a Plaintiffs' exhibit that would be produced by Plaintiffs.

MR. JONES: No. That was never part of anything.

MR. LEAVITT: No.

MR. DOYLE: Well, --

MR. JONES: That's an invention.

THE COURT: Okay. Plaintiffs -- folks, I'm not keeping my team past 5:00 again because you're so disorganized.

MR. DOYLE: Okay.

THE COURT: Okay. Plaintiffs' pretrial memorandum said Plaintiffs' 1 through 8505. Okay?

MR. DOYLE: That's the entire chart.

THE COURT: All right. Give me a second.

Defendants' has no Bate stamp numbers whatsoever. So I couldn't tell. And I told you this. Defendants' had no Bate stamp numbers. I couldn't even tell you what [sic] Defendants' pretrial memorandum had any documents at all, because you have no Bate stamp numbers and any reference. So --

MR. DOYLE: And I don't have it in front of me, but if we did not include the St. Rose Dominican Hospital records, it's because the agreement was that Plaintiff would be producing them as their Exhibit 1 --

THE COURT: Well, actually --

MR. DOYLE: -- and --

THE COURT: -- Medical Rose from -- medical records from St. Rose Dominican Hospital, San Martin campus, for the admission on August 7, 2014, you have 1 through 143.

MR. DOYLE: Right. That's the year prior. Because I did not include the 2015 admission, which is --

THE COURT: Oh, yes, you -- we have an imaging study.

MR. DOYLE: Right, we have imaging studies. But I was relying on Plaintiffs' pretrial disclosure where they identify the 2015 St. Rose records, pages 1 through 8,000 whatever.

THE COURT: So, Plaintiffs' counsel, did you agree to give Defense counsel a binder of -- for your exhibits? And if so, when did you give it to them?

MR. JONES: The first time that we met for about 15 minutes the day before, and we agreed to meet at 8:15, and we would give them a binder.

THE COURT: On the 8th? 8:15 on what day?

MR. JONES: Your Honor, I -- we met the day before the calendar call --

MR. LEAVITT: Monday.

MR. JONES: -- very briefly.

MR. LEAVITT: Monday we agreed.

THE COURT: Okay. Did you -- when did you give them a binder?

MR. JONES: 8:15 a.m. the day of the calendar call. Tuesday morning.

THE COURT: Is that when you got your binders, or did you get your binders on --

MR. JONES: They gave us a binder that was unlabeled, I

guess, the day before.

MR. LEAVITT: They've subsequently given us a correct binder.

MR. JONES: They -- yes.

THE COURT: What do you mean they --

MR. JONES: And we --

MR. DOYLE: It was an issue with the Bate stamps. We --

MR. JONES: We --

MR. DOYLE: We --

THE COURT: And when did you get your correct binder?

MR. JONES: Just now today. But it -- we're fine.

THE COURT: Really?

MR. JONES: Well, as far as --

MR. LEAVITT: And we haven't looked at it.

MR. JONES: They've --

MR. LEAVITT: We just got it.

MR. JONES: Right.

THE COURT: Okay. Counsel, because my clerk has the only thing that's coming in in this case. Okay? What she got on Tuesday is the only thing that's coming into this -- potentially coming into this case. Because you are so really asking me to strike -- I mean, this is -- okay.

MR. DOYLE: There's no prejudice to Plaintiff by including these records, Your Honor. I have them here. I have two binders. I can give them to the Court. They --

THE COURT: No prejudice. What do you think my clerk's

been doing for the last couple of days? Why do you think we have deadlines? Don't you think my clerk may be has 700 other cases on her docket?

MR. DOYLE: And --

THE COURT: Don't you think that these deadlines actually matter? Don't you think the fact that we went over everything specifically so that we ensured that we were supposed to have, remember, the finalized exhibit list?

Oh, did anyone give us that finalized exhibit list that was due? Did anyone?

MR. JONES: It's --

MR. DOYLE: We presented the Defendants' exhibit list.

MR. LEAVITT: Ours -- ours was in there, Your Honor.

THE COURT: Yes. The final, right? Everything that --

MR. DOYLE: You have the --

MR. LEAVITT: Ours is in there.

THE COURT: Everything that --

MR. DOYLE: -- exhibit lists.

THE COURT: All the correct numbers with all the pages, right?

MR. LEAVITT: Yes, Your Honor.

MR. DOYLE: Yes.

THE COURT: You told us -- the reason why the Court gave you to the end of the day Tuesday is because the Court specifically asked, okay -- and no one told the Court, hey, we didn't bother to look at

They're Bate stamped leaving off with Plaintiffs' number in sequential order?

MR. DOYLE: It's in sequential order. Mine start at 1-0614 and go through 1-1014. I have two binders right here ready to go.

THE COURT: How is that not prejudicial when the Court has a specific order and tells you by end of day?

MR. DOYLE: But the prejudice -- what is the -- well --

THE COURT: You don't -- see, that's --

MR. DOYLE: But -- no. But --

THE COURT: Counsel, you seem to have -- you --

MR. DOYLE: -- the prejudice is --

THE COURT: -- seem to think --

MR. DOYLE: It's what is --

THE COURT: -- that there's no big deal about --

MR. DOYLE: -- what is the --

THE COURT: -- filing court order after court order after court order after court order. That's the thing that you keep seeming to -- like there's no big deal. You keep on asking -- it's like the Court says, you can't do something, and you're like, well, I'll just pretend it doesn't say it, and I'll just do what I want. I mean, you don't think that that's a prejudice?

It's after 5:00. Goodbye. It's after 5:00. We're done.

MR. LEAVITT: Thank you, Your Honor.

MR. JONES: Thank you, Your Honor.

THE COURT: I'll see you all on Monday. I can't keep my

Exhibit 1. The Court said, is it going to be 20 to -- how many pages is it going to be, because --

MR. DOYLE: I didn't realize the enormity of the situation that I was presented with. And I --

THE COURT: And then you didn't --

MR. DOYLE: -- worked --

THE COURT: At 8:15 in the morning, did you look at it at 8:15 when you got it?

MR. DOYLE: I flipped through it briefly to see what was in there because it was such a small amount of records. And I asked Plaintiffs' counsel what is this? And they said, well, it's mainly the progress notes.

THE COURT: Did you look at --

MR. DOYLE: I did not look at --

THE COURT: -- Exhibit 1?

MR. DOYLE: I did not look at each and every page, no. It's some 600 pages. That was not practical.

And, Your Honor, there's no prejudice to me leaving the two binders here.

THE COURT: Why is there no prejudice?

MR. DOYLE: Because they are exhibits -- because they are the medical records that they produced, that they agreed would be -- they're Bate -- it's the same records. They're Bate stamped the same order.

THE COURT: They're Bate stamped in subsequent order?

team again because you choose not to comply with any court orders and just do what you want.

I'm going off the record.

[Proceedings concluded at 5:05 p.m.]

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio-visual recording of the proceeding in the above entitled case to the best of my ability.

Jessica B. Cahill

Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

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DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

TITINA FARRIS, PATRICK FARRIS,	)	CASE NO. A-16-739464
Plaintiffs,	)	DEPT. NO. XXXI
vs.	)	
BARRY RIVES, M.D., et al,	)	
Defendants.	)	

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

THURSDAY, NOVEMBER 7, 2019

TRANSCRIPT RE:
STATUS CHECK: JUDGMENT

SHOW CAUSE HEARING

APPEARANCES:

FOR THE PLAINTIFFS: KIMBALL JONES, ESQ.
JACOB G. LEAVITT, ESQ.
GEORGE F. HAND, ESQ.

FOR THE DEFENDANTS: THOMAS J DOYLE, ESQ.

RECORDED BY: SANDRA HARRELL, COURT RECORDER
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LAS VEGAS, NEVADA, THURSDAY, NOVEMBER 7, 2019, 9:39 A.M.

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THE COURT: Page 3, Farris versus Rives; 739464. May I have appearances, please.

MR. DOYLE: Tom Doyle for the defendants, Your Honor.

MR. JONES: Kimball Jones for the plaintiffs, Your Honor, along with Mr. George Hand and Mr. Jacob Leavitt.

THE COURT: Okay. So we have two matters on for today. One second, please. And of course this is Case 739464, Farris versus Barry Rives and Laparoscopic.

Okay. So I'm going to address the judgment issue first and then the order to show cause issue, okay. So then we get to the judgment issue first and there's an interesting question. Do you all see on your lower right-hand counsel table, right, the counsel tables, do you see that EDCR? See the only EDCR that has two provisions in the EDCR? What does that address? It has the words courtesy copies. How many times in this case, and you can appreciate after three plus weeks of trial, after everything that's gone on in this case, I don't understand how possibly counsel would not have provided this Court courtesy copies of things that potentially they may have filed within 24 hours of a hearing.

Defense counsel, did you provide the Court -- are you asserting that you provided the Court a courtesy copy of

anything that you filed?

MR. DOYLE: Not yesterday, it wasn't possible --

THE COURT: Why not? Excuse me. Why is it not possible?

MR. DOYLE: -- but I do have a courtesy copy.

THE COURT: Counsel, why was it not possible? If you filed something yesterday, why was it not possible to have someone provide a courtesy copy? You have -- Ms. Mandelbaum's firm is here in town; correct?

MR. DOYLE: Right.

THE COURT: If you choose to practice out of state that's perfectly fine, but it doesn't mean you don't have to comply with the rules. You understand there is still pending sanction hearings, right, that are going to be heard next week. I do not understand how people do not want to comply with the rules.

And by the way, you know that's not new. That's been sitting up there for, gosh, a long, long time taped down there, okay. Now, of course it couldn't be five days, but if you all choose to file things, which you can't file anyway less than 24 hours before a hearing, but if you choose to file it, particularly if one of those documents says, well, I don't know if you can file it anyway and raise an objection to the other side, but there is no excuse to not provide this Court with a courtesy copy, was there?

MR. DOYLE: We were not anticipating a filed objection by plaintiff, so when we saw theirs we scrambled, we put one together, we filed it at 4:06, and logistically we couldn't figure out a way to get a courtesy copy here before five o'clock. It just --

THE COURT: So you could have dropped it off in the box after five o'clock, right? Did you try? Did you contact Ms. Mandelbaum's office or any of the attorneys that are here locally --

MR. DOYLE: Yes.

THE COURT: -- or your appellate counsel that you also have in this case, or your client or anyone? Did you try and fax it in? Did you do anything?

MR. DOYLE: We tried to get a courtesy copy here and we made calls.

THE COURT: How? Did you try and fax it, counsel?

MR. DOYLE: No, we did not try and fax it.

THE COURT: Okay. So what -- I'm going to ask you and then I'm going to check with everyone because I'm going to ask the same thing on the plaintiff's side. You get the same question.

So, defense counsel, whom of all the three law firms that you're associated with -- you said you contacted -- in this case you have three law firms, right?

MR. DOYLE: Aimee Clark Newberry was handling the

logistics for this and she was not able to get down here in court. And I believe she spoke to someone at Kim Mandelbaum's office and it wasn't possible to get someone here before five o'clock.

THE COURT: Did you by chance fax it to a runner service and ask a runner service to do it?

MR. DOYLE: I don't know the answer to that question.

THE COURT: Or email it to a runner service and ask them to do it?

MR. DOYLE: I don't know the answer to that question, but I --

THE COURT: So there's tons of options that you could do, right? Anytime you want to do a filing, you can find a way to do it; correct?

MR. DOYLE: Correct.

THE COURT: So you had lots of options. You chose not to provide the Court a courtesy copy as was required because you could have faxed it. You could have faxed it to any runners or messengers. You had two sets of local counsel here, plus you have an appellate firm that's also been here all the time that could have done it, plus you could have done it or anyone from your firm could have done it. There's lots of options. The Court finds absolutely no good cause for the failure to provide the Court a courtesy copy.

Okay. Now let's go to plaintiff. Plaintiff's

counsel, are you going to contend that you provided the Court a courtesy copy?

MR. JONES: Your Honor, of our proposed judgment on Monday, I know that we did fax it in.

THE COURT: I'm talking yesterday. Let's be clear.

MR. JONES: Absolutely. Okay, yeah, so yesterday's.

THE COURT: A simple yes or no, are you contending that you provided this Court a courtesy copy? The Court did not receive any courtesy copies from anyone.

MR. JONES: Okay.

THE COURT: Are you contending that you provided the Court a courtesy copy?

MR. JONES: With that understanding, no, Your Honor, we did not, and I apologize. I have no excuse whatsoever.

THE COURT: If you think you are, feel free to show us --

MR. JONES: No.

THE COURT: Feel free to show us a runner's slip, feel free to show us a fax confirmation, feel free to tell us who you gave it to.

MR. JONES: No, Your Honor. I did not verify that it was done and I apologize. And if you didn't receive it, it wasn't done.

THE COURT: Is there any good cause for it not being done?

MR. JONES: None, Your Honor. Absolutely none. I can't think of any appropriate basis. My law firm is aware of the provisions and I made a -- I failed to verify that it happened, so I have no excuse.

THE COURT: Okay. And you also have three firms.

MR. JONES: We do, Your Honor.

THE COURT: Okay. The Court finds both parties specifically noncompliant. While I appreciate at least one side acknowledges their noncompliance, the Court does not appreciate the other side not acknowledging their non-compliance because there are several ways that people could have done this. You all hire runner services for every other thing that you want taken care of and there's runner services. You also use litigation services for multiple things. You didn't reach out to them, either. You could have emailed them or faxed them and had them provide it to the Court. There's multiple ways.

No one even tried to contact the Court to see if we would accept a fax. So please don't anyone say that they couldn't do it. They chose not to do it. There's multiple ways it could have been done. No one did it. No one contacted the Court. No one even gave the Court a heads up that it was being filed and that there was any challenges of trying to get the Court a courtesy copy, did you, defense counsel? Are you stating that anyone at your firm even

bothered to call the Court to say you were having challenges with providing a courtesy copy?

MR. DOYLE: No one from my office contacted the Court, no.

THE COURT: Okay. That courtesy wasn't even done. It's a per se violation of the rule by both sides, which is an interesting challenge because it appears that neither of you want the Court to take into account your objections because you chose not to provide it to the Court. So that's what the Court I guess has to take into view because you both chose not to provide anything to this Court, completely contrary -- and no one can say that you didn't know about it because I think you both will say that this Court unfortunately has had to say it -- anyone want to take a ballpark guess how many times I've had to remind you all about courtesy copies?

MR. DOYLE: Many, many times.

MR. JONES: Certainly, Your Honor.

THE COURT: And the Court doesn't like to be saying this, but come on, I mean, one would think, particularly on defense, when they're asking to reduce it by, you know, over a million bucks, one would think maybe you'd want an objection on plaintiff's side. To the extent that you're saying that there's math, you know, issues and stuff like that, one would think that maybe either one of you would either want to protect a verdict or maybe have challenges to a verdict.

But the Court is specifically finding that the objections -- first off, improperly filed objections because they were untimely, not by the Court. Even the Court would have potentially -- even to the extent the Court could have potentially excused that, the fact that there was blatant noncompliance, after all the parties acknowledged that they knew about the rule about courtesy copies, had full opportunities by multiple means to get courtesy copies to the Court, didn't even bother to contact the Court to tell them that there was a filing.

So even in the absence of getting the courtesy copies to the Court, even notifying the Court that something had been filed, all within less than one judicial day so it shouldn't be considered by the Court anyway, the Court finds both parties have waived anything written in their objections, fairly and equally to both sides, because you chose not to do anything, chose not to notify the Court, not even a courtesy to provide it to the Court.

And the Court in no way finds the fact that if anyone even brought one today, there's no way you can do it because it's the middle of the hearing. And as you know, I have another hearing that I need to take care of, which I'm going to pause your hearing one moment just to see if counsel was able to reach out. This one is going to take a long one, so.

(Colloquy with attorney in gallery regarding another case)

THE COURT: I'm going to -- just one second. I'm just going to ask the one word, recall or wait, so I don't have it switched over.

UNIDENTIFIED ATTORNEY: Recall.

THE COURT: Okay. So, counsel, since yours is longer and the other one is going to take a very short time, I'm going to pause in the Farris case. And I don't find any disadvantage to that.

Counsel, can you come to the podium? I'm going to switch over to the other case for just a brief moment.

Sorry, Madame Court Recorder.

(The matter was trailed and later recalled)

THE COURT: Okay, we're switched back. Okay, thank you so much. So now we're still on page 3. We don't need to do appearances again because we're back on page 3. Thank you so much. So we're back to 739464.

Okay. The Court mentioned there was the two matters and the Court has to first address the judgment. The Court already made its ruling with regards to rogue documents that no courtesy copies were provided, so both of those objections will be struck because they're rogue documents. No one gave any courtesy copies to the Court. No one even gave the Court any notice that they were going to be filed or that they had been filed. And they were filed less than a judicial day,

and no request was made to file either of those documents and nothing was provided to this Court that there was any basis to be able to file either of those documents. And so therefore of course they both need to be stricken as rogue documents. It is so ordered.

Okay. So the Court did receive two copies of proposed judgments on verdicts on November 4th. I want to confirm that each side got the other person's proposed verdict -- judgment on verdict.

Counsel for plaintiff, did you receive defendant's?

MR. JONES: We did, Your Honor.

THE COURT: And then I'm going to ask defense, did you receive plaintiff's?

MR. DOYLE: Yes, I did. There were several copies but they appeared to be all the same.

THE COURT: Okay. The Court --

MR. DOYLE: There were filings within a few minutes of each other.

THE COURT: The Court doesn't know from filings. The Court only knows the courtesy copies it received, so the Court is going to describe the courtesy copy the Court received says November 4, 2019 at the top. It had a 10:13:06 GMT on the cover letter with the attached proposed judgment on the jury verdict. The underlying jury verdict was not numbered by pages, so I can't say what the number of pages

are. I can tell you in the upper right-hand corner there's a fax number with an 801 fax number. It says Nelly Shama [phonetic]. So --

MR. JONES: That's our office, Your Honor.

THE COURT: Okay. That's what the Court has.

On defense side the Court received November 4th a communication. I believe this was dropped off in the box and that is a -- this one is numbered. This has page numbers one through five, okay. So that's what the Court has. Is that what both parties understand was provided to the Court?

Okay. So I'm going to tell you a general Court's inclination on the non-economic damages and then address whatever issue. Here's the Court's inclination with the non-economic damages. The two proposed judgments provided to the Court with regards to the non-economic damages -- on the one proposed by plaintiff did not reduce the non-economic damages. The one proposed by defendant did reduce the non-economic damages to $350,000 and that was then proportioned among past and future pain and suffering between Titina Farris and Patrick Farris.

The Court's inclination is as follows. Citing Tam v. Eighth Judicial District Court, 358 P.3d, 234; 131 Nev. Adv. Op. 80, 2015, direct quote: "Based on the foregoing, we conclude that the non-economic damages cap in NRS 41A.035 applies per incident, regardless of how many plaintiffs,

defendants or claims are involved. Thus, the district court erred in denying the portion of Dr. Tam's motion in limine requesting that the plaintiff's non-economic damages be limited to 35" -- sorry, I said 35, I meant to say 350, my apologies -- $350,000 as a whole pursuant to NRS 41A.035." So that is the excerpt from Tam, 2015.

The Court is now going to cite from Zhang v. Barnes, an unpublished case, however it's an unpublished Nevada Supreme Court case, so that means of course it's not precedential but it can be cited because it's Nevada Supreme Court, and that would be 382 P.3d 878, 2016, so it would be post Tam. And the Court is only citing it for the basis in which the Court can cite it.

In that case -- now, that case was a little bit different because it also had a negligent hiring, training and supervision claim; however, the relevant portion the Court is going to read from this is going to -- well, I'm going to read part of the paragraph, okay. "While a case-by-case approach is necessary because of the inherent factual inquiry" -- and that's referencing the negligent hiring, training and supervision -- "relevant to each claim, it is clear to us in this case that the allegations against NSCC were rooted in Zhang's professional negligence. Thus, Barnes' negligent hiring, training and supervision claim is subject to the statutory caps under NRS 41A.035. And, in light of this

court's holding in Tam, under NRS 41A.035 (2004), Barnes is only entitled to receive a total of $350,000 for non-economic damages 'per incident,' regardless of how many plaintiffs, defendants, or claims are involved." And then their internal citation to Tam is 131 Nev. Adv. Op 80, 358 P.3d at 240.

So you have those two cases. Then the Court would also be citing and looking at McCrosky. McCrosky, you know, came up several times during this particular case in the concept of the collateral source. McCrosky v. Carson Tahoe Regional Medical Center, 133 Nev. 930, 2017 case. Oh, I should have also said the parallel cite, 408 P.3d 149. Now, in McCrosky there was the issue of preemption. However, it is very clear that the issue of preemption -- and the Court is going to read a particular paragraph, so addressing in the section in McCrosky dealing with collateral source. And just to be clear, McCrosky's other two issues were vicarious liability, joint and several, so it did not address the collateral source. So the third issue was the collateral source and that was the only issue that really dealt with the preemption.

So without going to the analysis of preemption, I'm going to keynote 10: "Because of this preemption, the issue becomes whether NRS 42" -- and, yes, the Court is emphasizing 42 -- "42.021(1) is severable from NRS 42.021(2), such that we may strike the latter while leaving the former intact."

I'm not going to do the internal citations. And then it says, "We may not do so if the two sections are 'inextricably intertwined,'-- that had internal quotes -- "whereby enforcing section 1 without 2 would create unintended consequences and frustrate the very object of the act." The Court is not going to do the internal citations. "Reading NRS 42.021 as a whole" --

Do you need me to slow down?

THE CLERK: No.

THE COURT: I'll give you these cases, don't worry.

-- "section 1 benefits defendants by discouraging juries from awarding damages for medical costs that a plaintiff did not actually incur, but section 2 protects plaintiffs by prohibiting collateral sources from recovering against prevailing plaintiffs. Leaving section 42.021(1) intact while applying 42 U.S.C. 2651(a) would doubly reduce a plaintiff's recovery in a medical malpractice suit; first, by likely reducing the amount that juries award to the plaintiff, see Proctor, 112 Nev. at 90; 911 P.2d at 854, and second, by allowing the United States to recover Medicaid payments to the plaintiff, 42 U.S.C. section 2651(a). There is no evidence that NRS 42.021 was intended to effectuate a double reduction in a plaintiff's recovery. Therefore, because severing NRS 42.021(2) from the statute would result in the 'unintended consequence' of doubly reducing plaintiff's recoveries, we

must strike the statute in its entirety as applied to the federal collateral source payments." And then it says "See Finger."

It's very clear that McCrosky's preemption analysis was to a different section. That's why the Court when it was reading it kept on saying NRS 42 and said I was emphasizing NRS 42, not 41A. The preemption was to two particular subsections of NRS 42, which is the damages provision. It's not the NRS 41A.

So then the Court would circle back to, well, does 41A, because there's an analysis in McCrosky about preemption, should the Court be looking about whether or not maybe there's a general preemption of 41A or whether that would be generally unconstitutional. Well, you all know the Nevada Supreme Court already addressed the issue of the constitutionality of 41A, right? So the court already found 41A constitutional. If the court had intended to find preemption in 41A, the court would have said so.

So my long version, trying to give you specific cites and specific case law, means the Court's inclination is the non-economic damages in the present case is subject to the total cap of $350,000, which would be broken down between Titina Farris and Patrick Farris and broken down between their past and future pain and suffering amounts. Now, whether it is the proportional amounts suggested in the proposed judgment

of defendant or not, the Court is not going to have a specific opinion in its inclination in that regard. But as far as the reduction aspect, I think the Court has made clear what its inclination only is.

So I'm going to ask plaintiff first because my inclination is leaning towards defendant's position in the generic reduction aspect, so plaintiff's counsel, your viewpoint.

MR. JONES: Yes, Your Honor. The first thing, Your Honor, a moment ago you asked if we had sent down courtesy copies. You stated that you hadn't received one and I had no reason to disagree with you because I had not verified. I since then have texted my paralegal. He confirmed we definitively did send down a courtesy copy.

THE COURT: Really?

MR. JONES: Yes. And I asked him to --

THE COURT: I asked my JEA this morning at nine o'clock and was told no by both.

MR. JONES: And so --

THE COURT: Sent yesterday -- what time?

MR. JONES: I have --

THE COURT: Because I was here until almost seven o'clock and there was nothing --

MR. JONES: I have a screenshot or I asked him to text me a copy of the run slip with Legal Wings and he did.

I can show it to Your Honor if you'd like.

THE COURT: Legal Wings is saying that they delivered a courtesy copy to us?

MR. JONES: All I have is from my office the delivery to Legal Wings. And so I can't know for sure if Legal Wings actually did what they were hired to do in this case.

THE COURT: That's what I'm asking. I'm asking whether or not it actually got here.

MR. JONES: Yeah, that I can't say, Your Honor.

THE COURT: Okay.

MR. JONES: And if you didn't receive it, you didn't receive it. But we --

THE COURT: What time did you give it to Legal Wings?

MR. JONES: It says A.M., 11/6/19. It does not have an exact time but it has a request A.M. and my paralegal is the one who filled it out.

THE COURT: I'm hearing what you're saying, but if it says A.M., do you understand you did not even file it until 12:57 p.m.?

MR. JONES: I do, Your Honor. Yes.

THE COURT: So you do understand that even -- that presents a different interesting challenge because of course the Court wouldn't be able to get a courtesy copy of an unfiled document. So how would a courtesy copy go out in

the A.M. when it wasn't even filed until 12:57 p.m.?

MR. JONES: Your Honor, I know with certainty that it was delivered to Legal Wings, based on the representations of my paralegal. And I do agree, Your Honor, that even though he marked A.M., it would have had to have been given to them after the time of filing. Certainly, Your Honor.

THE COURT: Okay. I guess that -- the Court did specifically check -- actually, I shouldn't say nine o'clock. It was 8:42-ish because my 8:45 was not yet here, so I went off the bench and checked specifically to see if somebody was -- if we had either of them. So --

MR. JONES: No. And, Your Honor, I understand what Your Honor has said and, again, I can't state that it arrived here. I know that my office knows to do -- to make sure to get courtesy copies. I apologize that one wasn't received. My paralegal is insistent that he did give one to Legal Wings for delivery here, but I -- and he has a slip and a payment to Legal Wings that we can demonstrate.

THE COURT: Okay. But if you're telling me he gave it in the A.M. and you didn't file it until 12:57 p.m. --

MR. JONES: I think the run slip indicates that he was requesting Legal Wings to come in the A.M., but he says he did deliver it to Legal Wings. I can get you the exact times, Your Honor, and the cost associated if it would help at all. It sounds like it may not anyway, but I just --

THE COURT: Well, the Court would be interested to know -- I mean, if there's a distinction where Legal Wings is saying it physically delivered it before the five o'clock hour to our box, that's something this Court would want to know because I will tell you I specifically was here.

MR. JONES: Absolutely. So --

THE COURT: And so that would be a concern. And we have a camera.

MR. JONES: Yes. What I would --

THE COURT: So -- and my JEA, my law clerk, my court recorder were all here past the five o'clock hour. I'd have to double check exactly what time, the last time people walked out there, but I know from the cleaning crew when they --

MR. JONES: Absolutely.

THE COURT: I know what time I left.

MR. JONES: No. And, Your Honor, I'm not sure what exactly happened. I'd be happy to provide a letter that outlines the details and provide a copy to counsel, just letting the Court know after I've done a more thorough investigation. Right now all I've been able to identify is my paralegal says that he did in fact deliver one to Legal Wings for delivery here, but.

THE COURT: Okay. I appreciate the update. The Court only can rely on what it receives.

MR. JONES: Actually receives, Your Honor.

THE COURT: And that's -- if you've got some further information in that regard, the Court would be glad to listen to it --

MR. JONES: Perfect.

THE COURT: -- because I want to be fair and equal to everyone.

MR. JONES: If there's anything meaningful in my discovery, Your Honor, I'll go ahead and let the Court know. If you'd like me to just let the Court know the outcome either way regardless, I'm happy to do that as well.

THE COURT: It would just be helpful to know if there's some issue of something being delivered in a box that we -- you know what I mean?

MR. JONES: Yes. I do, Your Honor.

THE COURT: If somebody is going to say, you know, because --

MR. JONES: I will complete a more thorough investigation on this, Your Honor.

THE COURT: No worries. Yeah.

MR. JONES: And I'll make sure that it's updated.

THE COURT: Sure.

MR. JONES: The staff is aware of this requirement and I should have personally verified that it had happened. I did not, as I stated earlier. My paralegal does say, you know, what I just stated.

THE COURT: Okay, thanks. Go ahead, counsel.

MR. JONES: Your Honor, with respect to preemption on non-economic damages, and I understand that, Your Honor, under the Tam case I know there has been an opportunity for the Nevada Supreme Court to strike the cap of $350,000 as unconstitutional. I would say, though, that the efforts to do so or the request to do so was limited to the equal protection and to a much more narrow set of issues than what we have in this particular case. In this case --

THE COURT: So are you -- I'm going to interrupt you for a quick second.

MR. JONES: Yes.

THE COURT: Are you -- I did not see in anything that the Court was provided on November 4th or anything that you ever provided to this Court at any time during the trial that there was any assertion ever made to this Court that caps were unconstitutional. Are you asserting that you ever provided any case law, any argument, any anything to this Court that caps were unconstitutional and preempted?

MR. JONES: Your Honor, I certainly did not, other than the objection that we filed that I know Your Honor isn't considering. But just as part of my argument on the same cases --

THE COURT: Then let me ask you the second question.

MR. JONES: Yes, Your Honor.

THE COURT: Even if the Court were to consider your objection --

MR. JONES: Yes.

THE COURT: -- did you comply with appropriate law and notify the Attorney General, which is the only way that the Court can ever hear a challenge to constitutionality. Right?

MR. JONES: No, Your Honor, we did not.

THE COURT: Okay.

MR. JONES: We didn't notify the Attorney General.

THE COURT: So then you know the Court wouldn't be able to do so. Even if the Court were able to consider your objection, how would I be able to consider any argument on unconstitutionality if you did not notify the Attorney General as required? Or are you contending you didn't have to notify the Attorney General?

MR. JONES: Your Honor, I make no contention.

THE COURT: Okay.

MR. JONES: I don't -- frankly, Your Honor, I believe that we do have a constitutionality issue. I do. And I am uncertain as to my -- the necessity to notify or not the Attorney General. Based on what you've said, Your Honor, I do not doubt that that is a requirement.

THE COURT: I'll let you finish, but I'm just asking if you --

MR. JONES: But I can't say that I'm sufficiently familiar with the law to know my obligations in that regard.

THE COURT: Okay, let me let you finish. Go ahead.

MR. JONES: Yes, Your Honor.

THE COURT: Whatever you wish to bring to the Court's attention.

MR. JONES: The Nevada Supreme Court has never considered this issue in light of the -- in light of the McCrosky issue where you're dealing with actual preemption based on a federal -- a conflicting federal law issue as we have in McCrosky where they were able to make the determination since there was a federal law that allowed for subrogation rights that could potentially be impeded due to the reductions in economic damages, as outlined under NRS 41A.

We have the same exact scenario in this case under NRS 42.021 -- or, excuse me, in reverse order, Your Honor. We now have the same issue under NRS 41A, and in that, as the rights of subrogation are not limited to economic damages. And in fact, as was provided to the Court for other purposes, the plan of the plaintiffs, their medical plan under MGM, their ERISA plan specifically outlines in detail that subrogation rights extend to awards of pain and suffering and they extend to awards of loss of consortium in addition to economic damages.

And so as a result, we actually have a direct

conflict between the rights under federal ERISA and under -- and the rights of MGM to collect their subrogation rights and plaintiff's non-economic damages. And so because of that, Your Honor, we believe that there is a significant issue in that respect.

THE COURT: But how would MGM be impacted in any way whatsoever on the non-economic damages? They're not asserting anything with regards to that, are they?

MR. JONES: Certainly they are. They certainly are. In their plan itself it actually says that they can take not just from monies that were spent for economic -- for coverage of medical bills, but specifically it says they have a right to take from any award or settlement.

THE COURT: If it's not otherwise sufficient from -- You're not asserting that if the past medical damages awarded by the jury is sufficient to cover all medical expenses to be reimbursed by MGM, that MGM somehow is going to take a premium and saying that they're also going to ask for part of the non-economic damages, are you?

MR. JONES: Your Honor, what I'm saying is to my recollection there is no such distinction.

THE COURT: Counsel, but my question is different. What I'm saying -- and I'm being very clear in the question. Let's take a hypothetical. Or we can take your 1.6 million, but I'll take a hypothetical, all right. Say hypothetically

MGM spent a dollar, right, paid a dollar's worth of medical care, all right?

MR. JONES: Sure.

THE COURT: Say your client recovered two dollars in medical care and three dollars in pain and suffering. I'm just making really small numbers to make the math real easy here, right? So with those two dollars in medical care and for purposes of this Court's hypothetical the only outstanding medical claim is the MGM, right, but the MGM paid actually from a contracted rate -- that's where my example is one dollar versus two dollars. The contracted rate paid a dollar but the charges actually shown were two dollars, right?

MR. JONES: Certainly.

THE COURT: Which is why --

MR. JONES: I think I follow, Your Honor.

THE COURT: Okay, two dollars. So even if my math doesn't work out, it doesn't even matter if I do them a dollar, a dollar.

MR. JONES: Absolutely.

THE COURT: My example works out the exact same. So if you want a dollar and a dollar, right, I'll make it a dollar, a dollar. MGM paid a dollar. You recover in past meds a dollar and MGM is the only claimant, so you hand over that dollar to MGM. Are you asserting that MGM is saying that it's entitled to the other -- some portion of that other three

dollars that is specifically designated as pain and suffering non-economic damages, when they have been fully compensated for all monies that they have demonstrated that they have expended for medical care?

MR. JONES: Yeah. Your Honor, I'm concerned that -- I understand exactly what you're saying, but I'm concerned that we're talking past each other on this issue. Until money is actually received, until there's actual money in hand to give to MGM, MGM has equal rights to take from any one of those dollars once the money is there. There is nothing within the contract that restricts them to taking from the economic damages versus the non-economic damages, to my knowledge.

Now, I do understand that proportionally you could say if we know there's enough in economic damages to cover their subrogation claim and that was ultimately covered, would they then -- from that would they then come back and ask for money from a separate non-economic source? Well, I would suspect not, right? Your Honor, I think it's clear they would have no right to do so if they were fully compensated for their subrogation losses. But until money is actually received in the case, MGM subrogation possibilities are in jeopardy. They remain in jeopardy until money is actually received in the case and their right to subrogate appears to me, at least from the plan, to be equally applicable to

non-economic as to economic.

THE COURT: Okay. Anything else you'd like to state?

MR. JONES: No, Your Honor. I think that's everything I have. Appreciate your time.

THE COURT: Counsel for defense, feel free to set forth your entire position.

MR. DOYLE: I agree with the Court's analysis in terms of the application of the $350,000 cap. To address plaintiff's comments, I think if we were to have an evidentiary hearing what we would find out is that the MGM plan probably paid somewhere in the neighborhood of thirty to forty cents on the dollar for each of the medical expenses, that the amounts actually paid are substantially less than the amounts billed, which was the basis for the award in this case. So the jury's award of the past economic damages or the past medical expenses would be more than adequate to satisfy any lien or subrogation rights that the plan might have.

THE COURT: I'm going to flip it back to plaintiff. Show me some provision in the plan that somehow allows what you're saying so that this is a realistic issue.

MR. JONES: Yes, Your Honor. I didn't bring the plan with me, but I certainly can provide that to you. I know that we've attached it previously to other documents and I can identify the cite within just a couple of minutes.

THE COURT: I believe the provision -- doesn't the provision have a general subrogation, that the issue is if there's a lack of clarity so that they avoid if someone has something characterized as pure pain and suffering damages that they're able to recover their money, regardless of how it's labeled, to insure that they're getting fully compensated?

MR. JONES: Your Honor, you may have an advantage of having reviewed something just now that I'm -- my memory doesn't hold.

THE COURT: I don't have it in front of me just now. You all didn't give it to me.

MR. JONES: Your Honor --

THE COURT: It's been a few weeks since you gave it to me, right?

MR. JONES: All I can say, Your Honor, with respect to that, is I can't say that that is definitely incorrect, based on memory. That's not my recollection, but you could be right, Your Honor, and I would have to review the document again.

THE COURT: But how does that go to any analysis in this case that in any way would not have this Court follow Tam and Zhang?

MR. JONES: Your Honor, my -- well, Your Honor, I believe it does.

THE COURT: Follow Tam. Excuse me, I should phrase that more precisely. Tam being the published case as precedent, the Court following Tam, but reiterated in the non-precedential unpublished case but just for clarity since it was a year later, also mentioned in Zhang. I'll phrase it that way. Go ahead.

MR. JONES: No. Absolutely, Your Honor, a fair question. And to me the basis is this, Your Honor. At this point right now as we stand here, there has been no money paid to the plaintiffs and the triggering of subrogation rights, of taking money from the plaintiffs, is based on money being paid to the plaintiffs. And the federal preemption does not distinguish between the right to take from economic versus non-economic damages. And so until --

THE COURT: But it does, counsel. That was the distinction of 42 versus 41, right? 42 -- the McCrosky analysis on preemption was on a different statute. It wasn't on 41, it was on 42.

MR. JONES: I agree with that. I don't dispute that that is certainly the case. My dispute is that a McCrosky-like analysis dealing with the preemption of federal -- of subrogation rights under an ERISA plan, has never been done under NRS 41A. And I believe it is an analogous analysis and I believe the same outcome would be found, given that federal subrogation rights are not limited to economic damages. And

so if there is a finding of preemption for economic damages based on the ERISA plan, and ERISA plans permit taking non-economic damages in addition to economic damages for their subrogation rights, or -- you know, either way, then I don't see how the preemption would not equally preempt 41A, just as it does 42.

So that's -- that's my understanding, Your Honor, that if you have a plan -- if you have a plan with the federal protection in place and there is any risk, any risk created by a reduction in economic or non-economic damages, then you now have a conflict and the supremacy clause requires preemption.

THE COURT: I'm going to need to pause for a second in your case --

MR. JONES: Yes, Your Honor.

THE COURT: -- before the Court makes a ruling, because in fairness there's another attorney in the gallery who needs to be in a different department.

MR. JONES: Absolutely, Your Honor.

(Briefly off the record)

THE COURT: Okay. So, Madame Clerk and Madame Court Recorder, are we back now to page 3?

COURT RECORDER: Yes.

THE COURT: I appreciate it. Sorry about the confusion, but I want to take care of everyone. Okay.

MR. JONES: Your Honor, I was finished. I didn't

have anything else to say, unless Your Honor had more questions for me.

THE COURT: No worries. You can just appreciate the same thing, if somebody needs to be somewhere.

MR. JONES: Absolutely.

THE COURT: I'm trying to take care of everyone.

Okay. So while I appreciate your argument, which in essence I let you all argue the same things that was in your objection, so no one can feel in any way that they're prejudiced because you got to argue everything that was in your untimely, inappropriate objections and even more so than you put in your objections. Hold on one moment, please.

So here's the Court's ruling. The Court turns its inclination into an order. In so doing, the Court fully takes into account all of the oral argument, but in addition the very provision, the reason why the Court cited what it cited in McCrosky is because it really does address the very issue, counsel for plaintiff, that you're raising and it doesn't find it's appropriate because it definitely deals with the reduction and the double dipping. And so while that was in a 42 context, your analysis -- if Medicaid, if federal government doesn't have that be potentially unconstitutional, then a private, self-funded plan by analogy wouldn't do it either, okay.

And that issue is addressed in other cases, but

since you all didn't bring it to the Court's attention in any manner whatsoever, the Court is not going to go outside of a pure specific medical malpractice case law and go through an analysis of ERISA and go through all the analysis.

But feel free if you disagree. If you disagree, do what you need to do. But I'm not in any way encouraging or discouraging or anything else, but at this juncture 41A has been found fully to be constitutional. The Court doesn't -- the constitutionality argument couldn't even have been addressed because -- I'll just give you independent bases. Independent bases. The Court's inclination fully adopted, reaffirmed, turned into an order. The additional question about the constitutionality aspect raised afterwards, even if the Court, based on the representation of plaintiff's counsel that at least the objection was attempted to present, the Court had already anticipated the constitutionality objection in its inclination, so that was already addressed.

I let you all fully argue it. But to the extent that -- so the Court did take into account the essence of both of the objections, in any event, so that was already taken care of in the inclination that turned into an order. But independently of that, taking into account the additional unconstitutionality, the Court says, A) first, you can't raise unconstitutionality because the Attorney General wasn't notified. So you can't raise unconstitutionality because

unconstitutionality, you needed to notify the Attorney General in order to give them an opportunity to participate.

Third independent reason. Even in the absence of any requirement that you wouldn't need to have contacted the Attorney General and given them an opportunity to participate, third independent on the merits it's not unconstitutional based on the argument presented to this Court in the way that it was presented to this Court. McCrosky actually gives you a nice analysis on why it would not be unconstitutional for that concept.

The Court doesn't see -- first, there's nothing specifically shown in any provision of the MGM plan that makes that speculation a reality in this case; particularly in this case because the full amount of the requested past medicals was a specific line item in the verdict form. So it is not possible in this case unless plaintiff oops, which I'm not in any way saying you did, but your very amount was put in the verdict form. So if any manner there was anything that MGM could have potentially paid, it is covered because you stated that the full amount of past medical specials was fully covered in this case. And it was put as a line item, so this is not a case where the jury picked something less. They had your fully stated non-reduced, not subject to any decisions of this Court, right? The amount that you specifically asked for, for all the reasons previously stated, okay.

In fact, there was no adverse testimony, etcetera -- not reiterating everything the Court previously said, it was on the verdict form. So you got everything you asked for, so there can't be a possibility for MGM to be asking for something more.

So in this case it would be speculation and a hypothetical. The Court can't deal with speculation and a hypothetical, I have to deal with issues that are ripe in this particular case. I'm a district court judge. So in this case it's not ripe, it's a hypothetical, it cannot happen based on what you all presented as the evidence to be and getting the full amount of all your past medicals, and so therefore it wouldn't be viewed as -- you've raised -- it depends on which way you raised it. So the constitutionality argument wouldn't even be applicable even potentially here because even under a hypothetical that somehow the ERISA plan, which can't be read that way, but even assuming everything that you're saying is 100 percent accurate, it doesn't apply in this case because you got your full meds, as you specifically stated, okay.

Do you need any more analysis or do you think I've covered like fifteen different independent reasons -- really it's about four or five independent reasons.

MR. JONES: I think you've made a good record, Your Honor.

THE COURT: I think the caps are caps in this case,

right? So now the question becomes do you disagree with the proportional aspect of the caps only that was asserted by defendant's proposed judgment? I'm talking the numeric breakdown. Do you agree or disagree with their numeric breakdown?

MR. JONES: I think we agree, Your Honor. That's fine.

THE COURT: So then the numeric breakdown presented in defendant's judgment, okay, and so we're clear on what I mean by numeric breakdown.

MR. JONES: Speaking as to the proportionality of the three fifty?

THE COURT: I'm going to read the numbers and ask and confirm. I am looking at page 3 of the proposed judgment provided to this Court by defendants. Page 3 days $43,225 for Titina Farris' past physical and mental pain. I'm not getting to any of the interest aspects, I'm going straight for the breakdown of the three fifty. I'm going to read all four of the numbers and then I'm going to ask if you agree with all four. And if you don't agree with any of them, tell me which one or ones you disagree with, okay.

So it's $43,225 for Titina Farris' past physical and mental pain and suffering, and I'm not going to read the rest of it. Okay, that line item. $131,775 for Titina Farris' future physical and mental pain and suffering, etcetera.

And I'm not doing the math, so it looks like you've got a calculator so you're doing the math, okay. $92,225 for Patrick Farris' past loss of companionship, society, etcetera. $82,775 for Patrick Farris' future loss of companionship, society, comfort, etcetera.

So you will need to independently verify if that adds up to $350,000. You have a calculator. And, two, if you disagree with either the mathematics done by defendant or the allocation of those numbers to those four different categories to defendant. So, plaintiff, please let the Court know your position and then I'll let defendant respond.

MR. JONES: Your Honor, could we have just a moment?

THE COURT: Of course you may.

MR. JONES: Sorry, I hate to delay, but I'd like to chat about it for just a moment.

THE COURT: Defense counsel, do you have any objection to them having a moment?

MR. DOYLE: No, Your Honor.

THE COURT: Okay, go ahead. And while you're doing that, may I make a suggestion since we're going to go off the record anyway?

MR. JONES: Yes, Your Honor.

THE COURT: I'm going to -- you all have a moment to discuss your proportionality and take another moment to discuss with defense counsel your other mathematical issues on

interest, etcetera, right? Wouldn't that be a more efficient use of everybody's time?

MR. JONES: Yes, Your Honor. Very much so. Thank you.

THE COURT: So what I'm thinking, it's 10:35. I think it's a wonderful time for my team to have a nice break. See you back at ten minutes of 11:00. Does that work?

MR. JONES: Yes, Your Honor.

THE COURT: Give you enough time to see if you all can figure out your math and everything, right?

MR. DOYLE: Yes.

THE COURT: Appreciate it. Sounds good.

(Court recessed from 10:34 a.m. until 10:51 a.m.)

THE COURT: Okay, so we're back on the record. Okay, so a real quick point of clarification in the Court's ruling a moment ago on the medical malpractice caps. So you want the specific citation. The Court realized that when I talked about the specific provision under the Nevada Revised Statute, you pointed out I actually didn't give you the citation but I gave you the citation to everything else.

So of course it's NRS 30.130. "When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding

which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General shall also be served with a copy of the proceeding and be entitled to be heard."

See also State, The Office of Attorney General, Petitioner, v. Justice Court of Las Vegas Township, 133 Nev. 78, which was my other citation. And there it says -- that is for criminal. In that case they talked about the A.G. is not entitled for an opportunity to be heard in criminal cases, but makes it clear that obviously in civil cases that it is.

And it's also cited in another footnote in the distinction in Moldon v. County of Clark, Moldon, M-o-l-d-o-n, 124 Nev. 507, 2008. And feel free to look at footnote -- it also says footnote 23 where it talks about 30.130 and that there was constitutional challenges and how "In pertinent part, 30.130 provides that when declaratory relief is sought as to the validity of the statute, the Attorney General must be served with a copy of the proceedings."

Now, in this case they distinguished it because it was not the constitutionality, it was -- they found that it was not seeking declaratory relief, they were seeking just to recover interest. But once again, reaffirming a couple of different citations for whatever you wish for that. So that

would be part of the basis.

So let's circle back to -- we're at the allocation of the -- the mathematical calculation and the allocation of the four amounts equaling the $350,000. So the simple question is, are you in agreement with the 43,225, 131,775, 92,225 and 82,775, or do plaintiffs have a different view?

MR. JONES: No, Your Honor. We're agreeable to that proportionality.

THE COURT: Okay. And mathematically it works out?

MR. JONES: It does work out to $350,000, Your Honor.

THE COURT: Okay. So then the Court -- Counsel for defense, do you wish to be heard?

MR. DOYLE: Not on that point. No, Your Honor.

THE COURT: Okay. So then for the past physical and mental pain, suffering, anguish, disability and lost enjoyment of life, the award by the jury will be reduced to $350,000, in accordance with NRS. See the Court's ruling of a moment or so ago with all the various provisions stated thereon. That $350,000 is broken down into the $43,225 for Titina Farris' past -- I'm just going to say physical/mental pain and suffering, et al; $131,775 for Titina Farris' future pain -- excuse me -- future physical and mental pain, suffering, et al; $92,225 for Patrick Farris' past loss of companionship, society, et al; $82,775 for Patrick Farris' future loss of

companionship, society, et al. And my et al is just I'm not reading the rest of the words you said, but of course they are included. Everyone okay with me using the word et al?

MR. JONES: Yes, Your Honor.

MR. DOYLE: Yes, Your Honor.

THE COURT: Okay. It's what you all had -- it's what's set forth in paragraphs three, four, five and six on page 3 of defendant's proposed judgment.

So now let's go to the next item, which is the prejudgment interest. I am going to ask it in the -- okay, global. Do you all agree or disagree on the prejudgment interest percentages first, and then I guess I'm going to go to if the calculations are mathematically correct.

MR. JONES: Percentages. Yes, Your Honor.

MR. DOYLE: We agree on the percentages, which is 5.5 prime plus 2 percent, equaling 7.5 percent.

THE COURT: Okay. So then what is the disagreement, if any?

MR. JONES: I think we have agreed on everything, but it should be laid out.

MR. DOYLE: We did have a conversation outside and, you know, we agree on the percentages. I agreed to change the date of service from August 18th, which is in our proposed judgment, to August 16th, 2016, which was in plaintiff's proposed judgment, so we would back it up two days.

THE COURT: Wait. Yours actually said 2019. That was a typo, wasn't it?

MR. DOYLE: That was a typo. Yes, Your Honor.

THE COURT: That's what I thought. Okay. So would it be correct -- would it be taking paragraph one from plaintiff's proposed judgment, starting at line 23, would that paragraph be correct, then, the one that starts with one thousand -- 1,063,006.94. And it would be on the -- since they're not numbered, I will say it's the second page, line 23, but it has an indented paragraph 1. Is that paragraph then correct by the parties' agreement?

MR. DOYLE: Yes, Your Honor, with one, perhaps, clarification that according to the statute the post-judgment interest would begin to accrue on the date of the entry of the judgment, and that's not specified in either parties' proposed.

MR. JONES: I believe that's only with respect to future damages. And this was paragraph one, so this is past. So I think paragraph one is appropriate as is, Your Honor.

Is that correct, Mr. Doyle?

THE COURT: Well, I think you all are saying something -- okay, let's make sure what you're saying. I was just trying to go -- because what I'm seeing is what you all are going to be combining between these two, is really where I'm just trying to get you by going paragraph by paragraph.

And remember, we have another issue that's going to take some significant time, so we've got to get this.

MR. DOYLE: And we also agreed that plaintiff is not going to claim prejudgment interest on the future damages.

THE COURT: Okay. Well, let's go paragraph by --

MR. DOYLE: Okay.

THE COURT: From I'm looking at plaintiff's, it looks like -- I'm just trying to get through if that paragraph one is what you both agree on and then -- because it has the August 16, 2016 to November -- well, you have it through November 4, 2019.

MR. JONES: That is correct, Your Honor.

THE COURT: So is it intended to be through November 4th or is it intended to be a different date?

MR. JONES: Ongoing perpetually until paid, Your Honor, but the date of November 4th -- the amount would be correct as of that date, although it would -- and that would be the date but it of course would go forward into the future as well.

THE COURT: And the monetary calculation is the same regardless of whether you're calling it pre or post for this dollar amount. So that's why I was just asking. Are you all going to agree the prejudgment interest is going to stop on a date X, or are you going to -- some people like it to stop on a date X because you would say that the Court is -- I don't

have one for the Court to sign right now in open court because you're combining them, right?

MR. JONES: Right.

THE COURT: Sometimes people agree that a date X would be -- the Court is going to, you know, sign it on X date and the prejudgment stops that day and the post-judgement picks up the next day. Sometimes people want it just the daily calculation rate and don't want it to say -- you know what I mean? I just need to know what you all have agreed to. And that's why I was just trying to go the simple route. If paragraph one is agreeable because you agree that the daily rate is the same, you agree the calculations through November 4th is the same, and the way they've phrased it is post-judgment interest accrues until the judgment is paid and they've cut off prejudgment the 4th, so that presumes that post-judgment starts on the 5th, doesn't it?

MR. JONES: It does, Your Honor.

THE COURT: And since the rate is the same, does defense have a position one way or another or --

MR. DOYLE: It's six of one, half dozen of another, so I'm okay with this.

THE COURT: Okay. So is paragraph one, which is on page 2 of plaintiff's, the correct calculation for the daily interest rate and the correct percentages for the pre and post for the past medicals of Titina Farris by agreement of

the parties? Yes or no?

MR. JONES: Yes, Your Honor. That's perfectly fine.

THE COURT: From defendants?

MR. DOYLE: Yes, that's correct, Your Honor.

THE COURT: Okay, so that's agreed upon. So now you're moving on to paragraph two. I'm still looking at plaintiff's, right? If it's different, if you disagree, just let me know. So paragraph two, which was the 4,663,473.00 for future medical. Is the percentage rate the 5.50 prime plus 2, which equals 7.5 percent, agreed upon by the parties --

MR. DOYLE: Yes.

THE COURT: -- as the interest rate?

MR. JONES: Yes, Your Honor.

THE COURT: Okay. So then you go to the calculation aspect and does that meet you all's needs or does someone want something different in that paragraph two to be put in the judgment that's submitted to the Court for future medical? And you said and related expenses. Why did you put and related, by the way?

MR. JONES: Because there were things such as a shower chair --

THE COURT: Okay.

MR. JONES: -- or, you know, equipment. I mean, that's all, Your Honor. That's the only reason.

THE COURT: No worries.

MR. DOYLE: Under NRS 17.130, subpart 2, the interest would begin on the date of the notice of entry of judgment, so that would not be November 4th.

THE COURT: The prejudgment. You mean the post-judgment?

MR. DOYLE: I'm sorry. I apologize. Yes.

THE COURT: You mean post, right?

MR. DOYLE: Right.

THE COURT: Okay. So do you want it to be calculated that prejudgment is to the day before the notice of entry of judgment and the post will pick up at the date of the notice of entry of judgment?

MR. DOYLE: That would be fine.

MR. JONES: I'm fine with that, Your Honor.

THE COURT: Okay. So you'll make that change to both paragraph one and paragraph two, is that correct?

MR. JONES: Yes, Your Honor.

THE COURT: Otherwise, does paragraph one and paragraph two meet the needs of both parties?

MR. JONES: Yes, Your Honor.

THE COURT: And I'm saying paragraph two. I've now moved to page 3 on plaintiff's proposed judgment. So does paragraph one on page 2 and paragraph two on page 3 meet the parties' needs, with the additional language to clarify when prejudgment and when post-judgment picks up to be in

accordance with NRS 17.130?

MR. DOYLE: Agreed.

MR. JONES: Yes, Your Honor.

THE COURT: Okay, both understand that so that's taken care of.

So now we get to the pain and suffering, okay. So pain and suffering, I'm going to need to go back to defendant's proposed judgment, correct, because their calculations are going to be tied to the correct monetary amounts; correct? Yes?

MR. DOYLE: Correct.

THE COURT: Okay. So now I'm looking at paragraphs three, four, five and six. Now, what I don't know is if those are triggered two days short and so they need to be recalculated, or is there some other issues with paragraphs three, four, five and six or are they fine?

MR. DOYLE: We would need -- well, we need to do a slight recalculation, changing August 18 to August 16. And then, again, I think we need the language that the prejudgment interest will go to the day before the notice of entry of judgment and the post-judgment interest will begin on the date of the notice of entry of judgment, as we did -- or that language that we would put in paragraph two.

THE COURT: Okay.

MR. JONES: Yes, Your Honor, I think that's correct.

THE COURT: That meets your needs. Okay. But does the daily calculation in each of the paragraphs -- three, which has $8.88 per day; paragraph four, which has $27.07 per day; paragraph five, which has $18.95 per day; and paragraph six, which has $17.00 per day, do the parties agree or disagree that that is the correct daily calculation amount?

MR. DOYLE: Agree on those amounts.

MR. JONES: Your Honor, we haven't done the calculations. I think they are the right amounts.

THE COURT: So if you wish to reserve your right and if there's an issue on the math --

MR. JONES: That's all. Yeah.

THE COURT: -- then you need to let me know when this revised version gets sent to the Court. Okay?

MR. JONES: Perfect.

THE COURT: But can you confirm with defense counsel first if you're changing the number, that you confirm that you both agree, or if you have it different in the daily rate, show the math to me. Okay?

MR. JONES: We got it. Yeah, we'll do that.

THE COURT: Would that work?

MR. JONES: Yes, Your Honor.

THE COURT: Instead of wasting time now? Does that meet both parties' needs?

MR. DOYLE: Yes.

MR. JONES: Yes, Your Honor.

THE COURT: Okay. So then the last paragraph where you add it all together, I presume your calculators can do that. And since plaintiff is going to be tasked with doing the revised proposed judgment, right, that way you get it in as quick as -- right, very, very quickly to the Court?

MR. JONES: Absolutely, Your Honor.

THE COURT: But you need to circulate it to defense counsel first and then provide it back to the Court. Right? And if there's any disagreement on it, please when you submit it let me know if there's a disagreement. Or if not, approved as to content and form. Defense counsel, you'll sign off on it as approved to content and form or say that you're submitting something separately. Right?

MR. DOYLE: Yes.

THE COURT: Okay. But if you're submitting something separately, it needs to be within a judicial day of when I get it from plaintiff. I prefer it the same day so we can just get this taken care of, signed and get you moving. Does that work for everybody?

MR. JONES: Yes, Your Honor. And obviously we want it expedited, so we'll be trying to -- we'll get this to them today and we'll probably be filing it, if we don't hear back, tomorrow. We want to make sure that it's a quick process.

THE COURT: You need to give defense counsel a

judicial day to review it.

MR. JONES: Okay.

THE COURT: Does that meet your needs, defense counsel?

MR. DOYLE: One judicial day would be fine. Thank you.

THE COURT: Okay. That means if you get it today -- now, today being Thursday, let's make sure we're clear on what that judicial day means since today is a Thursday. Counsel for defense, if you get it today, are you giving it back to them tomorrow, Friday, or are you asserting that you have until Monday?

MR. DOYLE: It would be my position I would get it back to them on Monday.

THE COURT: Monday being Veteran's Day, it's a holiday.

MR. DOYLE: Oh.

MR. JONES: Oh, Monday is a holiday, so it would be Tuesday.

THE COURT: That's what I said. Monday is Veteran's Day, it's a holiday.

MR. JONES: We'll agree to Tuesday, Your Honor.

THE COURT: Okay. So if you submit it to me Tuesday, you know where I'll be. Okay. But remember, if you're submitting it and you need a quick turnaround, make

sure you put something on it and actually get it to us.

MR. JONES: Yes, Your Honor.

THE COURT: No worries. I'm just saying I can't deal with what I don't have. Okay.

MR. DOYLE: So just to clarify, so the defendants will have until Tuesday to approve as to content and all of that, or if we disapprove to submit something --

THE COURT: No. Okay. I'm expecting no later than 10:00 a.m. on Tuesday a revised proposed judgment because the defense's judicial day ends at 4:49 on Friday. No, excuse me, your judicial day -- I'm wrong, I'm wrong. I am wrong. Just one moment. You will have the -- yes. No, I'm right. If plaintiff gets it to you by today, that means you have all day tomorrow, which means by 4:49 would be the -- five o'clock is the end of your judicial day.

That means you need to get it back to them by -- first thing Tuesday morning because technically you could get it back to them after the judicial day with e-filing and e-service, but whichever way, which means no later than 9:00 a.m. on Tuesday morning they should have it back because you will have had your full judicial day on Friday. And you also get the benefit of a Monday holiday.

Then defendants would have to the end of the day Tuesday if they want to provide it back to the Court. If they get it to the Court sooner, then the Court can look at

it sooner. Remember, Wednesday is construction defect sweeps day. It's going to be a challenging day for this department.

Okay. Does that work for everyone? Is there anything else that anybody needs on the judgment?

MR. JONES: Your Honor, just to understand, so just for clarification, Your Honor, the verdict will be filed, is that correct?

THE COURT: The verdict should already have been filed.

THE CLERK: It has.

MR. JONES: Okay.

THE COURT: The verdict has already been filed.

MR. JONES: So the verdict was filed as is and the judgment itself, this is going to be the one and only judgment that we're talking about, or is this an amended judgment on remittitur or something like that?

THE COURT: I am --

MR. JONES: This is my first time that I've dealt with this situation in a medical malpractice case, Your Honor, so I apologize.

THE COURT: No, no, no. Okay. No. The judgment would include, just like you've done it this way with what the jury awarded and then it would include -- pursuant to NRS 41A the amounts have been reduced, whether you do it by a footnote or you do it in the body, right?

MR. JONES: Perfect.

THE COURT: To have those following amounts. So you explain what the jury did and then you explain the reduction. Right?

MR. JONES: Excellent. We'll make sure that that's done exactly that way, Your Honor.

THE COURT: Okay, so that's done that way. Remember -- I'm not saying that the Court is going to get any fees and costs, but remember dates and deadlines with fees and costs. And remember, Campos-Garcia. Campos-Garcia, fees and costs are not amended judgments. That's why this judgment can easily get filed and start triggering whatever that triggers.

MR. JONES: Absolutely.

THE COURT: Fees and costs is a separate appealable order of the court and in no way provides legal guidance. Campos-Garcia is a published case that clearly articulates what it articulates.

Okay. Does that take care of everything on the judgment?

MR. JONES: Yes, Your Honor.

THE COURT: Okay. See, when you have your next case here in January or February is your next one -- do you have another one in this -- you have another one coming up in this department. See how much easier it's going to be.

Okay. So now the Court is moving on. Okay, so I

heard plaintiff. I didn't hear defense counsel acknowledge if there was anything else.

MR. DOYLE: Nothing else concerning the judgment, Your Honor.

THE COURT: Okay.

MR. JONES: Your Honor, nothing else concerning the judgment, but sorry, a quick update. We verified our office messed up. It was submitted to Legal Wings. There was not a rush order put on it and so it's our bad. Anyway, so you should have got it. That was the problem. There was no rush order put on it and it's -- our apologies.

THE COURT: Somewhere; not even yet here.

MR. JONES: That's correct. You'll probably receive it at some point today, Your Honor. Our apologies.

THE COURT: Okay. Appreciate it. Thanks for the heads up. Thanks for the clarification and thanks for the candor to the Court.

Okay. So we are now moving on. The second item for today is the order to show cause. And the Court is going to read the order to show cause. One moment, please. Okay. Order to show cause. The order to show cause: "Thomas Doyle, you are hereby ordered to appear in person, District Court Department 31, 12B, located at 200 Lewis Avenue, 7th day of November, 2019 at 9:30 and show cause why seven separate documents were filed by defendants on November 1, 2019 during

closing arguments without any notice to the Court after all parties had already rested and after the Court confirmed there were no further outstanding issues to be addressed." This order to show cause is being set at the same time the parties were already scheduled to appear before the Court, trying to make it so it was nice and easy, and of course it had to be dealt with immediately from a timely standpoint in light of those purported filings.

So I am getting to them now. So first I want to ask a question and get some -- we're going to get a couple little -- a little background here. So do all parties confirm that on November -- as of when you both came in as of November 1 all parties had stated that as of the end of day October 31st they had rested their cases?

MR. JONES: That is correct, Your Honor.

MR. DOYLE: Yes, we had rested. Yes.

THE COURT: Okay. So as of when you all left on October 31st, 2019, everybody had rested. There was no further evidence to be presented. All parties confirm that the Court has asked you all multiple times each and every day, breaks, about issues to be addressed outside the presence of the jury?

MR. JONES: Yes, Your Honor. Every day, many times.

MR. DOYLE: The Court did make that comment on a number of occasions, but there were occasions when I was not

able to make what I thought were necessary statements on the record, but I can't tell you dates and times.

THE COURT: Well, you're going to -- I'm going to ask that because now I'm going to go to at any point at any time -- we're talking during -- because I'll tell you, this Court -- Do you all want to ballpark how many hours of arguments you all did outside the presence of the jury and before the jury was here and after the jury was excused versus the number of hours you did for actual trial testimony in this case? I'm going to ask plaintiff your estimate and then I'm going to ask defense your estimate.

MR. JONES: Twenty, thirty. Twenty or thirty hours, Your Honor. I know it was an unprecedented amount, in my experience, but twenty or thirty hours perhaps, maybe more.

THE COURT: Of?

MR. JONES: Of argument and/or -- yeah, of argument or discussion, whether it be at bench or here arguing. It was a lot of time.

THE COURT: And those were all issues that you all had the opportunity to discuss and argue, right?

MR. JONES: Yes, Your Honor, fully.

THE COURT: Okay. And defense counsel, what's your estimate?

MR. DOYLE: I have no estimate, Your Honor. It would just be a guess or speculation.

THE COURT: Do you disagree with plaintiff's estimate?

MR. DOYLE: I have no basis to agree or disagree. I have no estimate. I know it was a significant amount of time, but I can't give you a percentage or put it in terms of hours.

THE COURT: Just one second.

(Pause in the proceedings)

THE COURT: We're going to have a challenge with today's hearing. Because of all the time in order to give you with your judgment, I'm not going to be able to complete today's hearing because this Court has another long-standing commitment, which is why you saw my wonderful JEA, who likes to remind me -- she's absolutely phenomenal -- that I have to be somewhere and I have to leave here at 11:30. And fifteen minutes is not going to be enough to go through everything, so we're going to have to continue this.

I can start it and we can continue it, or I can just say I can have you back here tomorrow and we can continue it if you want to. What would you all like to do? Because I want to make sure everyone has a full opportunity to address these.

MR. DOYLE: Your Honor, I can't be here tomorrow for personal reasons and I would request that we take this up -- I think it's next week. I don't recall the day, but we are returning at 1:30 for the sanctions hearing and I would

request that we take this up at the same time.

THE COURT: There's not going to be enough time on the 14th at 1:30 because I've got all of plaintiff's plus the Court. I don't think there's going to be enough time to address all three issues, given the amount of time that you all like to argue. I mean, think of what it took for that simple judgment. That simple judgment really should have taken ten minutes. It shouldn't have taken -- I mean, I'm appreciative I'm giving -- as you've noticed, I give you all the time you want, but things that should take five or ten minutes take you all hours. That's not a negative comment, that's just a practical reality that I don't think in light of what's happened for three weeks plus of trial, all the pretrial stuff and even evidenced today with a simple thing like a judgment, that from 1:30 to the end of the business day is going to be enough.

I can put you also on the 12th as well and we could break it up between the two. Oh, hold on a second. I put something on the 12th. What did I put on the 12th? Oh, no, I can't put you on the 12th.

MR. DOYLE: I have --

THE COURT: This is too important. I mean, we'll continue it from the 14th to the 15th, then, because whatever does not get done on the 14th is going to have to continue to the following morning of the 15th because this is too

important not to get it done and I can't keep breaking this up. This has got to get finished and completed. The Court was planning on doing this during the trial and only because of the -- the plaintiff's estimate is pretty darn close of how much time you all had to argue each of your issues that each of you all brought up at various times during the trial and then argued extensively. The amount of hours this jury spent in the hallways, even having you all come in at eight o'clock and all sorts of different times to accommodate all -- both sides' issues, all the 7.27 briefs that were filed, all the issues not even addressed on the 7.27 issues that the parties brought up multiple times. Gosh knows, even the hours that were taken with Dr. Chaney. I mean, that's only one of many examples.

So I will do it the 14th and the 15th, continuing it on the morning of the 15th then. Oh, wait, I have a judges' advance. I can do it the morning of the 13th and the 14th. I've got my mandatory judges' advance on the 15th. I just misspoke. My apologies. I have judges' advance. I have to be at a district judges conference all day on the 15th. I don't have a choice about that.

So I can start it on the 13th. I can't do it in the afternoon on the 13th because that's construction defects sweeps, but I can do it from 10:00 to 12:00 on the 13th and then continue it on the 14th at 1:30.

MR. JONES: Your Honor, I have a separate deposition on the 13th. Sorry, not a deposition, I have a hearing here on the 13th beginning at 9:30. It's only a status check, but I -- and I know that Mr. Leavitt is unavailable during that morning. But I --

THE COURT: What I can do --

MR. JONES: -- if we could do it 10:15 or something like that, just pushing it off just a little bit. I mean, I'm okay with 10:00, but I just --

THE COURT: I'm going to say 10:00 and why don't you ask the other department just try and do priority.

MR. JONES: You got it. Absolutely, Your Honor.

THE COURT: You know what, I can do 10:15. It's not going to matter. Okay, 10:15 on the 13th --

MR. JONES: Perfect.

THE COURT: -- and then on the 14th at 1:30. So 10:15 to noon. And it's going to be actually 10:15 to -- it's really going to be like 11:45 because I have to be at construction defects sweeps by about 11:30, 11:45. That's exactly what time I have to be at construction defect sweeps.

(The Court confers with the clerk)

THE COURT: So, 1:30 on the 14th and then 10:15 to 11:45. It may not last that long on the 13th, but I'm trying to block out that time, okay. My intention is to do the pleadings first, then go to plaintiff's 37 motion and then go

to the Court's one last, okay. That's the order I'm intending to do, okay? Does that meet everybody's needs?

MR. JONES: Yes, Your Honor.

MR. LEAVITT: Yes, Your Honor.

THE COURT: Counsel for defense, does that meet your needs as well?

MR. DOYLE: Yes. Thank you for accommodating me for tomorrow.

THE COURT: Oh, yeah, sure, that's fine. Okay. That way you guys are doing back to back days and you can take care of it that way.

Do appreciate it. Thank you so very much. We'll see you back on the 13th. Thank you.

MR. JONES: Thank you, Your Honor.

MR. LEAVITT: Thank you, Your Honor.

(Briefly off the record)

COURT RECORDER: On the record.

THE COURT: Back. I didn't realize -- so just for a point of clarity, the fact that the Court is doing this hearing on the 13th and 14th in no way impacts the judgment being filed from this Court's understanding. Does anyone disagree?

MR. JONES: We agree completely, Your Honor.

MR. DOYLE: No disagreement.

MR. LEAVITT: No disagreement, Your Honor.

THE COURT: Okay. I just wanted that point of clarity. Thank you so much. That was my only question. Thank you.

MR. JONES: Thank you, Your Honor.

MR. LEAVITT: Thank you, Your Honor.

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.

Liz Garcia

Liz Garcia, Transcriber
LGM Transcription Service