

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.

BARRY JAMES RIVES, M.D.; and
LAPAROSCOPIC SURGERY OF NEVADA,
LLC,

Appellants,

vs.

TITINA FARRIS and PATRICK FARRIS,

Respondents.

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APPELLANTS' APPENDIX
VOLUME 17

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1 RTRAN

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3
4
5 DISTRICT COURT
6 CLARK COUNTY, NEVADA

7
8 TITINA FARRIS, PATRICK FARRIS,
9 Plaintiffs,

CASE#: A-16-739464-C
DEPT. XXXI

10 vs.

11 BARRY RIVES, M.D., ET AL.,
12 Defendants.

13 BEFORE THE HONORABLE JOANNA S. KISHNER
14 DISTRICT COURT JUDGE
WEDNESDAY, NOVEMBER 20, 2019

15 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

16
17 APPEARANCES:

18 For the Plaintiffs:

JACOB G. LEAVITT, ESQ.
GEORGE F. HAND, ESQ.

19
20 For the Defendants:

THOMAS J. DOYLE, ESQ.

21
22
23
24 RECORDED BY: SANDRA HARRELL, COURT RECORDER
25

1 Las Vegas, Nevada, Wednesday, November 20, 2019

2
3 [Case called at 1:32 p.m.]

4 THE COURT: On the record in case 739-464, Farris v. Rives
5 and Laparoscopic Surgery of Nevada. Counsel, would you mind making
6 your appearances, please? Thank you so much.

7 MR. HAND: For plaintiffs, George Hand and Jacob Leavitt.

8 MR. DOYLE: Tom Doyle for the Defendants.

9 THE COURT: Okay. So counsel, as you know, today is the
10 day -- we took care of the other outstanding issues, so today is -- by the
11 request of the parties, you had asked -- there was two outstanding. Let
12 me read them directly, so that you have them. In -- from September
13 19th, 2019, there was the order denying the stipulation regarding
14 motions in limine and order setting hearing that was originally going to
15 be for September 26th, but you asked the Court to keep continuing it at
16 10:00 a.m. to address counsel submitting multiple impermissible
17 documents that are not compliant with the rules of order. And that was
18 directed at both Plaintiff and Defense counsel.

19 Then subsequent to that, on 10/2, the Court did an order
20 denying Defendant's order shortening time requests for Defendant's
21 Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's motion to
22 extend the close of discovery that was titled ninth request. And -- now,
23 I'm saying it was titled, because that wasn't really the ninth request, but
24 it was titled ninth request. So I'm reading it as the caption said, not what
25 it was. And order setting hearing at 8:30 a.m. to address counsel's

1 continued submission of impermissible pleadings, proposed orders,
2 even after receiving notification and the Court setting a prior hearing re:
3 the submitting of multiple impermissible documents that are not
4 compliant with the rules/order.

5 That 10/2 order was only direct towards Defense counsel. It
6 was not directed with regards to Plaintiff's counsel, because -- well, by
7 the title of it, it wasn't, and the issue was where it was by 10/2. So I think
8 probably the best way to do this is to take the 9/19 order first and then
9 address the 10/2, since the 9/19 relates to both and the 10/2 only relates
10 to Defense counsel. Does that meet each of the party's needs?

11 MR. DOYLE: Yes, Your Honor.

12 MR. LEAVITT: Yes, it does, Your Honor.

13 THE COURT: Okay. The other thing is, I'm sure the parties
14 will agree, that you all asked me to keep on continuing it, too, so we
15 finally got to today, so that should have worked to everyone's benefit,
16 because everyone had plenty of time to prepare and we didn't even have
17 the aspect of trial, so you had even more time. So I think the best way to
18 do this is with regards to the 9/19 order is let each of the parties set forth
19 their position as they felt as of the 9/19 and then move to the 10/2 and at
20 10/2, let Defense counsel set forth its position and the Court to address
21 other outstanding issues, after I provide you each an opportunity to set
22 forth what you'd like to say.

23 Does that meet the party's needs?

24 MR. LEAVITT: It does, Your Honor, on behalf of Plaintiffs.

25 MR. DOYLE: Yes, Your Honor.

1 THE COURT: Okay. Then that is what we will do. So
2 Plaintiff's counsel, do you want to go first, since --

3 MR. LEAVITT: Sure. And this is in regards to the stipulation
4 to file motions in limine. Your Honor, as we said before when the
5 hearing was originally set. Yes, it was impermissible. There's really no
6 excuse, other than the parties between ourselves thought this would be
7 the best way to go about it, but it was an impermissible filing. As I
8 stated earlier, if I recall, Plaintiffs are willing to willing to accept a
9 sanction in the amount that this Court deems proper. I've never been
10 sanctioned before monetarily, so I wouldn't know what to ask the Court
11 to put upon us.

12 That was the filing that we did. I didn't sign it. I don't know
13 who did on the Plaintiff's behalf, but I'm here on behalf of the Plaintiffs.
14 It was an improper filing and as I stated, we had come to an agreement
15 between us at the 2-6-7. I thought that that was the best way. Obviously
16 we didn't seek the Court's approval to do so. It was mentioned on the --
17 in the -- I believe it was the September hearing. I'm going back in the
18 recesses of my memory. We discussed it with this Court. This Court did
19 not give us expressed permission to do so, however --

20 THE COURT: Actually, just the opposite. Didn't the Court say
21 it twice on September 5th and I even --

22 MR. LEAVITT: Correct.

23 THE COURT: -- referenced the times twice on September 5th,
24 why you could not do so?

25 MR. LEAVITT: Cor --

1 THE COURT: That was where the Court's concern was. It
2 wasn't not expressed permission. It was the Court specifically addressed
3 that twice --

4 MR. LEAVITT: Right. I believe --

5 THE COURT: -- on September 5th.

6 MR. LEAVITT: I believe the Court's right. So look, there -- we
7 don't have a good excuse. It just wasn't done. We didn't follow the rules
8 on that and so a proper sanction -- and I think what I discussed was
9 either it be the law library or legal aid. We're willing to -- I think Mr.
10 Jones' words were take it on the chin. It is what it is. I'm not going to
11 insult the Court and say, hey, look, we have some excuse. There really
12 isn't. As this Court noted, we were told, yet we did it. And that's all I
13 have. I don't -- I think the term is falling on the sword.

14 THE COURT: Okay.

15 MR. LEAVITT: That's what it is. I don't have an excuse.
16 Thank you, Your Honor.

17 THE COURT: Appreciate it. Counsel for Defense?

18 MR. DOYLE: I'd simply mirror counsel's comments and I
19 don't have anything to add.

20 THE COURT: Okay. So let's go back, because it's been a
21 little bit, just for clarity. If you recall, the Court's order from that
22 September 26th was not purely just one stipulation. It was -- and it was
23 even noted -- it's noted in the Court's detailed order that the Court had
24 not only -- well, let's circle back. And here's where the Court's
25 concerned. I mean, it's not the fact that somebody submits a little oops

1 stipulation. In no way is that the context of it and I think all parties --

2 MR. LEAVITT: Uh-huh.

3 THE COURT: -- understand that. I mean, this was something
4 that not only was it contrary to the trial order, it was contrary to the
5 pretrial memoranda aspects. It was contrary to EDCR. The trial did
6 specifically set forth when motions in limine were due. The Court then
7 did -- you know had the regular trial order. You had amended trial
8 orders and you had, I believe it was eight extensions, so all the parties
9 knew. And this was not the first order that didn't comply -- proposed.
10 Sorry this was not the first proposed stipulation presented by the parties
11 that did not in any way comply with the EDCR, which basically, it
12 multiplied the proceedings.

13 It was inaccurate. And the reason why this one finally to --
14 for the Court having to do this is because it wasn't the first, second or
15 third time and the Court had just on September 5th told the parties on at
16 least two occasions -- I even said it on page 5 of my order --

17 MR. LEAVITT: Uh-huh.

18 THE COURT: -- at 10:39 a.m. and 10:45 a.m. had specifically
19 addressed what could and could not be addressed. Then thereafter,
20 right after that, the Court then received an improper ex parte
21 communication from Defense Counsel, which the Court couldn't
22 consider, so it just got -- I'm not even sure if Plaintiff knows about it. The
23 Court found out about it afterwards, because obviously I wouldn't have
24 known about it at the time, because the Court doesn't get the ex parte
25 communications.

1 But while preparing this order, it was -- the Court was
2 informed that there was even a communication from Defense trying to
3 say about motions in limine, it's a new -- it still wasn't proper and then
4 still did the stipulation and obviously, that would have been contrary to
5 EDCR 2.25. It was contrary to the trial order.

6 It was contrary to the Court notifying the parties, specifically
7 verbally in various Court hearings and even more so from Defense side,
8 the Court had just the day before -- okay, that was 9/19, but the day
9 before, the Court had just sent a detailed memo to Defense Counsel
10 specifically regarding a different order shortening time on Barry Rives
11 motion to compel a deposition and had just gone over basically a lot of
12 the similar issues about the impropriety of trying to file something in
13 noncompliance with the EDCR, et cetera.

14 And so, when you add the fact that the Court had told the
15 parties multiple times at different hearings. It was in multiple written
16 trial orders. It's pursuant to EDCR 2.67 and 2.69. You couldn't have
17 done it and 2.35, you couldn't have done it. And the Court had just given
18 a memo, although it was addressed to both parties, it was in relationship
19 to the order shortening -- obviously this addressed both parties, because
20 all communications go to all parties. It doesn't go just to one party, but it
21 specifically addressed a similar issue with regards to what you need to
22 do when you file documents.

23 And that was a two-page memo that went through and cited
24 applicable provisions of the EDCR, et cetera. And then the very next day,
25 it looked like -- well, who could care less. The Court's sending memos,

1 telling people things multiple times in Courts. It's in all sorts of orders.
2 Then you submit something else that was additionally impermissible,
3 and the Court even noted in the footnote that it was at least the third
4 time. Yeah, the Court notes this is at the third time, the parties have
5 provided a proposed stipulation after a deadline has expired and it set
6 forth necessary information pursuant to the EDCR.

7 Although the Court has previous informed counsel of this
8 issue, unfortunately, as with the prior occasions, the Court again has to
9 comply with the NCR and based on the expressed language and the
10 applicable rules, cannot grant the party's request, so this was not first,
11 this was not second, this was not third and it came on the heels of just
12 telling Defense Counsel the day before you can't do it and then it came
13 again. When I say you can't do it, meaning you can't file things
14 impermissibly with regard to not following the rules and after deadlines,
15 et cetera and you need to comply with the EDCR.

16 So that's why the Court had to do this order, although it was
17 the first time I've ever had to do one since I've been on the bench. The
18 Court's appreciative of what each of the parties said. With the specific
19 order, the Court notes I'm going to have to do a two-pronger on this.
20 The Court notes that after this order came out setting the hearing on
21 9/19, the Court did not receive additional impermissible filings from
22 Plaintiffs. Unfortunately, the Court did receive multiple impermissible
23 filings after 9/19 from Defendant.

24 So the Court has to view this differently among the two sets
25 of counsel, because the Court would find that although there already had

1 been multiple by the time I had to do the 9/19 for the reasons stated,
2 Plaintiff's conduct did stop and Defense's, I think I'm going to have to
3 address more appropriately with the 10/2, because that deals with part of
4 the continuation aspect, although it continued past that date. So from
5 Plaintiff's standpoint, here's the Court's inclination. The Court's
6 inclination is that this might be a good educational opportunity. The
7 Court wasn't really inclined to issue sanctions.

8 Sometimes party state that for educational purposes, they
9 think it's appropriate to do a donation to a particular legal aid charity
10 that's not considered. It's considered a donation for educational
11 purposes, because realizing the issues and then allowing that to go to
12 somebody who assists people, I'm not sure what Plaintiff's position is,
13 but that's -- the Court was not intending to do monetary sanctions,
14 because it stopped as soon the Court --

15 MR. LEAVITT: Okay.

16 THE COURT: -- did this order. Does counsel for Plaintiff have
17 a viewpoint on what they'd like to do, if anything?

18 MR. LEAVITT: I would, Your Honor. I prefer the donation.
19 Again, I would rely on the Court for the amount. I've never -- if that's -- if
20 you want me to think of an amount, I can, but I really haven't been in this
21 position before.

22 THE COURT: Since the Court is stating that it was not
23 inclined to assert sanctions against Plaintiff's counsel, if Plaintiff's
24 Counsel thought that it was an educational opportunity that they wished
25 to do a donation to a legal aid charity, realizing that this took time, et

1 cetera, then it's the amount that the counsel would find that they wish to
2 do, because it wouldn't be coming from the Court --

3 MR. LEAVITT: Got you.

4 THE COURT: -- as a direction or an order. So that's up to --
5 people have often -- maybe often is not the right word, but people have
6 made that determination, if they wish to make that determination.

7 MR. LEAVITT: We would -- we prefer to give \$500 to the law
8 library.

9 THE COURT: You wish to do, feel free to do so.

10 MR. LEAVITT: Okay.

11 THE COURT: Provide the Court some notification in the next
12 couple weeks, if that meets your needs. Okay.

13 MR. LEAVITT: It does.

14 THE COURT: Like I said, the Court -- since the conduct of
15 Plaintiff's counsel stopped in that regard, then I have unfortunately
16 ongoing conduct, which now I have to go to the 10/2 order. I'm not
17 going to repeat it again, but that was just as to Defense Counsel. I think
18 the Court would have had the same position with Defense Counsel, if the
19 conduct had stopped, obviously on 9/19. Even taking into account that
20 Defense Counsel's was different than Plaintiff's counsel's conduct,
21 because Defense Counsel had just the day before received the
22 notification on 9/18 about something impermissible, but I would have
23 treated it the same if it had stopped then, but it didn't stop then.

24 So unfortunately, that meant that the Court had to do
25 another order on 10/2. I just -- I read a moment ago what the order was.

1 Then here's what the Court has to address with regards to this is
2 because even after the 10/2 order, unfortunately in looking through this
3 case, there still continued to be filings by Defense Counsel that the Court
4 had told both parties that if the parties requested, the Court would defer
5 to the end of the trial to see if there was any ongoing conduct by the
6 parties.

7 It was the Court's understanding that both parties had
8 specifically requested -- reiterated that on, I believe it was October 15th.
9 I read that excerpt the other day at the last hearing. The parties still
10 requested that and then at the end of the trial, you all wanted to speak
11 with the jury, so this got continued a couple more times, once again. So
12 everyone has the full advantage to explain what they wish to explain. I
13 don't want anyone being prejudiced, because you have more time, not
14 less time.

15 But the Court was only -- so the conduct the Court told both
16 parties what the Court was going to take into account whether there was
17 any ongoing conduct to hopefully the benefit of both sets of counsel and
18 that way my deferring it gave counsels -- each counsels an idea to show
19 well look, this was an oops and we weren't repeating it. Seemed to
20 work -- worked for -- appears to have worked for Plaintiff's counsel,
21 because they did not continue the process. Defense counsel was given
22 the same benefit, same opportunity, because it was the end of the trial,
23 the same opportunity to stop.

24 Unfortunately, it did not stop, and it didn't only stop at 10/2
25 for what's attached to the 10/2, but the Court is going to address after

1 Defense Counsel has an opportunity, if you'd like -- some of the ongoing
2 conduct both from the written pleadings and the -- you know, this was all
3 the issues was candor to the Court, Rule of Professional Conduct, 3.3, et
4 cetera. Also NRCP 37. Also EDCR 7.60. And remember, the context
5 here, as the Court had noted, is different than the context from Plaintiff's
6 motion, because Plaintiff's motion was Plaintiff saying that Plaintiffs
7 were aggrieved, based on conduct they asserted was engaged in by
8 Defense or Defense Counsel, by Defendants or Defense Counsel for
9 Defendants.

10 And so in those -- that hearing, the Court had to look at
11 whether or not Plaintiff as the movant -- Plaintiffs, excuse me -- as the
12 movant, had met their initial burden to establish the relief that they are
13 requesting pursuant to their motions. In this motion -- because this was
14 coming -- I am calling it a motion. I probably, more appropriately,
15 should have called it -- sorry -- the order and the hearing regarding the
16 order, so it's an order/order to show cause. Here the Court doesn't look
17 at the prejudice necessarily to Plaintiff.

18 The Court looks at whether there was compliance, even after
19 the Court gave several opportunities with Court rules or whether there
20 was additional conduct engaged in. And that would be under, like I said
21 NRCP 37, EDCR 7.60. Also, the Court's inherent discretionary powers.
22 And so that rubric is different than what the Court had to look at in not
23 only the Rule 37, but the reason why the Court's going to mention
24 another one is because there was also the -- there were some motions to
25 strike that came on during the course of the trial from Plaintiffs. And the

1 Court -- for example, the motion to strike what were the titled, the 7.27
2 briefs.

3 So when the Court also looked at that, the Court had to look
4 at whether or not Plaintiff had established that these were something
5 impermissible. And the Court's ruling with regards to that motion to
6 strike, as all parties know, was that the Court wasn't saying that those
7 filings were proper. The Court was just saying it was only taking into
8 account the information provided in those documents, regardless how
9 they were titled, as if they were 7.27 briefs and then when taking that in
10 that context, which of course then led to -- since you all have raised a
11 whole bunch of different motions.

12 Everyone had a full opportunity to address each of those
13 motions, to the extent they were oral motions or objections, et cetera,
14 and the Court allowed both sides to utilize their briefs in addition to any
15 oral argument, so -- and the Court is in a moment going to address those
16 documents that were titled 727. It's not looking at it in the format from
17 Plaintiff's motion to strike. It's looking at it from the duty of candor and
18 the propriety of filing those documents in light also of statements made
19 in Court and whether it was permissible to file those, regardless of how
20 the Court actually utilized them.

21 Similarly, the Court's going to have to address -- I'm just
22 trying -- Defense Counsel, making sure you fully understand, because we
23 went through this before, but is similarly in some of the motion practice
24 -- I'm using term motion practice to include both the oral motions and
25 the written motions. Plaintiffs during the course of the trial raised

1 issues/concerns/striking and a lot of other phrasings regarding certain
2 documents of Dr. Barry Rives and those documents that are referenced
3 are documents in which it was asserted by Plaintiff's counsel -- and I'm
4 just summarizing -- you stated it a little bit differently -- that the -- and I'm
5 going to ask counsel for Plaintiff to confirm, but this is what I generally
6 understood that Plaintiff's arguments where that the documents
7 reflected dates in which the Plaintiff, Ms. -- excuse me -- Ms. Farris had
8 seen Dr. Rives, had an electronically signed date that was not consistent
9 with the date that she actually saw Dr. Rives and that there was a
10 concern raised by Plaintiff's counsel that the electronically signed
11 document raised issues of when the information in the underlying
12 document -- and these were in an exhibit that was not admitted.

13 It was parts of proposed Exhibit A, like apple, but that the
14 electronic signature portion -- so it would be electronically signed by
15 Barry Rives, M.D. -- and the date of those documents, I'll just happen to
16 reference one of them, but there was a couple that were referenced by
17 Plaintiff's Counsel. One of them was A and -- oh, wait it was one, two,
18 three, four, five -- five zeros and then four was -- sorry. It starts on page
19 3. Sorry. Three. So five zeros and then three, that -- although the
20 signature page is on the page four, that there was concerns-slash -- I
21 think it was stated falsification.

22 I don't want to say exactly. I'm not sure the exact word
23 Plaintiff's counsel used. I'll let you say what exact words you used, but
24 that the electronically signed date was not reflective of when the actual
25 notes, progress notes would have been, because the progress notes

1 reflected 2015 appointments, not 2016 appointments and that that was
2 raised. So when the Court addressed that motion, the Court also had to
3 look at did Plaintiff meet their burden -- Plaintiffs meet their burden to
4 establish that the Court should take some action with relationship to that
5 motion, which is different than the Court asking questions as a result of
6 that motion regarding candor to the Court and the propriety of filing
7 documents, the latter coming under today's hearing.

8 The former the Court had already addressed, but that was
9 the distinction. Similarly -- so the -- and that's the [indiscernible].
10 Similarly with regards to the, I'm going to call it the collateral
11 source/insurance issue, that also was subject to motions by Plaintiff.
12 Once again, the Court in addressing that motion and the relief requested
13 thereon, which in part was in the Rule 37 renewed motion to strike, but
14 also raised elsewhere. Once again the Court, in ruling on those, had to
15 look at if Plaintiff met their burden for relief from the Court, which is
16 separate where the Court now has to look at it as whether or not that
17 collateral source, the representations as well as the documents filed
18 thereon.

19 And when say collateral source, so everybody understands,
20 I'm talking about the collateral source example with the preemption
21 issue with regards to MGM being self-funded. The Court has to look at a
22 different standard today, because one again, of course today's is
23 propriety of filings in light of the Court's two orders here and then
24 affirmative obligations of Valley Health Systems on RPC 3.3, et cetera.

25 And then the other issue becomes Dr. Cheney and the Dr.

1 Cheney aspect, the Court of course has to look at it differently today than
2 it looked at it when it was brought up by Plaintiff's counsel, once again,
3 because Plaintiff's was with regards to how Plaintiffs were impacted with
4 regards to the case and relief they sought, once again, the burden being
5 on Plaintiffs to do what they needed to do establish the relief they're
6 requesting. For purposes of today, the Court look at it, obviously with
7 the rubric of impermissible filings pursuant to the orders that the Court
8 noted in candor to the Court.

9 Similarly, with Dr. Hurwitz, which went into more detail last
10 week, once again, to the extent it was part of Plaintiff's renewed motion,
11 the Court had to look at -- for one rubric, the Court looks at it, once again,
12 with the same rubric that it was talking about a moment ago. The
13 candor, the impropriety of filings. And so -- just one moment. And then
14 in addition, obviously, for the documents that were attached to the
15 October 2nd. The Court also has to look at the October 4th supplemental
16 filing and that was discussed on October 7th, so the Court takes into
17 account without reiterating that, unless Defense Counsel wishes the
18 Court to go back to that one.

19 The Court would be fine just to reference that the Court
20 already had gone through the issue of the October 4th supplemental
21 impermissible filing that happened that was discussed on October 7th
22 and that related to the -- that certain conversation with Ms. Dubinsky
23 [phonetic]. Okay. So that -- the Court was going to discuss that with an
24 impermissible, because that would be a continuation of impermissible
25 filing on October 4th, obviously two days after the Court's second order

1 relating to impermissible filings. The Court has to look at that from, once
2 again, the filing aspect of and permissibility or impermissibility of filing
3 that and if there's any good cause as well as the candor to the Court
4 issue.

5 Then the Court also has to look at the offers of proof. The
6 Court was -- in the offers of proof, without reiterating everything --
7 unless Defense Counsel wishes the Court to do so and the Court would
8 be glad to do so, if Defense Counsel wishes. The Court is looking at the
9 offers of proof. Not to reiterate everything that happened before, but
10 just the nature that those were additional filings in light of the context
11 and chronology dating back from September going all the way to those
12 documents, when they were filed on November 1, 2019, looking at from
13 a whether or not the Court should be given benefit of the doubt, whether
14 that should be taken into consideration, et cetera.

15 Once again, I'm trying to just do from a chronology
16 standpoint. And I am -- those are the ones that the Court is currently
17 aware of. After I hear argument and discussion, I'll be more than glad to,
18 if there's some other ones that I should be addressing or any of these I
19 shouldn't be addressing, more than welcome to hear any of that. Before
20 I have Defense Counsel speak, I just want to make sure I correctly
21 articulate, as I was going to go back to Plaintiff's counsel on Plaintiff's
22 Counsel argument, how he was making the distinction between the
23 Exhibit A, Dr. Rives' medical notes and the signature issue, distinction
24 between what Plaintiff was asserting versus what the Court had to look
25 for today.

1 So I just didn't want to incorrectly frame Plaintiff's argument
2 different than you may have intended it to be framed, so if I didn't say it
3 in a general sense correctly, feel free to say what -- how you'd like to
4 have it phrased.

5 MR. LEAVITT: No, Your Honor, I -- just to clarify. The issue
6 was and is the electronic signature. I don't have the -- if you look
7 through the -- just any medical records, such as hospital record,
8 electronic signatures are that day and the day after. That's the issue that
9 we raised here. These are years after he electronically signs them, so
10 the general concept is correct, but I just wanted to explain, that's what
11 we are basing it on is --

12 THE COURT: Uh-huh.

13 MR. LEAVITT: -- electronic signatures need to be made at the
14 time and that's why he couldn't -- that was the issue. So the general
15 sense is the Court has it framed properly.

16 THE COURT: Okay. Right. Like you said, the Court isn't
17 looking at how you were addressing it from --

18 MR. LEAVITT: Right.

19 THE COURT: -- Plaintiff's aspect. The Court had to look at
20 from the permissibility of it --

21 MR. LEAVITT: Correct.

22 THE COURT: -- whether it is or is not a pattern. I haven't
23 heard from Defense Counsel, so I'm just framing these in a very neutral,
24 general, so that people have an idea of the topic areas, which isn't a
25 surprise, because I said as these topic areas happened, that they were

1 going to be addressed with regards to the outstanding orders. So
2 counsel for Defense, more than glad to hear whatever you'd like to say.

3 MR. DOYLE: So focusing on a couple of different time
4 periods and first focusing as of October 2, 2019 and the Court's order of
5 that date and the pleadings and filings that had proceeded October 20,
6 2019, the only explanation I can provide for the Court looking back on
7 this is you know, they seem to -- you know, you've talked about the
8 motion in limine issue, You've talked about the stipulations and
9 proposed orders for continuing the trial and extending discovery.

10 We have the Dr. Ripplinger filings, which all I can say about
11 those is a lack of attention to detail on our part and sloppiness. You
12 know, when we learned at the 2.67 conference on September 11th that
13 Plaintiffs would not agree to Dr. Ripplinger's deposition. I mean, I think
14 we've adequately discussed at different points in time the events
15 preceding October 2. Then going to October 10th, which was the
16 hearing or the last hearing before trial started.

17 And it's, you know, my understanding and recollection that
18 you know, between October 2 and October 10th, we had the filing by my
19 office -- I think it was under my signature as well, of the supplement or
20 supplemental opposition concerning the motion for terminating
21 sanctions. I think we have discussed that numerous times and I don't
22 really have anything more to add to that. The Court referenced our
23 discussion at the end of the October 10th hearing about the Court
24 deferring ruling on sanctions to see how the trial goes. I have read that a
25 couple of times.

1 And I'm certainly cognizant of the Court's comments and
2 what both counsel agreed to. It would be my position, however, that as
3 of October 10th, the Defense did not waive, you know, any due process
4 requirements of proper notice and an opportunity to be heard for any
5 events over or issues or problems or violations that occurred after
6 October 10th. And you know, the -- any party is certainly entitled to due
7 process with proper notice and an opportunity to be heard under Rule
8 37, Rule 7.72, Rule 11. While there's nothing specific in 3.3(a), Valley
9 Health Systems would stand for the proposition that those same
10 requirements are necessary before the imposition of sanctions.

11 At this point in time, I feel somewhat disadvantaged in terms
12 of what violations. Infractions, issues or problems the Court is focused
13 on, which rule or rules for each of those concerns is the Court thinking
14 about and I really don't have sufficient information to respond. Just by
15 way of example, the issue about Dr. Rives' records, office records and
16 the dates on those records. I did not realize before today or perhaps I
17 had forgotten that that was even an issue in this case.

18 As was explained -- and I don't remember if we were on the
19 record or off the record, that office electronic medical records typically,
20 whether they eClinicalWorks or Cerner or some other electronic medical
21 records system, when those systems are designed and implemented in a
22 physician's office, the date that appears on the records as in terms of a
23 signature, which I think Plaintiff and the Court was referring to in terms
24 of a date for the year following the care at issue, that is a date that occurs
25 when the records are printed.

1 I think if we went back and looked at when Plaintiff requested
2 the records and when those records were printed and produced to
3 Plaintiff, that we would learn that the date in the year following was
4 simply the date that those records were produced. I mean, that's based
5 upon my experience with various medical records systems in the office,
6 that is what that date represents. I did not realize that Dr. Cheney,
7 collateral sources, the offers of proof, et cetera, were an issue for today
8 in terms of sanctionable conduct.

9 And in terms of anything that has happened since October
10 10th, I would simply reiterate and say again I don't know what specific
11 acts or failures to act the Court is considering -- or actually considering
12 as a basis for sanctions and whether the Court is looking a one or more
13 rules or some combination of rules for each of these specific acts or
14 failures to act, which would be the basis for sanctions.

15 THE COURT: Just one moment.

16 [Pause]

17 THE COURT: Well, the Court did go through all the different
18 bases just a second ago, and went through it beforehand, and went
19 through it last week, and went through it in October, and went through it
20 throughout the trial, but if what your request is that you want me to
21 continue today's hearing to next week, I told you the latest I could do it is
22 next week. I'll do it next Tuesday for you if you want the time, I can do it
23 Tuesday, with additional time to prepare.

24 I thought --

25 MR. LEAVITT: I don't need --

1 THE COURT: -- after the Court had went through all these
2 issues, and at the time these issues came up during trial, the Court had
3 said clearly that it was addressing it from Plaintiff's standard, or that the
4 Court was still concerned with regards to the various documents that
5 had been filed, and they were asking the Court, and the Court said it
6 would be taking care of that at the time it was addressing its order.

7 The Court did specifically, with regards to Dr. Chaney on
8 multiple occasions, in front of her personal counsel and the issues that
9 came up with the veracity or lack of veracity with regards to the two
10 subpoenas, and then the sands of time change, I think is how it's
11 phrased by Defense counsel, that she was appearing voluntarily.

12 The Court, also with Horowitz, brought that issue multiple
13 times, including last week's, that it would also be addressed this week.

14 So, seeing how there would be surprise there with regards to
15 7.27 briefs, when the Court said it would only take those into
16 consideration, the 727 context, the Court did still specifically state that it
17 was still going to have to address the fact of how those got filed and
18 how those were filed, and whether it was consistent with the Court's
19 prior orders, because the Court raised a question there with regards to
20 whether or not there were prior motions in limine, which the Court was
21 going to re-ask again today to give Defense counsel another chance to
22 see what you're going to say about whether or not those were truly
23 motions in limine that had been utilized before and that were refiled in
24 this case is 7.27 briefs with a few caption and other changes made.

25 With regards to the collateral source, the Court did say that

1 multiple times, including the Court put off the hearing of that to give
2 Defense counsel an opportunity to file a brief if he chose to, saying that
3 no one required to have to file briefs with regards to the collateral source
4 issue that asked both counsel and the presence of this client about what
5 his client know when the documents that were taken out at the calendar
6 call, that where it became the Court's exhibit, and this will be the
7 insurance-related documents, including the insurance card of Ms. Farris,
8 including the billing statements, which were from Dr. Farris' office to
9 MGM, that those issues and how the response thereto was going to be
10 done was also that the Court was going to take into consideration with
11 regards to the pending issue regarding sanctions.

12 So the Court doesn't see how that one, with regards to that's
13 a collateral pre-emption issue that the Court still gave additional time to
14 provide a brief, if you wished to do so. The Court even asked at that time
15 whether or not Defense counsel thought he had already addressed the
16 issue because, guess what -- oh, he should have known at this time he
17 had already filed a brief on the issue, but, once again, the Court gave
18 additional time to have that argued.

19 And then the Court even asked multiple times whether or not
20 that argument was still going to be asserted in good faith by Defense
21 counsel because of the intervening time, because the opportunity to
22 speak with the client with regards to the MGM and his own billing
23 records, that being his own billing records, and the insurance card, with
24 the addition of the fact that there had been intervening time with trial
25 with regards to other proposed exhibits, which we also clearly put

1 counsel on notice about the argument, as well as the fact that the Court
2 had asked about the statement made by Defense counsel, I'm
3 paraphrasing, a statement made that, in essence, the motion in limine to
4 not have the collateral source exception apply with -- always made by
5 Plaintiff or ipso facto was made by Plaintiffs, or in your experience had
6 been made by Plaintiffs, something to that effect, and whether or not
7 that truly was an accurate statement in light of your own firm's own
8 conduct, and whether that was accurate to the Court, and so the Court
9 did address that one as well and said that instead of dealing with it right
10 then and there, the Court was moving on and was going to address that
11 at the end with regards to the Court's rulings with the pending sanctions,
12 and so the Court did address that.

13 Chaney said to address that both on the 28th and the 30th,
14 and Dr. Chaney also, with the multiple times of asking, with regards to
15 the deposition subpoena during the course of the trial to show that there
16 was any proof of service, and the Court also did specifically -- from Mr.
17 Rives twice.

18 Horowitz, the Court not only stated it last week that it was
19 going to address is again this week, showed the video clips of fully put
20 on notice of exactly what the conduct was. I'm not sure what else would
21 happen there. That video clip was shown in the Court explained why it
22 went to the video clip without -- went through everything the Court said
23 last week. The Court said trying to give him the benefit of the doubt and
24 had two very different opinions of what was asserted that had happened.

25 The Court went to the video so that fairness to both sides,

1 see exactly how it was done and what was done so that the Court could
2 make a ruling. The Court was going to address the portion of, probably
3 conduct aspect, this week, plus the Court has said that back on the 18th,
4 and the Court has said it when the statement in front of the jury was
5 stated. The Court had said it then as well.

6 With regards, sorry, circling back to the collateral source
7 insurance aspect also when -- Dr. Rives also used the word insurance in
8 front of the jury. The Court indicated that that part was going to have to
9 be addressed later. Because remember, the Court kept on saying during
10 the course of the trial, do you all now want me to address these
11 outstanding issues or are you sure you want me to continue this to the
12 end of trial, and both parties tell this Court that they still want it to be to
13 the end of the trial, giving everyone the best benefit of the doubt. Then
14 the Court said well, it's going to have to take into account things are
15 current, plus independent of all of that specific notice given in those
16 areas, and the Exhibit A.

17 So I think Exhibit A also was specifically discussed because
18 the Court even asked, and I'm paraphrasing again, made it clear trying to
19 get a perception similar to what Defense counsel said here in Court
20 today, because the distinction was whether Defense counsel's argument
21 was to the electronic signature aspect that was, for lack of a better term,
22 halfway up the document, mid-page of the document versus the printout
23 document -- printout information, which was at the bottom of the
24 document, and the Court even asked specifically when that was raised,
25 about people's background experience, and the Court said it was going

1 to be listening to Dr. Rives own testimony, having to address potential
2 inconsistencies thereto.

3 So, the Court would say that it addressed each of these at the
4 time, since you're not going back before October 10th, of course. I'm not
5 going to reiterate before October 10th. The offer of proof would -- even
6 if the offer of proof, the Court said had to take it from the offer of proof of
7 whether or not it was going to have to keep those in place. What it
8 should do and whether or not for you could [indiscernible] until you
9 heard that that had to be taken into account as well.

10 Independent of each of those, there's always an obligation by
11 all counsel to have candor to the Court. The Court doesn't have to say
12 each time, hey, I'm going to now set a hearing about candor to the Court,
13 because everyone has an affirmative obligation is on notice when they
14 say things that do not have a foundation or belief. Those things should
15 not be said either in writing, you can add a Rule 11 to everything the
16 Court said, and it shouldn't be said in Court.

17 Also, because of the RPC's, and RCP 37 7.60, and as well as
18 the -- so, but separate and apart from all of that, because that is an
19 affirmative obligation for everyone, appears to each and every hearing,
20 wouldn't have notice to be heard because as soon as somebody engages
21 in that infamous conduct, and you can actually take a look at *Valley*
22 *Health Systems*, but if you asked that and remember the *Valley Health*
23 *Systems*. It just basically says it needs to be supported by District --
24 substantial evidence, and it has to have the findings of facts shall not be
25 set aside unless they are clearly erroneous and not supported by

1 substantial evidence. Okay.

2 And then remember, District Court can even adopt the factual
3 findings of Discovery Commissioner. So, by definition, if you can adopt
4 the factual findings and the Discovery Commissioner, then you're
5 looking at the "due process" concept of that, the Court allowing to adopt
6 the Discovery Commissioner's factual findings. Of course, it wouldn't be
7 something that the District Court received in the him or herself, it
8 wouldn't. So that issue.

9 So if I look at Valley Health Systems, basically, it also says,
10 citing *John Young v. Johnny Ribeiro* finding, even if we would not have
11 closed such sanctions in the first instance, we would not substitute our
12 judgment for that of the District Court. And in that case, if you recall,
13 Centennial's answer was stricken and established liability that chose
14 negligence, the Court basically just had to go through *Johnny Ribeiro*
15 factors and then find out whether the conduct was local. The Court
16 argued with the offers of proof did make an affirmed finding last week
17 that it was willful. Fully had several hours of a hearing over a couple of
18 days to address each and every one of those, so the Court's not show
19 how that would not provide the due process.

20 And then the Court also, this is important also, in Valley
21 Health Systems continually acknowledges, tried to say -- the Court had
22 said in that case,

23 "In explaining its reasoning, the District Court has said,
24 simply put, Centennial's management was aware of the knowledge of
25 numerous Centennial staff of various stations exhibit an unlawful pattern

1 of suppression and denial, over the course of years to Bracket, Does, end
2 Brackets detriment."

3 And then the Court goes on to say,

4 "Centennial acknowledges that the collective knowledge
5 doctrine was not explicit use or applied by the District Court.

6 Nonetheless, Centennial argues the District Court used the doctor to
7 aggregate the employee's knowledge in order to complete the
8 Centennial willfully and intentionally considered the information with the
9 intent to harm Doe. Centennial contends that a Court cannot find that a
10 corporation acted willfully and intentionally, and at least -- unless at least
11 one employee has culpable mental state."

12 And then it says cites to several cases, etcetera.

13 And then it says that,

14 "Centennial argued the District Court errs as a matter of law
15 because it could not identify by name, an employee who acted with the
16 culpable state of mind."

17 And then the Supreme Court goes on to say,

18 "We conclude that Centennial's reliance on the collective
19 knowledge doctrine is misplaced. First, we have never applied the
20 collective knowledge doctrine in reviewing discovery sanction order.
21 Second, Centennial's relies on *Gihena* is unpersuasive, *Gihena* involves
22 a defamation claim where recovering Plaintiff had to show Defendants
23 had actual malice.

24 So, here, the District Court was considering, sorry, dot, dot,
25 dot, here, the District Court was considering whether Centennial willfully

1 chose to not comply with 16.1 disclosure requirements. Thus Centennial
2 has no put forth a persuasive argument. The District Court applied and
3 wished to consider the effective knowledge doctrine.

4 So, it's looking as to whether or not the Court provides
5 substantial evidence for each of its, aspects. These issues were all
6 argued throughout the Court. Any statements made by Defense counsel,
7 of course, is subject to the duty of Canon Professional Conduct, that's the
8 essence of Rule 3.3, because 3.3 is mandate as a lawyer not knowingly
9 make a false statement of fact or law to a tribunal or failed to correct a
10 false statement, a material fact, or law previously made to the tribunal by
11 the lawyer.

12 In this case, the Court kept on asking to try and give Defense
13 counsel an opportunity to retract or refer in a -- refer the Court to
14 something that would provide some support for some of the arguments
15 that were made, and really, this Court received, at least two times, a
16 response of sands of time. Okay? And so it did not appear that Defense
17 counsel really was taking the Court seriously in the Court's concern
18 during the course of the trial without the statements made in Court,
19 whether you were or not, obviously, the Court can get into somebody's
20 head, but I can hear what the statement is being made, and it's
21 alternative arguments, particularly Dr. Chaney, in saying the sands of
22 time, or something that the Court didn't even previously mention a
23 moment ago, would have been the Exhibit 12, which was the juror
24 question, when Mr. Jones agreed with Defense's position not to ask
25 questions, and Defense counsel stated that he wanted to change his

1 mind just because Mr. Jones was agreeing not to ask a particular
2 question. That's when Dr. Rives was on the stand, and it ended up being
3 Exhibit 12.

4 So, those duties of kinder are immediately required, and
5 those are affirmative obligations by counsel. So, if counsel chooses not
6 to be forthright, potentially, or chooses not to correct a false statement,
7 by definition that's counsel's affirmation obligation, so the Court
8 shouldn't have to say each and every day, each counsel, "You
9 remember you can't make any false statements to the Court, or if you
10 make any false statements, you have to immediately correct them," or,
11 you know, well, the Court did several times express his concern about
12 3.3, and everyone doing what they need to do to comply therewith. So
13 the Court would find that there was due process, nevertheless. And the
14 Court's going to also mention something else. Give me one second.

15 The Court already did an evidentiary hearing on October 7th.
16 The Court made it clear that Court was more than glad and willing to do
17 any other kind of evidentiary hearings and the parties wish to do so. Any
18 witnesses, etcetera, when it set these hearings after trial, and nobody
19 made such request.

20 The Court went through these issues, like I said, at a time
21 limit. Sorry, one moment, please. I'm looking at one other thing, please.

22 [Pause]

23 THE COURT: I'm just trying to reference one other case, just
24 one moment, please.

25 [Pause]

1 THE COURT: Okay. Well, the Court was going to give a
2 citation, but since that's unpublishable, it's not going to give a citation
3 thereon.

4 So, but irrespective of everything that the Court just said, if,
5 for any reason Defense counsel feels that today's hearing should be
6 moved to next Tuesday, the Court will be glad to do so.

7 MR. DOYLE: I don't see any reason to move the hearing.

8 THE COURT: I want to make sure that you feel all your due
9 process rights are taken into account and you have a full opportunity to
10 be prepared. So I can do it today, I can do it next Tuesday. I continue to
11 put this off at -- I thought it was each the counsel's specific request so
12 that everyone had a full opportunity to prepare, but if any way you think
13 you're not, I'll be glad to continue it.

14 MR. DOYLE: I stand by my comments and submit it and be
15 done with it.

16 THE COURT: Well, counsel, I'm not sure what you said when
17 you say you stand by your comments. In response to your statements
18 about not having some notice, the Court's more than glad to put this to a
19 different day so that you -- to the extent you feel you haven't had notice
20 of any of these issues, the Court's more than glad to put it to next
21 Tuesday.

22 MR. DOYLE: I don't believe that would be helpful, so I would
23 like to just finish it today.

24 THE COURT: Okay. Well, in that regard, then let's walk
25 through these issues.

1 I think with regards to the October -- part of the issue, let's go
2 to what was specifically attached to the October 2nd order, to expense
3 counsel's place, do you have that copy with you.

4 MR. DOYLE: I have a copy of the order.

5 THE COURT: Okay. Attached to the order, I remember this
6 is -- shows it was requested to be heard not only before the Discovery
7 Commissioner, but this wasn't given the first time you tried to file the
8 document on OST, tried to file it without the Court's signature, and then
9 tried to file it from the Discovery Commissioner. Is there any reason why
10 it was tried to file in front of the Discovery Commissioner?

11 MR. DOYLE: I think that was just a clerical oversight or
12 mishap in my office.

13 THE COURT: But none of the other pleadings had put to be
14 heard before the Discovery Commissioner, so this was additionally
15 added on to this one. What I'm trying to say is, if you're not
16 understanding what the Court's saying, just for a point of clarity,

17 "The prior motion from the prior day had a hearing
18 requested, but did not have the words to be heard by the Discovery
19 Commissioner. Those words and would have had to type on in
20 addition."

21 At least this Court didn't see any similar pleading where it
22 had the words to be heard from the Discovery Commissioner. So that
23 means somebody took the affirmative determination to add those words.

24 Have you done any -- is there any reasoning or explanation
25 why those words would have been added, or are you asserting that this

1 is a pleading from a year ago? What is the reasoning why this one has
2 to be heard in front of the Discovery Commissioner after the Court
3 specifically stated that, you know, for trial purposes, right, these issues
4 have to be heard by the Court, and you knew that -- so that would be the
5 first question.

6 And the reason why the Court is so concerned about that is
7 because what's happened here is part of that motion that's attached is a
8 motion to extend the close of discovery, in a requesting order shortening
9 time.

10 You knew specifically, and I say you meaning you, on behalf
11 of your firm, on behalf of -- as Defense counsel for Defendants. I don't
12 think anyone in your firm, including yourself, would have any possible
13 basis to tell this Court that it wasn't clear as of October 1st, with the trial
14 commencing on October 14th, that the Court had already ruled and
15 denied extension -- the ninth extension of discovery, and nowhere in that
16 pleading is it ever stated that the Court had already specifically stated
17 that.

18 The Court give -- so if this had been heard by the Discovery
19 Commissioner, it was not, did not in any way inform the Discovery
20 Commissioner, even if it thought it was properly inadvertently placed on
21 for the Discovery Commissioner, there's no affirmative statement
22 anywhere saying that the District Court has already denied this back in
23 July, reaffirmed it, the Court denied it on September 1st, sorry,
24 September 5th, and has again reaffirmed it the couple days -- couple
25 weeks earlier on September 18th, and then again on September 19th.

1 So why would none of those facts, as would have been affirmed and
2 required with the Rules of Professional Conduct, separate and apart from
3 EDCR 7.60, ED -- you know, EDCR's on what goes in front of the
4 Discovery Commissioner, which 2.35, as amended by the Administrative
5 Order, what goes before the Discovery Commissioner versus what goes
6 before a District Court Judge, as well as -- it's a general duty of candor, a
7 general NRCP 11 factor, none of those statements about the Court's prior
8 rulings were anywhere in that pleading.

9 Is there any good cause for not putting three -- as would be
10 required, the affirmative obligation to inform -- intend this to go to the
11 Discovery Commissioner with District Court was previously ruled,
12 multiple times?

13 MR. DOYLE: As I've said in the past, and I'll say it again, this
14 was not intentional. It was not some thought out, well planned design to
15 search and vend the Court, it's simply sloppiness and a mistake on the
16 part of my office.

17 THE COURT: Yeah, but I looked at the -- did you have a
18 chance to re-read the Declaration and the motion papers? Actually,
19 there's nowhere in there with any indication about the history of the
20 case. So, you would know, as an experienced practitioner, that you have
21 an affirmative obligation to say if the Court's already made a ruling on
22 something, when either a) you're either presenting it back to that Court;
23 or b) you're trying to present it to anybody else.

24 Are you saying that the declaration, as well as the pleadings,
25 was -- every one of those dates just seemed to slip people's lives?

1 MR. DOYLE: I said all I -- I said all I think I need to say.

2 THE COURT: Then counsel, I'm going to have to direct you
3 specifically to Paragraph 6 of the Declaration that was attached, right?

4 Paragraph 6, do you have the Declaration in front you by
5 chance?

6 MR. DOYLE: I do not.

7 THE COURT: You didn't bring the Court's order, which we
8 knew --

9 MR. DOYLE: I have the --

10 THE COURT: You knew specifically we were going over this,
11 right, and the attachments?

12 MR. DOYLE: I have the Court's order, I don't have any
13 attached to the Court's order.

14 THE COURT: Well, the Court's order had all these --

15 MR. DOYLE: Well, I just have the Court's order.

16 THE COURT: Well, it was attached thereto to put people
17 forward on notice of what the Court was referring to.

18 MR. DOYLE: I don't have any attachments.

19 THE COURT: Then the Court would be concerned about -- is
20 there any reason why you didn't bring the attachments today?

21 MR. DOYLE: I didn't think they were necessary, and I can
22 only carry so much. I'm happy to submit on what's already been said.

23 THE COURT: Well, counsel, we're talking another 15 pages
24 or so. The reason why the Court's concerned is because the Court did
25 say that it would be going over all these, and so to give you a full

1 opportunity to be heard, and you knew one of the issues could have
2 been brought up previously was the Paragraph 6, right? Where people
3 from your firm were making statements that were, first off, not on
4 personal knowledge and inaccurate as to what happened in July.

5 And then the same paragraph appears in another attorney's
6 Declaration, which is -- well, that attorney was there on July 6th is also
7 completely inaccurate, and it's a cut and -- I use the term cut and paste.
8 What I mean by the term cut and paste is if you are to compare the
9 Paragraph 6 of your Declaration of Mr. Couchot to Paragraph 6 of the
10 Declaration, and several other paragraphs, but Paragraph 6 that the
11 Court's mentioning at this juncture. This was directly attached to the
12 October 2nd order, when you got it on October 2nd and since then, is --
13 that Paragraph 6 is very, very, very similar as to almost every word, and
14 it specifically misstates about what happened on July 16th, 2019, as far
15 as what Defense's position was in that regard. Did you, by chance,
16 maybe find it?

17 MR. DOYLE: I know the paragraph the Court's referring to,
18 and on -- at the hearing on October 10th, Ms. Clark-Newberry attempted
19 to explain this, and Mr. Couchot attempted to explain this, and I don't
20 have anything to add to the comments they made at the hearing on
21 October 10th.

22 THE COURT: Actually, if you recall on October 10th, since
23 you had the transcript, feel free to go back, and October 10th is,
24 remember the Court provided an opportunity, but then asked both Ms.
25 Clark-Newberry and Mr. Couchot if they wanted to communicate with

1 one another before anything that the Court was a) more than glad to
2 hear anybody's explanation if they wished to do so, whether they wished
3 to possibly communicate with one another before somebody started to
4 say something, because from this Court's understanding, it appeared
5 that maybe inadvertently, maybe while those counsel didn't realize that
6 that paragraph was the same, was about to make statements to the
7 Court and that the Court wanted to give a full opportunity for counsel to
8 speak among themselves to see and actually look at the fact that it had
9 previously appeared in a prior Declaration, on a document that had been
10 impermissibly not filed and served, and presented to the Court in a
11 proper manner by Mr. Couchot, who is not able to be present at the July
12 hearing.

13 So when you say Mr. Couchot tried to explain, can you
14 please tell me what you mean he tried to explain, because the only
15 statements really made to this Court on that date was that after giving
16 the two of them an opportunity to speak to each other for a few
17 moments, they said that they were going to speak among themselves
18 and nobody wished to move forward and give any explanation to the
19 Court. If you think it's different, we got the hearing transcript from
20 October 10th, and I'll be glad to look at it on any page you would like,
21 you would like the Court to have its attention drawn to. I have them right
22 here.

23 MR. DOYLE: I'll just stand with what the transcript has to
24 say, I don't need to add anything to this.

25 THE COURT: But, counsel, if you're saying they tried to

1 explain, I would like to know where you think they tried to explain,
2 because I read all 139 [sic] pages, is it, yeah, 39 [sic] pages, and this
3 Court didn't see anybody wishing to explain after the Court providing an
4 opportunity to say did they wish to explain or did they wish to talk
5 among each other first.

6 MR. DOYLE: Well, Ms. Clark-Newberry offered an
7 explanation. Mr. Couchot started to offer an explanation, the Court
8 interrupted him and suggested that the two of them talk.

9 THE COURT: Sure. Counsel, can you please point me where
10 that is, please?

11 MR. DOYLE: Yes.

12 THE COURT: Because I would like to --

13 MR. DOYLE: Ms. Clark-Newberry's comments begin on page
14 99, Line 19.

15 THE COURT: Right, but those go to where she says at the
16 end, right?

17 MR. DOYLE: Right, and Mr. Couchot begins to speak on --

18 THE COURT: Right.

19 MR. DOYLE: -- 102, Line 9.

20 THE COURT: All right. And then if you go to -- and was that
21 a correct statement that he said in Court?

22 MR. DOYLE: I have no reason to disbelieve him.

23 THE COURT: Counsel, you have the transcript of the July
24 hearing. Was the statement that Mr. Couchot said on October 10th, that
25 you're just referencing, consistent with what was stated by Defense

1 counsel's position in July?

2 MR. DOYLE: I believe Ms. Clark-Newberry's comments at the
3 hearing were accurate.

4 THE COURT: I asked -- counsel, I appreciate -- asked you
5 about Mr. Couchot, you switched to Ms. Clark-Newberry, that's why I'm
6 trying to be very specific. You just referenced, you said "Mr. Couchot
7 started to speak," right? Okay. So what you said that reference that you
8 just gave, 102, Line 9, correct?

9 MR. DOYLE: Right.

10 THE COURT: Mr. Couchot's statement, as set forth in the
11 transcript, right? So, the Court must go back. Okay. So, let's go back to
12 page 101, right, where the Court started, Line 21. After Ms. Clark-
13 Newberry started to say, "I do believe the," Sorry, go back to Line 16,
14 because remember, the Court said, right above in Line 14,

15 "Do you realize the same language is used in another
16 Declaration?"

17 Ms. Clark-Newberry, "Yes, Your Honor, I do. I believe the
18 language used in other Declarations, each individual sentence, to the
19 best of my personal knowledge was, in fact, true, but now I see them
20 read together, they could be confused in the Court."

21 "Do you realize that that same language is used --" there's a
22 typo by the person, the transcriber, because it wasn't the words to
23 restrict, it was -- "was used, and it should be Mr. Couchot's Declaration
24 previously filed with the Court. That same language is used.
25 Structurally, Your Honor, I acknowledge that everything that's in it, for

1 saying -- I don't have personal knowledge of."

2 And the Court,

3 "No, I'm talking about, counsel, I'm not sure if you're aware
4 of those same sentences were used in a Declaration by Mr. Couchot on
5 September 13th, 2019."

6 That's where the Court was -- because things were starting to
7 be said and willing to ensure that everybody had a full opportunity to
8 know what they were saying and representing before they made
9 statements to the Court that were not going to be accurate.

10 And then Mr. Couchot says,

11 "Are you asking for my explanation, Your Honor?"

12 The Court did say,

13 "I'm saying,"

14 The Court says,

15 "I'm saying that those same sentences were used in
16 Paragraph 6 of your September 13th Declaration, Mr. Couchot.

17 Then he says,

18 "Your Honor, if I was not present at the hearing that the Court
19 is referencing in the transcript that the Court has cited."

20 So he admits he's not there, then he says,

21 "I understand that is inconsistent with my understanding of
22 the time when Plaintiff approached as to continue cases. We had -- we
23 didn't know."

24 And the Court says,

25 "No, you didn't say you didn't know, counsel, that's dead

1 bang inaccurate. You understand what the Court is saying, okay?"

2 Mr. Couchot says,

3 "I'm sorry, Your Honor.

4 The Court says,

5 "You didn't say you didn't know, okay? You two may want to
6 talk, and you intentionally did not mention counsel's name, intentionally
7 tried in indirectly infer it was in another Declaration."

8 Once again, the Court was trying not to embarrass anyone,
9 not to put anyone on the spot, because remember, the same things are
10 done with these special settings. You notice it's again an empty
11 Courtroom. This time an empty Courtroom because you all don't have
12 your people that you choose to view it, which in the Appellate Court,
13 you're more than welcome to be here, but the Court has set these
14 hearings at times where there's not other hearings on it, so that these
15 type of issues don't get raised in front of other attorneys to really
16 specifically, you know, not have anyone feel the least bit embarrassed, to
17 give everyone a full opportunity to be heard, you know.

18 So to the extent possible, the Court's tried to schedule these
19 special settings in accordance with your schedules so you can fly in. If
20 you're not available, I've made it on different days to try and do it. Not
21 only to accommodate Defense counsel's schedule, but also to
22 accommodate so that you don't have other attorneys here, so that these
23 type of issues aren't stated in front of other attorneys to minimize any
24 type of issue.

25 Now, if it all choose to bring people like you did last week,

1 that's perfectly fine, you're more than welcome to do so, but that's you
2 all choosing to bring people into the Courtroom. That's not the Court
3 having this in the middle of other hearings.

4 But going back to Page 102 -- so, the Court goes -- 118.

5 The Court, "You didn't say you didn't know, okay? You two
6 may want to talk, and you may actually -- I intentionally did not mention
7 counsel's name, I intentionally tried to indirectly infer there was another
8 declaration, so that counsel involved can talk with one another. Take a
9 look at the two Declarations and realize that the same language is used."

10 Okay. Albeit the transcriber put a period there, which
11 shouldn't have been there because that was all part of the same
12 sentence, but -- and so for one person to say that they're interpreting
13 their own words, when they've been previously used with somebody
14 else's name on it.

15 "I'm hearing what you're saying, but you understand it's a
16 challenge for this Court to say it's your words when those exact same
17 words in that same pattern of sentences is used by your colleague
18 previously."

19 That's what the Court was saying,

20 "I was trying not to put either of you on the spot and saying
21 this in open Court, which is why this Court was trying to be very careful
22 about just generally stating and not having anyone speak specifically,
23 which is why when you even stood up, I was saying you might want to
24 take a look at it with your colleague first. You may still wish to do that
25 before anybody says anything, you might both wish to do that."

1 Mr. Couchot says, "Thank you, Your Honor."

2 Ms. Clark-Newberry says, "Thank you."

3 The Court then says, this is Line 15.

4 The Court: "I am not in any way cutting you, let me be clear,
5 if either or you wish to speak further on this, I am in no way cutting you
6 off. I am trying to give you both the benefit of the doubt, but you may
7 wish to speak with each other first and look at the pleadings before you
8 speak. If you wish to speak now before the Court considers anything, I
9 would fully give you the opportunity. Do you understand the difference
10 of what I'm saying?"

11 Mr. Couchot then says, Line, 23, Mr. Couchot says

12 "I understand, Your Honor."

13 The Court says, Line 24,

14 "So, if you wish to explain it before you physically look at
15 each other," sorry, "look at each of your Declarations and wish to
16 explain it without looking at your Declarations and speaking among
17 yourselves, I will give you that opportunity. If you want not to explain it
18 right now, to the Court, and prefer to look at your Declarations and see
19 their similarities and talk among yourselves before explaining it to the
20 Court, then that's fine, too."

21 Mr. Couchot says, "Okay, that would be -- and I really hadn't
22 finished, but that's okay."

23 So, then the Court says, "I'm not requiring anyone explaining
24 it to the Court right now. The Court was taking a generic, giving
25 everyone the benefit of the doubt, generic statement,

1 "Just concerned about Declarations and general sense from
2 the firm in general, not pointing out the attorney. However, I'm in no
3 way, I say it again, however, I'm in no way precluding you that if either
4 of you wish to say something on your own behalf, feel free to do so, I'm
5 just not requiring it."

6 Mr. Couchot, Line 15, "We'll take an opportunity. We'll take
7 that opportunity, Your Honor. Thank you for allowing it."

8 And the Court says, "Do you also wish to take that?"

9 Ms. Clark-Newberry says, "Yes, Your Honor. Thank you for
10 providing us with that opportunity."

11 The Court says, "Okay."

12 This is Page 104, Line 20,

13 "So would both of you prefer that this Court defer, that this
14 Court evaluate how this trial goes, and then determine if there's any
15 further conduct --"

16 Once again, putting you on notice that the Court's going to
17 look at further conduct. Address your due process issue, counsel. So we
18 start that paragraph again, starting at Line 20 again.

19 "Okay. So would both of you prefer that this Court defer, that
20 this Court evaluate how this trial goes and then determine if there's any
21 further conduct that would tilt the balance toward striking? Right now,
22 very serious monetary sanctions and defer about anything else,
23 including whether I have to report anything to the Bar, until I see and
24 hopefully things do a 180 during the course of trial."

25 Is that what Defense counsel, I'll let you play as counsel, and

1 Mr. Leavitt says, "We understand, Your Honor."

2 "Because you start to stand up as I was talking. Of course
3 if -- I think you're saying, excuse me, I think you're saying you're making
4 a donation. I think that's what you voluntarily wish to do, that's fine. I
5 don't see this in similar context. That's going back to what Mr. Leavitt
6 said earlier.

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

11 "Once again, I'm letting you have the benefit -- the whole
12 trial, putting you specifically on notice on the 10th that I will take the
13 whole trial into consideration if you want to. Already telling you that at
14 that juncture on the 10th, the Court was looking towards potentially
15 striking or monetary sanctions, also considering whether I had to refer to
16 the Bar. But then I asked each and every one of you, so that was --"

17 I just read through Line 9, Line 10.

18 Mr. Doyle, "I will take that opportunity."

19 The Court, "On behalf of your firm?"

20 Mr. Doyle, "Yes, thank you."

21 The Court, "Okay, that's what we will do, Okay?"

22 Mr. Doyle, "Your Honor, I had a couple of miscellaneous
23 things about the trial that I suspect."

24 And then the Court says, "I will glad, well --"

25 He says, "you need to be somewhere."

1 The Court, "I've already missed what I needed to do. So let's
2 walk through and ensure you're taken care of for your trial." "Okay, so
3 take you for trial. We're going to get you 70 jurors, and we can start
4 going into the other."

5 So, I understand and heard what you said, Mr. Doyle, that the
6 only reason why this Court did this hearing when you wanted to is after
7 specifically walking through all of this, checking with Mr. Couchot,
8 checking with Ms. Clark-Newberry, and talking with you on behalf of
9 your entire firm, the Doyle Law Firm.

10 And so the Court said what it was going to do, said it was
11 hoping there would be a 180, explained right then and there on the 10th,
12 the seriousness of the sanctions, potentially striking, serious monetary,
13 as well as potential bar reporting, and then offered yet another
14 opportunity.

15 So both with the idea that the Declarations Paragraph 6, I
16 don't see even your comment here today to this Court to tell me how to
17 say that Mr. Couchot was trying to explain something, and the Court
18 didn't let him, implying that the Court didn't let him, but it was Clark-
19 Newberry was trying to say something and the Court -- implied the Court
20 didn't let him, isn't any way borne out.

21 I just had to read several pages. If you think there's any
22 other pages, I asked you to reference me any pages you wish me to do
23 so, but I went to the very pages you talked about, read the entirety of
24 those pages, and it says just the opposite. It says that the Court gave the
25 option to do it, then gave the option for counsel to speak among

1 themselves, gave the option if you wanted the Court to address the
2 overall issue of sanctions then and there, or whether or not you wish the
3 Court to wait until the end of the trial to, my words, see if -- hope that
4 there was a 180 so that it wouldn't be necessary. So that's right there. If
5 you want the audio, you have the disk. If you don't have the disk, you
6 can usually get the disk.

7 I've listened and watched it, both in addition to this, because
8 I wanted to make sure, that's why I -- I saw the typo, so I wanted to make
9 sure that I didn't say something different than what I thought it said, but
10 other than that little word that doesn't make it really a difference typo,
11 the Court fully prepared, went on notice. This Court thought it was
12 giving everyone, I use the words benefit of doubt multiple times, gave
13 lots of choices, very clearly said anyone wants to claim it, then and there,
14 I would be glad to do so. If they wanted it later, be glad to do so, and
15 then confirmed it again with you on behalf of your firm.

16 So, I'm not sure how your statement here today in this
17 Courtroom, this Court can do as being accurate or forthright because it is
18 so contrary to the recorder's transcript, and even after giving you a
19 chance to provide me with the very section you would like me to refer to
20 and it says really the opposite of what you were contending, and that's
21 kind of the pattern issue that has this Court so concerned about what
22 happened throughout the trial is that there was clearly something said or
23 that something said is not accurate. Okay?

24 Let's go to, you did mention the eClinical Works , and that
25 was the signature. I was hoping today that you would say something

1 different on this one because if you recall, not only did your client on the
2 stand specifically state that, when he explained his process under the
3 cross-examination about his process of how he did the notes, the
4 hospital explained what happened with regards to how notes are done,
5 because remember, he was talking specifically of the timing -- the issue
6 that this Court is going to reference is the chronology with regards to the
7 order as to whether or not Ms. Farris should or should not be drinking,
8 and it has a specific delineation that he articulated on the stand. It's
9 escaping my mind right now, but there was a couple of initials he talked
10 about, not having anything to eat or drink.

11 And so when your client testified, Dr. Rives testified on the
12 stand about how his order went through, both you, on his direct
13 examination, and he, also through cross-examination responses, both
14 instances, would prove that chronology is such a detailed order to show
15 it appeared that you were saying his order not to have her drink or eat
16 anything, and then it was one of the nurse's direction came on that
17 versus what she did was an issue, okay?

18 So that, in and of itself, and how he did his reports, and how
19 he signed off on it. I appreciate the term some people use sign off and
20 some people use lock, depending on which system they are utilizing and
21 eClinical Works may use a system called to lock it and they leave it. They
22 may have to click a lock button versus a sign off button, or whatever the
23 case may be, but your own client explained the process on how he did it,
24 and then how he signs off, and how it shows that contemporaneous date
25 and time.

1 So when you made the statement during the course of trial
2 and you're making it again today, the Court doesn't see how you can
3 have any foundation for that statements because it's inconsistent with
4 your client's own testimony.

5 Also, as an experienced litigator whose done numerous
6 medical malpractice cases, I believe you -- are you going to really tell this
7 Court as an officer of the Court that the doctor, whether they call it
8 logging off, locking, clicking, that when they're finished with their notes,
9 that the signature doesn't stay for all purposes as the signature on that
10 date and time?

11 And I want to give it as a hypothetical, so let me give you a
12 hypothetical date and time. If, for example, I just want to be clear that
13 I'm hearing this because I'm hoping I'm hearing it incorrectly, but I just
14 want to make sure, and I can show you these pages if you want to see
15 these pages. These were pages that were specifically referenced in oral
16 arguments. That's the reason why the Court went to it. Okay. Because
17 everyone would have fully unnoticed of it and this is an issue raised
18 specifically and fully addressed.

19 So if there were provider notes from seeing Titina Farris on
20 7/31/2014, so that would be 7/31/2014, pages 3 and 4, but yet on page 2
21 of 2, under the provider, and then it has electronically signed by Barry
22 Rives, M.D. on 6/09/2016 at 2:50 p.m., PTG, signoff status pending.
23 Okay? Separate and apart from the bottom line, okay, and the bottom
24 line -- I can lift this up and your -- I can ask the marshal to bring it.

25 Marshal, can you bring this over?

1 MR. DOYLE: I don't need to see it.

2 THE COURT: Okay. I was going to make a distinction.

3 MR. DOYLE: I don't need to see it.

4 THE COURT: Okay. Because the distinction the Court's
5 making is that when I say the bottom line, the bottom lining I'm talking
6 about is a line that says
7 <https://nvriveapp.eclinicalweb.com/mobiledoc/jsp/catalog/xml/printChartOptions>,
8 and the C in chart and the O in options is capitalized, .jsp?, and
9 it says -- and it looks like there's three little dots, and then it says
10 6/9/2016, and that's both on page 3 and 4 exemplar, it's on some other
11 documents within this file, as well. That one says 6/9/2016.

12 The one that parties were arguing about from this Court's
13 understanding, and please correct me if I'm wrong, was not that bottom
14 line because the Court asked about that bottom line I just read starting
15 with the http, that people acknowledged that that would be a print date,
16 but the issue was, as raised by plaintiff's counsel and the Court then
17 asked the follow-up questions is: is the signature, electronic signature,
18 which, is about 3, 4 inches above that where it says electronically signed
19 by Barry Rives, M.D. on 06, because that's actually distinction because
20 one said 6 and this says 06/09/2016 at 2:50 p.m. PTD. The next line says
21 signoff status: pending.

22 So if you'd rather not answer the question, that's fine, but
23 Mr. Doyle, I'm going to ask you one last time. Are you asserting to this
24 Court as an experienced practitioner in medical malpractice, despite
25 what you believe your client may or may not have said on the stand, that

1 the line that says electronically signed by Barry Rives, M.D. on
2 06/09/2016 at 2:50 p.m. PTD, are you saying that that was automatically
3 generated for the date it was printed versus that the eClinicalWorks
4 system would view that that is the date that he actually logged out of
5 that note but they used the term, actually, to lock it, I believe it's a box
6 called lock, log out, meaning the date that he physically added
7 something to the notes versus the date of printing?

8 MR. DOYLE: I will stand my comments and Dr. Rives'
9 testimony about how this, these systems work in the officer versus the
10 hospital and how they're different. My comments were accurate.

11 THE COURT: So, Counsel, only because --

12 MR. DOYLE: The Court is mixing up how it works in a
13 hospital with how it works in an office, and I stand by my comments
14 about how it works in an office.

15 THE COURT: This Court is not really -- this Court's kind of
16 asking an open-ended question. This Court is asking an open-ended
17 question. eClinicalWorks is the software program Dr. Rives uses in his
18 office; is that correct?

19 MR. DOYLE: I believe it's eClinicalWorks.

20 THE COURT: That's what -- says eClinical web, and you all
21 referenced eClinicalWorks during the course of the trial. And the same
22 I'm saying with pages 3/4, it's the same pages.

23 MR. DOYLE: I stand by my comments. The Court is
24 suggesting that Dr. Rives, a year later, went in and changed or added to
25 his note.

1 THE COURT: No.

2 MR. DOYLE: That's not how it works, and I stand by my
3 comments. I don't have anything else to say.

4 THE COURT: The Court is not suggesting anything about Dr.
5 Rives. The Court is looking at the conduct of defense counsel and
6 whether or not defense counsel used candor to the Court in making
7 argument that the electronic signature date, okay, that is throughout the
8 documents and Dr. Rives filed it. The electronic signature date as
9 compared to the one at the bottom which I -- which I call the http date,
10 http line, that the electronic signature was somehow under
11 eClinicalWorks, and eClinicalWorks was -- you all referenced this in your
12 oral argument, that you also note, it's on page 8. It says: note generated
13 by eClinicalWorks, EMR/PM software, www.eClinicWorks.com. Okay?

14 That even though the -- it's whether or not you had on a
15 sufficient basis and candor to the Court to make the argument that the
16 electronic signature date of June 9th, 2016 only said that electronic
17 signature date because that was the date of printing. That's what I'm
18 asking.

19 MR. DOYLE: I stand by my comments today and the trial. I
20 don't have anything else to say.

21 THE COURT: What are your comments, though? I just -- I'm
22 not sure what you really said because you said a lot of different things.
23 That's why I'm asking you today.

24 MR. DOYLE: I'm not going to say again because the Court
25 will just take what I say and somehow dissect it. I will stand by the

1 comments I made at trial and today. I don't have anything else to say.

2 THE COURT: Are you contending that the electronic
3 signature of 6/9/2016 was purely because of printing versus a date on
4 which any notes, I use the term notes, any references to anything in the
5 progress notes was made?

6 MR. DOYLE: I'm standing by the comments I've already
7 made which I believe answer your question.

8 THE COURT: Okay. But the Court's not clear on what you
9 said. That's why I asked the follow-up questions. Now I would
10 appreciate so that I have an understanding of what you're saying, and I
11 don't make a ruling misunderstanding what you're saying is the reason
12 why I was asking you today if my understanding that that's what you
13 said is correct or incorrect. Only you would know whether that's what
14 you said or not. If I'm not saying correctly, please correct me so that -- I
15 need to know so that I can make a well-reasoned ruling because,
16 counsel, I keep trying to give you the benefit of the doubt, but if you say I
17 rely on my comments, you're talking three weeks of trial.

18 I don't know which comment you're mentioning during those
19 three weeks of trial. I try and reference things to a specific date and time
20 and testimony. If what I said was not an accurate representation, your
21 position, you have an affirmative duty, right? Rule 3.3 2:57:03, give you
22 this affirmative obligation that you must correct it to the Court, so I'm
23 asking you if you want to take any opportunity to correct something to
24 the Court or are you saying that the electronic signature of 6/9/2016 was
25 only printed that way because that was the date of printing?

1 MR. DOYLE: That's my understanding, and I believe that's
2 what I said at trial, and what I said probably a half an hour ago.

3 THE COURT: Okay. Do you know whether you've argued
4 differently in other cases, counsel?

5 MR. DOYLE: That is my basis comes from my experience in
6 many other cases on how office electronic medical systems work,
7 medical record systems work.

8 THE COURT: And you as an experienced litigator doing
9 medical malpractice is familiar with the applicable guidelines that
10 doctors have to sign off on things accurately in their notes, regardless if
11 they are electronic or they are handwritten, correct?

12 MR. DOYLE: I'm not aware of any such requirements in the
13 office.

14 THE COURT: Okay. So let me ask you about the collateral
15 source then. Collateral source. Do you recall making a contention that it
16 was plaintiff's obligation if they wanted an exception the exception from
17 the collateral source rule under state law, that they had to file the
18 motions in limine that paraphrases and the fact that there's always --
19 plaintiff's that had to file it, but defense doesn't file those?

20 MR. DOYLE: I stand by the comments I made at trial, both in
21 writing and orally.

22 THE COURT: Okay. I'm just asking do you recall saying
23 something similar to that?

24 MR. DOYLE: Probably. I don't have the transcript.

25 THE COURT: Do you have --

1 MR. DOYLE: In my experience in other cases, when the
2 plaintiff wants to preclude the defense from offering a collateral source,
3 the plaintiff is the one who makes that motion. That has been my
4 experience in other cases.

5 THE COURT: Are you aware that your firm has filed motions
6 in limine specifically on this topic, i.e. the *Vickie Center* that was
7 referenced in this case?

8 MR. DOYLE: I assume we did.

9 THE COURT: So, counsel, how do you reconcile the fact that
10 filed a motion in limine, the *Vickie Center* case, saying that collateral
11 source could come in with your statements to this Court both previously
12 and today that is plaintiff's obligation?

13 MR. DOYLE: Because plaintiff in the *Center* case didn't
14 produce evidence of a self-funded ERISA plan, as I recall.

15 THE COURT: Maybe I wasn't clear on my question.

16 MR. DOYLE: Okay. Your Honor, I'm going to -- I'm not going
17 to make any more comments or statements today. I'm going to stand by
18 the record of trial as it exists in terms of the oral comments at trial and
19 the briefing on this issue at trial and the Court's rulings. I'm not going to
20 go back and dissect things that happened now more than a month ago
21 probably.

22 THE COURT: Well, we're at today's date at your request, so
23 that's why I'm asking you, if you want to get next Tuesday so you can
24 look into each of these issues --

25 MR. DOYLE: No.

1 THE COURT: -- I'm more than glad to give it to you.

2 MR. DOYLE: I do not want to look into these issues. I want
3 to be done with this, and let's just get to the Court's ruling.

4 THE COURT: Well, but the Court -- you understand, the Court
5 wants and does in each and every case are an impartial well-reasoned
6 ruling. In order to do so, tries to give, if it's an issue like this of potential
7 lack of candor and affirmative obligations and filing of things to see if
8 there's any good cause why a defense counsel or plaintiff's counsel or
9 third-party counselor, or fourth-party counselor, whoever may be at
10 issue for the actions, and also to ensure that maybe if somebody said
11 something during the course of trial that they really didn't mean to say
12 or something came out inadvertently, give them an opportunity to
13 explain that to the Court so the Court doesn't misunderstand that when it
14 heard something that really counsel meant possibly the opposite,
15 possibly something different, or possibly -- even in the case like with Mr.
16 Couched and Ms. Park-Newberry, try to give them an opportunity they
17 could talk among themselves to have an understanding why there would
18 be basically, I'll say identical paragraphs in two different declarations on
19 two different motions from two different attorneys, when one was at a
20 hearing, one wasn't at a hearing, and that paragraph was completely
21 inaccurate to what happened at the hearing, regardless if somebody was
22 or was not there.

23 There was different issues on those. So this Court keeps on
24 trying to give everyone the benefit of doubt, I mean, over and over and
25 over with your firm, and keep on saying are you sure you want to say

1 this, you want to answer, whatever. But here, counsel, the challenges as
2 you all referred and mention at some point, I -- the Court -- I don't
3 remember exactly when, that these motions had been filed, but then the
4 Court's having difficulty reconciling that because you had me look at the
5 Vickie Center one, and the Vickie Center one, defense counsel -- in fact, if
6 you were to look at it, I think you would find your *Vickie Center* motion in
7 limine saying that you -- allowing the collateral source is relatively
8 incredibly very, very similar to what you called a 7.27 brief on that topic
9 that you filed in this case, a distinction being that the issue -- and this is
10 where the challenge is.

11 You had me go and look at some of that stuff in Vickie
12 Center, and then I see this, and I'm hoping that maybe, gosh, oh golly,
13 it's something inadvertent to the time of trial which is why I keep trying
14 to give more time to look at this so that we can make well-reasoned
15 answers there is good cause.

16 But the whole -- the preemption issue, you specifically stated
17 the Vickie Center was by private insurance. It's a footnote and you
18 distinguish *McCriskin* in that case, which is how this Court's having --
19 what I'm asking you about whether there's a good-faith basis for the
20 arguments you made, including arguments you're making today is these
21 seem specifically, directly inconsistent with your arguments and the
22 assertions you're making.

23 This Court's hoping that there's something that this Court is
24 missing that gives some explanation on why this apparent abundant
25 direct inconsistency with two documents that look relatively the same

1 other than the footnote on the preemption issue is eliminated, that how
2 it was over and over on.

3 And once again, I'm looking at candor and the obligation to
4 supplement, right, under candor, and looking at the Rule 11 aspect of
5 filing the pleadings after knowing all these things, after giving the time of
6 saying can you check with your client, that your client would know
7 whether or not his own bills would be to a self-funded plan because
8 laparoscopic, when I say your client, that would be the laparoscopic, and
9 I pointed it out that day, laparoscopic client would know who they are
10 contracted with because since it's his own entity just to check with him
11 to see if that, so that you could make a correct supplemental
12 determination to the Court.

13 No such correct supplemental determination came forward.
14 That's why the Court was giving you another chance today expressly
15 saying what the issue was, to see if it got changed. And then you even
16 have on your Exhibit C for Dr. Chaney, that was never introduced, but
17 even under your assertion, even though it wasn't introduced, your
18 assertion that that was introduced but saw that nowhere in the record it
19 was, but even in the Exhibit C, the aspect of it being the MGM direct bill
20 is even in that.

21 So that's why this Court has this very strong challenge and
22 keeps on trying to give you an opportunity to say that maybe there was
23 an oops because all these documents show that everybody knew it was a
24 direct MGM plan.

25 So the Court's having a very strong difficulty trying to

1 reconcile and give you the benefit of the doubt, but you kept on making
2 the argument over and over, and even do the second briefing, and
3 contended that these were done by plaintiff, two separate concepts,
4 when it appears by actions at the calendar call by your very own briefing
5 in other cases, by the very documents that you asserted you wanted in,
6 and by the very own documents of your own client who would have the
7 knowledge of who he's contacted with, all would say that defense
8 counsel and/or defendant who would have fully known that it was an
9 MGM plan, a self-funded plan, everyone knew it was an ERISA plan, it's
10 self-funded.

11 And so that's why the Court's having this huge challenge,
12 trying to reconcile why it was over and over, even after saying counsel,
13 would you like a couple of extra days to look into this so you can talk
14 with your client to reconcile why you took these papers out, right? It was
15 -- became a Court's exhibit, be insurance card, the direct billing, right at
16 the time of the calendar call, to give you all an opportunity to
17 supplement to the Court that, oh, guess what, we maybe looked at this
18 and realized that it wasn't.

19 I mean, it was inadvertence rather than -- every one of those
20 documents, plus your client's own testimony makes it clear that knew it
21 was a self-funded plan by the way he has laparoscopic which was the
22 one that say client here and laparoscopic. So I'm trying to give you the
23 benefit of the doubt. If you don't want to wish to say anything on this
24 topic?

25 MR. DOYLE: Yes, Your Honor.

1 THE COURT: Sure. Go ahead.

2 MR. DOYLE: To the extent you're commenting today about
3 anything that happened during trial, whether it's happened now before
4 3:05 or is going to happen after 3:05, unless and until you give me
5 written notice of each and every violation that you believe has occurred,
6 and the rule or rules that you think that violation violated, and then give
7 me the opportunity, time and the opportunity to review the entire trial, to
8 review the entire transcript, and provide to you a written response to
9 each and every one of these items, then I don't believe I have due
10 process.

11 And I'm not going to do it today, and I'm not going to be able
12 to do it next Tuesday based upon how you are proceeding in this matter.
13 So that's why I keep saying I'm happy to just submit it, take your ruling,
14 and will go from there.

15 THE COURT: But counsel, I kept offering before I continued
16 with any of these, but I'd be glad to do this next Tuesday, and whether
17 you -- if you felt you had any lack of due process, you told me you
18 wanted to continue today, so I was continuing today only on your
19 direction to continue it today.

20 MR. DOYLE: WE didn't continue today. We continued today
21 because it was 5:30 last time we were here when you finished the offers
22 of proof, so you ordered us to return today to take up the Court's own
23 motion for sanctions. That's what I recall happening.

24 THE COURT: So you had the -- so we've gone from October -
25 - I'll just go back. So you had issues brought to your attention about

1 filings, right, and candor to the Court, not only on the written order of
2 September 19th, but you also had it back from the 18th about -- you were
3 made aware, were also in Court, but even in the writings, right?

4 The September 18th memo, the September 19th order, then
5 the 10/2 order, and then the Court just went through what happened on
6 10/10, giving you a chance that I could do it right then and there and be
7 done with it if you wished, or you wanted the trial, in the words of the
8 Court, you wanted to see if there was a 180, so -- and then to take
9 everything into account. Everything into account by the Court's own
10 words and you confirming it was everything in account.

11 So you knew throughout the whole trial things were being
12 taken into account, and you can go back to the Court's comments both
13 on I believe it's October 15th, and I believe again on October 18th, and
14 there's other dates. I believe it was October 28th, October 30th. I may
15 be off on dates a few, but this issue came up multiple times.

16 And then again, remember on October 31st offered to do it,
17 offered to do it on November 1st, then offered November 7th, and then
18 because things did not get finished, was wanting to do it the next day,
19 but because of your schedule continued it to another date. So you've
20 had from September -- one analysis would be September 19th to today,
21 November 20th, or you could take October 2nd to November 20th, or you
22 could take October 10th to November 20th, and it was restated again to
23 the end, or you could take them into trial November 20th, so that you've
24 had all of these, and all of these issues have gone forward.

25 And then even today when you raised it, this Court said

1 again, I will continue this until next Tuesday so that -- at least I heard you
2 say you didn't -- you wanted it done it done today, so the Court, and then
3 the Court, when you said something else, then again says I'll do it next
4 Tuesday so that you have time. If you never ever requested to do
5 anything in writing, the Court never heard that request until just a
6 moment ago.

7 So this Court has continued this over and over, you've had
8 all this additional time to look at everything. The Court's brought these
9 issues, brought Hurwitz, brought collateral source, brought the 727s,
10 these all have come up. I mean, all these issues have come up and
11 you've been specifically on notice.

12 Plus, these are really issues, counsel. Remember, I'm
13 bringing it up to date to see if you have a different position. So I'm
14 giving you an opportunity if you wish to supplement your position, okay,
15 on the candor of the Court aspect, but the Court's more than glad to hear
16 that which is why I'm pinpointing something specific, talked to you about
17 it, offered to show it to you, you didn't want to see it. If you choose not
18 to bring the attachments of the very order that's at issue, that's, counsel,
19 really your decision. It's not that many pages. I'm not sure what you
20 decide to bring or not bring, you know, but I've offered also to give you
21 copies of it, so -- and I then I read directly from the transcript when you
22 said it was on the transcript and asked you what page you want me to
23 look at. I reread the exact pages you're asking the Court to do so.

24 So if what you're saying is you want this hearing to stop and
25 you want it to be next Tuesday, I'll be glad to do it again. I'll offer that

1 again. So if you need to do a written response, or if you want to address
2 these or look into these more in detail, but every time I offer it to you,
3 you tell me no, so I'm not sure how many times you'd like me to keep
4 offering it and hear no and then -- so one last time, would you like me to
5 stop right now and continue this hearing to next Tuesday and so if you
6 wish to do either a written response, it can come in by Monday, I don't
7 care, I'll look at it Monday night, give the maximum amount of time.
8 And if you want, I'll continue this to next Tuesday. That gives you the
9 opportunity and time to address these issues. Would you like the Court
10 to do so?

11 MR. DOYLE: I have nothing more to say. I have no interest
12 in returning on Tuesday or submitting something between now and then
13 based upon the present state of affairs.

14 THE COURT: So is there any other way that you'd like the
15 Court to take your statement other than you'd like the Court to move
16 forward today?

17 MR. DOYLE: I'd like the Court to move forward today.

18 THE COURT: Okay. You understand the challenge when you
19 ask the Court to move forward today, I move forward, and then you tell
20 me that you feel that you want to do something different? That's why I
21 keep stopping and asking you if you want to do something different, but
22 I've got to -- now I've asked you multiple times, I've asked you for clarify
23 if you want me to move forward; is there anything that I'm not hearing
24 you, that you're in any way saying you don't want me to move forward
25 today?

1 MR. DOYLE: I have said everything I need to say.

2 THE COURT: Counsel, that doesn't answer -- it's a simple
3 would you like the Court to move forward today, yes or no?

4 MR. DOYLE: Yes.

5 THE COURT: Counsel for plaintiffs, would you like the Court
6 to move forward today or are you requesting any other day?

7 MR. LEAVITT: Your Honor?

8 THE COURT: When I say any other day meaning next
9 Tuesday, I'm offering you the same next Tuesday if you wish it next
10 Tuesday. It's a simple please today or next Tuesday, the same thing I
11 offered to defense counsel, again we would -- another week if you all
12 wanted it, but not a full -- it's a few days, a day less than a week, so it's
13 six days more.

14 MR. LEAVITT: I -- given the statements, I prefer next Tuesday
15 just to shore it up.

16 MR. DOYLE: And I'm not available. Next week is
17 Thanksgiving week. I'm not available to come back.

18 THE COURT: Counsel? Counsel?

19 MR. DOYLE: I want to be done and move forward today.

20 THE COURT: Since this is with regards to defense counsel's
21 conduct, are you asking for next -- something different? It's not
22 impacting your conduct, so --

23 MR. LEAVITT: No, I'm not asking for any but just because of
24 the back and forth, but no. If he wants to go today, I'm good with it.

25 THE COURT: Okay. I'm just making sure.

1 MR. LEAVITT: Yup.

2 THE COURT: I don't want plaintiff's counsel to feel in any
3 way that if you're saying I shouldn't be doing it today, please feel free to
4 let me know. So if your final answer would be today or next Tuesday?

5 MR. LEAVITT: Today, Your Honor.

6 THE COURT: Defense counsel, your final answer, today or
7 next Tuesday?

8 MR. DOYLE: I'd like to move forward today.

9 THE COURT: Okay. And since I have both sides asking me to
10 do it today, I will continue today. Okay. I was at the collateral source.
11 Counsel, is there anything else you'd like to say with regards to collateral
12 source for the Court to take into consideration?

13 MR. DOYLE: No.

14 THE COURT: With regards to Dr. Hurwitz, went over that and
15 showed you the video clip. In light of the video clip that you had the
16 opportunity to see last week, is there anything -- and the Court
17 explaining again today the issues and concerns with Dr. Hurwitz, is there
18 anything you'd like to say for the Court to consider with regards to Dr.
19 Hurwitz?

20 MR. DOYLE: No.

21 THE COURT: Okay. And then we'll go to Dr. Chaney. Dr.
22 Chaney, the Court mentioned today the concerns, just I went into the
23 issues went over with regards to a number of issue, about candor to the
24 Court about the subpoenas, candor of the Court about the payment
25 issue, candor of the -- and voluntary versus involuntary, and then Dr.

1 Chaney's testimony on the stand. The Court will be more than glad to
2 hear any position you have with regards to anything in writing or
3 anything verbally you said about Dr. Chaney, anything you would like to
4 say with regard to Dr. Chaney you'd like the Court to take into account?

5 MR. DOYLE: I have nothing to add.

6 THE COURT: To add to what, counsel, because you can't 00

7 MR. DOYLE: To our discussion during trial, whatever days
8 that were, whatever times that were off the record or on the record

9 THE COURT: Everything was on the record, counsel.
10 Everything got recorded. Everything was on the record. So as the Court
11 stated again, the concerns I express is that is there any good cause for
12 why you have stated that Dr. Chaney -- that you -- first, that you changed
13 your position that you had properly subpoenaed her one/two times. I
14 understand with regards to the second time, you stated that I guess it
15 was served and not filed, but I don't know if plaintiff ever got it out, and
16 that was actually specifically addressed, but okay. But it went from -- but
17 there was no certificate of service or anything ever presented to the
18 Court.

19 And then afterwards, then you stated that she was appearing
20 voluntarily, and you heard her testimony on the stand that she -- I'm
21 paraphrasing, she received, I believe she said an email or a text on or
22 about September 13th saying that she was going to get a subpoena for
23 trial, and that her statement was she felt that she was compelled to be
24 there, she was not coming voluntarily.

25 So in light of that, was there anything you'd like to

1 supplement under RPC 3.3, NRCP 11, NRCP 37, EDCR 7.60, general
2 duties under other aspects, Rules of Professional Conduct, or anything
3 else you'd like the Court to consider, anything you'd like to take back,
4 anything you'd like to modify with your prior positions with regards to
5 Dr. Chaney, either the subpoena issue or the voluntary issue?

6 MR. DOYLE: No, I think we just have different memories and
7 recollections, innocently, so.

8 THE COURT: Sorry. Are you contending that Dr. Chaney in
9 any way stated that she came voluntarily to Court?

10 MR. DOYLE: My understand that -- I'm going to stand on
11 what we said in Court, I'm not going to keep going.

12 THE COURT: Based on what she said on the stand, from her
13 perception, are you contending that there's still a viable argument that
14 she came here via voluntarily?

15 MR. DOYLE: For one, she wasn't on the stand, she was
16 standing at the podium here, but yes, my position is still that based upon
17 our interactions with her, in scheduling her deposition and scheduling a
18 date for her to testify at trial, that we were accommodating her and we
19 were trying to make it as convenient as possible for her, and my
20 understanding was she didn't have any issues or problems with that.

21 THE COURT: And, counsel, my question, just going back a
22 little bit, right? Okay? From what this Court understands is that she
23 retained counsel on or about September 16th, and that after 16th any
24 communications relating to Dr. Chaney went through her counsel. Is
25 that about -- your approximate recollection?

1 MR. DOYLE: You know, Your Honor, every time I say
2 something you dissect it and dissect it and dissect it, so I'm just not
3 going to say anything more.

4 THE COURT: Can I --

5 MR. DOYLE: I'm really am not going to say anything more.
6 I'll stand on what I've said both here, already, and at trial. I don't have
7 anything else to add.

8 THE COURT: Would you like the Court to play Dr. Chaney's
9 statement outside the presence of the jury of what she said as far as her
10 understanding? Would that assist you in any manner?

11 MR. DOYLE: I know what she said.

12 THE COURT: I'm asking if that would assist you.

13 MR. DOYLE: And I'm not changing my position or my
14 statements or my comments.

15 THE COURT: Okay, so --

16 MR. DOYLE: There's no need to badger me with this.

17 THE COURT: Counsel, the Court in no way -- I have -- the
18 Court has the duty that I -- however you'd like to phrase it, that
19 sometimes people have mis-recollections, sometimes people get busy,
20 sometimes people may forget different things. Okay? So sometimes
21 seeing a video is helpful to people, to refresh their memory. Okay? Or
22 to read a transcript or whichever way people, they're visual learners,
23 audio, or a combination thereof.

24 So I'm trying to give, just like I would in any other case, any
25 possible thing if you think it would helpful to you, because this Court is

1 strongly concerned about all the representations and that what appears
2 to be inaccuracies, and so I'm really hoping that I am wrong. I'm hoping
3 that there is some explanation and there's some supplement that the
4 Court can take into account. If showing you a clip from a video would
5 help you out, I'm more than glad to do it. I'm trying to take as much time
6 as necessary to ensure that you have any resource that you think you
7 may need. If you don't want it, then I don't do it. That's -- trying to --

8 MR. DOYLE: I don't have anything more to say.

9 THE COURT: Okay. Dr. Hurwitz. Dr. Hurwitz, you had the
10 benefit of seeing a clip, you had the benefit of hearing the discussion last
11 week, once again focusing on the candor to the Court aspects and filings
12 with regards to Dr. Hurwitz and not focusing on the sanction component
13 from plaintiff's standpoint. With regards to Dr. Hurwitz, now that you've
14 had the benefit and you've had a week to digest and after you've seen
15 that clip and everything like that, is there anything you'd like to say with
16 regards to Dr. Hurwitz that you'd like the Court to consider?

17 MR. DOYLE: No.

18 THE COURT: Okay. So then the 7.27 briefs, the 7.27 briefs, in
19 regards to that and the distinction between whether or not -- do you feel
20 in candor that those were submitted as true 7.27 briefs that were done
21 for this case, or upon maybe re-reviewing them or something, you'd like
22 to supplement the fact that maybe they really were regenerated motions
23 in limine used in another case and then submitted to this Court and
24 called them 7.27 briefs or something that you used all the case law and
25 obviously the facts that used the case law in most of the documentation?

1 I'm trying to just get from a candor standpoint, counsel.

2 MR. DOYLE: They were 7.27 briefs.

3 THE COURT: Were you aware that the essence of those
4 briefs were utilized in another case and called motions in limine?

5 MR. DOYLE: They were 7.27 briefs.

6 THE COURT: Okay.

7 MR. DOYLE: For purposes of this case.

8 THE COURT: So it would be correct that they were not
9 asking for any affirmative relief, they were only asking the Court to
10 evaluate the case law contained therein? Was that their only purpose?

11 MR. DOYLE: I believe that is accurate.

12 THE COURT: Is the offers of proof that were for two days, is
13 there anything that you have the extra week time spent, is there anything
14 you would like to add with regards to the offers of proof that the Court
15 should take into consideration or is there anything that you'd like to see
16 and excerpts, anything that could assist you in any manner if you'd like
17 to see with regards to the offers of proof?

18 And when I'm saying the offers of proof, I'm talking about
19 the seven filings that you entitled offers of proof on November 1st, which
20 the Court because of the reasons the Court already set forth had to be
21 stricken, but I'm not looking at the candor to the Court aspect versus
22 whether or not they were pleadings that could exist on the system, had
23 any purpose with the system, since you called them administrative
24 documents, paraphrasing what you said, they had administrative
25 purpose or something very similar to that.

1 The word "administrative" was used as -- so it was not for
2 anything the Court to rule on, and those times the Court had to make
3 that ruling, but anything else with regards to the seven documents that
4 were filed on November 1st, whether you want to call offers of proof or
5 however you'd like to refer to them, that you'd like the Court to take into
6 consideration with regards to RPC EDCR 7.60, the Court's inherent
7 discretion regards to sections NRPC 11 and NRPC 37?

8 MR. DOYLE: No.

9 THE COURT: Okay. I already asked you about the other
10 pleadings. Okay. Is there any other aspect that the Court has not
11 addressed or taken in consideration that you would like to address with
12 the Court or in any way have the Court take into consideration?

13 MR. DOYLE: I have nothing more to say.

14 THE COURT: Just be clear the Court's more than glad and
15 would like to if there's some reason or something that you'd like to
16 affirmatively supplement, the Court's more than glad to hear it.

17 MR. DOYLE: I have nothing more to say.

18 THE COURT: So what do you -- so now at this juncture, the
19 Court has to take into consideration everything that it has before it, has
20 to take into consideration. Offered defense counsel opportunity to
21 respond to each of those individually. Anything in global context,
22 anything else, even if the Court hadn't mentioned it or hadn't addressed
23 it? Is there anything else that defense counsel would like to say or would
24 you like the Court to make a ruling? What would you like the Court to
25 do?

1 MR. DOYLE: I don't have anything more to say.

2 THE COURT: Okay. If I continue this until next Tuesday,
3 would you have more to say if I continued it to next Tuesday?

4 MR. DOYLE: I would not.

5 THE COURT: Okay. So now the Court has to determine, and
6 the Court goes back to what it stated on the 10th about some of the
7 concerns that it had even as of that juncture, and looking at the nature of
8 sanctions, what needs to be done. Would you like, counsel for defense,
9 would you like to address at all what you think the remedy should be in
10 light of all the issues that have been discussed today in the totality with
11 regards to the Court's ordering the hearing today?

12 MR. DOYLE: I suspect the Court already had an inclination
13 and I'll just go with the inclination.

14 THE COURT: The Court doesn't have an inclination.
15 Otherwise, I would have stated it at the beginning. I wanted to hear
16 everything, take everything into account that you said, and reviewed a
17 lot of different things to put you on full notice. So no, the Court doesn't
18 have an inclination. I would like to hear what your thoughts are if you
19 have any.

20 MR. DOYLE: Well, as I indicated on October 10 I thought
21 sanctions would be appropriate, but not striking the answer which that,
22 of course, is somewhat moot.

23 MR. DOYLE: Okay. I think consistent with what defense
24 counsel's statement is, is when you say sanctions, you mean -- do you
25 mean monetary sanctions? That's the way I understood what you said

1 on the 10th.

2 MR. DOYLE: And that's what I assume you were -- we were
3 speaking about, yes.

4 THE COURT: Okay. Sanctions as --

5 MR. DOYLE: I don't know what other type of sanctions there
6 would be for this.

7 THE COURT: I'm just making sure that if you're thinking
8 something different, then I'm all ears to listen to it. This is -- you can
9 appreciate either from this Court's standpoint, never had to do
10 something like this. Never had such egregious conduct. This is a first
11 time. Usually somebody's doing something, providing them the
12 information in Court, ceases it. Sometimes it needs a little memo
13 ceasing it. I've never even gotten to the second order-type stage. Okay?

14 So this is -- this pattern and the breadth and depth of it is
15 something new to this Court, and it's very, very concerning, so that's --
16 this Court thinks it's tried for the -- and has provided every type of due
17 process, every type of information, given the benefit of the doubt, and
18 trying to take everything into account, and really at this juncture the
19 Court is having to -- and this was to counsels, okay? This wasn't to
20 client. This was to counsel, so that's what the Court has to look at.

21 So what are the things that a Court would be able to do as a
22 result of counsel's conduct, where we are currently with the verdict
23 already in. So it does appear that there's two things the Court needs to
24 evaluate independently. One is the monetary sanction aspect, and the
25 second is in the affirmative obligations that this Court has with regards

1 to the totality of the conduct. With regards to the second on whether or
2 not this Court's obligations with regards to the totality of the conduct,
3 this Court has to report something to the bar, the Court's going to re-
4 listen to everything that happened today before it makes that
5 determination on the second aspect because I think that's the most fair
6 thing to do, after the full totality and of the circumstances and duty, and
7 once again, the largest possible benefit of the doubt to defense counsel.
8 So the Court's going to defer that and make a determination in that
9 regard.

10 So then there's -- have monetary sanctions. I'm going to ask
11 plaintiff's counsel at this point because those are the two remedies that
12 the Court sees. I think you're here, we had some -- it had some
13 impacting notes, the Court thing, I'm not saying that I will or will not do
14 what you ask, I just -- do you see anything other than monetary
15 sanctions that you have any position on whatsoever? I presume the
16 answer's no, but I'm not talking for you, I just -- since this is an issue with
17 defense counsel, do you have any position? Because I just don't want
18 you to be sitting here and not have an opportunity to say something if
19 you wish to say something.

20 MR. LEAVITT: Plaintiffs' position is, is just that the conduct
21 was egregious in a number of aspects stemming from Ms. Newberry-
22 Clark and Mr. Couchot. It goes back -- this started back in discovery. I
23 have never been a part of conduct like this, what I mean part of, I've
24 never seen this before. And despite the many warnings, nothing was
25 curtailed, and the plaintiff's position is there should be heavy, heavy

1 monetary sanctions, and as for the second aspect, I think that continuing
2 conduct needs to be looked at by the Court, for the Court to make a
3 decision.

4 THE COURT: Just to let you know, the Court was -- the Court
5 has to make its own independent determination with regards to its own
6 affirmative obligations. I just was asking on -- if the Court really was
7 looking for monetary sanctions consistent with what defense counsel
8 thought was appropriate, just -- I was asking plaintiff's counsel because
9 you're here, and whether you had to disagree on what the concept of
10 monetary sanctions versus some other type of sanction, just --

11 MR. LEAVITT: No, Your Honor.

12 THE COURT: -- giving you the same -- the same --

13 MR. LEAVITT: Simply monetary sanctions.

14 THE COURT: Okay. So let me be clear on one thing.
15 Actually, more than one thing. I heard what plaintiff's counsel said. The
16 Court is not taking this back to discovery. Okay? The Court is starting
17 where the Court's first order was, because that's where the Court will
18 find it gave the notice. Okay? And what I'm saying, the notice was in the
19 9/19, the 10/2, and that's referenced in the 9/19, 10/2, and everything
20 going forward because that was specifically confirmed by defense
21 counsel on October 10th, that that's what was going to happen.

22 So the Court's not going back to things that this Court didn't
23 specific -- did not -- I was aware of things at the time, so I wouldn't be
24 going back to that, so just so we're clear. So I -- plaintiff's counsel, I did
25 hear what you say but --

1 MR. LEAVITT: Yes.

2 THE COURT: -- the Court has to take it from 9/19 forward
3 because that's the appropriate aspect when the Court did its order and
4 what it said it was doing, and when I say 9/19 forward I'm talking about
5 what's contained in that. So that does have some actions that predate
6 9/19, but those were specifically -- defense counsel specifically put on
7 notice.

8 So defense counsel, would you agree with the timeframe,
9 should start with what was started in the 9/19 reference thereof, going
10 forward, and should not go back to discovery?

11 MR. DOYLE: I would agree starting at 9/19 and ending at
12 10/10 for the reasons I've stated.

13 THE COURT: Well, the Court disagrees with the ending at
14 10/10 based on these specific words of defense counsel on 10/10 and the
15 specific excerpt that was read and the specific agreement to give to the
16 end of the trial to try and see if there's any benefit of the doubt and to
17 take the bulk of conduct into account, and since the Court did restate that
18 during different aspects of the trial, and parties consistently asked that
19 this hearing be continued to today, so the Court does have to take
20 everything through the November 1 offers of proof because, point being,
21 the Court was trying to give everyone benefit of the doubt, and one side
22 continues to continuously violate it over and over again, the Court can't
23 just disregard it because of the independent obligations of defense
24 counsel and the Rules of Professional Conduct, NRCP 37, NRCP 11, and
25 DCR 7.60, the Court's inherent, and that's fully discussed in *Valley Health*

1 *Systems* case, et cetera.

2 So that's why the Court has to take that totality because I was
3 giving the benefit of the doubt totality, and of course to take the totality
4 of the actions because those were the full notice and as you're going to
5 see in the excerpt the Court read from the 10th that that was the
6 intention and what defense counsel said that he wanted on behalf of his
7 firm. So that's what the Court has to do.

8 So when I say 9/19 it includes the items listed in the 9/19
9 order, but it does not go back prior to that and what the Court stated, and
10 the questions the Court has to not go prior to the nine -- what was set
11 forth in the 9/19. I have to look at that pattern of conduct. The Court
12 would have gone back earlier if it would have given defense counsel any
13 benefit of the doubt, but since defense counsel hasn't said that there's
14 any conduct that it should be taking into account to mitigate the conduct
15 that happened since what was articulated 9/19 forward, then the Court is
16 not going to do that because the Court doesn't want to penalize defense
17 counsel. It would only been if defense counsel had provided anything
18 that he'd want the Court to take into account which would be to his
19 benefit.

20 He did not do so, provide the opportunity to do so, so the
21 Court's starting with what's set forth in its first order, moving forward, all
22 the way through the offers of proof was articulate through hearings,
23 including today.

24 So monetary sanctions. Here's what the Court's going to do.
25 The Court does find that there needs to be significant monetary

1 sanctions. Okay? The Court does not find that this is a situation that the
2 Court could say that hey, it's a simple donation with sanctions because
3 the totality of the circumstances does not allow that.

4 The Court finds that it had already even allowed and keeps
5 on asking if there's opportunities to rescind, if they're going to modify,
6 defense counsel chose not to do so, and so the Court has to look at this
7 from significant monetary sanctions.

8 So what's the definition of significant monetary sanctions?
9 Here's where the Court's going to go. The Court has before it, I saw a
10 memo of cost, and I don't know if I'm getting attorney's fees or not, I just
11 saw them in the cost. I think the more well-reasoned approach is that
12 when the Court is considering the memo of cost, the Court's going to
13 have to look at *Cadle v. Woods and Erickson*, of course, *Bobby Veracini*
14 *In Re Dish Network*, and any subsequent case law on that, in addition to,
15 obviously, the NRS 18, whatever, Nevada Revised Statutes.

16 So when I look at the totality of evaluating those, the Court's
17 going to do the motion in cost first, and then the Court is going to look to
18 evaluate on anything that is being requested by plaintiff's that the Court
19 should be considering under a sanction amount as an alternative
20 potential to a cost and/or fees amount. Okay? Because the time has not
21 passed yet. Am I getting a motion for fees?

22 MR. LEAVITT: Yes.

23 THE COURT: I'm not encouraging or discouraging.

24 MR. LEAVITT: No.

25 THE COURT: It's purely a question and if you --

1 MR. LEAVITT: Yes, Your Honor.

2 THE COURT: -- you don't wish to tell the Court, then it's fine
3 to say you do not wish to say if you're still strategizing over it. The
4 Court's just trying to do is a lot of the conduct -- let me be clear. Great
5 part of the conduct by defense counsel has caused the trial to be a lot
6 longer than it should have been, caused innumerable hours and work
7 done by the plaintiff's counsel and various pleadings. It's caused these
8 additional hearings, specifically to include today's hearing, okay?

9 So the Court wants to be able -- but the Court in no way feels
10 and it's going to be clear that in no way plaintiff's shouldn't -- plaintiff's
11 counsel shouldn't be getting a double-dipping, and I'm using the term
12 double-dipping, probably not the precise term, but I think everyone
13 understands, should not get a double advantage if they're otherwise
14 potentially getting -- I'm not saying the Court's making no ruling
15 whatsoever, but the Court was -- when the Court was asking whether it
16 was getting a fees motion is seems to be the Court has to resolve fees
17 and cost, and then when resolving fees and costs, has to look at if
18 anything is not otherwise considered under fees and cost, should that
19 monetary amount be looked at from the sanction amount as a result of
20 defense's conduct because while this Court has had to utilize
21 enumerable resources, has used literally, no exaggeration, hundreds of
22 hours to try and give defense counsel the benefit of the doubt going
23 through these issues to see if there was anything so that -- and that's
24 totality of all the hearings and all the looking at everything, and doing
25 every -- all the research to try and give defense counsel the benefit of the

1 doubt, his -- the Court's appreciative, I'm here, I serve the community, so
2 that's not it.

3 So then the sanction would either be -- I have to consider
4 where any monetary sanctions should go for plaintiff's time that
5 otherwise may not be covered, that the Court should do as a sanction.
6 The Court -- I'm telling you what the Court's going to consider. I'm not
7 saying I'm going to do it.

8 The Court's going to consider that because of the conduct of
9 defense counsel, the Court is finding -- I'm going to articulate it more
10 when I give my final determination and walk through each of the factors,
11 in NRCP as interpreted therefrom, 877.60, but even on the Court's
12 discretion, including the RPC 3.3, candor factions, the Court is finding
13 there's a lack of candor to this Court on multiple occasions.

14 The Court is finding that the Court has provided numerous
15 opportunities for there to be a clarification and to see if there was a
16 misunderstanding, and has mentioned different issues which there was a
17 lack of candor to the Court to see if there is any supplementation, any
18 follow-up, anything that the Court should either, A, be taking into
19 account just in case the Court misunderstood how something was being
20 presented; or B, to allow defense counsel -- so you both opportunity to
21 defense counsel to supplement or provide updated information so that
22 to the extend there were the misrepresentations, the lack of candor, that
23 they could be rectified, and therefore, hopefully, be viewed in a more
24 minimalized fashion that upon further reflection there was something
25 brought forth to the Court in candor, and so therefore, the sanction

1 should be less. That has not happened.

2 So the Court does find it as egregious, willful, intentional
3 conduct, articulating it with each of these. Let's go through the areas.
4 Offers of proof incorporating that everything that the Court said with
5 regards to the offers of proof that it's willful, intentional, no good basis
6 for everything the Court said the prior hearings regards to that. The
7 claims also, obviously, it's a violation of NRCP 11, violation of EECR 7.60,
8 a violation of 37 because of some of its bases and relationship to the
9 discovery aspect of it that then was phrased in regards to the 7.60, minus
10 the violation of RPC, include but not limited to 3.3, a lack of candor to the
11 Court.

12 And so then we go to the -- everything incorporated in --
13 well, it's acknowledged what was in the 9/19, so the Court will find out if
14 they -- that was impermissible and should be result in sanctions for the
15 conduct mentioned therein, because that's by counsel's own statements
16 earlier today. Conduct referenced in the 10/2 order, the Court -- still not
17 been provided any good cause for the additional filings, the fact that the
18 filing is -- worried from this little fact, but the filings included paragraphs
19 in two separate declarations that basically mirror each other, and we
20 can't have somebody who wasn't present say something on personal
21 knowledge, but that's the more minimalized, it's just the fact that it
22 blatantly was untrue.

23 Paragraph six is untrue what happened, and while the Court
24 appreciates that, you know, one person can oops on it, there was two
25 people having the same exact paragraph within a word or two, and one

1 was there, one wasn't there, and that has never been taken back by
2 anyone of the Doyle firm, from the day it was put in either of those
3 declarations to the present. Okay? With the assertions that were a fact of
4 failure to notify either of the pleading in the 10/2 was headed towards the
5 discovery commissioner, even that was inadvertent, putting discovery
6 commissioner on it, the fact that there was no affirmative statements
7 anywhere in that pleading or any subsequent pleadings about the
8 Court's prior rulings, that the Court specifically, that wanted to attach to
9 the 10/2, that the Court had already denied the request for extension of
10 discovery is per se inappropriate, willful, and there's been no good cause
11 provided for that. Okay.

12 That goes through the 10/2 up on through the 9/19. Since
13 that time, the Court already went through its analysis what happened on
14 10/2 supplement. The Court incorporates what it stated there. Once
15 again, that doesn't give a benefit of the doubt, that shows more
16 egregious conduct. Everything the Court said through 10/4. 10/10 is set
17 forth in 10/10, what's happened, the Court also states what it stated on
18 10/8 at the calendar call, 10/7 during the evidentiary hearing, and just to
19 be clear, any of these in the absence of trial, still would have significant
20 monetary sanctions.

21 The fact that this totality also has monetary sanctions, even
22 up to timeframe suggested by defense counsel, between what was listed
23 on 9/19 through 10/10, the Court's ruling would be the same because it is
24 still significant monetary sanctions. Now it's gotten more egregious
25 since 10/10, but that really just makes it so that the Court has no basis to

1 give any benefit of the doubt, but there was still willful intention of
2 conduct, there was still significant willful intentional conduct, egregious,
3 willful, intentional conduct, lack of candor, et cetera.

4 That's all even through 10/10, but even after 10/10, when the
5 Court then said it would try to give the benefit of the doubt to the end of
6 trial to see if there was -- the Court's paraphrasing 180, in the hope that
7 there'd be a 180, and things could be minimized, and the Court could
8 then take the totality of the circumstances. Instead, it just got worse, and
9 the examples of what -- Court's asking questions of -- and the Court only
10 highlighted some, this wasn't even the totality of the issues that were --
11 the Court had concerns about, but per which not taking into account
12 what the Court already ruled with regards to plaintiff's, only the separate,
13 alternate, other conduct.

14 Chaney, and the reasons stated with Chaney. Collateral
15 source, the Court can't find that there would be a good faith basis in light
16 of -- in light of everything that happened. The totality of the
17 circumstances and that even if there was a good faith basis, with the 727
18 brief, the fact that the Court then gave another opportunity, a second
19 brief still asserted that, and that after the Court even gave you another
20 opportunity and walked through the fact of removing the insurance
21 documents, the pattern that happened on the calendar call, and that was
22 brought forth during the argument, and then asking counsel to speak
23 with his client, Dr. Rives, to see about laparoscopic in their own
24 contractual aspects. Plus the fact that this had already been known and
25 these arguments already been raised by counsel, even the absence of

1 the fact that these aren't usually raised by counsel really -- that's a non
2 sequitur, that's just -- there's no way the Court can give the benefit of the
3 doubt there because -- looking there, but that's not the fact. It's the
4 factors that statements to this Court in this case and all the opportunities
5 this Court gave to retract those.

6 Even in the arguments with the offer, potential offer of proof
7 on Exhibit C, the offer was never sought to be admitted as the Court said
8 in the other -- and everything that's said before in those pages include
9 the very direct contradiction with regards to the fact that -- I say
10 contradiction meaning clearly showed that MGM self-funded. The Court
11 asked counsel to check with his client, but no, it was contracted with --
12 it's very clear on the insurance card, contacted with, it was very clear it
13 would have taken a two-second Google search, maybe a five-second
14 Google search.

15 So remember, attorneys have the obligation, not only if they
16 actually know, but to reasonably look and to think before they make
17 arguments, so the Court can't find it, even if it didn't specifically know,
18 should have known, reasonable basis to know for all these aspects that
19 happened in this. Clearly, his client, including the document depending
20 on the assertion of his own client documents.

21 Similarly, the Court doesn't find that there's a good
22 foundational basis with regards to the signature, and I will tell you, the
23 signature, I will isolate out, even not taking into account the signature
24 issue on the documents of Dr. Rives, even without that, the Court still
25 would find the intentional egregious, this one. That one, I heard what

1 counsel said, but given his own client's testimony, given other doctor's
2 testimony with regards to how they did it, given the fact that these
3 documents that on their face don't even show that that could even be
4 possible, and it says it's signed, okay, it says electronically signed.
5 Common sense, electronically signed, doesn't have that, so the Court
6 can't find that looking at anything, but once again, that is a carve out
7 separately.

8 I would add that to the alternative basis, but even without
9 considering the signature aspect, we still have all the conduct which still
10 merit huge amount of sanctions, even without that, but -- and with it,
11 still, it's huge sanctions the Court really finds that since it does it with or
12 without it, is not adversely impacting defense counsel because it's still
13 significant on everything else.

14 727 briefs, the Court is, while it's very concerning how
15 someone can say that they filed something as motions in limine and
16 then file the same things with basically the same arguments and then
17 call them 727 briefs, the Court is not taking the 727 briefs into account,
18 and the Court finds it shouldn't take -- it's not taking the 727 briefs into
19 account based on counsel's statements here in Court, that they were
20 intended only as 727 briefs, and counsel would know how he intended
21 them. So even though it looks apparently inconsistent, the Court's not
22 taking that one into account, so that's not part of the Court's ruling with
23 regards to sanctions.

24 Court has gone over everything that it went through, and so
25 when I was saying -- going back to what I was trying to go before the

1 significant monetary sanctions. To put a number on it right now would
2 be a challenge because I think the more well-reasoned approach is to
3 look at the potential if there is any additional cost to plaintiff's that may
4 not otherwise be covered, and to see if they're going to argue that or not,
5 and then take that into account, because I'd have to take that into
6 account anyway, realistically, if that's going to be argued, so the Court
7 has to take that into account anyway.

8 And once again, that gives yet, defense counsel, yet another
9 opportunity to assert whatever his position is with regard to looking at
10 some of those monetary amounts in an alternative as a sanction amount,
11 but being clear, there's not going to be any -- not -- and no one would
12 ever ask me for double recovery, but of course, there's not going to be
13 any. But by deferring it, that gives defense counsel yet again another
14 opportunity to argue with regards to that. Now the Court is also going to
15 look at sanctions separate and apart because I have to look at what the
16 impact is to plaintiffs.

17 I also have to look at if that impact takes care of the
18 significance of the issue or whether or not there should be additional
19 monetary sanctions separate and apart from the impact plaintiff, which
20 the Court would have to issue, and that would be possibly a monetary
21 amount. I have to see if there's additional Court expenses that had to be
22 incurred, or whether or not from an independent aspect to address
23 monetary sanctions to ensure that this conduct doesn't happen again.
24 Okay?

25 And that's in the form of a sanction amount that then would

1 get "paid to the Court", which is not every imbursement type, but is a
2 pure sanction amount because of the extent of an egregiousness. But I
3 think the best way to do that is to break it down first to see what the
4 impact is to plaintiff's counsel and plaintiffs, then take -- let's see if there
5 is an additional cost that the Court has had to incur, and then thirdly,
6 take into account the monetary sanction due to the pure egregiousness
7 set apart from those two other issues.

8 By doing it at the time I'm going to be hearing the fees and
9 cost motion, it doesn't really add any argument, it just has the Court
10 being able to analyze that there's something that the Court otherwise
11 may not fall under a provision, which I don't yet know, and of course, not
12 making any advisory rulings or advance in any matter whatsoever, but
13 then can look at it in that alternative, so that it shows that all parties are
14 fully and truly addressed and taken into account.

15 And like I said, independent of that, the Court has to review
16 today's hearing and determine whether or not it has any affirmative
17 obligation with regard to the [indiscernible].

18 Counsel for the defense, after hearing what the Court's
19 inclined to do, is there anything that you would like to say or anything
20 you'd like the Court to take into account?

21 MR. DOYLE: No.

22 THE COURT: Okay. Plaintiffs, I don't really see that this falls
23 within your realm, but since you're here, I'm not saying that you really
24 are going to necessarily have a viewpoint because this really is that, but
25 just because you're here, in fairness, I always ask people if they want to

1 say anything. I'm not saying that you should or shouldn't, I just -- you're
2 here and I'm always polite and ask people if they have a position.

3 MR. LEAVITT: No, Your Honor. Just to clarify, I will put it in
4 my motion for fees and cost, the sanction, that's it.

5 THE COURT: The Court's not advancing that I'm going to
6 give you sanctions. I'm saying --

7 MR. LEAVITT: No, no.

8 THE COURT: -- I need to evaluate if there --

9 MR. LEAVITT: Correct.

10 THE COURT: -- was anything since I don't yet have motions,
11 it is not yet before me. This is not a situation where this hearing has
12 taken place after the Court has had the benefit of seeing on motion and
13 opposition or memorandum in potential opposition. I don't even know if
14 defense counsel's going to oppose it, and I'm not asking.

15 I'm just saying because of where this is chronologically, date
16 wise, I don't have the benefit of knowing what each party's position is
17 with regards to fees and costs, so that is something that the Court, based
18 on past case law can look at, and so I'm trying to do it in the means
19 which is the most instructive so you don't have the conduct occur in the
20 future, but not in any way penalize defense any more than what the
21 conduct merits, or not reward plaintiff in any manner than -- in any
22 manner, just ensure that plaintiff is not disadvantaged by defendant's
23 conduct, which is another factor the Courts have to consider *Johnny*
24 *Ribeiro*, you name it, every single case addressed. And so I'm trying to
25 take that wide panoply into account, plus the Court's position is that I

1 also do it at the time of the hearing on fees and costs. Bless you.

2 That that gives defense counsel yet another opportunity to
3 assert any positions that from a due process and every other standpoint
4 gives you another opportunity to evaluate those from his standpoint.

5 MR. LEAVITT: And I'm sorry, Your Honor. That's all I was
6 trying to clarify is that we will be adding that in to our fees and costs,
7 and to answer the Court's questions earlier, yes, we are doing a motion
8 for fees and costs. It hasn't been presented yet. That's it.

9 THE COURT: Court takes no position, I'm just --

10 MR. LEAVITT: Correct.

11 THE COURT: -- that the Court was just -- if there wasn't
12 going to be anything, then I wouldn't be saying that party's taking it into
13 account. Okay. Does anyone else wish anything else that the Court can
14 do for them today or wish to state anything else?

15 MR. LEAVITT: Not on behalf of plaintiff's, Your Honor.

16 MR. DOYLE: No thank you, Your Honor.

17 THE COURT: Okay. Then at this juncture, the Court realizes
18 the only thing the Court has not yet done is based on you all's prior
19 statement is you need a signature on the first 37 motion.

20 MR. DOYLE: I'm sorry, say that again?

21 THE COURT: You all submitted competing orders on the
22 rule, first rule 37 motion which when we spoke last week, everyone was
23 fine, but the Court was continuing doing it until we had the totality of all
24 of these done because they were so distinct. I'm going to ask you both
25 to submit your proposals in Word. I may have gotten one already in

1 Word. I'm not -- I don't really have a specific recollection.

2 MR. LEAVITT: You want them in Word? Okay.

3 THE COURT: To the extent that you want your competing
4 orders, would you mind submitting them in Word if you've not already
5 done so? If you've already done so, I'm going to double-check my JEA
6 but --

7 MR. DOYLE: Do we submit those directly to your JEA.

8 THE COURT: Directly to my JEA, cc'd to the other side, of
9 course.

10 MR. DOYLE: Okay.

11 THE COURT: Okay. It just saves this Court some time from
12 having to retype it myself again.

13 MR. DOYLE: Okay.

14 THE COURT: Okay. That way I can just look at -- take care of
15 both of those. That's the only thing that this Court saw, because I don't
16 see that there's any future dates at this juncture. Correct?

17 MR. LEAVITT: Correct.

18 MR. DOYLE: Right.

19 THE COURT: Okay. And in that regard, I wish everybody a
20 nice rest of their day, a nice rest of their week. If I don't see you before
21 Thanksgiving, then have a Happy Thanksgiving. I don't know what you
22 may have submitted while I'm in here with you that -- I don't know if
23 there's any OST's back there on this case, so I'm not asking, but I'm
24 wishing you a happy Thanksgiving in case I don't see you before
25 Thanksgiving. Thank you so much.

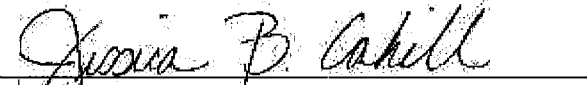
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MR. DOYLE: Thank you.

MR. LEAVITT: Thank you, Your Honor.

[Proceedings concluded at 3:56 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.


Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

Electronically Filed
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Steven D. Grierson
CLERK OF THE COURT



RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

TITINA FARRIS, ET AL.,
Plaintiffs,

CASE#: A-16-739464-C
DEPT. XXXI

vs.

BARRY RIVES, M.D.,
Defendants.

BEFORE THE HONORABLE JOANNA S. KISHNER
DISTRICT COURT JUDGE
MONDAY, OCTOBER 14, 2019

RECORDER'S TRANSCRIPT OF JURY TRIAL - DAY 1

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

1 Las Vegas, Nevada, Monday, October 14, 2019

2

3 [Case called at 8:31 a.m.]

4 THE COURT: Okay. We're on the record in case number
5 739464, Titina Farris and Patrick Farris, Plaintiffs v. Barry Rives, MD,
6 Laparoscopic Surgery of Nevada, et al. Can I have appearances, please?
7 All parties and their counsel were all supposed to be here by 8:30. It's
8 8:30. So can I have appearances, please?

9 MR. JONES: Kimball Jones for the Plaintiffs, Your Honor.

10 MR. LEAVITT: Jacob Leavitt on behalf of Plaintiff.

11 MR. DOYLE: Tom Doyle for the Defendants, including Dr.
12 Rives.

13 THE COURT: Okay. And I just actually -- I think our memo
14 actually did just say counsel. So I -- when I said all parties and their
15 counsel, all counsel were supposed to be here. Okay. So all counsel are
16 here?

17 MR. JONES: Your Honor, we -- Mr. Hand is with the Plaintiffs
18 downstairs. He's in the building with the Plaintiffs downstairs.

19 MR. LEAVITT: To avoid any interaction with jurors.

20 THE COURT: Okay. So but you can take care of all the trial
21 matters?

22 MR. JONES: Absolutely, Your Honor.

23 THE COURT: All the pretrial?

24 MR. LEAVITT: Yes, absolutely.

25 MR. JONES: Yes.

1 THE COURT: Because you all got my memo about --

2 MR. JONES: Absolutely.

3 THE COURT: -- the outstanding things that we still needed
4 parties to -- because you all didn't answer a couple of the questions,
5 things we need before the jury comes in.

6 Okay. Mr. Doyle, are you going to be sole trial counsel?

7 MR. DOYLE: Yes.

8 THE COURT: Okay. So you're sole trial counsel. Okay. And
9 we've got Mr. Rives. Okay. Everyone can sit down. And so I guess
10 there's a question. We've got a couple people. So as you know, purely
11 public courtroom. People are more than welcome to be in here purely
12 public courtroom. We have -- you all had asked for 70 prospective jurors
13 to come in. And since we had some of the matters we just needed to get
14 taken care of before the prospective jurors came in. We can walk
15 through those in just a moment. But we have some observers.

16 So we usually ask -- just to let you know from both sides -- if
17 you have anybody that's not trial counsel or clients, okay, or part of your
18 trial staff. Nobody in this case asked the Court in accordance with any of
19 the rules or the Court's trial procedures, and not at the calendar call, not
20 at the hearing the day before the calendar call, not when you all were
21 here on Thursday did anybody ask this Court for anything additional, or
22 ask that anybody else sit at the counsel table, or anything like that, or
23 make any requests. And so -- nor did I get anything by letter. I've
24 checked again because unfortunately since there's been a pattern of
25 filing things without -- in violation of the rules, I even checked to make

1 sure nothing got filed.

2 So did anyone file anything between when you left on
3 Thursday and today that -- because this Court got no courtesy copies of
4 anything. So I just want to make sure because there's unfortunately
5 been a pattern of that.

6 Defense, did you file anything between Thursday and today
7 that the Court should be aware of?

8 MR. DOYLE: Not that I'm aware of. No.

9 THE COURT: I would hope you would be aware of it if you
10 filed anything on behalf of your clients. That's why -- I'm just really
11 trying to ask a simple yes or no. As you know, you keep filing things.

12 MR. DOYLE: We have no filed anything.

13 THE COURT: Okay. I just -- I don't want to be surprised. If
14 there's any matters that the Court should take care, the Court's more
15 than glad to take care of them. But I at least need to know about them,
16 so that's why I'm asking.

17 Counsel for Plaintiffs, did you file anything?

18 MR. LEAVITT: No, Your Honor.

19 THE COURT: Okay. So there's no pre-trial briefs, there's no
20 anything else that's been filed since Thursday. I didn't see anything on
21 Odyssey. I just wanted to make sure that there wasn't anything that the
22 Court isn't aware of.

23 Okay. So pursuant to the Court's memo, first couple things
24 we need to address is you all -- the Court had asked, and we put this in
25 the memo for you, the number of alternate jurors. Did you wish two, or

1 did you wish -- the Court had asked and thought you all wanted two. But
2 I didn't hear -- confirm that there was affirmatives that you wanted two.
3 So that would be eight jurors.

4 MR. DOYLE: We all agreed to two alternates and four -- and
5 four --

6 THE COURT: Would you like me to finish my sentence or
7 not?

8 MR. DOYLE: Please.

9 THE COURT: Okay. So that's what the Court was going to
10 ask. But just so we have a clean record, please, Mr. Doyle, if I can finish
11 the sentence so that -- before you answer. So that's why the Court put it
12 in the memo. I was going to ask you to confirm today whether you
13 wanted two alternates or something else. So first question, I'll do this
14 one by one so that we just get it clear. Do you all wish two alternates
15 and eight seated jurors, or do you wish something else?

16 Plaintiffs' counsel?

17 MR. LEAVITT: Yes, Your Honor. Two alternates is preferred.

18 THE COURT: Defense counsel?

19 MR. DOYLE: Two.

20 THE COURT: Two?

21 MR. DOYLE: Alternates.

22 THE COURT: Thank you. We just -- we do it step by step that
23 way we just don't have any lack of clarity because sometimes people say
24 afterwards that there may have been some lack of clarity. So we just try
25 and help you all out by asking these questions one by one so there really

1 isn't any lack of clarity. Okay.

2 And then the second question, which also was in the memo
3 to you all, is whether or not you wanted four for your peremptory
4 challenges. And remember, peremptory challenges happen at the end
5 after both sides have passed for cause, and they happen outside the
6 presence of the jury. So did you all come to an agreement whether you
7 wanted four peremptory challenges of jurors that would go back for
8 deliberation plus one for an alternative, or whether you wanted five
9 peremptory challenges regardless if those jurors would be generally
10 considered a juror that went back for deliberations or an alternate?

11 Counsel for Plaintiff?

12 MR. LEAVITT: Yes, Your Honor. We would prefer five.

13 THE COURT: Okay.

14 MR. DOYLE: Four -- and we would prefer four and one.

15 THE COURT: Okay. So you all did not come to an
16 agreement?

17 MR. DOYLE: I thought we had by email yesterday, but
18 apparently not.

19 MR. LEAVITT: Your Honor, four and one, I spoke with
20 Kimball, that's fine. Four and one's fine.

21 THE COURT: Okay. So when you both say four and one that
22 means that you would be selecting four jurors that would normally go
23 back for deliberations, which would be if we're looking at the box, and
24 remember you got the chart beforehand, seat number 1 is the far left
25 corner back row. Okay. So seat number 16, and those are all physically

1 behind the half -- the pony wall. Okay. That means you'd be selecting
2 your four jurors from there because those would be 1 through 16. Just
3 do it in half, that would be the potential jurors going back for
4 deliberations. And that means the four seats you see in front, which are
5 seats 16 through 20, that would be your potential alternates. Is that what
6 you all were intending?

7 MR. LEAVITT: On behalf of Plaintiffs, yes, Your Honor.

8 MR. DOYLE: Yes, Your Honor.

9 THE COURT: Okay. Now, remember, when the Court says
10 that, there's a couple of things, is that -- let's walk through a couple of
11 examples. Say -- because -- say during the Court confirming that
12 everyone is a qualified juror, right, because even though jury services
13 takes care of this issue, the Court does go back once all the prospective
14 jurors come in, after their sworn in, after the roll call, et cetera, we
15 explain to the jurors, you know, give them a brief introduction, and then
16 we ensure that they are qualified jurors. Which means of course that
17 they are US citizens and that they -- if they have had a felony conviction,
18 if so that they have had their voting rights reinstated. Okay. So we go
19 through that.

20 Just one second. And if by chance someone in the box --
21 and I refer to box left gallery, because it's my left, and right gallery.
22 You've all done trials in this courtroom before so I'm being redundant.
23 But so if someone in the box -- and for hypothetical sense I will say seat
24 number 3 in the box, say that person were to say that he or she was not
25 a United States citizen, let's walk through that scenario. There's a couple

1 ways we can handle that. One, you all can decide that you wish to
2 potentially stipulate, that I don't even check, and maybe you want to
3 move on the case and you just want to stipulate that that person's
4 excused or not. And I will bring you to bench. If somebody says that,
5 and I think I've only had it happen once or twice in ten years, okay, so --
6 but it's up to you all.

7 Sometimes people like me just to check down with jury
8 services. You know, I call you to the bench. And remember, bench
9 conferences are not part of the official transcript. So remember, and I've
10 told you this before, told you this here at other trials, told you lots of
11 other times, if at any point there is something at bench that you want to
12 be part of the official transcript, it is your affirmative obligation to let the
13 Court know and then find in the time that we do the matter outside the
14 presence of the jury that you want it done at counsel table.

15 If you don't tell the Court that you want the matter done at
16 counsel table outside the presence of the jury, as much as I would love
17 to have a crystal ball, as much as I would love to be able to read people's
18 minds, I can't, and I don't have a crystal ball, so I can't read your minds.
19 And so I presume that if you're -- counsel, if you're up at the bench and
20 you don't tell the Court, okay, then you're fine that it's at the bench.
21 Okay. So remember that.

22 Okay. I don't repeat it throughout the trial because I presume
23 as sophisticated litigators you knew that before I said it, because you
24 need to know that before I said it. I've said it in your prior trials. Okay.
25 So just remember that. So I will bring you to bench if somebody were to

1 raise your hand on those issues right on there. And so if that were to
2 happen, I'd ask you what you want to do. If you wanted to stipulate to
3 excuse the person without the Court checking in any manner to see if
4 that was taken care of by jury services, which it is taken care of by jury
5 services, is -- you could do that. Sometimes people want to wait, check
6 with jury services. However you wish to proceed.

7 But in a hypothetical sense, whether it came from a
8 qualification standpoint, whether it came from a hardship because you
9 wished to excuse them because they had a hardship, which I'll go over in
10 just a second, or for whatever reason that you chose, okay,
11 hypothetically, say seat number 3 were to be excused based on your all's
12 stipulated request or because the Court ruled on something. Seat
13 number 21 -- in my hypothetical sense because presumably nobody has
14 yet been replaced, right.

15 So seat number 21 would fill in seat number 23. Seat
16 number 21 remember is the first seat immediately behind. We go in
17 sequential order. So the list you're getting of the 70, that's what I'm
18 going based on. We've got people right at seat number -- I'm assuming
19 all 70 have shown up in my hypothetical, right. So 20 in the box. Seat
20 number 21 is immediately behind the Plaintiffs' counsel. Right. So seat
21 number 21 would fill in seat number 3. We do not move everyone over
22 one. Okay. So that -- and you all know this because we went through
23 this before in prior trials.

24 So what that means is once all the hardship, right, and
25 qualifications have happened, right, and you both have passed for cause,

1 that means we will have moved people over seats where they were in
2 the box, but new people will come from the gallery to replace people.
3 So in the hypothetical I just gave, 21 will already have filled in seat
4 number 3. Say that there is a hardship. Hardship is seat number -- two
5 hardships, right. Those two hardships -- the order in which people get
6 released for hardship or anything is the order in which those seat
7 numbers get replaced in the box. So if you all were to stipulate to
8 hardship to hypothetically seat number 21st and then seat number 6,
9 then seat number 20 would get next in line filled in, and then seat
10 number 6.

11 If however you stipulated to seat number 6 next, and then
12 seat number 20, then seat number 6 would be filled in versus seat
13 number 20, which of course potentially may make a difference because
14 of the way that you have selected your peremptory challenges, right,
15 because the person you may be wanting from the gallery, right, and the
16 example I just gave you, 22 and 23 is so we know the people -- the seats
17 have been changed, right. 22 in the first one would go into seat number
18 20. But if you had stipulated 6 and number 20, right, then 22 would go
19 into 6 rather than seat number 20. Once again, order matters.

20 Order also matters obviously with your cause challenges.
21 Remember, cause challenges come at the end of all of your voir dire
22 questioning. It does not come as you do voir dire questioning unless
23 there's the very, very unique example where somebody's acting in such
24 a manner that they need to be dealt with in an immediate situation, or
25 there's some kind of emergency that the Court can't right now, you

1 know, anticipate. But if you know, otherwise, we do not do what you do
2 in, like, my large CD cases and other cases where you have to qualify
3 people one by one. In a case in which you only have two parties, the
4 more efficiently effective way is to let Plaintiff finish their voir dire
5 questions, right, and then you either pass for cause, or you say Your
6 Honor, may we approach. If you say may we approach, that is a clue to
7 everyone that you're potentially going to have a cause challenge. And if
8 not you would've said, Your Honor, may we -- can we pass for cause.
9 And then it would move to Defense, right. So if you say may we
10 approach, that would be a clue that you have some cause, or maybe
11 more than one cause challenge.

12 So walking through the cause challenges, order matters as
13 well, right, because if Plaintiff were to raise a cause challenge in my
14 hypothetical with seat number 3 and maybe seat number 20, if Plaintiffs
15 were to raise a cause challenge first seat number 3, and then seat
16 number 20, the Court would address them in that order. If you did seat
17 number 20 first and then seat number 3, the Court would address them
18 in that order. The order in which you choose to address them. Okay.

19 So let me go back just for a moment. Does everyone
20 understand that so far, that we don't move all the people down and that
21 we replace it seat by seat? Does that make sense? Right. Everyone
22 understand it? The same as I've done it in all your other past trials,
23 right? Does that work for Plaintiffs' counsel?

24 MR. LEAVITT: Yes, Your Honor.

25 THE COURT: Defense?

1 MR. DOYLE: Yes.

2 THE COURT: Okay. So let me step back before I get to the
3 cause challenges just in case. Okay. So the order that we do it.
4 Prospective jurors come in. The first 20 get into the box. So the first 20
5 listed which would be on your sheet, assuming everyone has shown up.
6 Okay. 21 through 70 are placed in the gallery, first left gallery, and then
7 right gallery for the flow over. Okay. Once they're in, they get their
8 general introductions. Right. They get sworn in. They get their roll call,
9 et cetera. We address if we have any ADA accommodations. And when
10 I say ADA, I am of course including state, federal, and local as well. It's
11 just quicker for me to say ADA. Okay. I'm more than glad to do so.

12 I'm going to stop there for one quick second. Going back to
13 jurors for just one second. You all have previously told me that none of
14 yourselves, your clients, or your witnesses needed any accommodations.
15 Is that still accurate?

16 MR. LEAVITT: That is correct, Your Honor. My client has a
17 walker, but she can come in just fine.

18 THE COURT: And is she able to get to the witness stand just
19 fine?

20 MR. LEAVITT: With assistance from myself or Kimball.

21 THE COURT: Usually the marshal would assist the witness.
22 Is there any reason you wouldn't want the marshal to assist?

23 MR. LEAVITT: No. The marshal is fine.

24 THE COURT: Okay. But do -- we had a ramp. Remember I
25 told you if you needed a ramp or anything, we had it. We just prefer a

1 day's notice because it has to be installed. We're more than glad to
2 install it for you if you think that that's needed.

3 MR. LEAVITT: I'll clarify again with her, but she said she
4 didn't need it. Just assistance. You have the bars there --

5 THE COURT: Okay.

6 MR. LEAVITT: -- and whichever bailiff is here that day.

7 THE COURT: I need more than a day's notice because like I
8 said, it's a physical ramp. It needs to get put out of storage. And then
9 we need to get properties to install it. So if you think you need it, please
10 give us some notice so that I can get those wheels in motion. When do
11 you anticipate your client may testify?

12 MR. LEAVITT: Either Thursday or Friday. I'll have an answer
13 for you. As far as it stands, all she needs are the steps. But I'll have an
14 answer for you this after -- at lunch.

15 THE COURT: Okay.

16 MR. LEAVITT: If it changes, I'll let you know at lunch.

17 THE COURT: Because as you can appreciate --

18 MR. LEAVITT: Absolutely.

19 THE COURT: -- we work wonderfully with properties, but
20 they prefer if we give them as much notice as possible because we're
21 one of several departments in the building and we try and coordinate
22 and give as much notice as possible. Okay?

23 MR. LEAVITT: Absolutely.

24 THE COURT: I appreciate it. Okay. Defense counsel, did you
25 need any accommodation? I understand none of your witnesses, your

1 clients, or yourself needed any accommodations. Has that changed in
2 any manner?

3 MR. DOYLE: It has not changed.

4 THE COURT: Okay. So now let me get back to the juror
5 selection. So of course we see if there's any ADA accommodations,
6 which FYI, what we ask is we ask jury services to send -- do you have a
7 list yet by chance on the ADA? Probably too early, right?

8 THE CLERK: I can check.

9 THE COURT: Oh, do you mind checking? Thanks so much.
10 I asked my wonderful clerk to check down with jury services
11 to see if they know of anyone right off the bat to give us a heads up in
12 advance so that we can then talk with you. And remember, everyone
13 has a full right to be on jury duty. Okay. So we are more than glad to
14 accommodate. We just -- if we can get a heads up, then we will talk to
15 you about potential accommodations that are needed. Okay. For
16 example, what we've done sometimes in the past, if we have somebody
17 in the box that -- we also have a ramp that we can do, but it takes a day
18 to get that taken care of as well.

19 We have some other modifications we can do. But if people
20 because of a particular accommodation don't want to sit, like, right in the
21 middle, if the other way is hypothetically going to be seat number 5,
22 which is right there in the middle, and that might be difficult for
23 someone, then I will touch base with both of you all at bench, right,
24 unless it's a normal time for a break, to find some other kind of
25 accommodations. Sometimes what we've done is we utilize one of these

1 chairs that don't have arms. Like, sometimes we have someone who's
2 very, very large, or someone who may be pregnant, or have something
3 that it's hard to sit in one of the chairs that have arms with it or sit in the
4 middle. So sometimes we offer -- you can see we have space over there
5 to the right. Sometimes people would prefer to be over there to the
6 right, or maybe wish to sit in a different location. So we talk with
7 counsel and then talk with the juror to see what accommodation meets
8 their needs. Okay. Does that work for you all?

9 MR. DOYLE: Yes.

10 MR. LEAVITT: Yes, Your Honor.

11 THE COURT: Okay. So segwaying back to jurors and
12 selecting processes because I went a little bit long to the ADA
13 accommodations. So after all the jurors are seated, we've gone through,
14 like I said, the preliminaries and we've gone through their qualifications,
15 then we go through hardships. Okay. With regards to hardships, the
16 Court gives a general explanation with regards to areas which broad
17 range we kind of call the sympathy areas, but generally are not
18 hardships because your trial, although you keep changing the number of
19 days of the trial -- has it changed since Thursday again?

20 As of Thursday -- because originally the trial was going to be
21 the 24th over. Then it changed to the 28th. And I think as of Thursday,
22 late afternoon right as we were leaving you said that, Defense counsel,
23 you thought it might take to the 30th. Is that currently the estimate, or
24 have you all changed again by chance? Because I do need to tell the trial
25 that is directly trailing you. Remember, we tried to get a hold of them

1 late -- we tried to get a hold of them Friday when you all changed
2 because they have several witnesses coming in from all over the
3 country, too. And so it's a hardship for the case that's after you when
4 you keep changing your trial dates and times because, you know,
5 fairness to other cases. So is the 30th still where you're at or not?

6 MR. DOYLE: I made a number of phone calls over the
7 weekend, and I anticipate our last witness will be Monday morning the
8 28th.

9 THE COURT: Defense's last witness will be Monday the 28th.
10 So then would you anticipate that you'd be doing closing arguments and
11 going to deliberations on the 29th then?

12 MR. DOYLE: Or on the 28th. But yes.

13 THE COURT: Okay. So for safety sake, I should probably say
14 the 29th; is that correct?

15 MR. LEAVITT: Sounds about right.

16 THE COURT: Okay. Because once again, remember, I'm
17 trying to give fair expectations to the other cases on the docket as well.
18 You know, I'm trying to make sure you all get 100 percent your trial time
19 so that you can fully have your trial fully taken care of. But at the same --
20 you know, but also give a fair heads up because if you were the trial right
21 afterwards, you'd want to know when you're starting as well to let your
22 experts and witnesses know. Okay. So through the 29th. Okay.

23 So that being said, it's an approximate two-week trial. It's --
24 the reason why I'm saying that is because when you go through
25 hardship with the prospective jurors I explain to them what hardship

1 generally is and what hardship generally isn't with a few examples. And
2 that's tied to the length of the trial in a lot of respects. So I go through a
3 variety of different examples, and then I go first to the box, then left
4 gallery, then right gallery. And what the marshal does, the marshal will
5 bring the microphone over. And we always ask the jurors -- remember,
6 this is when we ask our voir dire questions as well. Any time they speak,
7 they need to give the last three digits of their badge number as well as
8 their last name. So we ask them to go through their hardship. Okay.

9 I listen to all the hardships. I presume you all listen as well,
10 and take whatever notes you choose to take. After they're fully
11 completed, then I ask you all to come to bench. In general, that's what I
12 do. Once again, it's going to depend on how many potential hardships
13 with 70 prospective jurors, and it's going to depend on the time. Okay,
14 because if it's time appropriate maybe for a potential break what we may
15 do is we may send them out to break and may do it outside their
16 presence. Once again, that's flexible depending on what the time is.

17 Okay. If we don't have a lot and it's not a good time for a
18 break, then I'll either call you all to bench and really go through each of
19 those asserted hardships one by one. The Court goes in the order --
20 generally in numeric order, or the order they're stated. It really depends.
21 Sometimes we get a last minute one that comes right at the end. So we
22 go through those hardships. Okay.

23 And if you all stipulate, then we let the person go. Of course,
24 general practice, if one person says they don't stipulate and the other
25 person says they let it go, the Court let's that person stay unless this

1 Court finds that there's an independent reason that I should let that
2 person go, which rarely ever has happened. I mean, realistically, it's you
3 all's decision. Okay. Actually, I can really only think of one time off the
4 top of my head and that was a person initially said they weren't going to
5 let the person go, and her water broke. So the Court had to make a
6 decision. But all counsel actually agreed as she was leaving. So it really
7 doesn't technically fall into that other category. But I guess you could
8 say in the immediate second it did. So you get the idea. It's you all's
9 trial. You have the opportunity -- it's your case. You're the lawyers. It's
10 your clients. Okay. It's your decision. Okay.

11 So you all will make that decision to let people go or not.
12 Okay. Now, sometimes we may have a lot of people that fall into a
13 particular category of economics and you may make the decision that
14 you want to wait until end of day to see because if not, you may have a
15 flood of people that might utilize the similar. And that's going to be up
16 to you because remember, you have 70. I'm just kind of taking that into
17 account because remember, getting more jurors in and starting the
18 process again can be very timely. But once again, it's your case.

19 So after we've gone through that hardship, right, then we
20 would see if it's impacted anyone in the box, right. We need to take that
21 into account as well because oftentimes people want to see because
22 sometimes people want to see, after they want to ask some questions to
23 see truly if it is a hardship because realistically, sometimes people if they
24 understand the process a little bit more realize that they can balance
25 things, because they may not realize that they don't need to be here full

1 days, that they can balance their various different things. Okay. So it's --
2 so that's really going to be you all's decision.

3 So after that's taken care of, say hypothetically for hardship
4 maybe we've lost maybe a couple people in the box. Okay. Go back to -
5 - say 3 and 20, right, but they were excused in that order, 3 and 20, then
6 they would be replaced in next in order from the left -- from the gallery, 3
7 and then 20. And my example if it wasn't 3 and 30, whatever seat
8 numbers, but in the order that they were excused for hardship.

9 Okay. And if -- then we would move forward after hardship
10 was completed. Plaintiff would have an opportunity to do their voir dire.
11 I did not have any objections to voir dire questions timely provided to
12 the Court, so there's nothing for the Court to be addressing in that regard
13 since I did not have any written, timely, in accordance with the rules,
14 provided to the Court. So Plaintiff would do their voir dire questions
15 subject to any individualized objections presented.

16 At the conclusion of Plaintiffs' voir dire questions, Plaintiff
17 will either say Your Honor, may we approach, or Your Honor, we pass
18 for cause. Okay. And do realize that Plaintiffs' voir dire may need to be
19 interrupted once again depending on timing. If it's a lunch break time,
20 morning break time, or, you know, afternoon break time.

21 Okay. So what this Court will do is give you a heads up.
22 We're going to -- because the jury's been here incredibly early this
23 morning, we are breaking for the lunch break at 11:40 in fairness to the
24 jury because they got here very early, and in fairness to everyone else
25 because we're starting at 8:30. So I'm saying 11:40, give or take a

1 moment or two. But realistically, we're trying to do 11:40. That's likely
2 going to be in the middle of Plaintiffs' voir dire I realize. Ask a question --
3 finish up a question right around that time period, okay?

4 MR. LEAVITT: Okay.

5 THE COURT: I'm trying to give you a heads up as much as
6 possible. 11:40 means we're probably going to come back at 1:00 to
7 1:15. What would you all prefer, because remember, I'm going to have
8 to have 70 jurors approximately. It'll be a little bit less. But we're going
9 to have to try to get out of this building, through the elevators, have
10 lunch, and come back. So what time would you all like to come back
11 from lunch today?

12 MR. DOYLE: Given it's a Monday, I'd say 1:15.

13 THE COURT: Does that work for you all as well?

14 MR. LEAVITT: Yes, Your Honor, it does.

15 THE COURT: Okay. So taken care of that. Once again,
16 everyone's trying to get back. Okay. So then once the Plaintiff is
17 finished with their voir dire questions, like I said, if you have cause
18 challenges, you come to the bench. Once again, depending on if it's a
19 lunch break, if it happens to timely work out if you're done by 11:40 --
20 you know, if it's during break time, we take it during break. If not, we'll
21 do it at bench unless you request otherwise. So cause challenges taken
22 care of.

23 Order, we already went through the order in which you raise
24 them. You'll say, for example, challenge for cause, go back to seat
25 number 3, seat number 3, Plaintiff raised a cause challenge for seat

1 number 3, did -- 3 and 20. You did 3. Defense stipulated. Seat number
2 3, if it was stipulated to, that person would be excused. That means
3 automatically the next from the gallery would replace seat number 3.
4 Say seat number 20 Defense objected to and said that they wanted to do
5 their examination before the Court made a determination. Then the
6 Court's going to have to make that decision whether or not the Court is
7 or is not going to excuse that person or defer. If the Court defers, what's
8 going to happen is -- that kind of goes to my little first side, right. Then if
9 that was the only other challenge then seat number 3 would be replaced.

10 Now, the general practice unless you all want something
11 different would be that Plaintiff would then have an opportunity to -- first
12 we'd go back to the Court's standard questions. Remember the standard
13 questions that we gave you, and that you all said you wished the box to
14 read through? Okay. You've got a copy I think in your hand, Plaintiffs'
15 counsel. Is that what I see in your hand? Okay. So we'd go back to
16 asking those standard questions first, right. So they'd answer the
17 standard questions. Then Plaintiff would have an opportunity only to ask
18 questions in this example of juror number 3 because that's the new juror
19 that came to the box. It does not open up Plaintiffs' questions to the rest
20 of the jurors.

21 Okay. So then juror -- say juror number 3 met Plaintiffs'
22 needs, then Plaintiff would either say Your Honor, can we approach,
23 which means he's going to raise a cause challenge to juror number 3
24 because that's that one there, right, or Plaintiff said -- will say it passes
25 subject to, you know, prior discussion at bench or something, which

1 basically indicates they still have their outstanding -- you know, we still
2 have the outstanding issue on number 20, right, because that's what you
3 had from the first time, but you are passing for number -- so you pass,
4 you know, subject to the prior. So we still have 20 on hold, right.

5 So then it would go over to Defense counsel, once again,
6 subject to whether it's a break time, right, lunch time, et cetera. Defense
7 counsel would then commence with your voir dire questions. At the end
8 of Defense's voir dire questions, Defense is either going to say I pass for
9 cause, or may we approach. In the hypothetical I said, say Defense
10 counsel passed for cause. You still would both -- I still would say
11 counsel, can you still approach, right, because I still have 20 to deal with.

12 Then what I would generally say is Plaintiff, after you've
13 heard the questions, you know, Plaintiff, do you still have an objection to
14 20. If Plaintiff said they no longer had an objection, then you all have
15 basically agreed now to the jury, right, because in my example I just
16 gave you, Defense would've passed, Plaintiff, you no longer have an
17 objection to 20, you've now agreed to the full box, correct?

18 MR. LEAVITT: Yeah.

19 THE COURT: In the hypothetical I just said. Right. You
20 understand that?

21 MR. LEAVITT: Yes.

22 MR. DOYLE: Yes.

23 THE COURT: Make sense okay? Let's say Defense now
24 raises an objection to number 2 and 6. I deal with 20 first because 20
25 was Plaintiffs' one, and that was the one that was left first to deal with

1 because once again, order is going to matter on replacing from the
2 gallery. So I would address number 20 first. I'd make my ruling on 20, if
3 20 was still out there, if Plaintiff hadn't waived, and if Defendant by this
4 time had not stipulated. If Defendant stipulated, then 20 would be
5 excused and we'd already know the next in order would fill seat number
6 20. And then I would go to Defendants. Okay.

7 And so we'd walk through Defendants. Okay. And then
8 Plaintiff would have the opportunity there. Right. So in that regard, you
9 all would decide at this juncture because Defendant had finished their
10 examination, whether you wanted Plaintiff to go back and talk to the
11 person who -- my example, 20 has been excused, right. Would you
12 Plaintiff to go back and talk to the new seat in 20 first, or because
13 Defendant was finishing up, did you want Defendant to go first. I will ask
14 you that at bench. And you just need to tell me which way you want to
15 do it. The Court's going to be fine any which way as long as you both
16 have an opportunity, if you choose to do so, to inquire of any new jurors
17 that have come into the box. Does that make sense? Does that work for
18 both of you all?

19 Does that work for Plaintiff?

20 MR. LEAVITT: Yes, it does, Your Honor.

21 THE COURT: Does it work for Defense?

22 MR. DOYLE: Yes.

23 THE COURT: Okay. So that fully explain -- and then once
24 you all have passed, you have the 20 jurors, then what we would do is
25 the jurors would take a break. Obviously we would admonish them.

1 And you would do -- exercise your peremptory challenges since you've
2 selected four plus one. Whoever is currently seated, right, I've explained
3 the process, whoever is currently seated then in seats 1 through 16
4 would be the choices for your four challenges because those 16 would
5 be the ones potentially that could be going back to deliberations.
6 Whoever then is seated in the seat up here in the front, right, seat 16
7 through 20, would be the potential alternates, and you'd be selecting
8 your one alternate. Now, if you pass, right, if you pass one of your -- if
9 you pass your alternate you de facto have stricken really seat number 20,
10 correct?

11 MR. LEAVITT: Right.

12 THE COURT: Because it goes backwards, right, since you've
13 done four plus one. If you don't choose to exercise your alternate
14 challenge then you de facto have stricken seat number 20. If you both
15 pass your alternates, you've stricken seat number 19 and 20. And then
16 your alternates really are, you know, the other two because that's de
17 facto. If you pass one of your challenges of the first -- do you need me to
18 stop for a second?

19 MR. DOYLE: Yeah. Would you say that one more time?

20 THE COURT: Sure.

21 MR. DOYLE: Would you mind?

22 THE COURT: Sure. Do you have the chart I gave you last
23 week that shows the -- or you could do it by chairs. Okay.

24 MR. DOYLE: Yeah.

25 THE COURT: Since you've done four plus one, right?

1 MR. DOYLE: Yes.

2 THE COURT: Four is the seat -- there's 16 seats in the box,
3 right because --

4 MR. DOYLE: Correct.

5 THE COURT: -- 16 gets to 8, and those are the 8 that are
6 going to go back. Right. The front and four -- these are your four
7 alternate seats, correct? These four -- two of these are going to be your
8 alternates, the front four, correct?

9 MR. DOYLE: Correct.

10 THE COURT: Since you've done a four plus one, if you do
11 not utilize your alternate challenge, you de facto have taken the 20th seat
12 because even if you don't exercise it, we can't have four alternates,
13 right? It has to come down to two. So unless you all are saying you
14 want something different, it would go backwards, right, because you
15 have -- from the four alternates, you have to get down to two alternates.
16 So if you don't exercise your alternate challenge, how do we get down
17 from four potential alternates to two alternates, right? You would strike
18 the last person, and then you strike the next to last person, if you both
19 did not exercise your alternate challenges.

20 Counsel, go ahead, do you prefer something different?

21 MR. DOYLE: No, no. But I just wanted to make sure I
22 understand. So if for, example --

23 [Court and Clerk confer]

24 THE COURT: Go ahead, Counsel.

25 MR. DOYLE: If both counsel pass on exercising a peremptory

1 challenge to the alternates, then our alternates are 20 and 21?

2 THE COURT: No, no, no. No, they're not. No, they're not.

3 MR. DOYLE: Okay. Then I

4 THE COURT: Okay.

5 MR. DOYLE: Sorry.

6 THE COURT: Okay. No, no. Marshal, actually I need that, I
7 was going to show an example.

8 THE MARSHAL: Oh, okay.

9 THE COURT: I was going to show him an example. Okay.

10 In the lined jury seating chart --

11 MR. DOYLE: I misspoke, I'm sorry.

12 THE COURT: It's going to be 17 and 18, because this last row
13 is your alternates, right. So you're going to use the seating chart, it's
14 going to be filled in with names, okay. The first two rows are your
15 potential jurors that are going to go back to deliberations, correct? Now,
16 remember, the jurors are not going to know who's going back for
17 deliberations. Alternates do not know until the time actually these
18 deliberations are going to happen; they never know, okay? In fact, you'll
19 see that it says -- you know.

20 So these four seats, 17, 18, 19 20, which are the four seats
21 immediately in front of the pony wall, right in the front of the hard
22 barrier, okay, are your 4 people who end in that, after both sides have
23 finished their voir dire questions and the rest of the gallery has been
24 excused, you'll have 20 people sitting there, right; 16 behind the pony
25 wall, 4 in front. The 4 seats in front are your alternate seats, right; of

1 those 4, 2 of those 4 people end up being your alternates.

2 If you use your challenges, you can pick whether it's 17 and
3 20, 18 and 20, whatever combination of those four seats. If you choose
4 not to use your alternate strike, then somehow these four seats have to
5 come down to two seats. Historically you would cross off backwards
6 from the 20th seat backwards; if people don't use their strikes, right?
7 That's why I said, you'd strike off 20 first, and then 19, so you have 17, 18
8 will be left; 17 would be alternate number 1, and 18 will be alternate
9 number 2. That's the standard way to do it. If you all wish something
10 different, please let me now?

11 MR. DOYLE: The standard is fine.

12 MR. LEAVITT: Standard is fine, Your Honor.

13 THE COURT: Okay. So then if you don't exercise one of your
14 challenges, now I'm going to go through if you don't exercise one of
15 your 4 challenges, okay? As you see in the right-hand box your
16 peremptory challenge is plaintiff and defendant, okay?

17 [Court and Marshal confer]

18 THE COURT: Okay. So now, if you're going --

19 MR. DOYLE: Your Honor, can I get another copy of that?
20 Because you did give me one on Thursday, and I'm not --

21 THE COURT: Sure.

22 MR. DOYLE: -- finding one easily.

23 THE COURT: Sure. Marshal, can you give him another copy.
24 And just to let you know, you're going to get one with the first 20 names,
25 as soon as we get --

1 MR. DOYLE: Oh, okay.

2 THE COURT: -- the 20 names, just to let you know.

3 MR. DOYLE: Got it.

4 THE COURT: We just gave that to you last week, so that you
5 have a visual when we go over this -- I actually gave it to you last
6 Tuesday. We give visuals of the calendar call, just so that everyone
7 understands, but you'll get one with the first 20 names. My clerk's
8 absolutely wonderful, and gives you that, okay. And then you'll get an
9 updated one when it's time for peremptories, it actually has the 20
10 names on it, okay; and I'm about to go through that in just a second,
11 how you do it.

12 But with the first 4, okay, that's the first 2 rows, right, of
13 people, now you see the boxes for the peremptory challenges. The way,
14 the standard way to do it -- once again, if you want something different
15 you need to let the Court know. Plaintiff exercises their first challenge,
16 and we ask that you either put an "X" a "P1" or something, in the physical
17 box, as well as put the last three digits of the badge number in the lower
18 right-hand corner.

19 And the reason why we do that, it's a practical way, and that
20 way people visually see who they're striking, plus also do the badge
21 numbers, so that people don't inadvertently strike someone that they
22 didn't mean to do, right? Because if you're writing down the badge
23 number, and you put in the position, you've got that right? So you put
24 either P1, usually, or something like that, okay.

25 Then Defense gets the sheet and you put your D1, and the

1 same thing, okay, back and forth. Say Plaintiff passed on their second
2 peremptory challenge; that's fine they can pass. They don't -- they lose
3 that challenge, but they do not lose challenges 3 and 4, in my
4 hypothetical, right?

5 It would go to D, so D2, then P3, D3, P4, D4. So in that
6 scenario, Plaintiff would have only exercised 3 of their 4, and Defense
7 would have exercised all of their 4, okay. So in that scenario you're
8 dealing with the first 16, right? So first off, that's generally the intention
9 that if you pass on one, you've not passed on your rest; is that what you
10 all intend to do?

11 MR. LEAVITT: Yes, Your Honor.

12 MR. DOYLE: Yes.

13 THE COURT: Okay. The next part of that is, how that gets
14 handled, as far as -- because you can't have 9 people, you need to have
15 8, correct, that go back to deliberations, right? So generally, once again,
16 in the same concept, the highest numbered person would stricken, who
17 is left; that's generally the way this Court would do it.

18 Now it's not as easy, okay. So to make my hypothetical easy,
19 I'm going to say that neither of you struck seat number 16, in my
20 hypothetical. If you hadn't struck seat number 16, then that person
21 would de facto be stricken, right, because you have to get from 9 down
22 to 8. If your highest number not stricken was seat number 14, then seat
23 number 14 de facto would have been stricken.

24 The highest number not stricken, regardless if it was a
25 Defendant or a Plaintiff that did not exercise their peremptory challenge,

1 would de facto be stricken. And if 2 peremptory challenges were not
2 utilized, then the 2 highest numbers would be stricken; is that what you
3 all intend?

4 MR. DOYLE: Yes.

5 MR. LEAVITT: Yes, Your Honor.

6 THE COURT: Do you know what I mean? Does that make
7 sense what I'm saying? Everyone's understanding that, right? Because
8 you have to get down from, my first example is a hypothetical 9, you've
9 got to get down to 8, so you have to have some method in which to
10 strike it. If you don't want it to be the highest number, then tell me what
11 you want it to be. But it's the highest number, usually the way it's done,
12 if you want something different let me know.

13 MR. DOYLE: The usual way is fine.

14 THE COURT: Highest number is fine; does that work, yes,
15 no?

16 MR. LEAVITT: Yes, Your Honor.

17 THE COURT: Okay. So you both want the highest number,
18 the highest number is the way we'll do it. So that should take care of all
19 the aspects with peremptory challenges. Is there any questions, all?
20 Voir dire process, peremptory challenges, et cetera, with all that?

21 Because then your 8 will go back to the jury, and just to let
22 you know, with the 2 alternates, we offer the alternates the opportunity
23 to either stay in a different jury room, or that they can go back to their
24 lives, and they leave a phone number with the appropriate admonition.

25 Does that work for Plaintiff's counsel?

1 MR. LEAVITT: Yes, Your Honor.

2 THE COURT: Does that work for Defense counsel?

3 MR. DOYLE: Yes.

4 THE COURT: Okay. Any questions at all about the voir dire
5 process, and the selection of jurors, or anything in that regard? Sure,
6 counsel --

7 MR. DOYLE: I'll just notes that we did not receive proposed
8 voir dire questions from Plaintiff. So in terms of having objected to any
9 such questions, there weren't.

10 THE COURT: Well, the Court did not receive any objections.
11 No one raised anything at the time of the calendar call, when we went
12 through proposed, if anyone did or did not receive it. So this Court
13 would take if you didn't raise any timely objections, that they would be
14 waived, because the Court went through all this at the time of the
15 calendar call, back on the 8th today's already the 14th.

16 Someone should have let the Court know if somebody had
17 an issue, because if you don't let the Court know, the Court -- I guess I
18 don't have a crystal ball, and those objections would have been timely
19 made in order for this Court to have been able to address them, so that
20 being said.

21 So with regards to the process, and then we have you all,
22 obviously, sign off on the jury seating charts, so they can be filed for
23 you. Okay. That takes care of all that. We've got the jury --

24 [Court and Clerk confer]

25 THE COURT: So now, Defense counsel, before we came in,

1 had a couple of individuals, and questioned about seating at the --
2 generally the counsel tables, the first two sets of tables here. The Court
3 has no viewpoint as far as who sits where, as long as nobody is sitting,
4 intermingled with our prospective jurors, or our jurors, because we want
5 to ensure, obviously, the sanctity of having a fair, and impartial trial in
6 each and every case.

7 So counsel for Defense feel free to make your request, and
8 then you'll hear Plaintiff counsel's viewpoint; go ahead.

9 MR. DOYLE: I'd request that Amy Hanegan be able to sit at
10 counsel table to assist me with selection of the jury, and I notified
11 Plaintiffs, yesterday, in an email about her.

12 THE COURT: And Ms. Hanegan is?

13 MR. DOYLE: She's not an employee of my office, she's an
14 independent contractor there, that I often work with in various aspects of
15 trial preparation and trial.

16 THE COURT: A jury consultant?

17 MR. DOYLE: Yeah.

18 THE COURT: Oh, okay. I just -- counsel for Plaintiff, do you
19 have any objection?

20 MR. DOYLE: Amongst other things.

21 MR. LEAVITT: Just that this is the first we're hearing of it; it
22 was last night. I don't think it's -- I mean, we didn't make the request at
23 the time to have anybody other than counsel seated at the table, and
24 parties.

25 THE COURT: Okay. So I have to kind of go back to the

1 simple, do you have an objection, or not? If you have an objection the
2 Court's more than glad to hear the objection.

3 MR. LEAVITT: Sure.

4 THE COURT: This was just raised to the Court this morning;
5 the Court wasn't put on any notice of it. Yes. It's the kind of thing I
6 normally get. Any joint pretrial memoranda, or someone brings up the
7 calendar call, or the parties have already agreed to it, that's not where
8 we're at. It just got brought to the Court's attention. If you have an
9 objection I'll hear it, if you don't, the Court -- like I said, the Court has no
10 position, because I let attorneys do it. I address objections.

11 MR. LEAVITT: Correct, Your Honor.

12 Yes. The Plaintiff objects to it. Just the fact that we didn't
13 know, this came across last night. Honestly, Your Honor, I don't think
14 it's appropriate. We all knew who was going to be at our tables earlier
15 last week, and honestly, I haven't had time to synthesize it; so that's my
16 objection.

17 THE COURT: And the reason, from Defense counsel, that
18 you didn't let Plaintiff's counsel know? Is there any good cause, or any
19 good reason not to let them know, just by the fact that you all were here
20 Monday, Tuesday and Thursday of last week?

21 MR. DOYLE: Other than I did not see anything in writing
22 from the local rules, or the Court's own rules, indicating that that was a
23 necessary step. If I had seen something in writing of course I would
24 have dealt with it.

25 THE COURT: Okay. It's the general custom and practice, and

1 a courtesy, if you wanted people too. These are counsel tables, right?
2 Counsel tables are designed for counsel, and then if you want tech
3 people or other people seated at them, the general custom and practice
4 is, you know, courtesy, that you let the other side know, because people
5 get introduced and then the Court needs to address the fact, so you don't
6 have confusion of the jury, or the concept of --

7 MR. DOYLE: Okay.

8 THE COURT: -- who all is sitting at that, and the Court has to
9 address that from a general case management standpoint. That's the
10 reason why you can't anticipate every single thing, otherwise you can
11 appreciate things would be volumes, and volumes. We highlight the
12 general things, and assume that counsel, that's what a 2.67 says, you're
13 supposed to go over all the trial aspects. In fact it clearly does go
14 through all of that, and it doesn't have to pinpoint --

15 MR. DOYLE: Well, Your Honor, I've tried cases in many
16 departments and it's never been an issue before. So -- and I mean, there
17 isn't anything in writing that I'm aware of, that speaks specifically to a
18 juror consultant, or who is sitting at the table during voir dire.

19 THE COURT: There is the catch-all, right? Any other matter
20 which counsel desires to bring to the Court, prior to trial, I mean, the idea
21 is counsel are supposed to go through things together so that no one is
22 surprised of who is going to be there, what's going to be said, what's
23 going to be done so that trials run smoothly. So --

24 MR. DOYLE: But I don't --

25 THE COURT: -- the whole --

1 MR. DOYLE: -- understand any prejudice?

2 THE COURT: The issue really becomes -- not everything is
3 about prejudice, right? There's also the common courtesy. I mean, how
4 do you expect that gets explained to the jury?

5 MR. DOYLE: That she's just assisting me for this part of the
6 trial. We don't have to identify her in any form or fashion, other than --

7 THE COURT: But you always identify people sitting at the
8 various tables, because --

9 MR. DOYLE: You could just say, Amy Hanegan, part of Mr.
10 Doyle's trial team, who will be assisting him.

11 THE COURT: Wait. You're not asking the Court to fail to
12 identify someone, are you?

13 MR. DOYLE: No. I thought you had invited me to provide
14 something to say to the jury. She can be identified as Amy Hanegan,
15 simply as that. I mean, I don't know that you have to say anything more,
16 and that she'll be here for voir dire and then she'll be gone.

17 THE COURT: Plaintiff's counsel, do you have a position on
18 that one way or another --

19 MR. LEAVITT: I do.

20 THE COURT: -- before the Court --

21 MR. LEAVITT: My objection is this, Your Honor, jurors are
22 going to look at these tables, we're going to present who we are, at the
23 table. When we say "attorneys" that's who we are, and for example, my
24 client is here, Plaintiff, that's who she is. I mean, that's -- how do you
25 explain who the person is, sitting next to him. A name alone isn't

1 sufficient. If the Court wants to explain, she's a jury consultant.

2 THE COURT: The Court just --

3 MR. LEAVITT: That would suffice for Plaintiff. Say, this is a
4 jury consultant, that's what she does.

5 MR. DOYLE: Or he could simply say that she's with my
6 office.

7 THE COURT: Is that true? Is that true and accurate?

8 MR. DOYLE: It is true and accurate, as an independent
9 contractor.

10 THE COURT: But with your office, does that not imply --
11 "with your office" is that an accurate statement? Is she with your office?

12 MR. DOYLE: She is, for purposes of --

13 THE COURT: For the IRS purposes, is she with your office --

14 MR. DOYLE: Well --

15 THE COURT: -- for employment, for purposes of payroll,
16 et cetera, is she considered with your office; is that an accurate
17 statement?

18 MR. DOYLE: I believe so, because she would receive a 1099
19 from our office.

20 THE COURT: Is she going to be comfortable with that status
21 of being with your office, when she's filing everything that she needs to
22 file with the State and Federal Governments, that she's with your office,
23 being very clear of what the Federal Government and everyone requires,
24 1099, independent -- the Court can't provide any legal advice, but with
25 your office, do you think that implies that she's regularly employed by

1 your office versus that she's independently hired for this case, Counsel?

2 MR. DOYLE: Well, I do work with her on a regular, ongoing
3 basis, on many of my cases, so we have a longstanding relationship, she
4 was not retained simply for this case.

5 THE COURT: The way that you describe her relationship as
6 an independent contractor, given the way you describe that and saying
7 she's with your office, it does not -- here's the challenge for this Court.
8 This Court has 20 some odd years, prior to going on the bench;
9 approximately 20 years, right? Prior to going onto the bench, doing
10 labor and employment law.

11 This Court in no way will take any of its independent
12 knowledge in any manner, but I'm hearing what you're saying. Those
13 two concepts, the Court handles, of course, employment matters on the
14 bench, right. The Court has to cognizant of Nevada law in that regard, in
15 handling matters on the bench.

16 I am hearing what you're saying, and I am -- as an officer of
17 the Court, you think that that is consistent, to represent to a jury that
18 she's with your office; is what you're saying?

19 MR. DOYLE: Or we could say she's assisting me --

20 THE COURT: I'm asking you what you feel comfortable
21 saying, as an officer of the Court?

22 MR. DOYLE: As an officer of Court I am comfortable saying
23 that she is with my office, in her capacity as juror consultant.

24 THE COURT: So is that what you want --

25 MR. DOYLE: As an independent --

1 THE COURT: You're going to say that whole line, "In the
2 capacity as juror consultant"?

3 MR. DOYLE: No. I don't think it's necessary to identify her as
4 a juror consultant. I think, identify her as "with my office to assist with
5 picking the jury."

6 THE COURT: Counsel, I've got a jury waiting now, 70 people
7 waiting, so I'll give you the last and final word, because we've got
8 another person. Go ahead.

9 MR. LEAVITT: Your Honor, if the Court -- we don't have time.
10 I practice employment law and Worker's Compensation law. Why don't
11 we voir dire her and ask what her true employment status is, because
12 this is the issue that the Plaintiff has. That statement, "she's with my
13 office," to me, without saying anything further, with a pass of going on,
14 is just a misrepresentation.

15 This is the jury. We chose not to have certain people at the
16 table, and we are presenting who we are. That is not what's being
17 presented to the jury; that's my concern.

18 THE COURT: The Court is going to -- if a person is fully and
19 accurately identified who he or she is, then he or she may be at one of
20 the two tables, wholly and accurately, in accordance with the State and
21 Federal law. Wholly and accurately, that's the Court's determination,
22 and that's equally for both sides, fully and accurately.

23 MR. DOYLE: So am I able to say that --

24 THE COURT: The Court -- fully and accurately, that's Court's
25 ruling; the Court's not a wordsmith. Fully and accurately, what the

1 person's role is. So if -- people are more than welcome to be in the
2 courtroom in any observational capacity, but if somebody wishes to sit
3 at one of the tables their role needs to be fully and accurately stated;
4 that's just fair to both sides.

5 So either you can have who you wish at any of these two
6 tables, right, they need to just be identified fully and accurately, what
7 their role is. Okay?

8 MR. DOYLE: Can I indicate what I would say, and see if the
9 Court is --

10 THE COURT: The Court --

11 MR. DOYLE: -- okay with it.

12 THE COURT: -- is not going to make a -- I'm not going to tell
13 you, as officers of the Court, under the rules of professional
14 responsibility, okay. And if you need to do any independent research
15 before you make that determination, then you all are experienced
16 lawyers. The Court's not going -- the Court can't approve. The
17 guidelines are fully and accurately, which is the right thing to do. It's the
18 legal thing to do, it's ethical thing to do; fully and accurately, right?

19 You can misrepresent to the jury. I phrased it a little bit
20 differently, but the answer is, you cannot misrepresent to the jury, you
21 have to fully and accurate say who's at either one of these two tables.
22 So it needs to be done fully and accurately, and then either side is able
23 to have who they wish, at either of these two tables, as long as that
24 person is identified fully and accurately.

25 And that means Plaintiff's counsel. Obviously, if you're

1 adding something, it equally goes to either side, okay.

2 MR. DOYLE: Okay.

3 THE COURT: Fully and accurately either side.

4 MR. LEAVITT: Fair enough.

5 THE COURT: Okay. Defense or Plaintiff, okay?

6 MR. LEAVITT: Very good.

7 THE COURT: That's the Court's ruling, because that's the
8 way it has to be, fully and accurately. I'm going to have you all
9 introduce, because we go through, you introduce who's at each of the
10 tables, fully and accurately introduce who's at the table, okay. So that's
11 what needs to be done, because I'm sure you all would want to be full
12 and accurate under the rules of professional conduct; you have to be, so
13 that's the appropriate way to do it.

14 Okay. Is there anything else before we bring the jury in.
15 We're still waiting. I mean, I'm about to bring a juror in, but I haven't
16 seen your other counsel, or your client.

17 Marshal, can you go down and get the jury, it's going to take
18 a little bit to bring all 70 up anyway, so --

19 THE MARSHAL: Yes, Your Honor. I am two chairs shortened
20 down, Your Honor; I have 68.

21 THE COURT: If we don't use the last row?

22 [Court and Marshal confer]

23 THE COURT: Okay. Is your client and counsel coming up?

24 MR. JONES: They're coming up right now, Your Honor.

25 THE COURT: Thanks. Is anyone else coming from your side?

1 [Counsel and Marshal confer]

2 MR. DOYLE: Your Honor, can I inquire of the staff about the
3 request for daily CD's forms, how that works, or would you prefer --

4 THE COURT: Sure. I'll give you that -- no, I will explain that
5 in just one second. Give me just one moment. Okay. Counsel, just so
6 that everyone can hear. I was asked about the daily CDs. We normally
7 stop the day around 4:45, okay, so that the staff and everyone can get
8 things taken care of.

9 If anyone is going to be requesting daily CDs we need at
10 least a day's notice on that, and we have to stop by 4:30, no if, ands, or
11 buts. If you don't stop by 4:30, remember -- because what happens is,
12 the court recorder needs to not only download the day for the official
13 record, but if she's doing any for the parties, that takes an extra 15, 20,
14 minutes, or so, and so we can't incur, obviously, the overtime, so --

15 MR. DOYLE: I'm sorry, I didn't hear?

16 THE COURT: We can't incur the overtime --

17 MR. DOYLE: No, no.

18 THE COURT: -- for two different reasons. So --

19 MR. DOYLE: We have to stop at what time?

20 THE MARSHAL: We have stop 4:25, 4:30.

21 [Court and court recorder confer]

22 THE COURT: We've been saying 4:30, okay. So remember
23 that, if you all keep talking and keep asking questions, the Court's giving
24 you that heads-up, right? So we try and balance that with your needs
25 with experts and things, but as you're both taking time, we're glad to

1 accommodate you, but 4:30, because you can appreciate, to try and get
2 everything done for you all, because you all have to clean up your
3 things, and we can get those DVDs done for you.

4 But you've got to fill that out so that she knows today,
5 because you can appreciate you can't ask at 4:45, can you, all of a
6 sudden, download DVDs. Because remember we're doing a lot of
7 different things for every other case, as well. We try and accommodate
8 each and every case fairly and equitably in our -- right, so --

9 MR. DOYLE: Of course.

10 THE COURT: We're more than glad to help you out, but
11 we've got to have some notice so that we can -- because everyone's got
12 rush priorities, right. And so there is only 24 hours in a day, and we've
13 got a wonderful team, but they can't be in multiple places, as much as I'd
14 love to have multiple of them; this is the whole team, so --

15 MR. DOYLE: So each request is a separate form?

16 THE COURT: No. One request for the entire trial.

17 MR. DOYLE: Go it. Okay.

18 [Court and court recorder confer]

19 THE COURT: Marshal, would you mind going and getting
20 the jury?

21 THE MARSHAL: Yes, Your Honor.

22 THE COURT: Yeah. Thank you so much, appreciate it.

23 Okay. And friendly warning for anybody who may not be as
24 familiar with the Court system, and I'm sure you've already told all your
25 witnesses this anyway. The Marshal will generally ask the prospective

1 jurors, when they become jurors, to stay closer towards the "D"
2 courtroom, which is way over to the end, okay. But remember, they are
3 going to wander, okay.

4 And we also ask, you've got to remember with your
5 witnesses, and everyone, to remind them that they cannot talk to
6 anyone. And remember there's -- right, places like people inadvertently
7 sometimes forget on elevators that they think that they can chat, but you
8 never know who's around you in elevators, parking lots, wherever you
9 choose to eat. So just be very cognizant of that so that people don't
10 inadvertently start talking about a case, and you may have prospective
11 jurors around, as well.

12 And we also remind you, sometimes when people have
13 witnesses that may be doing this for the first time, or whatever, they
14 think they may be being friendly and offering people, always a preverbal
15 Tic-tac, okay, or a piece of gum, or may want to offer people different
16 things to help them out, they cannot do so, and so it's not to be nice, but
17 it's because in no way want anyone to be viewed differently, in order to be
18 fair and impartial, can't talk in any manner to anyone.

19 And I do tell the jury that, but, you know, also just -- I'm sure
20 everybody does remind their clients and witnesses of everything like
21 that, so to ensure that everyone has a fair and impartial trial.

22 Go ahead, counsel, to Plaintiff, there's a question?

23 MR. JONES: Your Honor, can I step out just briefly, one
24 minute?

25 THE COURT: Of course. It's going to take about ten minutes

1 or so, because there's 70 jurors to be brought up in the elevators, okay.

2 MR. JONES: Thank you, Your Honor.

3 THE COURT: So since you're still here, did I address --
4 because Mr. Eisenberg, my position is the same. I try to make it globally,
5 so you're more than welcome to be any at the tables as well, it's really
6 up to Mr. Doyle and you all, how you wish to do it. So like I said, the
7 Court's position is, anybody is welcome as long as they're fully and fairly
8 identified, so --

9 MR. EISENBERG: Thank you, Your Honor. And I didn't want
10 to be at counsel table, but I was hoping to have surface to put my
11 computer. But I can stay back here, if that's a question of preference.

12 THE COURT: It's really up to Mr. Doyle and -- oh, sorry.
13 Madam Recorder is saying she couldn't hear what you said. Would you
14 mind, if you wish to be heard, you're more than welcome to either come
15 to a microphone, I was just making sure -- you're more than welcome.
16 It's really up to Mr. Doyle, as trial counsel.

17 So, you know, like this Court doesn't have an objection from
18 Plaintiff, so I have to treat it as whatever, as long as people are fully and
19 fairly identified, the Court finds those as tables.

20 MR. EISENBERG: Can I have a few seconds to talk to Mr.
21 Doyle?

22 THE COURT: You don't have to decide right -- yeah. We're
23 going to do this, if there's nothing else the parties need at this moment,
24 we're going to go off the record for a moment. We're going to let
25 people do what they need to do, and jury is going to be back in a few

1 moments, okay? Does that work for everyone?

2 MR. EISENBERG: I agree, Your Honor.

3 THE COURT: I appreciate it. We'll go off the record. They
4 don't have all counsel here.

5 MR. DOYLE: Okay.

6 THE COURT: So we'll take care of that. Go ahead. Thank
7 you so much.

8 [Off the record at 9:33 a.m., on the record at 9:38 a.m.]

9 COURT RECORDER: Okay. We're on the record.

10 THE COURT: Are we back on the record? Okay.

11 COURT RECORDER: Yes.

12 THE COURT: You all needed a few moments, it's been a few
13 moments, so too late for your client; is he coming back? Oh, here he
14 comes.

15 MR. DOYLE: He's right out there, Your Honor, all good.

16 THE COURT: Okay. So waiting for Defense client, okay.

17 Yes. Sorry, I thought you all were just taking a quick second,
18 Mr. Eisenberg and Mr. Doyle, in the courtroom for a moment, and then
19 everyone left on me, so --

20 MR. EISENBERG: I'm going to stay back here, Your Honor.

21 THE COURT: Okay. You decided to stay back there?

22 MR. EISENBERG: Yes.

23 THE COURT: Okay. You're more than welcome, like I said.

24 [Court Recorder and Court confer]

25 THE COURT: My Madam Court Recorder politely reminded

1 me, Mr. Eisenberg, she could not hear your response. Did you wish to
2 stay back there in the last row --

3 MR. EISENBERG: Yes.

4 THE COURT: -- or did you wish to come to one of the tables;
5 what is your choice?

6 MR. EISENBERG: I'll stay here.

7 THE COURT: Could you hear him or not? You could not,
8 okay. Sorry, Mr. Eisenberg would you mind coming to a microphone so
9 I could hear you, sorry? Thank you. You're just wonderfully soft spoken
10 and so --

11 MR. EISENBERG: I'll stay back in the spectator area, Your
12 Honor.

13 THE COURT: Okay. No worries.

14 MR. EISENBERG: Did you hear that?

15 COURT RECORDER: Yes.

16 THE COURT: Okay. Thanks so much, I appreciate it. I have a
17 wonderful court reporter who just makes sure we get a fully clear record.
18 So I appreciate it, thanks so much. Okay. So like I said, we both have
19 various people here, people are more than welcome at the tables, if you
20 wish to identify them, feel free.

21 Okay. So we got that part taken of. Marshal is getting jurors
22 up in the elevator, they should be here shortly, okay. A couple of quick
23 housekeeping matters. From the Court's perspective, I just need to make
24 sure that people have ingress and egress, and just a friendly reminder,
25 because I see a binder on the second table there, and I thought a

1 computer was open on the second table on Plaintiffs' side.

2 MR. LEAVITT: That's correct.

3 THE COURT: Thank you. I just need to make sure. You're
4 more than welcome to utilize what you need to utilize, but just remember
5 there will be people sitting immediately behind you, so anything on that
6 second table, thank you so very much, you just need to make sure, does
7 not have anything that indicate something about the case. Because
8 people just sometimes forget that there are people sitting immediately
9 behind you.

10 So do what you need to do, just make sure it's in a manner
11 that prospective jurors can't see immediately behind you, and a friendly
12 reminder that also is that far edge table, over there towards Plaintiffs'
13 side, so that -- sometimes people just don't think about that, when you
14 kind of get into the midst of trial preparation, et cetera.

15 Now for purposes of voir dire, although it will be a little bit
16 before you actually start your actual voir dire, do either counsel
17 anticipate that they're going to want to be utilizing anything other than
18 counsel table, or the large podium, or the small podium, in the current
19 position?

20 MR. JONES: The small podium I would like to move to a
21 different position.

22 THE COURT: Okay.

23 MR. JONES: But otherwise, no.

24 THE COURT: Okay. So a couple of different things. With
25 regards to -- the small podium can come to -- what we try and do, is we

1 kind of create, because we have people there in that front row, and we
2 kind of make sure that they don't feel like they're encroached upon, and
3 so they need to actually even stretch their legs, right?

4 MR. JONES: Absolutely.

5 THE COURT: Because the marshal is also going to have
6 around sometimes with the microphone. So what we ask you to do is --
7 why don't you put the podium where you think you want it, and I'll tell
8 you if it's kind of gone past our little imaginary -- we kind of just try and
9 do an artificial line, that's kind of a witness box. A little back, back a little
10 bit. Do you see where the line of Elmo stand is, and the witness box
11 corner?

12 MR. JONES: Yes.

13 THE COURT: You're about where it is, because that
14 automatically works out nicely, because what Madam Court Recorder is
15 doing, is see if she can then put the microphone there so that everyone
16 can be heard. Okay?

17 MR. JONES: Perfect.

18 THE COURT: So if it's there, that's fine, okay. But the reason
19 why we don't do it closer, is because we just need to make sure from an
20 ingress and egress standpoint, we make sure. And people can stretch
21 their legs, because we never know with our prospective jurors, if
22 somebody needs to stand up we need to accommodate them. Just we
23 make sure we give everyone enough room and space to do so.

24 Does that meet your needs?

25 MR. JONES: That meets our needs, Your Honor, sure.

1 THE COURT: Okay. For Defense counsel? Are one of these
2 options going to meet your needs, or do you need to be pocket
3 microphoned, or what do you do for your voir dire?

4 MR. DOYLE: One of these is fine.

5 THE COURT: One of these, okay. Okay. So we've got that
6 taken care for you. You should have water on each of the counsel tables.
7 By the way the cooler over there but remember the one with the red
8 button is hot, okay. So hot, does mean, hot, red does mean hot. A nice
9 appropriate type size warning is also hot, so please at your own.

10 Okay. With regards to a question which I don't really have to
11 deal with today, but remember we also do have pocket microphones,
12 when you actually do start your questioning. So if people want to use
13 pocket microphones, please let us know in advance.

14 MR. JONES: I would like that, Your Honor, actually. I think I
15 will move around a little bit. I won't just be standing still --

16 THE COURT: Are you talking --

17 MR. JONES: -- behind the podium.

18 THE COURT: -- about during voir, or during questioning?

19 MR. JONES: Voir dire, Your Honor.

20 THE COURT: Okay. Then we will get you a pocket
21 microphone. Still, even with the pocket microphone, we also ask you
22 still, though, to not go any farther than the front of that podium; because
23 once again, that's kind of like an imaginary line back to the witness box
24 edge.

25 MR. JONES: Fair enough, Your Honor.

1 THE COURT: Because once again, just for ingress, egress,
2 because we've had jurors in the past tell us that they don't like people
3 getting --

4 MR. JONES: Coming in.

5 THE COURT: -- too close to them, and so we try and
6 minimize issues, and what we've learned in the past is --

7 MR. JONES: No one likes a close talker, Your Honor.

8 THE COURT: So we try and accommodate everyone's needs
9 and anticipate those. And so if you don't mind, you've got a nice big
10 well, here, which, if you're a walker, feel free to walk around --

11 MR. JONES: Perfect.

12 THE COURT: -- but just that way we take our prospective
13 jurors into account, as well.

14 Okay. So I do anticipate with the way this hour is going to go
15 is, my introductory remarks, just to let you know, are not that long, but
16 70 jurors is going to take a little bit of time, generally just to do the roll
17 call, and to get them in here and seated.

18 So we hope that Plaintiff's counsel is going to be able to start
19 with their voir dire questions, it's really going to depend on the number
20 of hardships that we get. And this time of year it's somewhat up in the
21 air. We've had some cases where we get very little hardships, and some
22 cases where we get a very large number of people asserting hardships.

23 So our hope is to get you to Plaintiff voir dire before the
24 lunch break, but we will do our best to ensure. Madam Clerk, would you
25 mind giving them those first 20. What Madam Clerk is going to do for

1 you, is we don't have the list yet from jury services. When the marshal
2 comes up with the actual jurors he will give you the full list of 70.

3 Because I have such a wonderful team, my clerk was actually
4 able to get the first 20 names, and she is going to hand you one copy for
5 counsel. Each counsel table is going to get one copy of the first 20
6 names, okay? So those could be the 20 in the box.

7 Now, once again, you don't have to use those sheets, those
8 are just for your convenience, if you wish to utilize it. Those are the first
9 20 names in the box, and when the marshal comes up you'll get your
10 standard random list that you normally get. It's just the jury services
11 hands those to him when he comes up physically. But to the extent
12 those are helpful to you, or to the extent that you are the people that go
13 and look up those names, feel free, okay.

14 So that should take care for your jury voir dire issues, with
15 regards to anything I said. You get a clean copy at the end. The roll call
16 will be taken care of. Have you filled out the sheet with regards to -- feel
17 free, is there --

18 MR. DOYLE: May I?

19 THE COURT: Yeah. Of course you may. Of course, of
20 course.

21 MR. DOYLE: And, Your Honor, I did have some -- a couple of
22 housekeeping questions, but they don't pertain to voir dire, so we can
23 take them up at some convenient time later today, if need be.

24 THE COURT: Sure. I think the only thing the Court's waiting
25 for is a couple of orders that you all need to provide to the Court, which

1 remember, if you don't get me the orders signed right before your first
2 witnesses, you do present some challenges, right, with regards to
3 different things.

4 So would appreciate the outstanding order so that the Court
5 can review them. Make sure you do send them to the other side, first,
6 but provide them to the Court so we can get them signed, and then you
7 can get them filed, because there's some of those outstanding matters
8 that do need to get taken care of.

9 And then you all have one of those orders does address a
10 potential instruction to the jury, and I need to know -- that's not for right
11 now, because I appreciate you all may want to be focusing on your voir
12 dire, but remember, if you want something that's a pre-instruction
13 versus an instruction at the time of jury instructions at deliberations, the
14 Court; a) is going to need to know about; and b) enough time to review
15 it, if it's not agreed upon by the parties. If it's agreed upon by the
16 parties, obviously that's one thing, it makes it a lot quicker and easier,
17 but if it's not agreed upon by the parties, then we have to find time so
18 that we're not -- because you all have your witnesses and things like
19 that.

20 Oh, two other things, actually? One, do you all anticipate
21 that your potential clients and/or counsel may be coming in and out
22 during the course of the trial? Because the Court's more than glad to, if
23 you'd like me to, is I will tell the jurors, if you'd like, that during the
24 course of the trial, and I can paraphrase it different ways if you like, that
25 counsel and/or their clients may or may not be here during the entire

1 course of the trial, and that the jury should take no note of that, that they
2 can't hold it against people, one way or another, if they are, or are not
3 here during the entire course of the trial.

4 Sometimes people like me to say that, because respective
5 clients may have businesses to run, things to do, or for different reasons
6 may or may not be here, and sometimes you may have intervening
7 attorneys here, or not here, during the different courses of the trial. So
8 the Court's more than glad to say that, if counsel wishes me to say that.
9 If counsel does not wish me to say that, and specifically request that I
10 don't -- I'm glad not to say, it's really up to you all.

11 MR. DOYLE: We request that. And Dr. Rives will endeavor to
12 be here every day at start time, but with patients and whatnot. So if he
13 were to come and we've already started, would he come to the table, or
14 just sit in the back until a break?

15 THE COURT: Two prongs on that one. The answer is, it's up
16 to you, okay. From the Court's standpoint, as long as it's done in a, you
17 know, unobstructive manner, which I'm sure it's going to be, I've never
18 had an issue of that in the past. I mean, obviously, no one's going to
19 come in on the phone, okay, that wouldn't be appropriate for anyone,
20 but that's not specific to anything.

21 So people all the time come in and out and come sit at the
22 tables. You know, they do it in an appropriate quiet manner, it's
23 perfectly fine for the Court. The Court has no preference, it's really up to
24 what counsel and the client, how they design to do it, that's perfectly
25 fine. The same thing, getting up and down, okay? Like I said, once again

1 as long as a phone is ringing subject to emergency issues, which
2 nobody's told me that anybody has any emergency issues that they need
3 to keep a phone on, so that would be a caveat.

4 So does that answer yours?

5 MR. DOYLE: Yes, thank you.

6 THE COURT: Okay. Counsel for Plaintiff, any requests?

7 MR. LEAVITT: We agree that the Court makes that statement.

8 THE COURT: Okay, yes. And oftentimes the parties prefer
9 the Court just to do it in a very simple generic way, so that it doesn't
10 have a view of one side or the other, okay; so you do. Okay. So I'll
11 mention that. And I just mention it in kind of like just general remarks,
12 but I kind of go on with that, like that.

13 Okay. Is there anything else specific that the parties jointly
14 request that the Court say to prospective venire panel as a whole?

15 MR. DOYLE: Will be a statement of the case that the Court
16 has drafted?

17 THE COURT: The Court does not draft. As I mentioned, it is
18 in the rules, right, is if the parties sometimes give the Court, and if
19 you've got a few moments, if you all give a one-liner, or a two-liner that
20 you wanted the Court to read, the Court would have read it. I didn't
21 receive one from you all in this case, so if I had, I'd been glad to have
22 read it; I didn't get one.

23 If I don't get one then I will be -- usually I just would say it's a
24 civil case. If the parties which me to say something, you want to agree
25 on something right now, feel free to write it down, and I'll be glad to read

1 it.

2 [Counsel confer]

3 THE COURT: I mean, this Court usually would just make sure
4 that the jury knows it's a civil case, not a criminal case, because that's
5 obviously going to impact the burden of proof. But oftentimes parties
6 have something typed that they want me to do, so I'll read that if they
7 wish, or handwritten, as long as I can read it, I'll be glad to do that as
8 well.

9 [Counsel confer]

10 COURT RECORDER: I'm sorry, Your Honor, could we have
11 Ms. Hanegan spell her name?

12 MS. HANEGAN: Yes.

13 THE COURT: Well, okay. Let me make sure that counsel -- I
14 mean, let me ask counsel if he wishes that to happen, if you don't mind,
15 please.

16 Are you planning on introducing Ms. Hanegan?

17 MR. DOYLE: Yes.

18 THE COURT: Okay. Then you're going to need to state what
19 her name is, and titling and everything, so that clerk can write it down.

20 MR. DOYLE: Now, or --

21 COURT RECORDER: We just need the spelling of her last
22 name.

23 THE COURT: They need it for purposes of the recording, and
24 I mean, who's present. We need her name and her titling so that they
25 don't put it as an attorney, or anything like that, and the correct spelling

1 and everything, right.

2 MR. DOYLE: Her first name is A-M-Y, last name is
3 H-A-N-E-G-A-N, and I'm going to identify her as a consultant.

4 COURT RECORDER: Thank you.

5 [Counsel confer]

6 MR. LEAVITT: May I approach, Your Honor?

7 THE COURT: Sure. You know what I'm going to ask you to
8 do, I'm going to ask you to read it out loud --

9 MR. LEAVITT: Oh, sure.

10 THE COURT: -- what the parties have agreed upon, and so
11 then if you don't mind handing it to me, or wherever, and then just hand
12 it to me then afterwards.

13 Go ahead.

14 MR. LEAVITT: Oh, I'm sorry. "This is a medical malpractice
15 case, Plaintiffs, Titina and Patrick Farris are suing Defendant, Dr. Barry
16 Rives, and his corporation."

17 THE COURT: Okay. That's what the parties agreed upon?

18 MR. DOYLE: Yes.

19 MR. LEAVITT: Yes, Your Honor. There's not much, but I'll
20 rewrite it.

21 [Court reviews document]

22 THE COURT: Okay. Will you pronounce --

23 MR. DOYLE: If you wanted to add in the words "civil case"
24 somewhere, somehow.

25 THE COURT: It's whatever the parties have agreed on, the

1 Court will be glad to read it as is. The only question the Court was just --
2 I just wanted to make sure I get pronunciations right. And I will
3 apologize in advance that I may mispronounce people's name. And
4 you'll even hear me say that to the jury, just like people mispronounce
5 my name, all the time. My last name is Kishner, like wish, dish, fish,
6 kish, right. And you'll hear me even say this to the jury, and people all
7 time add an "R" in the middle of my name, or different other things.
8 Yeah.

9 So my apologies in advance. So the pronunciation, again, of
10 your client's first name, and I mispronounced your client's last name,
11 sometimes, incorrectly, so let me just try again to get it correct, if you
12 don't mind.

13 MR. LEAVITT: Yes. [Ta-tina].

14 THE COURT: [Ta-tina]. Okay. And it's?

15 MR. DOYLE: Rives. Phonetically it would be [Ree] perhaps.

16 THE COURT: Okay. [Ree-ves]. Okay. That's why, I just
17 want to make sure, okay. I will read that. I generally say, "this is a civil
18 case" because when -- we'll go over that just generic aspect, okay. And
19 when you're introducing, remember I will ask Plaintiff to introduce
20 counsel, and you have to introduce counsel, your client, any witnesses
21 that you anticipate calling, right.

22 And then I'll get Defense to introduce yourself, right, to your
23 client, and any witnesses you anticipate calling that have not otherwise
24 been named by Plaintiff, okay? Or do you wish to rename names that
25 Plaintiff has already stated? Some counsel for Defense like to restate the

1 names, and sometimes counsel don't. So I can say either way, I can just
2 leave it as, "Defense counsel introduce yourself, your client and any
3 witnesses?

4 MR. DOYLE: I'm okay just adding to any names they did not
5 name.

6 THE COURT: Sure.

7 [Pause]

8 MR. DOYLE: Your Honor, may I ask a question?

9 THE COURT: Of course you may.

10 MR. DOYLE: I think it would helpful, although -- unless
11 Plaintiffs are planning calling Dr. Ripplinger, I don't know that he'll -- I
12 don't think he'll be appearing as a witness, but his name I think will
13 feature prominently in this case; could I just mention him as a witness?

14 THE COURT: The way that it goes, is we do the witnesses
15 that will be called, because otherwise there could be confusion with the
16 jury, unless you both stipulate that you want something different.

17 The challenge with that, would be is it would be hard,
18 because the jury sometimes writes down the names of the witnesses,
19 and so we'd find it difficult in how they would distinguish who may be in
20 records and different things, and yeah, the issue, why wasn't this person
21 called, or not called, and someone potentially raising the issue down the
22 road.

23 So that's generally -- the aspect is, counsel, their clients and
24 the witnesses who are being called to testify, that's the way it is. And
25 then sometimes people like it, it didn't apply in this case, so I didn't say

1 it, is if people are going to be called via deposition, you know, then
2 sometimes the attorneys like to give that specific distinction at the
3 beginning, so that the jurors don't have an anticipation that someone is
4 going to be called "Y" and then all of a sudden, they hear deposition
5 testimony being read.

6 Since that wasn't the situation in this case I didn't even
7 mention that part of it, but counsel, for Plaintiff, you heard Defendant's
8 proposal, do you agree, or do you disagree?

9 MR. LEAVITT: If we're not calling them we don't agree to
10 read his name off at some point.

11 THE COURT: Okay. Since they don't agree, then I need to
12 keep it the way that would be proper and consistent, is that you just
13 name the witnesses that are going to be called. Because, remember,
14 you're asking those individuals to identify any of the people that will be
15 coming here to Court, not every single name and every single record.

16 And so you did that then -- if you had requested that back at
17 the time of the calendar call and you both had some kind of agreement,
18 and wished the Court to address, and brought me some reasoning that I
19 should be doing it that way, I would have been glad to address it.

20 But 10:00, while the jury is loading up the elevator, and I've
21 got an objection, then I have to go with the standard practice in the light
22 of not being presented anything, or any reason why I should do -- any
23 reason to do it differently in this case, because it can cause juror
24 confusion; if I did just one name particularly, thus it would highlight that
25 name.

1 I appreciate it, thanks so much. Any others? If not, then we'll
2 probably go off the record, and give you all a few moments to prepare
3 for your voir dire, and we'll check the marshal, and see the status.

4 Thank you so much.

5 [Recess at 9:59 a.m., recommencing at 10:06 a.m.]

6 THE COURT: Okay. We're back on the record, outside the
7 presence of the jury, in Case 739464. So, counsel, what you just got
8 handed by the marshal is the random list of the 70 jurors, so you should
9 have gotten -- you got two copies for each counsel table; is that right?

10 MR. LEAVITT: We did, Your Honor.

11 THE COURT: Okay. So just a friendly reminder, at the end of
12 voir dire we're going to need those returned to us so they can be
13 shredded, as you know, because it contains --

14 MR. LEAVITT: Correct.

15 THE COURT: -- confidential information of members of our
16 community. So after voir dire they need to be shredded. So as you
17 know, you can't make copies or anything like that. They can just be used
18 for purposes of voir dire.

19 Everybody understands that, right?

20 MR. DOYLE: Absolutely, Your Honor.

21 MR. LEAVITT: Absolutely, Your Honor.

22 THE COURT: Because under *Stephens Media*, of course, that
23 information can be taken into account, so I just want to make sure. Okay.
24 So you each have those. The jurors all out there, the marshal is getting
25 them lined up and they'll be coming in; everybody is ready for them; is

1 that correct?

2 MR. JONES: Yes.

3 MR. DOYLE: Yes, Your Honor.

4 THE COURT: So it's just a second, once he gets them lined
5 up. Take a quick moment, make sure, see if you know anyone on this
6 list. The Court did a real quick, and the Court, I'll double check again, but
7 the Court did not see -- okay.

8 And both of your lists should say "attorney list" in the upper
9 left-hand corner, correct? You didn't inadvertently get one that said,
10 "Judge's list," I just want to make sure. Yours all say, "attorney list?"
11 Correct, upper left-hand corner, third page in?

12 MR. JONES: Yes.

13 THE COURT: It should say " random list," on the first page. It
14 should say "attorney list" correct.

15 MR. DOYLE: Your Honor, I apologize, where is on the page?

16 THE COURT: It just says, "random list." It says, "random list."

17 MR. JONES: It does.

18 THE COURT: It doesn't say Judge's list on the upper --

19 MR. JONES: It says, "random list."

20 THE COURT: -- left-hand corner. That was my only question,
21 I just wanted to make sure. Okay, no worries. It doesn't say "random."
22 Sometimes inadvertently they may make an extra copy of the Judge's
23 list, I just wanted to make sure no one got that inadvertently, no worries.

24 Does anyone recognize any names that the Court should
25 address before the prospective jurors come in?

1 [Counsel confer]

2 MR. DOYLE: We don't recognize anyone, Your Honor.

3 THE COURT: Yeah. It's just if there's anybody that you want
4 me to address before the prospective jurors come in, I'm more than glad
5 to do so, and if there's not we'll just wait and see.

6 MR. DOYLE: I did have a couple of housekeeping, if you --

7 THE COURT: You know the jurors are right outside. He's
8 going to bring them in two seconds.

9 MR. DOYLE: Oh, I misunderstood.

10 THE COURT: He's just lining up the 70 jurors, they're all up
11 here, he just --

12 MR. DOYLE: No worries.

13 THE COURT: Do you need -- is it for purposes of voir dire, or
14 anything that you want taken care of right now, I'd be glad to do so?

15 MR. DOYLE: We can take it up later.

16 THE COURT: Okay. So it's not voir dire?

17 MR. DOYLE: Correct.

18 THE COURT: Okay. No worries. I just thought you probably
19 want to get your voir dire going, rather than having the jurors wait
20 outside. The marshal is just lining up the 70, it's just because we got so
21 many, you can appreciate, getting the first 20, so he can get them
22 brought up and brought into there, and the other 50 brought nicely into
23 the gallery for you.

24 [Pause]

25 [Court and Clerk confer]

1 THE COURT: Okay. I appreciate it, thank you. So jury
2 services that there was no accommodations, to our knowledge, and the
3 marshal didn't indicate any either, so unless someone mentions it when
4 they come in, that's the current knowledge available to us.

5 I will also give you a friendly reminder that some of you may
6 not be fully aware of, the acoustics from counsel table's microphones to
7 Court is very good. So remember, when you're talking among
8 yourselves, the acoustics if very good. And also remember these are
9 voice activated JAVS microphones, and so when you talk the JAVS
10 system heads your way. So that's your friendly reminder.

11 MR. DOYLE: There is a mute button.

12 THE COURT: There is --

13 MR. DOYLE: It goes green apparently.

14 THE COURT: It sometimes works. Just your friendly
15 reminder, okay. So --

16 [Pause]

17 THE COURT: We are ready if they are.

18 THE MARSHAL: Yes, Your Honor.

19 THE COURT: I do appreciate it.

20 THE MARSHAL: We'll be right in, in a minute.

21 THE COURT: Thank you.

22 [Pause]

23 THE MARSHAL: Jurors are present.

24 [Prospective Jurors in at 10:15 a.m.]

25 [Within the presence of the prospective jurors]

1 THE MARSHAL: Are there any gaps?

2 THE COURT: There shouldn't be any gaps, every chair
3 should be filled.

4 MR. DOYLE: I think there's a gap here.

5 THE COURT: I think there's a gap there, yeah.

6 Folks, please make sure that there's no gaps. You should fill
7 in every seat. We want to make sure each and every one of you has a
8 nice comfy seat here in the court room. Some more comfier than others.

9 [Pause]

10 THE COURT: Marshal, are we short a couple of seats, do we
11 maybe need to --

12 THE MARSHAL: Yes, Your Honor.

13 THE COURT: Okay.

14 THE MARSHAL: I am at capacity. There was one individual
15 that did not answer, 0449.

16 THE COURT: Okay. Do we have a Danny Magbual, 0449, at
17 all in the courtroom? Oh, that's not good. Okay. Just a second. Okay.
18 So, Marshal what do we have? Do we have 69 of 70?

19 THE MARSHAL: 69.

20 THE COURT: 69 of 70 present, okay. Thank you so much.

21 THE CLERK: I think it's badge 499, not 449.

22 THE COURT: Sorry, 499. Thank you so much.

23 Okay. So can I have counsel approach for a brief a moment?

24 And Madam Court Recorder can you turn on some white noise for a
25 quick second. Can I have -- at least have one from each side, please, just

1 one quick second?

2 [Sidebar at 10:19 a.m., ending at 10:21 a.m., not transcribed]

3 THE COURT: It looks like we had three overflow people who
4 were just here in the courtroom beforehand. Those three-overflow
5 people can come sit at that back table. All three of those overflow
6 people, if they want to come sit at this; we have three seats here at a
7 back table, okay. So we have some more seats in the gallery, if any of
8 those three-overflow people wish to sit in the back row you can do so.
9 Or all three can, if you wish.

10 And I spoke to counsel. By agreement of counsel all three of
11 the overflow people can sit back there; is that correct?

12 MR. DOYLE: Yes.

13 MR. JONES': Yes, Your Honor.

14 THE COURT: Okay. Marshal, would you like us all to sit?

15 THE MARSHAL: Yes, please be seated folks.

16 THE COURT: I do appreciate it. Thank you so very much
17 Okay. Well, first thing, good morning.

18 GROUP RESPONSE: Good morning, Your Honor.

19 THE COURT: Come on, you all can be do better than that,
20 this is Monday morning in Department 31. Good morning.

21 GROUP RESPONSE: Good morning.

22 THE COURT: I can get started until I have everyone smiling
23 with a good morning. So very easy, welcome to jury duty in Department
24 31. The first question I need to ask, can everyone hear me in the back?

25 GROUP RESPONSE: Yes.

1 THE COURT: Good. Back over here?

2 GROUP RESPONSE: Yes.

3 THE COURT: Okay. Good. You can hear me over here --

4 GROUP RESPONSE: Yes.

5 THE COURT: -- right? There you go. And this plays true, I've
6 been on the bench about ten years and I have so far found out that the
7 only people who usually can't hear me, and for those of you who are
8 parents you know about what I'm going to say, right, are my kids when
9 I've asked them to clean their room or do something, right? Otherwise
10 my voice seems to work well, right? Okay. So that was supposed to be
11 funny, to start the morning out.

12 So let me introduce myself, although, guess what, it's
13 mid-October and I've been talking a lot. My name is Judge Joanna
14 Kishner, hopefully no one's played a practical joke on me, because I
15 haven't looked today to see that my name tag really is there; right, it is
16 mine, it's not somebody else's?

17 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

18 THE COURT: Good, okay.

19 So right off the bat, Judge Joanna Kishner, wish, dish, fish,
20 kish, and the reason why I'm saying that, is because in advance, in just a
21 moment, when the clerk does a roll call of the 69 of you, not the 70 of
22 you, which unfortunately, that means a challenge for the person who
23 may be getting a visit from a marshal, at his or her place of work, home
24 or somewhere else, we're going to see about, unfortunately.

25 But we may pronounce your names incorrectly, so in

1 advance I apologize okay, on my behalf of my wonderful team. And the
2 reason why I told what my last is, because guess what people do? I think
3 my last name, you pronounce every letter in my name, right? First
4 name, Joanna, every letter is pronounced, last name Kishner, every
5 letter is pronounced.

6 You would be surprised the number of people who try and
7 make my last name be Kirshner, like Don Kirshner's rock concert, for
8 those of you over a certain vintage would appreciate that. I don't get the
9 royalties; I don't have the last name. I'm also not related to Hare
10 Krishna, don't pronounce it that way either. So, you know, but you can
11 appreciate it, I'm really trying to give you that as a couple of examples.

12 So when we do the roll call, or throughout this case with
13 either myself, or one member of my team, or one of the attorneys may
14 mispronounce somebody's name, do not take it personally, we're doing
15 our best, but a lot of names get mispronounced, so our apologies in
16 advance.

17 So let's cut to the chase of it, we're going to do, like I said,
18 the roll call in the moment, but I'll give you just a couple of real brief
19 introductions. It is Department 31, you're in the right place, if you think
20 you're here in Department 31. It's a really easy department to
21 remember. You should remember it for a couple of different reasons,
22 right, for those of you who like ice cream, it's better off when I say this in
23 the summer, when it's hot outside, right? Baskin Robins, 31 flavors.
24 Okay. Guess what, sorry I'm the only judge of choice, you don't get 30
25 other choices, okay.

1 Second thing, it's October, right? What comes at the end of
2 this month, Nevada Day. I know you all were thinking Halloween, but it's
3 Nevada Day, right? Nevada was admitted to the Union October 31st,
4 1864, our wonderful State. So I'm sure you all remember that, you're in
5 Department 31, it's no coincidence. Yes, it's also Halloween, but, okay.

6 So what are you thinking? How long do I have an
7 opportunity to do my service to our country? I presume we always are
8 very fortunate to have some veterans in our prospective jury panel. Do
9 we have some veterans, or families of veterans? Thank you, thank you,
10 thank you for your service, or for the service of your family members,
11 for many people in our community, however, who have not had the
12 opportunity to serve our country through military service, or family
13 military service.

14 So how do you do your civic duty, a couple of different ways,
15 right? You exercise your right to vote, and you serve on a jury, okay.
16 Those are some of our foundations of our democracy. Without it we
17 wouldn't have our system of government, we would not be able to do
18 justice here in the courthouse, flags all around us, without each and
19 every one of you willing to give of your time here as prospective jurors,
20 and yes, we have 69 of you, right, we asked for 70, we have 69 of you.

21 But, yes, 10 of you either by the end of today or tomorrow,
22 who will be staying with us for this trial. Without each and every one of
23 you willing to serve here on jury duty, we could not have our system of
24 democracy, we could not have justice done, we could not go forward
25 with our trial. So a very big thank you in advance, for showing up here

1 today, and for your willingness to be here to serve your civic duty and be
2 prospective jurors, and for those of you will remain with us, those will be
3 our jurors; so thank you so very much.

4 It is so very, very important, and you cannot appreciate it
5 how important it is to our community to have individuals, such as
6 yourself, willing to be here and do your duty for our democracy, so thank
7 you. So before I go further, let me have our wonderful clerk, she's going
8 to do a roll call, what we're going to need is we need some affirmative
9 response that you are here, okay. So here, present, something to
10 indicate you're here. We can't have a show of a hand, just to let you
11 know, and you'll find this out throughout the voir dire process, is that
12 we're going to need verbal responses.

13 And the reason, of course, we need a verbal response, is
14 because everything that happens during the course of this case, okay,
15 from the voir dire process on, gets recorded, both audio and visually,
16 and so we need to have that verbal response.

17 So, Madam Clerk, I really would appreciate it, if you don't
18 mind doing a roll call of our wonderful 69 prospective jurors. Thank you.

19 THE CLERK: Yes, Your Honor.

20 Christopher Diaz?

21 PROSPECTIVE JUROR 357: Here.

22 THE CLERK: Kyle Root?

23 PROSPECTIVE JUROR 361: Here.

24 THE CLERK: Felix Barrios?

25 PROSPECTIVE JUROR 366: Here.

1 THE CLERK: Ryan Gliponeo?
2 PROSPECTIVE JUROR 368: Here.
3 THE CLERK: Terrence Harker?
4 PROSPECTIVE JUROR 370: I'm here.
5 THE CLERK: Thank you. Renee Williams-Dloach?
6 PROSPECTIVE JUROR 382: Here.
7 THE CLERK: Ken Beck?
8 PROSPECTIVE JUROR 386: Here.
9 THE CLERK: Francisco Hernandez?
10 PROSPECTIVE JUROR 387: Here.
11 THE CLERK: Skyler Inscore?
12 PROSPECTIVE JUROR 388: Here.
13 THE CLERK: Anett Liddell?
14 PROSPECTIVE JUROR 391: Here.
15 THE CLERK: Salvador Diaz?
16 PROSPECTIVE JUROR 404: Here.
17 THE CLERK: Troy Hocking?
18 PROSPECTIVE JUROR 412: Here.
19 THE CLERK: Belinda Hightower?
20 PROSPECTIVE JUROR 417: Here.
21 THE CLERK: Dareal Thomas?
22 PROSPECTIVE JUROR 418. Here.
23 THE CLERK: La Kisha Hilley?
24 PROSPECTIVE JUROR 419: Here.
25 THE CLERK: Yvonne Baker?

1 PROSPECTIVE JUROR 424: Here.
2 THE CLERK: Rex Dalton?
3 PROSPECTIVE JUROR 425: Here
4 THE CLERK: Cindy Peacock?
5 PROSPECTIVE JUROR 426: Here.
6 THE CLERK: Roger Johnson?
7 PROSPECTIVE JUROR 441 : Here.
8 THE CLERK: Tesfaye Andei?
9 PROSPECTIVE JUROR 443: Here.
10 THE CLERK: Ashley Fossile?
11 PROSPECTIVE JUROR 444 : Here.
12 THE CLERK: Stacey Costa?
13 PROSPECTIVE JUROR 448: Here.
14 THE CLERK: Tara Collins?
15 PROSPECTIVE JUROR 450: Here.
16 THE CLERK: Tommy Daniell?
17 PROSPECTIVE JUROR 451: Here.
18 THE CLERK: Gary Phasouk?
19 PROSPECTIVE JUROR 452: Here.
20 THE CLERK: Keondra Crenshaw?
21 PROSPECTIVE JUROR 455: Here.
22 THE CLERK: Edna Ates?
23 PROSPECTIVE JUROR 456: Here.
24 THE CLERK: Andrew Wilcox?
25 PROSPECTIVE JUROR 460: Here.

1 THE CLERK: Elizabeth Holt Maddox?
2 PROSPECTIVE JUROR 463: Here.
3 THE CLERK: Stephen Robbins?
4 PROSPECTIVE JUROR 465: Here.
5 THE CLERK: Isabel Espinoza?
6 PROSPECTIVE JUROR 466: Here.
7 THE CLERK: Sheleathaian Ray Freeney?
8 PROSPECTIVE JUROR 468: Here.
9 THE CLERK: Monae Balitine?
10 PROSPECTIVE JUROR 470: Here.
11 THE CLERK: Jeffery Soriano?
12 PROSPECTIVE JUROR 473: Here.
13 THE CLERK: Jason Montes?
14 PROSPECTIVE JUROR 474: Here.
15 THE CLERK: Larry Miller?
16 PROSPECTIVE JUROR 480: Here.
17 THE CLERK: Tiara Fajardo?
18 PROSPECTIVE JUROR 482: Here.
19 THE CLERK: Philip Halm?
20 PROSPECTIVE JUROR 483: Here.
21 THE CLERK: David Mann?
22 PROSPECTIVE JUROR 485: Here.
23 THE CLERK: Jennifer Autry?
24 PROSPECTIVE JUROR 486: Here.
25 THE CLERK: Michael Stanley?

1 PROSPECTIVE JUROR 494: Here.
2 THE CLERK: Angela Powell?
3 PROSPECTIVE JUROR 497: Here.
4 THE CLERK: Darielle-Joy Rios?
5 PROSPECTIVE JUROR 506: Here.
6 THE CLERK: Maria Velez?
7 PROSPECTIVE JUROR 514: Here.
8 THE CLERK: Amanda Donathan?
9 PROSPECTIVE JUROR 520: Here.
10 THE CLERK: Marian Picorro?
11 PROSPECTIVE JUROR 523: Here.
12 THE CLERK: Michael Bland?
13 PROSPECTIVE JUROR 525: Here.
14 THE CLERK: Krystyn Hernandez Saria?
15 PROSPECTIVE JUROR 526: Here.
16 THE CLERK: Marlys Anderson?
17 PROSPECTIVE JUROR 528: Here.
18 THE CLERK: John Taylor?
19 PROSPECTIVE JUROR 529: Here.
20 THE CLERK: Marcelo Spahn?
21 PROSPECTIVE JUROR 533: Here.
22 THE CLERK: America Liao?
23 PROSPECTIVE JUROR 535: Here.
24 THE CLERK: Shayna Lee?
25 PROSPECTIVE JUROR 539: Here.

1 THE CLERK: Linda Clark?
2 PROSPECTIVE JUROR 540: Here.
3 THE CLERK: Kellie Achzet?
4 PROSPECTIVE JUROR 543: Here.
5 THE CLERK: Daniel Thompson?
6 PROSPECTIVE JUROR 552: Here.
7 THE CLERK: Jennifer Vazquez?
8 PROSPECTIVE JUROR 553: Here.
9 THE CLERK: Jenee Bishop?
10 PROSPECTIVE JUROR 563: Here.
11 THE CLERK: Josie Gonzalez?
12 PROSPECTIVE JUROR 567: Here.
13 THE CLERK: Lynn Barnes?
14 PROSPECTIVE JUROR 568: Here.
15 THE CLERK: Vicki Moers?
16 PROSPECTIVE JUROR 571: Here.
17 THE CLERK: Verna Stringer?
18 PROSPECTIVE JUROR 575: Here.
19 THE CLERK: Nancy Torio?
20 PROSPECTIVE JUROR 580: Here.
21 THE CLERK: Rhonda Thomas?
22 PROSPECTIVE JUROR 581: Here.
23 THE CLERK: Cinnamon Vaughan?
24 PROSPECTIVE JUROR 582? Here.
25 THE CLERK: Selene Perez?

1 PROSPECTIVE JUROR 583: Here.

2 THE CLERK: Jennifer Zasloff?

3 PROSPECTIVE JUROR 584: Here.

4 THE CLERK: Guadalupe Fuentez?

5 PROSPECTIVE JUROR 585: Here.

6 THE CLERK: And Bruce Morgan?

7 PROSPECTIVE JUROR 588: Here.

8 THE CLERK: Thank you.

9 THE COURT: Okay. Well, congratulations, 69 of you at least
10 made it from jury services up here, so thank you. No one got lost in
11 elevators, which is great.

12 Okay. So first question most people want to know when they
13 come into a courtroom, right, is what type of case is it, and how long will
14 I have the opportunity to serve my civic duty? But before I get there,
15 what Madam Clerk is doing, is why she's still standing, is because she
16 needs to swear you in a prospective jurors.

17 Sorry, Madam Clerk, I took one step ahead. Go ahead
18 please.

19 THE CLERK: Will all the jurors please stand and please raise
20 your right hands?

21 [The prospective jurors was sworn]

22 THE CLERK: Thank you. Please be seated.

23 THE COURT: You can tell how much I love what I do,
24 because I get so anxious, I want to get going on the next step, because
25 usually people want to know, right, how long and what type of case. So

1 let me get to that.

2 Well, I mentioned the true Nevada Day, right, October 31st,
3 so let me tell you. I mentioned Department 31, Judge Joanna Kishner.
4 I've got a docket, one of my specialty dockets is construction defect. My
5 construction defect cases, you know, you can appreciate those are those
6 nice long cases that go anywhere between 6 months and 2 years, I hate
7 to disappoint you, this is not one of my construction defect cases.

8 So for those of you who were hoping to be here in
9 Department 31 for the next 6 months to 2 years, disappointed, I know,
10 but this is not one of my 6-month, 2-year cases. Although I do have one
11 starting up in a couple of months. We'd love to see those of you who
12 may not be able to serve on this case, we'd love to have you back on one
13 of those. Those are hard to get some jurors, okay, so keep that in mind,
14 because we're going to go over hardship.

15 Not right now, we're going to go over hardship in a little bit
16 of time. But do remember, if you're not on this case, we'd love to see
17 you back on other cases, right, your name goes back into that nice
18 grouping where you can go into it, for different time periods, depending
19 on different issues.

20 So how long is this case going to be. I've spoken with the
21 attorneys, best estimate, okay, estimate being what it is, best estimate is
22 it's approximately two-ish weeks, October 29th is, but we are off on
23 October 25th, which is the State holiday Nevada Day, the 25th being
24 State holiday, Nevada Day, the State Courts are closed, and so that's
25 why I say two-ish weeks, and that's why we say the 29th-ish, okay, for

1 going to deliberations. So that's best guess, best estimate of time.

2 Okay. What type of case is it? This is a civil case, so it's not
3 a criminal case. The parties have agreed that the Court would say that
4 this is the type of case it is: This is a medical malpractice case, Plaintiffs
5 Titina and Patrick Farris, are suing Defendant, Dr. Barry Rives and his
6 corporation. So that gives you the snapshot, the nature of the case, and
7 the time of the case.

8 You'll keep that in mind because in a little bit we're going to
9 go over what hardship is, and opportunities with regards to what
10 hardship is, and what hardship isn't. But I will tell you right now, get it
11 out of your mind, if any of you have had friends, or have read some of
12 those blogs, which I know no one who had ever come to this
13 Department would have ever done this, but I've heard rumors, that
14 sometimes people read blogs, about, you know, things that they think
15 they can say to maybe not serve on jury duty.

16 But you can appreciate, I've heard it all, good luck; judges
17 read those too, right. So in any event, we'll get to hardship in a little bit.
18 But you're probably wondering, why are there 70 of you, when the
19 Judge of just said that 10 of you would be remaining with us? Well,
20 here's what you can appreciate.

21 The voir dire process is somewhat of a long process, voir
22 dire, and for those of you who speak French, do realize I'm giving what is
23 called a "very rough" translation. It means roughly "to speak the truth."
24 During the voir dire process we'll be asking some general questions, and
25 a series of questions, from both sides' counsel; have an opportunity to

1 ask you a series of questions, okay.

2 Those series of questions are going to go into a wide variety
3 of different areas to ensure that we have a fair and impartial jury to both
4 sides, right? Everyone starts upon an even playing ground, and people
5 will listen to all the evidence before making a well-reasoned
6 determination, based on the evidence presented to that fair and impartial
7 jury, okay.

8 So what we don't want to do, is we don't want to have to
9 keep starting and stopping, and going back and asking for new jurors,
10 right? So we ask for a larger number of individuals that will be staying
11 with, because we find out that sometimes people may end up knowing
12 some of the witnesses, right, or different things that may happen in
13 people's lives, and so that's the reason why we have 69 people right
14 here, and we're going to get down to 10. Because we don't want to take
15 more of your time than we really have to.

16 Everybody appreciates that no matter what part of our
17 community you are, you have important things going on in your lives,
18 okay. And that's one of the things that we're going to talk about in a few
19 moments. So do appreciate we are trying to take the least amount of
20 time away from your very busy lives, and so that's why we have more
21 of you here than we need initially.

22 One other thing you're going to notice, is you're what we call
23 "the box," okay? Because you can see, most of you are inside a box and
24 you're right outside, okay. You're the what's called the left gallery,
25 because you're to my left hand. You're the right gallery, because you're

1 to my right hand. There will be certain questions that will be asked for
2 efficiency purposes, to the box directly, because instead of asking all of
3 you, right, we'll ask some questions when we get to generalized
4 questions and some of the attorney questions we ask to the box.

5 But we ask everyone in the gallery, please listen attentively,
6 because when you get into the box, you'll be asked likely, many of those
7 same questions, right. So to be efficient we're not going to repeat them
8 all and have everybody answer them upfront, just as you get into the
9 box, okay.

10 So here's a question that I ask, and you've got very
11 experienced counsel, so I already know the answer, but I still need to ask
12 it? Counsel, are you ready to proceed, Plaintiffs' counsel?

13 MR. JONES': Yes, Your Honor.

14 THE COURT: Defense counsel?

15 MR. DOYLE: Yes, Your Honor.

16 THE COURT: Okay. So I've introduced myself, right, but I
17 haven't introduced the rest of my wonderful team. You've already met a
18 phenomenal marshal here, in the 8th Judicial District. Whether it's
19 wonderful marshal who you've already met, or it's another marshal that
20 helps us in our department, my regular marshal, is a marshal named
21 Jimmy Nieto [phonetic]. The marshal is going to be the only one who
22 can talk to prospective jurors, or those individuals who will be staying
23 with us.

24 And what I mean by that, and he can't talk to you
25 substantively about the case, but he can tell you about getting to the

1 Department on time, when we take breaks, et cetera and we go out -- I
2 don't go with you of course, but when you go out to lunch, what time
3 you need to back, et cetera, okay. But the rest of us cannot speak with
4 you, okay. So I'm going to introduce other individuals, and in a moment,
5 counsel are going to introduce themselves, and their potential witnesses
6 and their clients, okay.

7 But we can't speak to you, so let me get this out of the way
8 right now, we are not being rude. If we see you in the hallway, if we see
9 you in the elevator, if we take a different elevator, because we see
10 people with badges that say prospective jurors, or jurors, none of us are
11 being rude. What we are doing is we are ensuring that this case is fully
12 fair and impartial, okay.

13 So by doing so, by not talking with you, that's the way we do
14 it, because we wouldn't someone to say, hey, gosh that person is no
15 nice, maybe I'll lean towards the one side or another, right. So in order
16 to maintain everyone being fully fair and impartial is that no one can talk
17 with you throughout the entire case. They can only talk to you here in
18 the courtroom and provide obviously the voir dire -- ask you voir dire
19 questions, they can talk to you once the trial starts with regards to the
20 substantive evidence, right, but they can't talk to you outside.

21 And that also includes if somebody sees you outside in a
22 grocery store, right. So if they go shopping in the produce aisle because
23 they see you in the frozen foods, don't take offense, okay. So everybody
24 understands that, right? Yes?

25 GROUP RESPONSE: Yes, Your Honor.

1 THE COURT: So the marshal, so I've got a wonderful
2 marshal. I told you I've got everything being recorded audio and
3 visually, right? So that is wonderful Sandy Harrell, our Court Recorder.
4 Our wonderful Court Clerk, Susan Botzenhart, she is the one who gave
5 you the oath and did the roll call. She'll be doing a lot of different things,
6 she's absolutely fantastic.

7 I've already introduced me; you know what my role is. I've
8 got a wonderful extern, Krista [phonetic] here, she's currently still at
9 Boyd Law School. So she comes in, she has an opportunity to see what
10 trials are like and do some work here in the Department. My Law Clerk,
11 Natise Loch [phonetic] may also come in and watch parts of the trial,
12 because we try and give them a substantive experience, as well as
13 getting to see what trial is like; you may see them come in as well.

14 So that's kind of our team, and the reason why I ask that
15 question is not only because I'm so very lucky to work with each and
16 every one of these individuals, but I want to make sure that none of you
17 know any of us to such a substantive nature that it could impact your
18 ability to be fair and impartial jurors.

19 Sorry, I will tell you, I was born and raised here in Clark
20 County, and if one of you went to preschool with me and I don't
21 recognize you so much later in life, I do apologize in advance, but I just
22 want to make sure, does anybody recognize or know any of us to such
23 an extent it would impact your ability to be fair and impartial jurors, if so,
24 I ask you to raise your hand. No, okay.

25 So let me get to kind of some of the more direct things I need

1 to do. First off, qualifications of a juror. This issue got taken care of in
2 jury services, I'm sure, but from a practical standpoint I also go back and
3 make sure about this. There are two qualifications to be a juror, right?
4 One is, you must be a citizen of the United States. And it's perfectly fine
5 if you became a citizen the day before you got your juror summons,
6 okay, in essence, that's kind of practical.

7 And when I say this, we actually had a juror a couple of years
8 ago, it's been about four or five years ago, who literally got his juror
9 summons, he said about two weeks after went through the swearing in
10 ceremony. An so I always relate to his story, is he sat through our
11 entire jury and I got to speak to him after they already came back and
12 our verdict and everything was in, I mean his story about how proud he
13 was to serve on that jury was amazing, because his former country, of
14 course, did not have our system of democracy, and didn't have juries,
15 and so it was an amazing story.

16 But please make sure that everyone is a citizen of the United
17 States. So I ask first in the box, if anyone is not a citizen, please raise
18 your hand? I'm not seeing any hands raised in the box. Left gallery,
19 anybody not a citizen, please raise your hand? I'm not seeing any hands
20 raised. Right gallery? No hands raised.

21 Okay. Second qualification. The second qualification is if
22 you have had a felony conviction your voting rights must have been
23 reinstated. So if you have a felony conviction and your voting rights
24 were not reinstated, then I would need you to raise your hand, okay. So
25 that means if you've had a felony conviction, not just charged with

1 something, that means a true felony conviction, and your voting rights
2 were not reinstated, then that means that would be very unusual for that
3 to have happened, because jury services checks all of those things. So it
4 would have to be a felony conviction, you would not have to have
5 sealing records happen, because of sealing records, that would be taken
6 care of in that regard. Okay. So if records have been sealed, if a felony
7 conviction has been reduced, that would have also taken care of the
8 issue, or if it's been a felony conviction and your voting rights have been
9 reinstated, then you're perfectly fine with jury service.

10 It would only be that unique instance in which you have a
11 felony conviction, which has never been reduced, never been subject to
12 sealing records, and not have had your voting rights reinstated, that
13 would preclude you from jury service? And normally those all get taken
14 care of down in jury services, because that initial questionnaire you fill
15 out, before you even get anywhere near a courtroom; a) they double
16 check all of that, but if that is the situation we can run that through jury
17 services, specifically and they can run it through real quickly, to get that
18 taken care of.

19 If anyone thinks that they fall into that category where
20 they've had an actual felony conviction and have never had their records
21 sealed, those felony convictions have not been dropped off because of
22 age or any other aspect, right, and have not been reduced in any
23 manner, and have not had their voting rights reinstated, then I would
24 need you to raise your hand.

25 And we'll go first to the box. Okay. Get some badges

1 numbers first. Marshal, can you hand the microphone, please.

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: Sir, I'm going to need the last three digits of
4 your badge --

5 PROSPECTIVE JUROR 412: Yeah.

6 THE COURT: -- number, and your last name, please?

7 PROSPECTIVE JUROR 412: 412.

8 THE COURT: Your last name, sir?

9 PROSPECTIVE JUROR 412: Hocking, H-O-C-K-I-N-G.

10 THE COURT: Okay. And are you stating that you've had a
11 felony conviction?

12 PROSPECTIVE JUROR 412: Yes, sir -- yes, ma'am.

13 THE COURT: How long ago?

14 PROSPECTIVE JUROR 412: 1984.

15 THE COURT: And you've never voted since 1984?

16 PROSPECTIVE JUROR 412: No, ma'am.

17 THE COURT: Was it here in Nevada, that felony conviction?

18 PROSPECTIVE JUROR 412: Yes.

19 THE COURT: And you didn't report it when you filled out
20 your initial paperwork, when you got the jury summons.

21 PROSPECTIVE JUROR 412: When I first got the summons
22 four years ago --

23 THE COURT: No. The one that you got for this case? You
24 would have gotten --

25 PROSPECTIVE JUROR 412: I called in, and they said I was

1 eligible.

2 THE COURT: Well, that's why -- I'd be very surprised,
3 because they double check all that. We're going to run that through jury
4 services, okay. There's another hand.

5 Please pass it down. Go ahead, please.

6 PROSPECTIVE JUROR 419: Badge number. 419.

7 THE COURT: Yes.

8 PROSPECTIVE JUROR 419: Last name Hilley, H-I-L-L-E-Y.

9 THE COURT: Felony conviction?

10 PROSPECTIVE JUROR 419: Yes, ma'am.

11 THE COURT: What year?

12 PROSPECTIVE JUROR 419: 2011.

13 THE COURT: State of Nevada?

14 PROSPECTIVE JUROR 419: No, ma'am.

15 THE COURT: What State?

16 PROSPECTIVE JUROR 419: California.

17 THE COURT: And it wasn't subject to sealing records, or --

18 PROSPECTIVE JUROR 419: No, no. I attempted to, but it was
19 denied. So I don't know, like at the time I attempted to have it reduced
20 down to a misdemeanor, and it was denied.

21 THE COURT: And you've not voted since that time?

22 PROSPECTIVE JUROR 419: I did, but I was on parole, so I
23 don't think it counted.

24 THE COURT: What, you voted; you voted since 2011? You
25 voted in any election, in any State, any municipal --

1 PROSPECTIVE JUROR 419: Yes, ma'am.

2 THE COURT: -- any city elect, anything, and you have voted?

3 PROSPECTIVE JUROR 419: Yes, ma'am. Uh-huh.

4 THE COURT: Then you're fine.

5 PROSPECTIVE JUROR 419: Okay.

6 THE COURT: Okay. Anybody else in the box? No.

7 Left gallery? Any hands? I did not see any hands raised in
8 the left gallery. Right, gallery? Did not see any hands raised. Okay. I do
9 appreciate it. At this juncture, Madam Court recorder, would you mind
10 turning on some white noise, I'm going to ask counsel to please
11 approach.

12 [Sidebar at 10:45 a.m., ending at 10:46 a.m., not transcribed]

13 THE COURT: Thank you so much. Okay. Moving on.

14 So next issue is hardship. Now let me explain what hardship
15 is. Fully appreciative that each and every member of our community, it's
16 very important what you do, no matter what you do to our community.
17 Whether you're employed, whether you're retired, whether you work
18 with your children, whether you work with your family, whether you do
19 volunteer work, whether you have a particular job, whether you're self-
20 employed, et cetera, no matter what you do you participate in our
21 community, and each and every one of us are equally the same in our
22 participation.

23 So what are hardships? Taking that into account, while the
24 Court and everybody else is fully empathetic with the idea that people
25 have things going on with their lives, there are certain things that

1 generally are not hardships, when you have a case that is so short, as
2 this case is short. And when I take "short" I mean to the relative nature
3 of other cases going on here in the courthouse. This is a relatively short
4 case, it's a standard case. It's not a super, super short case, but it's
5 relative a standard case, okay, as far as the time period.

6 So a couple of things that sometimes people bring up that
7 generally are not hardship. I fully appreciate, and I know the unfortunate
8 circumstance, but sometimes there's only one sole breadwinner in a
9 family. Unfortunately, that generally is not a hardship, okay. The fact
10 that people are self-employed, generally is not a hardship, because
11 balancing with the idea of doing your jury duty service.

12 Also, sometimes people are taking care of children. Fully
13 appreciate the balance between being a working parent, okay. As I
14 mentioned earlier, although -- that's interesting, that's not good,
15 someone took my family picture off my bench, that's not good; that's
16 really not good. But, okay, well, I'm a working parent, I fully appreciate
17 that balance. It's a challenge, it's a challenge that people do okay, so
18 jury service is usually doubling up as working parent usually is not a
19 hardship, as well.

20 Another one that people sometimes say is, I may be
21 unemployed, I'm looking for work. I fully appreciate that balance, but
22 remember, we're not going to be here every day, a full eight hours.
23 Some days we don't start until like 11:00. Okay. So doing balance and
24 different things like that.

25 Sometimes people say, well, it's just maybe I have to move

1 around a little bit. We'll be glad, we accommodate, okay. If people have
2 accommodations, we're glad to accommodate your needs, State, Federal
3 law, everything. We'll be glad to accommodate you. We want to ensure
4 that you have an opportunity to do your civic duty, okay. And we'll make
5 sure that happens for each and every one of you.

6 Now there's one thing that I heard, was basically really my,
7 gosh, second, third trial, when I first became a judge about a decade ago,
8 okay. This also is not a hardship, but take a second, if you look to your
9 left, the person next to you on your left, the person next to you on your
10 right. Does anyone think that you're more important than the person
11 sitting to your left or right? If so, please stand up. Okay.

12 The reason why I do that now in every trial, literally, it was
13 like my second or third trial when I came on the bench, I had someone
14 stand up and tell, in front of anything, that they felt that they were too
15 important for jury duty service. So if you are, feel that you are more
16 important than the members of the community sitting next to you, one
17 way or another, feel free to stand up and explain. No. Anyone in the
18 box? No. Left gallery? No. Right gallery? No.

19 Okay. Because that was -- I was a newer judge then, I hadn't
20 heard that one, I haven't heard it since, it's because honestly, you know,
21 we're all wonderful members of our community. And we've had
22 everyone in every type of profession, you know, everything, to do that,
23 so.

24 I'll kind of give you an idea of general things that aren't
25 hardship. So taking that in mind, I'm going to ask first the box, that

1 sometimes there is a hardship. Like sometimes somebody has a prepaid
2 plane ticket, and I have to give you a distinction. This of course would
3 never happen, in any prospective juror that ever would come in this
4 department, but once again I hear about these rumors, so I'm going to
5 mention it. I heard once that somebody bought a refundable Southwest
6 ticket while they downstairs in jury services, and then wanted to show it
7 to the Court. You can appreciate that one wouldn't be, okay. We do look
8 at the dates of when the tickets are bought, okay.

9 If it comes after the date you likely got your summons and
10 it's refundable, you can appreciate that presents -- the Court has to look
11 at that further, right? But there sometimes are specific hardships, okay.
12 So taking that fully into mind, right, and taking into mind that -- and I
13 appreciate that they tell you downstairs that you won't get reassigned
14 maybe today, or may you will, who knows.

15 You saw how many people are downstairs, right? We've got
16 lots of trials going on. We're running -- there's 32 departments here,
17 civil, criminal, and we are running 20 some odd trials any given week,
18 and I know if I let one of you all go, we always get the calls up, do you
19 have extra jurors, or do you need extra jurors, because we all are very
20 cooperative to let people go to other cases. So maybe you'd like a nice
21 longer case, or maybe if construction defect sounded good to you we'd
22 love to have you.

23 But taking everything into mind we want to make sure we
24 have a fair and impartial jury for this case, we want to make sure we're
25 taking care of everyone. With that in mind, are there any hardships?

1 We're going to look first for the box, and the Marshal will hand you the
2 microphone, and if there are any, you're going need to raise your hand.
3 We're going to get your last name, last digits of your badge number,
4 we're going to take down your potential hardship to get evaluated, and
5 then we'll go left gallery, and right gallery.

6 Any in the box? I'm not seeing any hands raised in the box?
7 No, you're sure? That's just a movement, right, that's not a hand raise?
8 Yeah. Just making sure. Ms. Hilley, I just want to make --

9 PROSPECTIVE JUROR 419: Oh, me?

10 THE COURT: Yeah.

11 PROSPECTIVE JUROR 419: No, ma'am.

12 THE COURT: Okay. Just wanted to make sure. I want to
13 make sure I've got everyone taken care off, as you know I'm looking
14 around and making sure. Okay, no. Okay, I looked that box.

15 Now let's go to our left gallery, any hardships in our left
16 gallery? I see one hand raised in the back row. Marshal, can you take
17 care of -- I'll get that microphone to you.

18 PROSPECTIVE JUROR 485: In regards to what you were
19 talking about, I actually do have a --

20 THE COURT: Just a sec, hold on, sir. I appreciate it. First off,
21 let's make sure, do you need a glass of water, in the front row?

22 PROSPECTIVE JUROR: I have some.

23 THE COURT: Okay, no worries. I always want to make sure
24 you're get taken care of. Sorry, sir, you were speaking right as I was
25 hearing that. So I need last name and badge number a little louder,

1 please, sir. Thank you so much. And then we'll hear, you started to say,
2 you were talking about, and so I just need to hear that again, but --

3 PROSPECTIVE JUROR 485: The last name is Mann --

4 THE COURT: -- I need to hear your badge number and last
5 name again, please, sir.

6 PROSPECTIVE JUROR 485: Mann, M-A-N-N. Badge number
7 is 485.

8 THE COURT: Okay.

9 PROSPECTIVE JUROR 485: I do have a prepaid plane ticket, I
10 think it's for the 25th, which is I think the last Friday of the month, so
11 when you said that, it could go to --

12 THE COURT: Do you have that on your phone by chance?

13 PROSPECTIVE JUROR 485: Yes. Okay. Well, we'll check to
14 see if there's anyone else. Why don't you pull that up on your phone for
15 a quick second. I'll have the marshal take a look at that, and he'll bring it
16 up, and we'll see if there's anybody in left gallery, while you're doing
17 that one, sir, okay.

18 THE COURT: Okay. Anybody else in the left gallery? Next
19 person. Go ahead.

20 PROSPECTIVE JUROR 486: Juror No. 486.

21 THE COURT: Uh-huh.

22 PROSPECTIVE JUROR 486: Name, Jennifer Autry.

23 THE COURT: Yes.

24 PROSPECTIVE JUROR 486: And I have -- also have a
25 Southwest ticket this Saturday.

1 THE COURT: This Saturday, okay.

2 PROSPECTIVE JUROR 486: And I purchased that many
3 months ago. I can pull that up on my phone too.

4 THE COURT: I'd be glad to take a look at that as well, okay.
5 Is that for just the weekend, or does that cover workdays, as well.

6 PROSPECTIVE JUROR 486: That's work -- well, all I do is
7 work for -- I travel for all my jobs. I also have a volunteer --

8 THE COURT: We need to get the microphone back to you,
9 please. Appreciate it.

10 PROSPECTIVE JUROR 486: Most of my work is out-of-town,
11 so I travel all the time.

12 THE COURT: Right.

13 PROSPECTIVE JUROR 486: I'm home this week, but I'm not
14 home after that.

15 THE COURT: Right. We just need to ensure. When people
16 say "weekend" we just need you -- would you be gone during Court
17 days, meaning Monday through Friday?

18 PROSPECTIVE JUROR 486: Yes. Yeah. Wherever the event
19 is, it's not always on the weekend.

20 THE COURT: Okay. That's what we just need to make sure.
21 Because sometimes people are gone, you know, after business on
22 Friday, and back by Sunday night, that's what we need to --

23 PROSPECTIVE JUROR 486: I wish. No, it's not.

24 THE COURT: Okay. No worries, we'll take a look at that as
25 well. Okay. Anybody else in the left gallery? No. Just a polite

1 gentleman was handing the microphone.

2 Okay. Going to the right gallery, we've got a couple of hands
3 raised; just one second. Okay. If you have paper copies it's even better,
4 but it not we'll take a look at it on phones, the marshal will bring up the
5 phone, and then I'll have counsel take a quick look. Okay. Let's do this.
6 Can you just stop by counsel table and show each of them, before you
7 just --

8 THE MARSHAL: Yes.

9 THE COURT: Okay. As long as counsel saw it, I don't need
10 to see it. As long as counsel each saw it, okay. And the same with Ms.
11 Autry, did she give you her phone yet? Oh, she's done. So let's go to
12 the right-hand gallery, let's here -- there a microphone, the first row on
13 the right-hand side, please.

14 PROSPECTIVE JUROR 514: Maria Valez.

15 THE COURT: Yes.

16 PROSPECTIVE JUROR 514: 514.

17 THE COURT: Yes.

18 PROSPECTIVE JUROR 514: I'm currently a plaintiff in a civil
19 suit --

20 THE COURT: Let's not go through -- okay, it doesn't matter.

21 PROSPECTIVE JUROR 514: No.

22 THE COURT: If you have a case, that's your issue?

23 PROSPECTIVE JUROR 514: No, no.

24 THE COURT: Okay.

25 PROSPECTIVE JUROR 514: My case is being heard

1 November 1st. .

2 THE COURT: November 1st, okay.

3 PROSPECTIVE JUROR 514: And I have to give depositions
4 the 25th in New York.

5 THE COURT: In New York.

6 PROSPECTIVE JUROR 514: And I have the paperwork with
7 me.

8 THE COURT: Pardon?

9 PROSPECTIVE JUROR 514: I have the paperwork.

10 THE COURT: Okay. Sure. Go ahead, give it to the marshal,
11 that'll be great, Thank you so much. I appreciate it.

12 PROSPECTIVE JUROR 514: Do you need the --

13 THE COURT: He just needs to see your depo notice. That
14 would be great. Thank you so much.

15 There's another one, go ahead.

16 PROSPECTIVE JUROR 533: Hello. My name is Marcelo
17 Spahn, badge number 533. I have tickets like for like the Formula 1 race
18 that's on the end of the month.

19 THE COURT: Sorry, for what at the end of the month, sir?

20 PROSPECTIVE JUROR 533: Formula 1.

21 THE COURT: Formula 1, okay.

22 PROSPECTIVE JUROR 533: But I'm going like for like a week
23 before to celebrate with my friends and all that.

24 THE COURT: What date are you leaving, sir?

25 PROSPECTIVE JUROR 533: I believe it's like the 27.

1 THE COURT: Okay. Do you have it on your phone, do you
2 have it printed?

3 PROSPECTIVE JUROR 533: Not the printed ticket, but I have
4 the confirmation of the package of the race and everything like that.

5 THE COURT: So you have a copy of --

6 PROSPECTIVE JUROR 533: Okay. Plus I buy -- plus I bought
7 the tickets to go to a race, but my friends have like the plane tickets, like
8 the bundle. You can ask for it, I don't know --

9 THE COURT: Okay. The marshal will take a look and see
10 what you have, okay?

11 PROSPECTIVE JUROR 533: Okay.

12 THE COURT: Thank you, sir. Okay. That we'll just take,
13 since it's a piece of paper, we'll look at up at the bench. Okay. Just
14 leave it there for a quick second.

15 THE MARSHAL: Okay.

16 THE COURT: I'll just leave that there for a quick sec.

17 Okay. So you need Ms. Autry's phone, and then you need
18 Mr. Spahn's. Okay. One second, please. Can you show that, yeah, just
19 to counsel; that would be wonderful, thank you. Okay. Thank you. And
20 Mr. Spahn, badge 533. Do you want to just show it to each of the
21 counsel, and then they can just take a look at that. That would be
22 wonderful. Thank you, Marshal, I appreciate it.

23 Okay. I believe there was another hand raised in the right
24 gallery? There you go. Thank you.

25 PROSPECTIVE JUROR 571: Badge number 571, Vicki Moers.

1 THE COURT: Thank you.

2 PROSPECTIVE JUROR 571: And what I have is a potential
3 conflict. If the trial goes, my husband is scheduled for surgery on
4 November 4th, but if ends when it's supposed to end, I'm good.

5 THE COURT: Okay. Thank you. I do appreciate it. If the
6 attorneys are still here on November 4th, I'm supposed to be at another
7 trial before the 4th. I love each and every case. I of course will ensure
8 that they have their full opportunity to have their case fully heard, but I
9 don't anticipate they'll still be here on November 4th, okay. But thank
10 you. Is there any pre-op, or surgery is just on the 4th?

11 PROSPECTIVE JUROR 571: His surgery is on the 4th, and
12 pre-op is the week before and Friday before. But I can make
13 arrangements for pre-op.

14 THE COURT: Okay. But the Friday before, so the Friday
15 before being November 1st?

16 PROSPECTIVE JUROR 571: Right.

17 THE COURT: Okay. I appreciate it, thank you so much. I
18 appreciate that, okay. There was one other hand, sir? Can you pass the
19 mic --

20 PROSPECTIVE JUROR 585: Your Honor, can I stand up?

21 THE COURT: You can sit down, stand up, that's find, what's
22 ever comfortable for you?

23 PROSPECTIVE JUROR 585: I feel more comfortable standing
24 up.

25 THE COURT: No worries, go ahead.

1 PROSPECTIVE JUROR 585: A little bit more respect for you.

2 Anyway --

3 THE COURT: I appreciate it.

4 PROSPECTIVE JUROR 585: No. I work full-time at night.

5 And the only way that I can take my son to school is --

6 THE COURT: Last name and badge number, though, please,
7 sir. Thank you.

8 PROSPECTIVE JUROR 585: 585, Guadalupe Fuentez. I have
9 two issues, real quick. I work at night, in order so -- I get off at work at
10 6:00 a.m. in the morning so that I can take my son to school. He's
11 11-years-old, it's about a 35-minute walk from our home, but we don't
12 live in the best neighborhood either. That's the first issue. I purposely
13 work at night for that reason.

14 My second issue, is my wife has a high-risk pregnancy.
15 She's due in December, she's 38-years-old, and she's a green cardholder
16 from the Philippines, she doesn't speak English very well --

17 THE COURT: Okay.

18 PROSPECTIVE JUROR 585: -- and she doesn't drive.

19 THE COURT: Okay. I do appreciate it. Thank you so very
20 much.

21 THE COURT: And just a friendly -- I should mention one
22 other thing. If there's ever anything that you don't wish to disclose in the
23 open courtroom, like medical privacy or anything, feel free just to say,
24 you know, medical privacy, and then we can do the old fashion, you
25 whisper in the marshal's ear, right, and then he'll mention it to the Court

1 and we can tell counsel, okay.

2 So I never want somebody to disclose something that you're
3 not comfortable saying in an open courtroom, okay? Everybody
4 understands that, right? Okay. You're okay with what you disclosed, we
5 can --

6 PROSPECTIVE JUROR 585: Oh, that's fine.

7 THE COURT: Okay. I wasn't sure you were heading that
8 way, I thought you were just going to give me general things. So usually
9 I say that a minute or so later, I don't normally say it at the very
10 beginning, but I want to make sure everyone understood.

11 Okay. Have we taken care of all the hardships? Yes, okay.
12 That was just the last. Okay, perfect. So that was just glasses coming
13 off, right?

14 PROSPECTIVE JUROR 585: Oh, yeah.

15 THE COURT: Okay, no worries. Sometimes I get those last-
16 minute hands come up, just as you know -- okay. That being the case,
17 I'm going to ask counsel, if they don't mind, taking a moment, please
18 coming forward, please. Thank you so much.

19 The white noise is on, right? Okay. Just to let you know, the
20 whole idea of the white noise is so that we can discuss something
21 quickly at bench, that instead of excusing all 69 of you, right, out into the
22 hallway, which takes a long time, we can just do something really
23 efficiently quickly at bench.

24 If you can hear us when the white noise is on, please like
25 raise your hand and make sure I get your -- you know, I can see you,

1 because the whole idea, if you can hear us, then that kind of eliminates
2 the very thing we're trying to do, okay. So far no one could hear us,
3 right? Okay. Good, we're good to go.

4 [Sidebar at 11:02 a.m., ending at 11:08 a.m., not transcribed]

5 THE COURT: Okay. I do appreciate it. So you'll all get used
6 to that lovely white noise sound, I know. But it's the quickest way to do
7 this, versus having you all go in and out all the time.

8 Okay. At this juncture, the Court is going to thank and
9 excuse badge 486, Jennifer Autry; and please go to the double doors,
10 okay. The Court is going to thank and excuse Badge 514, Velez. The
11 Court, and the marshal has got the sheet to give back to you, your --

12 PROSPECTIVE JUROR 514: No. Thank you, I apologize.

13 THE COURT: Okay. No worries, he gave you back your --
14 wait, you can't leave yet.

15 THE MARSHAL: Wait, don't leave yet.

16 THE COURT: No. I said, go to the double doors.

17 PROSPECTIVE JUROR 514: Oh, just stand by the double
18 doors?

19 THE COURT: Just stay at the double doors for a quick
20 second, please. Appreciate it.

21 And the Court is going to thank and excuse Badge 533,
22 Spahn, go to the double doors, as well. Okay. Those are the three
23 individuals, the Court's thanking. Now just to let you know, you're going
24 to need to go back down to jury services, each of you. I can't say
25 whether you will or will not be reassigned either to another case today,

1 or whether I'll see you back on a CV case or something else down the
2 road, hope to see you back in another case.

3 And you do understand, although there's been nothing that's
4 been said in this case thus far, you understand you cannot post about
5 the voir dire process, thus far, anything on this case, right? Because we
6 want to ensure fair and impartial until this -- right? Everybody
7 understands that, and you acknowledge you won't be doing anything,
8 positing about this case until, well, at least past October 29th, correct?

9 GROUP RESPONSE: Correct.

10 THE COURT: I need affirmations out loud, please.

11 GROUP RESPONSE: Yes.

12 THE COURT: I appreciate. Thank you so much, for that
13 regard. The best of luck in all your respective Formula I, cases and trips,
14 et cetera. So thank you so much. Out of courtesy, everyone else doesn't
15 have to stand, but at least the Court stands when just a couple of our
16 jurors leave, and so does counsel.

17 Oh, you all, because there's so many of you, we don't
18 actually make you. Unless you want to stand and stretch, feel free to do
19 so. Thank you so very much, I appreciate it. Okay. Yeah. If anyone
20 needs to stand for a quick two seconds, but we're going to sit right back
21 down, because we're going to move forward with the next step, because
22 we don't want to take more of your time than we have to.

23 Okay. Same, thing, okay. So let me go to the next. The next
24 step is, we are going to walk you through -- I'm just trying to -- okay. At
25 this juncture I'm going to let -- the attorneys are going to introduce

1 themselves, and their clients, and then they're going to introduce the
2 witnesses that are anticipated to testify in this case.

3 Afterwards, what I'm going to ask each and every one of you
4 is whether you know any of the attorneys, the witnesses, or the clients to
5 such a degree that it may impact your ability to be fair and impartial in
6 this case. So I'm going to start first with Plaintiffs' counsel. So
7 Plaintiffs?

8 MR. LEAVITT: There was one more hardship, Your Honor.

9 THE COURT: Wait. There was another hardship --

10 MR. LEAVITT: Yes.

11 THE COURT: -- afterwards? Wait a second. Okay. Just a
12 second, we had one other person state that there was a hardship, after
13 we finished. Let's hear this last hardship. Go ahead, please.

14 PROSPECTIVE JUROR 567: Sorry, Your Honor. I have to
15 check my phone to check some dates. Badge number 10567, Josie
16 Gonzalez.

17 THE COURT: Thank you, okay. And what was your hardship,
18 please?

19 PROSPECTIVE JUROR 567: My son will be having surgery on
20 the 28th, and we tried to push the surgery as far back, because he did not
21 want to miss school, he has advanced classes, and my insurance will
22 only allow a window, and we are approaching the expiring window, so
23 we cannot push it back to November or December. So it has to be the
24 29th, October 29th. And I also -- I'm sorry, October 28th, and then the
25 29th I have pre-op.

1 THE COURT: And do you have some paperwork in regards
2 to that?

3 PROSPECTIVE JUROR 567: I could call both offices for you.

4 THE COURT: So here's what we're going to do. When we
5 take the break, the lunch break, we're going to be taking a lunch break
6 around 11:40 to around 1:15, just to let you know. Okay. So during that
7 lunch breach we'll just ask you to try and get them to email you
8 something, and we'll take care of it after the lunch break, okay.

9 PROSPECTIVE JUROR 567: Okay. Thank you.

10 THE COURT: Does that work, okay?

11 PROSPECTIVE JUROR 567: Yes.

12 THE COURT: I appreciate. That's for bringing that to our
13 attention. Just remind us after the lunch break, okay? Because it's not a
14 today thing, right? It's not until late in October, so we can address it
15 right after lunch, correct?

16 PROSPECTIVE JUROR 567: Yeah.

17 THE COURT: I appreciate it. Thank you so much. So we'll
18 circle back with 567, okay.

19 So now we're going to move forward. Plaintiffs' counsel,
20 without further ado, would you mind introducing yourself, and client,
21 and the witnesses; thank you so much.

22 MR. JONES: Yes. Thank you, Your Honor. I'm Kimball
23 Jones, this is my partner, Jacob Leavitt, Nathan Morris, is another of my
24 partners. He won't be participating in the trial, he's here today. We also
25 have Ryan Anderson, Jacqueline Bretell, Dan Gilliam, Josh Berrett,

1 Alika Akerman [phonetic], Noah Duran and Richard Fumbwana
2 [phonetic], and then also George Hand.

3 Does anyone know any of those people? No? All right.

4 In addition, my clients are Titina Farris and Patrick Farris,
5 right back here. Does anyone know either of them? And then other
6 witnesses that will testify in this case: Dr. Michael Hurwitz, Dr. Alan
7 Stein, Dr. Justin Willer, Dawn Cook, Christine Garcia, Amy Nelson,
8 Addison Durham, Lowell Pender, Sky Prince, Naomi Chaney, Dr. Naomi
9 Chaney, and Dr. Alex Barchuk, Terence Clauretie, Mary Jayne Langan,
10 Vickie Center, and Dr. Bess Chang.

11 Does anyone know any of those names?

12 THE COURT: Okay. Appreciate it.

13 MR. LEAVITT: Thank you, Your Honor.

14 THE COURT: Thank you so very much.

15 Okay. Defense counsel, would you like to introduce yourself,
16 your client and any witnesses?

17 MR. DOYLE: Yes, Your Honor. Thank you.

18 Good morning everyone, I'm Tom Doyle, and Amy Hanegan
19 is here sitting with me, she's a consultant who's going to help me with
20 this part of the trial. Dr. Barry Rives is at the end of the table. And the
21 witnesses that we anticipate calling are Dr. Rives, Dr. Brian Juell,
22 Dr. Lance Stone, Sarah Larson, Bruce Adomato, Dr. Kim Erlich, Dr. Scott
23 Kush, Erik Volk, and I believe Dr. Chaney was mentioned. Thank you.

24 THE COURT: Okay. And just to confirm, I'm just going to
25 double check. Everyone in the box, does anyone in the box know any of

1 the names that have been identified, okay, let me finish the whole listing,
2 and then we'll just get to you, okay. I want to make sure with counsel,
3 their clients, or any of the witnesses that have been named, to such an
4 extent that it could impact ability in this case.

5 Okay. First the box, I think there was one hand. Okay. The
6 microphone is heading your way, sir. And what we're going to ask,
7 anything to do with any medical privacy, you don't need to go the
8 medical privacy, just state the individual, and go ahead, sir. Your last
9 name --

10 PROSPECTIVE JUROR 368: Last is Gliponeo.

11 THE COURT: -- and last three digits --

12 PROSPECTIVE JUROR 368: Badge number 368.

13 THE COURT: Okay.

14 PROSPECTIVE JUROR 368: I do know Dr. Barry Rives.

15 THE COURT: Okay. And without going into specific details
16 do you know him through work, privately, how?

17 PROSPECTIVE JUROR 368: He was my surgeon at one point,
18 back in 2013.

19 THE COURT: Okay. He was your surgeon in 2013. Okay. I
20 appreciate it. Thank you so very much. Okay. So anybody else in the
21 box. Nobody else, no hands raised in the box.

22 Okay. Let's go into the left gallery. Does anyone in the left
23 gallery know any of those names that were just listed? I do not see any
24 hands raised in the left gallery.

25 Now let's go to the right gallery? Anyone in the right gallery;

1 the whole totality of the names, anyone? I do not see hands raised. Just
2 one second, making sure. Okay. So we had the one, and that's just it,
3 right. Okay, no hands. No further hands being raised. Okay. I do
4 appreciate it.

5 Counsel, could I have you approach please, and Madam
6 Court Recorder, can we turn on that lovely white noise that our
7 prospective jurors are so appreciated to hear this morning.

8 THE COURT: Ladies and gentlemen, I'm sorry. I realize this
9 is kind of a double standard, but I've got to tell you, one thing we do ask,
10 is we ask, whenever we've got white noise on, we do have to ask you not
11 to talk, and there's a very good reason for it. We just need to make sure
12 that you're not talking about the case. And so the easier way really to
13 say it, and the fair way to say, is by asking you not to talk, then I can
14 ensure you're not talking about the case.

15 Now you don't know anything about the case, so there's no
16 way you talk about the case right now, because you haven't heard
17 anything about the case. So if I just politely ask you not to talk about the
18 case, but we have the white noise on, then we just ensure that nobody
19 ever is talking about that case.

20 If I start that from the beginning here, before you've even
21 heard anything about it, it just kind of gets in everybody's mind so it's
22 consistent throughout the whole time. So my apologies. I know it's hard
23 to kind of sit there quietly while you're hearing white noise, but we really
24 want to ensure, in each and every case, fair and impartial, as if you all
25 were sitting at any of the tables as well. So if you don't mind we'd

1 appreciate that. Thank you so very much.

2 [Sidebar at 11:18 a.m. , ending at 11:20 a.m., not transcribed]

3 THE COURT: Okay. Do appreciate it. Okay. At this juncture
4 the Court is going to thank and excuse badge 368, I'm going to --- can I
5 just call you Mr. G.?

6 PROSPECTIVE JUROR 368: Uh-huh.

7 THE COURT: Thank you. I just -- or I will try and pronounce
8 it. Sorry, can you pronounce your last name again, sir?

9 PROSPECTIVE JUROR 368: Gliponeo.

10 THE COURT: Gliponeo. Mr. Gliponeo, we really would have
11 loved to have had you in this case, and we look forward to seeing you on
12 another case, okay. So the same thing you heard, what I said with the
13 other individuals, right? You need to go back down to jury services, and
14 then they will see if they're reassign you to a different case, if not we
15 have to see you back in another case, either here in Department 31 or
16 elsewhere, okay? Do appreciate it.

17 So out of courtesy, I and my team will stand up, everybody
18 else, it's up to you, all because -- and you just go out the double doors,
19 go down to jury services. Thank you so much, badge 368 is being
20 excused by stipulation. Thank you. Appreciate it. Thank you so much.

21 And that means, wonderful clerk, we have an empty seat in
22 the box, and there's a person sitting there in the left gallery that's
23 anxious to go fill that seat.

24 THE CLERK: That'll be badge number 0444, Ashley Fossile.

25 THE COURT: Okay. Thank you so very much. So everyone

1 nice let you by, so you can go into seat number 4. Appreciate it, thank
2 you so much. Okay.

3 Here's what it looks like we're going to be able to do before
4 the lunch break. So at this juncture what the marshal is going to do, as
5 soon as you have a quick second to get there in that seat, is the marshal
6 is going to -- we have just some standard questions. We're going to ask
7 these questions of the box, and there actually is a nice little sheet. What
8 the marshal is going to do, is he going to start -- just to let you know,
9 he's going to call you Juror No. 1, it's real easy. You're Juror No. 20,
10 you can do the math, right, 1 through 8, 9, through 16, okay.

11 So what we're going to ask you do, we're just going to hand
12 you the microphone, okay, and just answer each of those questions, kind
13 of read a little bit of the question so you know what the question is, out
14 loud, right. So like, "name" my name is, okay? You don't have to read
15 the entirety question, like former jury duty, and just answer each of those
16 questions. Once you finish answering each of those questions, once
17 you've finished answering each of those questions just pass it to the next
18 prospective juror. We're going to do that all through 1 through 20.
19 Okay? I do appreciate it. Thank you so very much.

20 PROSPECTIVE JUROR 357: My name is Christopher Diaz.
21 The last three digits of my badge number is 357. My current job is
22 security officer at Planet Hollywood. My spouse's name is Mindy
23 [phonetic] Diaz, we are married. Her current job is a teacher at a charter
24 school here in town. We have one child, five-years-old. I have lived here
25 in Clark County for 13 years. Before this I've lived in Florida. I have

1 never been a juror before. I've been, up to this point, of the interview
2 process.

3 My father-in-law is a retired captain from Metro, and now is a
4 private investigator. I actually do have family members who are
5 employed by an insurance company. My wife's uncle is an insurance --
6 insurance salesman, whatever you call them right now. Service --
7 service agent. I have an associate degree in college, a two-year degree,
8 and some extra college in between there. I have never been part of a
9 lawsuit, or civil or criminal.

10 THE COURT: Okay. I appreciate it, thank you. Next
11 prospective juror, perfect.

12 PROSPECTIVE JUROR 361: My juror number is 361. My
13 name is Kyle Root. My current job, I'm a sales associate for Cox Media.
14 The name of my spouse is Marissa Martinez [phonetic], not divorced or
15 deceased. She is an account rep for DES, and I do not have any children.
16 I've lived in Clark County since I was three, so that would be 25 years. I
17 just came back -- we're back from Colorado, for a two-year stint, but
18 worked most of my life here.

19 I've never been a juror before. I've been down to the room
20 down there and sent home, this is my first time in here. No law
21 enforcement family. No family employed by insurance. I have a
22 bachelor's degree of journalism, from NLB, and I've never been part of a
23 lawsuit, civil or criminal.

24 THE COURT: I do appreciate it, next prospective juror?

25 PROSPECTIVE JUROR 366: I've got to get my glasses.

1 THE COURT: No worries. Just in case anyone forgot
2 glasses, we also have them to help out, if anyone needs it.

3 PROSPECTIVE JUROR 366: Badge number 366. Badge
4 number 366, my name is Felix Barrios. My wife's name is Rhonda
5 Barrios. She is an escrow assistant. All our children are grown up, thank
6 God. I've been living in Clark County about ten years. I have never
7 been a juror.

8 No, nobody is -- I don't have any family members in law
9 enforcement, nobody in insurance. High school level diploma, and I've
10 never been part of a lawsuit.

11 THE COURT: Okay. I do appreciate it. Next prospective
12 juror.

13 PROSPECTIVE JUROR 444: My name is Ashley Fossile, last
14 three digits is 444. I am a QA tester for a private division. My husband is
15 an engineer for Southwest Gas. I have two kids, 5 and 3, and then I'm
16 also pregnant with my third. I've lived in Clark County for about 14
17 years. There was one year I was in California.

18 I have been a juror for a criminal trial. There was a verdict
19 reached, I was not the foreperson. I don't have any family members in
20 law enforcement or in insurance. I have a Bachelor of Science from
21 UNLV, and I have not been party of a lawsuit.

22 THE COURT: I do appreciate it. Next prospective juror.

23 PROSPECTIVE JUROR 370: Juror No. 370, Terry Harker.
24 Currently a route manager of Sparkletts Water, Las Vegas. Wife's name
25 is Rebecca. I've been married 25 years. She works for -- she's an

1 esthetician, skin care company. Three children, youngest 24, oldest 33.
2 Been in Clark County six years.

3 Never been selected for a jury. No family in law
4 enforcement. My sister is an insurance agent. High school graduate,
5 and never been part of a lawsuit, criminal or civil.

6 THE COURT: Thank you. Appreciate it. Next prospective
7 juror.

8 PROSPECTIVE JUROR 382: Badge number 382. My name is
9 Renee Williams-DeLoach. I am a registered nurse, and my most recent
10 job, I'm a nurse at the VA. No partner, divorced. I have three children,
11 the oldest 33, the youngest 24, and the middle one is 26. I've been in
12 Clark County since November of 2017.

13 And, yes, I was a juror before, it was criminal, and a verdict
14 was reached. And, no, I don't have any members in -- any family
15 members in law enforcement, or in insurance. And I have a Bachelor's in
16 science -- a Bachelor of science. And, no, I have not been part of a
17 lawsuit.

18 THE COURT: I do appreciate it. Next prospective juror,
19 Thank you so much.

20 PROSPECTIVE JUROR 386: My name is Ken Beck, badge
21 number 386. I currently own my own company. My wife's name is
22 Tiffany Bond [phonetic]. Her job, she works for a marketing company. I
23 do have one child, 13. I've lived Clark County 22 years. I have been on a
24 jury before, a verdict was reached, I was the foreperson.

25 No members of law enforcement in my family. I worked for

1 an insurance company for 12 years. Position, I had four different
2 positions, anywhere from sales to assistant vice president. Educational
3 level is bachelor's degree in business administration, and I have not
4 been involved in a lawsuit.

5 THE COURT: Appreciate it. Next prospective juror.

6 PROSPECTIVE JUROR 387: My name is Francisco
7 Hernandez; the last three digits are 387. I am currently working as a
8 receptionist at West Dermatology. I'm single, no kids. I have lived in
9 Clark County for about 12 years. I have not been a juror before. I don't
10 have any family in law enforcement, or the insurance. My level of
11 education is high school diploma, and I have not been part of a lawsuit.

12 THE COURT: Okay. Appreciate, Thank you so very much.

13 The marshal is going to go back to -- bring it back to you, sir,
14 and we're going to continue along with this row, as well.

15 PROSPECTIVE JUROR 388: My name Inscore, last 3 is 388.
16 Most recent job was part owner of a taxi company up in Utah. No
17 spouse or partner. No children. Lived in Clark County for about four or
18 five years, with that time in Utah in between. I have never been a juror
19 before. I have two cousins that are here as Las Vegas Metro.

20 No family in insurance. No -- last grade completed was 11th,
21 and I was involved, me and my brother, in a child abuse case a few years
22 ago.

23 THE COURT: Okay. Appreciate it. Next prospective juror.

24 PROSPECTIVE JUROR 391: My name Anett Liddell. Last
25 three digits are 391. I am currently working for the Clark County

1 Department of Aviation as a project planner. My husband's name
2 Camon Liddell [phonetic]. He is also working for Clark County, DAQ, as a
3 senior quality specialist. I do have a child, she's 17-years-old. I lived in
4 Clark County about 10, 11 years, give or take.

5 I never been a juror before. No one in my family works in
6 law enforcement, and no one in the insurance company. And my level of
7 education I have two master's degree, one in engineering, and another
8 one in business management. And I never been in any lawsuit.

9 THE COURT: Okay. Appreciate, thanks so much. Next
10 prospective? All right. The first question is your name and badge
11 number, sir. Your name and badge.

12 PROSPECTIVE JUROR 412: Your name and badge number?

13 THE COURT: Okay. All right. The first question is your
14 name a badge number, sir. Your name and badge number?

15 PROSPECTIVE JUROR 412: 404

16 PROSPECTIVE JUROR 404: 404, my name is Salvador.

17 THE COURT: Okay. And are you employed, sir? [Question
18 in Spanish]?

19 PROSPECTIVE JUROR 404: Yeah.

20 THE COURT: Where? [Question in Spanish]?

21 PROSPECTIVE JUROR 412: Name of spouse or partner?
22 Wife? [Question in Spanish]?

23 PROSPECTIVE JUROR 404: Yeah.

24 PROSPECTIVE JUROR 412: Wife?

25 PROSPECTIVE JUROR 404: Wife and -- [reply in Spanish]

1 THE COURT: Okay. Counsel, would you like to approach for
2 a brief -- just one second, please. Yeah, just one second. Can I have
3 marshal and have counsel approach, please. And Madam Court
4 Recorder can you turn on some white noise.

5 [Sidebar at 11:34 a.m., ending at 11:38 a.m., not transcribed]

6 THE COURT: Okay. So, Mr. Diaz, are you having difficulty
7 reading those questions? [Question in Spanish].

8 PROSPECTIVE JUROR 404: No.

9 THE COURT: No [question in Spanish]? Verbally, no
10 [question in Spanish]?

11 PROSPECTIVE JUROR 412: No [question in Spanish].

12 THE COURT: I need to hear it from him, Mr. Hocking. I
13 appreciate your helping him. Okay.

14 Based on the stipulation of counsel the Court's going to
15 thank and excuse Mr. Diaz, badge number 404. Okay. Thank you.

16 Okay. So ladies and gentlemen of the jury, what we're going
17 to do now is, the marshal is going to -- we're not going to go to --

18 [Pause]

19 THE COURT: Okay. So ladies and gentlemen, since I said
20 we'd be taking a lunch break about this time, keeping consistent, we're
21 not going to get through all the rest of you before the lunch break
22 anyway. So what we're going to do is we're going to send you out for a
23 lunch break in just a moment. Do not start getting up, because I've got
24 to tell you something really important. Do you remember I told you the
25 important thing, how no one can talk to you, and you cannot talk about

1 this case. There is a specific admonition that the Court is going to read
2 to you before any break.

3 Thank you so much for bringing it down, I appreciate it.

4 So I'm going to read this before any time we take a break,
5 whether it's a break in the morning break, afternoon break, or during a
6 lunch break, okay. So a couple of things I need to real quickly tell you
7 before I read you the admonition and excuse you for lunch.

8 For those of you who are wondering, we are going to end
9 around about a quarter to 5:00 in the afternoon, so if anyone is needing
10 rides, et cetera, the voir dire process is going to take until tomorrow.
11 Okay. So for those of you who are wondering, we're likely to start
12 tomorrow around 10:30 or 11:00, I'm not sure exactly, if you're trying to
13 balance your day for tomorrow, and probably have a jury selected by
14 end of day tomorrow, probably again around the 5:00 hour.

15 So today we're going to end around a quarter to 5:00 to 5:00,
16 same thing tomorrow. Tomorrow we're probably not starting until
17 around 10:30 to 11:00. I'll have a better idea closer to the end of the day,
18 because I'm trying to move some of my things from the morning, to give
19 you all more time to try and get a jury picked by tomorrow afternoon,
20 okay. So that gives you a ballpark of time, for those of you who need to
21 schedule for today and tomorrow, okay.

22 So the admonition I'm about to give you is so very, very
23 important, please listen to each and every word that I read, because it is
24 so very important. So for those of you who are tied to your electronic
25 devices and love to Google things, the second that you have a second to

1 turn on your preferred electronic device, you must not, okay. And I'm
2 going to ask you in advance. I'm going to talk about various electronic
3 devices in social media. Does anyone in this courtroom need me to list
4 every single type of social media and electronic device that I'm aware of,
5 or that you understand that I will give you some examples, and that
6 includes the whole range of every single thing, even though I've not
7 named every single thing. If anyone thinks I should name every single
8 thing I'm aware of, please raise your hand.

9 Okay. So everyone understands, even though I'm going to
10 give you some examples, it includes everything, right?

11 PROSPECTIVE JUROR : Yes.

12 THE COURT: Yes. I'm seeing all affirmative nods. Okay. So
13 let me read this to you:

14 Ladies and gentlemen, during this lunch recess -- your
15 admonition ladies and gentlemen, do not talk, you're admonished not to
16 talk or converse among yourselves, or with anyone else on any subject
17 connected with this trial, including the voir dire process.

18 You must not to read, watch or listen to any report, or
19 commentary on the trial, or the voir dire process, or any person
20 connected with the trial, or the voir dire process, by any medium of
21 information. including without limitation, social media, there's a whole
22 range of everything, right? Any type of texts, okay. Any type of tweets,
23 newspapers, television, the internet, the radio. Even though I've not
24 named every specifically you understand that includes the whole range
25 of everything. So you techy people, that there's things that I may not

1 have mentioned, and it includes every type of thing that in any way
2 exists.

3 Do not visit the scene or the events mentioned during the
4 trial, or the voir dire process. Do not undertake any research,
5 experimentation, or investigation. Do not do any posting or
6 communications on any social networking sites, or anyplace else you
7 can do any kind of postings, right? You may not do any independent
8 research, included but limited to internet searches, or any other type of
9 searches, right.

10 You may not form or express any opinion, on any subject
11 connected with the trial or the voir dire process, until the case is fully
12 and finally submitted to those who would go back at jury deliberations
13 after all the evidence has been submitted during the course of the trial.

14 Does everyone understand that? Box, do you understand
15 that?

16 UNIDENTIFIED PROSPECTIVE JUROR : Yes.

17 THE COURT: Yes. Left gallery, do you understand that?

18 UNIDENTIFIED PROSPECTIVE JUROR : Yes.

19 THE COURT: Right gallery, do you understand that?

20 UNIDENTIFIED PROSPECTIVE JUROR : Yes.

21 THE COURT: Okay. So we're going now go out to lunch,
22 we're going to be back at 1:15. You're come back up here to the floor,
23 the marshal's going to explain. Remember, no one here can talk to you,
24 other than the marshal to kind of give you times and organizational
25 things.

1 So do not take us to be rude if you see us during the lunch
2 hour and we cannot talk to you, okay. With that we're going to wish you
3 a very nice lunch, see you back at 1:15. Don't worry, for those of you
4 that have the question, you are eligible for jury duty,

5 So to those two individuals, for you who is going to let us
6 know after the lunch break, we'll take care of your issue after the lunch
7 break. Have a lunch and know who's coming up to our box next. We'll
8 see you. Thank you so much.

9 [Prospective Jurors out at 11:44 a.m.]

10 [Outside the presence of the prospective jurors]

11 THE COURT: So everyone's going to go out through that
12 door, and counsel will wait just a moment until we get all our jurors,
13 prospective jurors out. Thank you so much.

14 And please do take your items with you, because the
15 courtroom will be closed during the lunch break, okay. Thank you so
16 much.

17 [Pause]

18 THE COURT: And counsel, we'd like you back at closer to
19 about 1:10, or you know, about 1:08 or 1:10 so any last-minute issues
20 before the jury comes back. Do appreciate it. Have everyone a very nice
21 lunch break. As I mentioned my team does need their [indiscernible]
22 and need a lunch break, so we appreciate, excuse yourself. And just
23 during lunch, have nice lunch.

24 [Lunch Recess at 11:45 a.m., recommencing at 1:09 p.m.]

25 [Outside the presence of the prospective jurors]

1 THE COURT: Okay. On the record outside the presence of
2 the jury. Okay. Counsel, Marshal, a couple just little juror issues, just to
3 give you a quick heads up. As you know, we've come back from the
4 lunch break. We're going to be replacing the juror sitting in seat number
5 11, which 404, Mr. Diaz was excused based on a stipulated agreement of
6 counsel at bench.

7 And so Madam Clerk, the individual who will be filling that
8 seat would be whom?

9 THE CLERK: For seat 11?

10 THE COURT: Yes.

11 THE CLERK: Stacey Costa, Badge Number 0448.

12 THE COURT: Okay. So that's the reason why we stopped
13 and had a lunch break there, because that way, she can go through the
14 standard questions that you all agreed upon, the Court's standard
15 questions you all had agreed be asked, okay? So she will start with
16 those questions. The Clerk will call her.

17 Do you just want her to be lined up to come into that seat, or
18 do you want the Clerk to call her into that seat? It's just a matter of
19 whether she has to walk in front of people. What's you all's preference?

20 MR. DOYLE: Whatever is convenient.

21 THE COURT: Counsel for Plaintiff, do you have a preference?
22 There's two ways we can do it. One, we can ask the Marshal just to have
23 her line up with the people going into the box, and then she can go
24 straight into the box. The second is to have the Clerk have her go sit in
25 the gallery, and then she walks in front of the people of the gallery and

1 gets called into the box. Do you all a preference?

2 MR. DOYLE: Line her up.

3 MR. LEAVITT: Directly into the box, just for efficiency sake,
4 Your Honor.

5 THE COURT: In the box? Okay.

6 So Marshal, thanks, I appreciate it. So you have that one?

7 THE MARSHAL: Yes.

8 THE COURT: Okay, perfect. I appreciate it. So that will get
9 taken care of for you. The next thing is, when we come back, we're
10 going to have -- Badge 567 was the woman who mentioned her song
11 may be having surgery on the 20th, so we'll need to address her
12 hardship issue. And Marshal just indicated --

13 It was Badge 482; is that correct, Marshal?

14 THE MARSHAL: Yes, Your Honor.

15 THE COURT: I do appreciate it. Thank you so much. Badge
16 482 indicated to the Marshal right as they were leaving for break, and
17 that's Fajardo, F-A-J-A-R-D-O.

18 Can you say what she indicated to you, please?

19 THE MARSHAL: Your Honor, she indicated to me that she
20 has a funeral tomorrow, on Tuesday, at 1300.

21 THE COURT: Okay. So 1 p.m. tomorrow, Tuesday, which
22 she did not indicate for the hardship, but she indicated to the Marshal
23 when she was leaving for the lunch break. Okay.

24 THE MARSHAL: Yeah.

25 THE COURT: So let's address that one. Does anyone wish

1 that one -- she's 482, so she is -- well, she is where she is. She's about
2 the 15th one to come.

3 THE MARSHAL: She's in the third row.

4 THE COURT: I appreciate it.

5 THE MARSHAL: On the north side.

6 THE COURT: Rough estimating that she's -- there's about, I
7 think, 14 people in front of her, I think, before you get her to the box,
8 approximately, give or take one or two. So I don't know what you want,
9 if you want that further inquired upon.

10 Oh, and I started -- you didn't tell me I should be waiting for
11 Mr. Hand.

12 MR. DOYLE: No. You don't need to wait.

13 THE COURT: They didn't tell me I should be waiting for you,
14 so I started.

15 MR. HAND: We're fine, Your Honor.

16 THE COURT: Okay. No worries. Do your clients need some
17 assistance getting through those double doors in light of her walker?
18 Oh, her husband has got it. Okay, no worries.

19 So I don't know what you'd like to do, if anything, with
20 regards to her. Do you want the Court to address it? Do you want to
21 wait until the end of the day to see where you're at or what would you
22 like to do, or some third option?

23 MR. LEAVITT: Your Honor, Plaintiff's position is just to wait
24 until the end of the day.

25 MR. DOYLE: That's fine.

1 THE COURT: Okay. So on 482, Vajardo, we'll wait until the
2 end of the day since you wanted the Court, anyway, to circle back with
3 you all on --

4 THE MARSHAL: Hang on, Your Honor.

5 THE COURT: Sure. Yeah. Thank you. Thank you, Marshal. I
6 appreciate that.

7 THE MARSHAL: I'll be right with you.

8 THE COURT: No worries.

9 THE MARSHAL: Thank you.

10 THE COURT: Okay. Because remember, the Court was going
11 to circle back with you, at your request, on Badge 585 at the end of the
12 day. That was the gentleman who said he worked the evening and had
13 the wife who had the high-risk pregnancy. So do you want me to circle
14 back with 482 the same time we circle back with 585 at the end of the
15 day?

16 MR. LEAVITT: That would be the preference, Your Honor, for
17 Plaintiffs.

18 MR. DOYLE: That's fine.

19 THE COURT: Okay. So that's the juror issues. Just wanted
20 to make sure. Surprisingly, actually just a few. Sometimes we get more
21 during the lunch break, but those are the ones we're currently aware of.

22 Marshal, that's the only juror that came up to you, right?

23 THE MARSHAL: Yes, Your Honor.

24 THE COURT: Okay, perfect. Would you mind getting them
25 all lined up then and we'll get going, unless --

1 THE MARSHAL: I will, Judge.

2 THE COURT: Any other juror issues?

3 So we're at Juror Number 011, just for the standard
4 questions. We'll finish that off and then we'll go straight into Plaintiff's
5 voir dire afterwards. Does that work for you?

6 MR. LEAVITT: Perfect. Yes, Your Honor.

7 THE COURT: Okay, perfect. And you said you did want a
8 pocket mic; is that correct, counsel?

9 MR. JONES: Yes, Your Honor.

10 THE COURT: Okay. So we'll start getting that --

11 MR. JONES: How far away from that mic can I stand, and it
12 still travel?

13 THE COURT: Without a pocket -- well, we'll just get you a
14 pocket mic.

15 MR. JONES: Okay, all right. We'll do that. Thank you, Your
16 Honor.

17 THE COURT: In fact, my recorder is one step ahead, as usual.
18 She's wonderful. She actually has it there in front of her if you want it.

19 MR. JONES: Excellent.

20 THE COURT: The only thing is, just remember, before you
21 turn it -- you don't need to turn it now, but remember --

22 MR. JONES: Perfect.

23 THE COURT: Got your on and off; yes.

24 COURT RECORDER: And if you have a bench conference,
25 make sure you turn it off.

1 MR. JONES: Okay, thank you.

2 THE COURT: Right.

3 COURT RECORDER: Uh-huh.

4 THE COURT: Yes, or the friendly remind when you go back
5 to sit at counsel table; yes. Or at counsel table, unless you want
6 everyone to hear what you're saying.

7 MR. DOYLE: Your Honor, at the calendar call, you indicated
8 that we could file trial brief today if we had any. I just don't want to
9 forget. I've had --

10 THE COURT: The short answer is trial briefs are in
11 accordance with the rule under 7.27 --

12 MR. DOYLE: Uh-huh.

13 THE COURT: -- so you do what you do under 7.27.

14 MR. DOYLE: Well, the calendar call, you indicated we could
15 file them today.

16 THE COURT: No. The Court --

17 MR. LEAVITT: No.

18 THE COURT: -- said you need to follow the rules with
19 regards to trial briefs. So trial briefs are what trial briefs are under the
20 EDCR. You're more than welcome to do them in accordance with the
21 rules, and so --

22 MR. DOYLE: I did read the transcript from the calendar call
23 and Ms. Clark Newberry had some trial briefs and the Court asked her if
24 she would like to file them today or --

25 THE COURT: Uh-huh.

1 MR. DOYLE: -- today or last Tuesday.

2 THE COURT: Right.

3 MR. DOYLE: And --

4 THE COURT: Right. So yes, so --

5 MR. DOYLE: So I had to pay for copies for the Court.

6 THE COURT: So you have courtesy copies for the Court?

7 MR. DOYLE: I do.

8 THE COURT: You've already filed them? Okay. Sure. We'll
9 take --

10 MR. DOYLE: Well, we had --

11 THE COURT: -- courtesy copies.

12 MR. DOYLE: I'm not sure we've been able to file them yet
13 today because it's a holiday in California and my office is closed, so
14 we're trying to figure out how to e-file them because I don't have any
15 staff today.

16 THE COURT: Okay. Anybody do it here?

17 MR. DOYLE: It's Columbus Day.

18 THE COURT: But you have local counsel here.

19 MR. DOYLE: Ms. Clark Newberry is trying to figure that out.

20 THE COURT: Right, but you don't have to do it from staff.

21 You can do it -- well, you can do it remotely. Well, we can't take courtesy
22 copies unless they're filed courtesy copies, if you can appreciate. So
23 you --

24 MR. DOYLE: Okay.

25 THE COURT: Because yeah. Well, you can file and serve

1 remotely anywhere.

2 MR. DOYLE: I'm sorry? What?

3 THE COURT: You can file and serve remotely anywhere, but
4 you've got local counsel here. You've got Kim Mandelbaum on your
5 pleadings, as well.

6 MR. DOYLE: Right, but she doesn't have the pleadings in her
7 system. They're in my system at my office. And there's nobody in my
8 office to get them to Kim Mandelbaum's office.

9 THE COURT: The EDCR is the EDCR. You didn't need to file
10 them, you know -- it is what it is. That's what I said. Didn't need to --
11 that's why I said, she could've done them then, she could've done -- trial
12 could do it just under the EDCR, so it's up to you. You can go downstairs
13 and file them directly, if you want to. The Clerk accepts filings here in
14 Court, as well.

15 MR. DOYLE: I have copies of each one.

16 THE COURT: What I'm saying is we can't file them in open
17 court. I mean, the Clerk's office downstairs also does -- people do filings
18 down there directly, as well, if you have staff members that it do it there,
19 as well. But you can file an e-serve from any kind of remote location.
20 You don't need to be physically in your office. Couldn't they forward the
21 email? However you wish to do it. I mean, EDCR is EDCR. Let's follow
22 the rules.

23 He's lining them up and getting them taken care of.
24 Anything else the Court can address for the parties?

25 MR. JONES: Not on behalf -- oh, Your Honor, I do have a

1 response to the question earlier. I spoke with Ms. Farris.

2 THE COURT: Oh, with regards --

3 MR. JONES: She said --

4 THE COURT: -- to the ramp. Gotcha. Okay.

5 MR. JONES: As far as the ramp, as long as the Marshal is
6 able to hold her other hand while she goes up, she's just fine.

7 THE COURT: Okay.

8 MR. JONES: And she would prefer it that way.

9 THE COURT: Sure. That's fine. Any objection to that
10 process from Defense?

11 MR. DOYLE: No, Your Honor.

12 THE COURT: Okay. That's fine.

13 MR. JONES: But that's all Plaintiff has at this time, Your
14 Honor.

15 THE COURT: Okay.

16 MR. JONES: Thank you.

17 THE COURT: No, and I appreciate it. Okay. Thank you.

18 MR. DOYLE: Could I ask another question while we're
19 waiting?

20 THE COURT: Of course you can.

21 MR. DOYLE: What's the Court's procedure for counsel
22 notifying the Court and opposing counsel, the witness order, and who's
23 coming when?

24 MR. JONES: Your Honor, may I?

25 THE COURT: Usually parties take care of that at the 2.67 and

1 they come to an agreement among themselves so that we know you
2 have to go witness to witness, so there's not, you know, a gap in the trial
3 because that wouldn't be fair to the jurors to have them wait around so
4 that there's a gap in trial testimony.

5 The Court presumes as experienced professionals, you all
6 discussed this and took care of it, and the Court just needs to know a
7 couple of different things. If you all are agreeing that a witness is being
8 called for all purposes, you know what I mean, so that you're not going
9 to have objections, like outside the scope, and the Court needs to know
10 that in advance so that just -- so how I'm, you know, taking notes and
11 handling, you know, potential objections, right? Because I need to know
12 if the person is going to be subject to recall or not, you know?

13 If there's an agreement -- if there's an agreement that you
14 want to have a witness out of order, the Court is more than glad because
15 often times, counsel asks the Court to let the jury know that, just from an
16 administrative standpoint so that if you're going from Plaintiff's case and
17 chief, hypothetically, that you have a Defense witness out of order in the
18 midst of Plaintiff's case and chief, the Court prefers that you -- well,
19 usually the counsel prefers. The Court just generally accommodates,
20 right?

21 Give the Court a heads up because often times, counsel like
22 the Court to let the jury have a heads up so they're not wondering why
23 Defense counsel is asking questions first of a witness, versus the
24 standard what they've seen with the Plaintiff asking it. That's just for out
25 of order, but if you all don't want me to explain it and you want there to

1 be potential confusion, that's up to you, but most attorneys like the Court
2 to explain it, if you're doing a witness out of order, just to take care of
3 that. Or if you're doing a witness, like I said, for all purposes that you've
4 agreed so that there isn't that outside the scope issue, to give the Court a
5 heads up. Does that answer your question?

6 Just one second, Marshal.

7 THE MARSHAL: Yes, Your Honor.

8 THE COURT: So sorry. Did that answer --

9 MR. DOYLE: No, not really, but I'll --

10 THE COURT: Okay.

11 MR. DOYLE: -- speak with counsel the next break.

12 THE COURT: Right.

13 MR. LEAVITT: Sure.

14 THE COURT: I mean, did you all -- I mean, the order of
15 witnesses --

16 MR. LEAVITT: Uh-huh.

17 THE COURT: -- as far as calling them in general?

18 MR. DOYLE: Yes, so that I would know, for example, on
19 Wednesday, who the witnesses are so that I would know what
20 transcripts to bring and what not.

21 THE COURT: Oh.

22 MR. LEAVITT: Sure. Your Honor, we always like -- because
23 trial is so fluid, we always like 24 hours' notice, say hey, this is who we
24 intend to call tomorrow, the next day, da, da, da, so he'll know by the
25 end of today who we intend to call Wednesday.

1 THE COURT: Sure.

2 MR. JONES: That's not a problem.

3 THE COURT: Does that meet your needs?

4 MR. DOYLE: That meets my needs. Thank you.

5 THE COURT: Perfect.

6 MR. JONES: Yeah, thank you.

7 THE COURT: Anything else? Are we ready for jury? Okay.

8 THE MARSHAL: One other, Your Honor.

9 THE COURT: Oh, I knew one was too good to be true. Go
10 ahead, Marshal.

11 THE MARSHAL: 525, Your Honor, Michael Bland --

12 THE COURT: Sure. 525, yes.

13 THE MARSHAL: If you remember earlier this morning, he
14 was the gentleman that was standing in the back --

15 THE COURT: Right.

16 THE MARSHAL: -- with the blue.

17 THE COURT: Yeah, the gentleman who said he needed to
18 stand; right.

19 THE MARSHAL: Yeah. I believe he mentioned about
20 diabetes. I didn't go in depth.

21 THE COURT: Okay, sure.

22 THE MARSHAL: Just medical related stuff.

23 THE COURT: Does he need accommodation for more breaks
24 or anything like that?

25 THE MARSHAL: Possibly. I didn't --

1 THE COURT: Okay.

2 THE MARSHAL: I just told him I would bring it to your
3 attention in maybe a --

4 THE COURT: Sure.

5 THE MARSHAL: -- a sidebar, perhaps.

6 THE COURT: Okay, sure.

7 So counsel, you heard the Marshal just indicate 525
8 mentioned to him that he has diabetes. Often times with those types of
9 things, there's a couple of ways we can handle it. One, if you'd like the
10 Marshal, he can ask him real briefly after he brings the box people in,
11 when he's bringing in the rest of the gallery panel, he can ask him to stay
12 for a quick second and ask him if he needs an accommodation.

13 Sometimes, people such as that, you would need an
14 accommodation. A) They bring food into the courtroom, which the Court
15 is perfectly fine to accommodate that. B) Sometimes, they may need to
16 go out a little bit at times to maybe take a break, which once again, the
17 Court is fine using the gallery anyway.

18 MR. JONES: Right.

19 THE COURT: Or C) If he has some other accommodation,
20 just find out what it is. Would you like the Marshal to do that or do you
21 want to have some other process?

22 MR. DOYLE: No, Your Honor, I think the Marshal could do
23 that. That wouldn't be a problem.

24 MR. LEAVITT: Marshal is fine.

25 THE COURT: Okay. And if he requests something different,

1 just let us know, but it's any of those, we can easily accommodate, okay?

2 THE MARSHAL: Yes, Your Honor.

3 THE COURT: I appreciate it. Thank you so much.

4 THE MARSHAL: I have the first --

5 THE COURT: Are we ready to bring the jury in? I'm sorry?

6 THE MARSHAL: I have the first 20.

7 THE COURT: Right. Just want to make sure. Counsel, all
8 ready to bring the jury in?

9 MR. LEAVITT: Yes.

10 MR. DOYLE: Yes, Your Honor.

11 THE COURT: Okay. Appreciate it. Thank you so much.

12 THE MARSHAL: Jurors are present.

13 THE COURT: Perfect. Thank you so much.

14 [Prospective jurors in at 1:23 p.m.]

15 [Within the presence of the prospective jurors]

16 THE MARSHAL: All present, Your Honor.

17 THE COURT: Appreciate it.

18 THE MARSHAL: You can be seated.

19 THE COURT: Appreciate it. Thank you so much.

20 Welcome back, ladies and gentlemen. Hope everyone had a
21 nice and relaxing lunch. And everyone obeyed the Court's admonition,
22 right?

23 PROSPECTIVE JURORS: Yes.

24 THE COURT: Did anyone disobey the Court's admonition?
25 Please raise your hand. I don't see any hands raised. Perfect. Okay.

1 Thanks.

2 Real quickly, I think 567, you were going to -- did you, by
3 chance, have a chance -- if we could get the microphone over there just
4 real quickly.

5 THE MARSHAL: Yes, Your Honor.

6 THE COURT: We're going to take care of you. Juror last
7 name and badge number. Did you have a chance to -- go ahead, if you
8 don't mind.

9 PROSPECTIVE JUROR 567: Yes, I got the emails.

10 THE COURT: Once again, last name and badge number.

11 Sorry.

12 PROSPECTIVE JUROR 567: Gonzalez, Josie.

13 THE COURT: 567.

14 PROSPECTIVE JUROR 567: 567.

15 THE COURT: Okay, perfect. You were able to get an email or
16 something to confirm --

17 PROSPECTIVE JUROR 567: Yes.

18 THE COURT: -- that date?

19 PROSPECTIVE JUROR 567: Yes.

20 THE COURT: Do you mind just showing it to the Marshal,
21 please?

22 PROSPECTIVE JUROR 567: Sure.

23 THE COURT: Thank you so much.

24 [Pause]

25 THE MARSHAL: Yes, Your Honor.

1 THE COURT: Okay. Okay. So we'll address that a little bit
2 later this afternoon, and address that a little bit later. Okay. I do
3 appreciate it.

4 And we have a new person in the box. So Marshal, I think
5 she joined us in the box just in time to be handed the microphone and
6 the sheet so we can learn a little more about you. Welcome to the box.
7 A little more comfy seat, a little more different view, so welcome. And
8 would you like to tell us a little bit about yourself? Go ahead.

9 PROSPECTIVE JUROR 448: Last name, Costa, 448. I work at
10 Sahara Las Vegas. I'm engaged. He works at Sahara Las Vegas. No
11 children. I've lived in Clark County for five years and one month. Never
12 been a juror. I have a cousin who is in law enforcement. Nobody from
13 insurance. Some college, and I was a party of a lawsuit.

14 THE COURT: Okay. And is that resolved or currently
15 pending? Sorry. Just one second.

16 PROSPECTIVE JUROR 448: Resolved. This was years ago.
17 Not here. In Florida.

18 THE COURT: Okay. I do appreciate it. Thank you.

19 PROSPECTIVE JUROR 412: My name is Troy Hocking. My
20 badge number is 412. I'm unemployed at the present time. I have no
21 kids, no mother -- I mean, no girlfriend. Currently looking for a job. No
22 children, of course. I've lived in Clark County for 42 years. No, I haven't
23 been a juror. No one in law enforcement, no one in insurance.
24 Education is tenth grade, and I've never been into a lawsuit.

25 THE COURT: Okay. I do appreciate it. Please pass it to the

1 next potential juror.

2 PROSPECTIVE JUROR 417: Belinda Hightower, 417. Work at
3 Blue Bunny ice cream factory. No spouse. One child, grown. Lived here
4 over 20 years. Been a juror before. No family in enforcement or
5 insurance. High school diploma. Never have been a criminal or lawsuit.

6 THE COURT: Okay. I do appreciate it. And won't hold it
7 against the Judge that I made a Baskin Robbins comment, right?

8 PROSPECTIVE JUROR 417: No.

9 THE COURT: Because of where you work. Okay, just wanted
10 to make sure.

11 Go ahead. Next potential juror?

12 PROSPECTIVE JUROR 418: Darea'I Thomas, the last three
13 are 418. I work at a marketing company. I'm single. Yeah. No children.
14 Born and raised here. Never been a juror before. No family in law
15 enforcement. Not even in insurance. High school diploma, and I've
16 never been a part of any lawsuit.

17 THE COURT: I do appreciate it. Next potential juror?

18 PROSPECTIVE JUROR 419: My name is La Kisha Hilley. Last
19 three digits are 419. Currently, I'm a manager at Harbor Freight Tools.
20 My spouse is Carada [phonetic] Hilley. Her current job, she works as a
21 massage therapist at the Paris Hotel. We have no children. I've lived in
22 Clark County for four years. I've never been a juror. My mother and
23 uncle are retired law enforcement. No family that works for insurance
24 companies. I have a bachelor's degree in business from UNLV. I have
25 been a part of a civil lawsuit and am currently a part of a class action

1 suit.

2 THE COURT: Okay. So a class action. Class action is like a
3 construction defect or one of the -- are you a lead plaintiff in that class
4 action or just --

5 PROSPECTIVE JUROR 419: No, I'm just party of the class
6 action. I'm not the -- like a --

7 THE COURT: What's the nature of class action?

8 PROSPECTIVE JUROR 419: It's in California. It's pending the
9 strip search at the CDR Women's Facility.

10 THE COURT: Oh, okay. Okay, gotcha. Okay, no worries.
11 Appreciate it. Thank you.

12 Go ahead, next potential juror.

13 PROSPECTIVE JUROR 424: My name is Yvonne Baker. My
14 number is 424. I am a teacher with Clark County School District. I am
15 divorced. I have five children. They are all grown. The youngest is 21,
16 the oldest is 32. I've lived in Clark County for seven years, and I lived in
17 Texas before that. I have never been a juror before. I don't have any
18 members of my family in law enforcement. I was employed by Aetna
19 Life and Casualty before I was a teacher, and I also have a son in law
20 who works for Blue Cross Blue Shield. I have a Bachelor of Arts in
21 English language arts, and a master's degree in urban leadership from
22 UNLV. And yes, I have been a party to a lawsuit. It was 12 years ago.

23 THE COURT: Okay, appreciate it. Okay.

24 Okay. We're going to get the last four of you and keep going.
25 Appreciate it. Thank you.

1 PROSPECTIVE JUROR 425: My name is Rex Dalton, 425.
2 Currently work for a military contractor. My wife's name is Shannon.
3 She's an HR representative for a local credit union. I have two children.
4 I've lived in Clark County 25 years. Never been selected for a juror.
5 None of my family is law enforcement or insurance. High school
6 education. And I have not been in a civil or a criminal before.

7 THE COURT: I do appreciate it. Thank you so much.
8 Next potential juror?

9 PROSPECTIVE JUROR 426: Hi. Cindy Peacock, 426. Sales
10 manager for Elite Media. Scott Peacock is my husband. He works for
11 Rico. Two biological children and two by marriage, ranging from 21 to
12 32. Lived in Clark County for ten years. Lived in Maine before then. I've
13 never been a juror. I know no one in law enforcement. My sister-in-law
14 is an insurance agent in Maine for like car and home insurance. Some
15 college. I was part of a tenant/landlord dispute about 25 years ago in
16 Ohio.

17 THE COURT: Okay, I do appreciate it.
18 Next potential juror?

19 PROSPECTIVE JUROR 441: My name is Roger Johnson. My
20 number is 441. I'm retired. My wife's name is Deborah [phonetic]. She
21 works at Zappo's in accounts payroll. I have two girls, two children. One
22 in San Diego, one in North Dakota. I've lived in Clark County for about
23 17 or 18 years. And before that, I lived in North Dakota. Yes, I have been
24 a juror before, but that was decades ago in North Dakota, and I don't
25 remember anything about that.

1 THE COURT: Okay.

2 PROSPECTIVE JUROR 441: You know, I'm too old. And my
3 sister-in-law's daughter, I think she was in the sheriff's department or a
4 marshal, and now she's doing this type of job. But now she does child
5 abuse cases. She's trained out of California, but she goes all over, I
6 guess, and does that type of investigation. No, there's nothing that -- no
7 insurance company involved there. My education is some college. I had
8 a tech degree in -- well, an associate's degree. I don't know if bankruptcy
9 would be a lawsuit or not, but that was ten years ago.

10 THE COURT: I appreciate it. Thank you so much.

11 Next prospective juror?

12 PROSPECTIVE JUROR 443: My name is Tesfaye Andei. My
13 last three digits are 443. Currently a taxi driver. I am single. I have one
14 daughter who is 22 years. I've been in Clark County for five years.
15 Before, I was in Boston.

16 THE COURT: Okay.

17 PROSPECTIVE JUROR 443: And I don't have any family
18 member in insurance.

19 THE COURT: Okay.

20 PROSPECTIVE JUROR 443: I don't know any member of law
21 enforcement. I don't have any family [indiscernible]. I have
22 [indiscernible]. I never been in [indiscernible].

23 THE COURT: I do appreciate it. Thank you so very much.
24 Okay. At this juncture, since we've asked all the general questions,
25 counsel, would you like to commence with your voir dire questioning?

1 MR. JONES: Yes, Your Honor.

2 THE COURT: Plaintiff, thank you so very much. So you've
3 got your pocket microphone that we gave you all taken care of?

4 MR. JONES: I do, Your Honor.

5 THE COURT: Okay.

6 MR. JONES: I'll get that situated.

7 THE COURT: No worries. And the microphone is -- the
8 Marshal has it, so he'll hand it to whoever. I don't know if you're going
9 to ask a random general question first, and then he'll hand it to whoever
10 for a response for you, and we can pass it around. And just remember,
11 same thing with Plaintiff's counsel and then Defense counsel asks you
12 questions. When you do respond, if it's a specific question, you do need
13 to answer last name and last three digits of your badge number so we
14 can do those general questions, okay? I do appreciate it. And for those
15 in the gallery, please do listen carefully, also, to these answers because
16 when you come to the box, you'll be asked probably some similar
17 questions. Thank you so much.

18 Go ahead, counsel.

19 MR. JONES: Thank you, Your Honor. Okay.

20 Can you guys hear me okay?

21 UNIDENTIFIED PROSPECTIVE JUROR: Yeah.

22 MR. JONES: Everybody out there can hear me okay?

23 UNIDENTIFIED PROSPECTIVE JUROR: Yes.

24 MR. JONES: All right. This is going to be a little bit awkward
25 because these are like actually not pockets, so I'm going to try to make it

1 work like that and hopefully that'll do. So the Judge already explained --
2 here, I'll put it down here. See if that'll work better.

3 THE COURT: It should also have a clip for your belt.

4 MR. JONES: Oh, yeah. That'll do. Clip it on the belt.

5 UNIDENTIFIED PROSPECTIVE JUROR: People usually put
6 them in their back pockets that I've seen.

7 MR. JONES: Nice. Okay. So I think that will work now. If it
8 doesn't, we're going back pocket next. Okay. So the Judge explained
9 the process of voir dire and we've gone through part of it. It's a very
10 important process, even though it's long and kind of -- as you guys are
11 feeling it here, but it's critical, because it's the only opportunity that I
12 have to be able to talk to you as jurors and that you have to talk to me or
13 to Defense counsel.

14 So I'm going to be asking you a bunch of questions, and you
15 can ask me questions, as well, if you have questions for me, okay? It's
16 totally appropriate. And then when all of this is done -- it should end
17 tomorrow at some point -- then at that point, going forward, it's, you
18 know -- we won't be talking to each other. And so we got a taste of that
19 this afternoon when several of you were out there and me and my group
20 were doing everything we can to try to avoid everybody so there's no
21 improper interaction, right?

22 Now, as we go through this, there are no wrong answers.
23 I'm going to ask you some questions, and when you answer the
24 questions, I'm going to accept the answer that you give me. If I ask you
25 a bad question -- and I will try not to. I will try and ask good questions,

1 but if I ask you a bad question, just please tell me that you didn't
2 understand it, that it wasn't a question that was good or whatever and
3 ask me to rephrase it. I'm happy to do that.

4 Something else that I think is, at least, as important, is I'm
5 not going to try to get into really personal things as I'm asking these
6 questions, but if I do ask you something and for some reason it's
7 personal, because I just kind of overlooked what I should have
8 recognized or it's something that you feel that way, that you don't feel
9 comfortable sharing out here in front of all of these people, including
10 myself that you don't know, then please tell me that. And I'm not going
11 to push you on it, right? I'm not going to, hey, I really need you to
12 answer this.

13 And does anyone feel that if I don't push someone to answer
14 a question that I'm not doing my job as a trial lawyer? No? Everybody
15 okay with that? Yeah? Yeah? We okay with that? All right.

16 Look, I'm going to try and make this process not super
17 boring, okay? We're going to try and make it a little bit exciting. This is
18 an important case, and I think that you guys are going to find the process
19 -- those of you that are selected here -- exciting. I think you're going to
20 be very proud, very glad that you were able to be a part of it ultimately.
21 And so I'm going to try to make this as enjoyable as we can, as we go
22 through this.

23 I'm going to be asking you questions in two areas, primarily.
24 First, I'm going to ask you about your life experiences. Find out who you
25 are, where you came from, and what you've been through, right? And

1 then I'm going to ask you questions about your opinions, okay?
2 Everybody has different opinions, right? One of the things they say that
3 is one of the greatest things about America is that we all have different
4 opinions or many of us do, but we all get along, at least most of the time,
5 right? And so it's a big deal and it's totally appropriate for everybody to
6 have their own opinions about things, okay? And so you share your
7 opinions, that's perfect.

8 I want to ask you -- we're going to begin by talking about
9 passions, okay? What are you passionate about? And when I ask this
10 question, and if I just ask it just like I just did, inevitably, most people talk
11 about their family and about their religion, or something spiritual, and
12 that's absolutely understandable, right? Of course I feel the same way.
13 For the purposes of voir dire today, for the purposes of what we're
14 doing, I want you to talk about what you're passionate about besides
15 family and religion, okay? And what is it that gets you up in the
16 morning? What is it that you look forward to after a hard work week,
17 right? What is it that keeps you going, that makes you happy? What are
18 you passionate about?

19 Anyone? Who's -- yes, please?

20 THE COURT: Just a second. Just a second. Remember, a
21 couple things.

22 MR. JONES: Yes.

23 THE COURT: Microphone first, then last name and last three
24 digits of your badge number before you give an answer. I appreciate it.
25 That way we always know who's talking and we can get everything

1 recorded so we can hear it appropriately. Appreciate it. Thank you.

2 PROSPECTIVE JUROR 382: Badge number 382.

3 THE COURT: Uh-huh.

4 PROSPECTIVE JUROR 382: Renee Williams-DeLoach. And
5 I'm passionate about patient education, as well as traveling.

6 MR. JONES: So I want to stay on that.

7 PROSPECTIVE JUROR 382: Okay.

8 MR. JONES: Let's talk about patient education first.

9 PROSPECTIVE JUROR 382: Uh-huh.

10 MR. JONES: What do you mean by that?

11 PROSPECTIVE JUROR 382: I'm a nurse.

12 MR. JONES: Uh-huh.

13 PROSPECTIVE JUROR 382: So the patients come in and they
14 don't know about their illness, and we're like the first line, so we have to
15 teach them all of that.

16 MR. JONES: Okay.

17 PROSPECTIVE JUROR 382: About the different illnesses, the
18 medication, everything.

19 MR. JONES: Awesome. In my immediate family, we have
20 four registered nurses.

21 PROSPECTIVE JUROR 382: Uh-huh.

22 MR. JONES: Okay? So I have a brother, a couple of sisters,
23 my mom. Anyway, so I understand what you're saying.

24 I want you to tell us about traveling. Traveling where?
25 Traveling -- what do you do?

1 PROSPECTIVE JUROR 382: Well, I just went to Puerto
2 Vallarta in July, and I just went to Oakland, and I'm going to Hawaii and
3 Cancun. So Hawaii and then Cancun, and then we're going to Paris at
4 the end of the year, actually.

5 MR. JONES: Awesome. So what is it about traveling that --
6 why do you enjoy that so much? What is it about that?

7 PROSPECTIVE JUROR 382: I want to see the world. I want to
8 see what different cultures do and how they -- yeah, I just want to
9 experience just another part of the world that I haven't been in.

10 MR. JONES: What is the thing about Paris that you are the
11 most excited about?

12 PROSPECTIVE JUROR 382: I want to see the different
13 monuments. I want to -- I want to see the -- is that in Paris? The tower?
14 The Eiffel Tower?

15 MR. JONES: Uh-huh.

16 PROSPECTIVE JUROR 382: And so I want to do that.

17 MR. JONES: Awesome, awesome. Cool. Thank you very
18 much.

19 Someone else? What are you passionate -- please. Pass it
20 on down to Kyle.

21 PROSPECTIVE JUROR 361: I'm Kyle, badge number 361. I'd
22 say I'm passionate probably about the outdoors and sports. Go Knights.

23 MR. JONES: Thank you, thank you. I think we have a few of
24 us here, I see in front of you there. It's been pretty exciting, hasn't it? I
25 mean, it's -- the last couple of years, having an actual team here.

1 PROSPECTIVE JUROR 361: Yeah.

2 MR. JONES: Tell us about that. Why are you passionate
3 about that?

4 PROSPECTIVE JUROR 361: About the Knights or sports in
5 general?

6 MR. JONES: Let's start with the Knights and then let's --

7 PROSPECTIVE JUROR 361: Yeah.

8 MR. JONES: -- talk about sports in general.

9 PROSPECTIVE JUROR 361: Well, I grew up a Kings fan, so
10 when I came back, I see what they kind of do in the city, back in
11 Colorado. Probably about a year after the October incident. Seeing
12 what they did for the city, it's hard not to jump ship over and, you know,
13 go on with Knights, so it's cool to see.

14 MR. JONES: That's awesome, awesome. And tell me about
15 sports in general. What is it about sports that does it for you?

16 PROSPECTIVE JUROR 361: I just grew up watching it. Part
17 of what I grew up doing, played it. I didn't play in college, but yeah.
18 Gave me something to cheer for and watch on Sundays and yeah.

19 MR. JONES: Do you watch it by yourself? Do you watch it
20 with certain people? Do you -- what's --

21 PROSPECTIVE JUROR 361: Usually with my family,
22 sometimes by myself.

23 MR. JONES: Okay.

24 PROSPECTIVE JUROR 361: Yeah.

25 MR. JONES: Is it kind of a time to get together? When -- is

1 that --

2 PROSPECTIVE JUROR 361: Yeah, I'd say so. Like watch it
3 with my dad, good times with my dad.

4 MR. JONES: Okay. Awesome, awesome. Thank you for
5 sharing that. I appreciate that.

6 Hold on. You said something else, too, Kyle. So what was
7 the other one?

8 PROSPECTIVE JUROR 361: Outdoors.

9 MR. JONES: Outdoors?

10 PROSPECTIVE JUROR 361: Yeah.

11 MR. JONES: Talk to me about that.

12 PROSPECTIVE JUROR 361: I like to fly fish and just get out
13 and get the fresh air. Nothing better than the outdoors. It's the best.

14 MR. JONES: So I went to college in Idaho and I tried fly
15 fishing a few times, and I was -- well, yeah, so I don't like fishing in
16 general because I don't have the patience for sitting there. And what I
17 found out, that fly fishing is kind of the same, just a lot more work.

18 PROSPECTIVE JUROR 361: Yeah, yeah. [Indiscernible] not
19 going there.

20 MR. JONES: So no, that's very cool.

21 PROSPECTIVE JUROR 361: Yeah.

22 MR. JONES: But with the outdoors, what is it about the
23 outdoors that is fulfilling for you? Why do you like to be out there?

24 PROSPECTIVE JUROR 361: It's away from the noise. I feel
25 like when you're out there, it's good, you know -- the stress of the world

1 kind of goes away. It's a little more get back to your natural self, I guess
2 you could say. It's a good way to detach from everything that's going on
3 during the week.

4 MR. JONES: Awesome. Do you feel a sense of
5 independence, a sense of freedom that --

6 PROSPECTIVE JUROR 361: A little bit.

7 MR. JONES: A little bit?

8 PROSPECTIVE JUROR 361: Yeah.

9 MR. JONES: Okay, awesome.

10 Anybody else? Yes? Let's go right here first, and then we'll
11 come right up front and then we'll go back again. All right.

12 Yeah, please. Skylar.

13 PROSPECTIVE JUROR 388: Inscore, 388, and for the most
14 part, like Kyle, I am a huge sports fan and I love the outdoors, but I'm
15 also a huge gamer.

16 MR. JONES: Absolutely. What games?

17 PROSPECTIVE JUROR 388: I usually just like RPGs, like Sky
18 Rim, every single Elder School [phonetic] game. Shooters, like Call of
19 Duty, and stuff like that.

20 MR. JONES: Awesome. Fantastic. I will tell you, I spent, at
21 certain points in my life, too much time doing that.

22 PROSPECTIVE JUROR 388: Yeah, my entire childhood.

23 MR. JONES: Absolutely. No, I -- what is it about gaming,
24 first of all, that -- what is it?

25 PROSPECTIVE JUROR 388: The way that my brain works, I

1 like to escape into different worlds, different realities, and forget about
2 what's going on in the real world.

3 MR. JONES: Sometimes, it's nice to let go of all the stress
4 and just be able to go do something. That sounds a lot like what was
5 being said about the outdoors, right? I mean, that's kind of the same
6 line.

7 PROSPECTIVE JUROR 388: Yeah.

8 MR. JONES: The outdoors. What do you like to do?

9 PROSPECTIVE JUROR 388: When I used to live down here a
10 few years ago, every once in a while, I would go on hikes with my dad
11 and stepmom. We went to Red Rock, Rally Fire. For the most part, just
12 to get out, get some exercise, just go for a long walk.

13 MR. JONES: Yeah, awesome.

14 Let's go ahead and let's come forward here to the front row.

15 So, Roger?

16 PROSPECTIVE JUROR 441: Roger Johnson, 441. What I'm
17 passionate about is like gym, working out all the time, exercising, that
18 type of thing, push yourself to the limits, and then see what work and
19 what doesn't work. Working in the yard, you know, doing planting,
20 moving rock around. Right now, I'm replacing the irrigation in the yard,
21 and my wife thinks I'm -- because of my age, it's too hard, but no, no, it's
22 not too hard, and so I'll get that done. And cabinetry, construction work.
23 I've built two of my own homes, and just to do that and be in that, and
24 be able to re-plumb the homes, do the electrical, and do the construction
25 work, cabinetry, things of that nature. Make it easier on my wife, and

1 then because she's getting to the point where she can't bend a lot, and
2 so make things so she can -- the cabinet moves up, she can get things
3 out, and push another button, it lowers itself and pulls back in. Things of
4 that nature. It helps her out.

5 And also diet. Diet and types of food, food stuff that people
6 need, and how it's made, and how it's been produced and so forth,
7 because my -- now I got out of North Dakota, we moved out here
8 because my body had -- couldn't tolerate any more of the agricultural
9 chemicals that were sprayed in the air all the time for farming. So I
10 moved out here because of that.

11 MR. JONES: So I loved so many things that you said.
12 Anyway, I love the -- all the help, the underlying desire to help your wife,
13 and that's the basis of all this that you're doing. That's extremely doing.

14 In addition, my goodness, so you've built two homes?

15 PROSPECTIVE JUROR 441: Right.

16 MR. JONES: What is it about getting out there and doing it?
17 I mean, did you have help on these or did you like actually --

18 PROSPECTIVE JUROR 441: Yeah, yeah. Yeah, yeah. I had
19 other people helping with that, but it's the idea, more or less, you see a
20 project to the end. And you get to see -- it's more or less the feeling like
21 you've accomplished a task, and it's mostly you want it to be completed.
22 And the homes that I built up in the Dakotas there, it is that they're so
23 well built that the tornadoes come through and others were roofs were
24 falling off and walls coming down, ours would stay straight. No knowing
25 problems. See, at the most, the wood would crack, but that's about that.

1 But it didn't shift in the winds or nothing. So it really built -- everything
2 was just built really nice and solid. Just the completion of a task and a
3 quality type end product.

4 And my business I had was I did a lot of environmental
5 concerns in that respect. I was a state preferred contractor in that
6 theatre.

7 MR. JONES: You take pride in being able to do that stuff on
8 your own --

9 PROSPECTIVE JUROR 441: Correct.

10 MR. JONES: -- and being able to actually push something
11 through like that?

12 PROSPECTIVE JUROR 441: Correct.

13 MR. JONES: Because I'll tell you, it would never happen. I
14 mean, my wife would be the first one to tell you, Kimball, don't even talk
15 about it. Like that's -- you're just going to be wasting your time. So I
16 don't have the skill and -- I don't know. Anyway, but it's remarkable.
17 That's fantastic, and I thought that was very cool.

18 If I may, I'd like to go to Cindy, but I want to ask you kind of a
19 different question.

20 PROSPECTIVE JUROR 426: Okay.

21 MR. JONES: I'd like you to -- what does it tell you about
22 Roger, what Roger just shared with us?

23 PROSPECTIVE JUROR 426: So Cindy Peacock, 426. Yes, it
24 definitely tells me that Roger caring for others is very, very important to
25 him. That's how he wants to spend his time, and that sense of pride in

1 work, in a job well done, and I think having like control over the process
2 and seeing it through and making sure that the quality of the work is
3 there and being actively engaged.

4 MR. JONES: Yeah. Thank you. Would you mind sharing
5 with us something you're passionate about? Or would you rather us
6 pass it around --

7 PROSPECTIVE JUROR 426: No, it's fine. Outside of family
8 and religion, probably the two for me are cooking and taking care of the
9 homeless.

10 MR. JONES: Awesome.

11 PROSPECTIVE JUROR 426: My family and I, at least twice a
12 week, we cook for Caberone [phonetic] House, which is a day shelter in
13 Henderson. So we cook meals for them on Sundays, and we always
14 cook for them what we would eat, so we always eat better on Sundays
15 because we want to give them a really good meal. So we enjoy cooking.
16 Some music and wine, and the family cooks together.

17 MR. JONES: That is so awesome.

18 PROSPECTIVE JUROR 426: [Indiscernible].

19 MR. JONES: That is really cool.

20 PROSPECTIVE JUROR 426: Thanks.

21 MR. JONES: And how old are your kids, again?

22 PROSPECTIVE JUROR 426: The youngest is 19. I messed up
23 before. Nineteen, 21, and then by marriage, 30 and 32.

24 MR. JONES: Have you -- as your kids were growing up, did
25 you do this with them? Were they involved in this process?

1 PROSPECTIVE JUROR 426: Yeah. We all -- they love to cook.

2 And we moved from Maine. It wasn't quite -- the homeless situation

3 wasn't quite the same there in the community --

4 MR. JONES: It's a big issue here.

5 PROSPECTIVE JUROR 426: -- but here it is.

6 MR. JONES: Yeah.

7 PROSPECTIVE JUROR 426: Yep.

8 MR. JONES: Awesome. Well, thank you.

9 PROSPECTIVE JUROR 426: Thanks.

10 MR. JONES: I appreciate you sharing.

11 What do you like to cook?

12 PROSPECTIVE JUROR 426: Well, for them, I mean, it's the

13 heartier, the better.

14 MR. JONES: Sure.

15 PROSPECTIVE JUROR 426: So it's all things we shouldn't

16 eat, but we get to eat every other weekend for them. So a lot of

17 [indiscernible] and all that stuff. My 19-year-old has become a vegan,

18 which is challenging, because we're a meat-eating family, but we're

19 trying to find balance there.

20 MR. JONES: Absolutely. Absolutely. No, I should be more

21 cautious about what I eat, there's no question about it. And there was a

22 time I was in the military like you gentlemen, and it seemed, at that time,

23 I didn't have to be so cautious. Anyway, so it's been an interesting

24 process.

25 Thank you, Cindy. I appreciate it.

1 PROSPECTIVE JUROR 426: Uh-huh.

2 MR. JONES: Let's go ahead and let's pass it back to Ashley.

3 PROSPECTIVE JUROR 444: I'm Ashley Fossile, badge
4 number 44. Besides family and religion, I do have a bit of passion for
5 video games, as well, since that's actually the industry I work in. I test
6 video games, so if you're looking for a job, let me know, in video games.

7 Anyway, the other thing I don't mind sharing is I'm actually a
8 huge Star Wars fan, so like this past April, I went to a Star Wars
9 celebration in Chicago. And then I plan on going with my whole family
10 with three kids in tow next August in L.A. So --

11 MR. JONES: That is -- so what -- everything you just said is
12 awesome.

13 PROSPECTIVE JUROR 444: Thank you.

14 MR. JONES: So Star Wars. I mean, most -- I don't know.
15 Maybe not -- probably most people are not as big of a nerd as me, but I
16 think that there's a lot of people here that feel similarly.

17 What is it about Star Wars? Why do you love Star Wars so
18 much?

19 PROSPECTIVE JUROR 444: You know, first off, you know,
20 kind of growing up with it, you know, just kind of the sci-fi in my family.
21 I got a lot more into it with my current -- with my husband since we went
22 to high school together, and it was just one of those things that I can
23 easily connect with other people. It's usually what I use as like
24 conversation starters, and I just love, you know, the diversity and the
25 culture in it. Yep.

1 MR. JONES: And you're hiring video game players?

2 PROSPECTIVE JUROR 444: Yes. Testers at my work; yeah.

3 MR. JONES: Okay. All right. At the end of this, if you're not
4 a member of the jury, just leave your information behind. There may be
5 -- you know --

6 PROSPECTIVE JUROR 444: All right.

7 MR. JONES: You may be getting some applications.

8 PROSPECTIVE JUROR 444: All right.

9 MR. JONES: Would someone else be willing to share
10 something -- what they're passionate about?

11 Yes, please. Bring it up forward. Rex.

12 PROSPECTIVE JUROR 425: Rex Dalton, 425. I've actually got
13 a couple questions for you.

14 MR. JONES: Yeah, give it to me.

15 PROSPECTIVE JUROR 425: Number one, what school did
16 you go to in Iowa?

17 MR. JONES: Brigham Young. Is that okay?

18 THE COURT: Counsel, could you both approach, please?

19 Madam Court Recorder, can you turn on the white noise?

20 PROSPECTIVE JUROR 425: Sorry. Bad question.

21 [Sidebar at 1:58 p.m., ending at 2:11 p.m., not transcribed]

22 THE COURT: Okay.

23 MR. JONES: Where were we at?

24 THE COURT: So let me just be quick. Since there was an
25 evidentiary objection presented to the Court, the Court is just going to

1 ask counsel to continue with proper voir dire questions and ask if there's
2 an objection the Court needs to address, the Court will be glad to hear
3 any proper objections. Thanks so much.

4 MR. JONES: Go ahead, where were we at? Do you recall?

5 PROSPECTIVE JUROR 387: We were talking -- yeah. I love
6 watching like those HTTV where they're fixer-uppers, and I don't know,
7 it's always something, since I can remember that I've always been
8 interested in and somewhat passionate about.

9 MR. JONES: What is it about that, you know, changing,
10 fixing things up, what is it about that, that draws you in?

11 PROSPECTIVE JUROR 387: I just like looking at like the
12 people. I'm more like into the modern, kind of design. So when I watch
13 those shows, like all those how that are, like outdated, like back from the
14 '70s, I like seeing them more modern, and I don't know, just -- it's also
15 like the furniture and, you know, everything that's put in the house,
16 that's all -- again, I know it's just something that really catches my
17 attention.

18 MR. JONES: The transformation, correct?

19 PROSPECTIVE JUROR 387: Yeah. Pretty much, yeah.

20 MR. JONES: Yeah. Yeah. Fantastic. Let's go ahead and
21 pass it down, along, please. Terrence, correct?

22 PROSPECTIVE JUROR 386: No. Ken Beck, badge 386.

23 MR. JONES: Ken. Sorry, Ken.

24 PROSPECTIVE JUROR 386: No problems.

25 MR. JONES: Go ahead. What are you passionate about?

1 PROSPECTIVE JUROR 386: Right now I've started up my
2 own business this year, finally. Did corporate America for 20 years,
3 finally I started my own business, and spend of my time being
4 passionate about that.

5 MR. JONES: It's a tremendous amount of work running your
6 own business.

7 PROSPECTIVE JUROR 386: Yes.

8 MR. JONES: Has it been harder or easier, since the
9 transition?

10 PROSPECTIVE JUROR 386: Well, a bit of both.

11 MR. JONES: Okay.

12 PROSPECTIVE JUROR 386: It's nice not doing TPS reports,
13 when you have your own business, but it's a lot of hours, so a lot a more
14 work, but a lot more enjoyable work.

15 MR. JONES: Yeah. And you're building something that's
16 your own?

17 PROSPECTIVE JUROR 386: Yeah.

18 MR. JONES: Does it give you a different type of pride in
19 what you're doing, knowing that this is your own thing, versus helping
20 building within a corporation?

21 PROSPECTIVE JUROR 386: Yeah.

22 MR. JONES: Thank you. Appreciate it.

23 PROSPECTIVE JUROR 386: All right.

24 MR. JONES: Let's see. I think we have -- let's see. Yes,
25 Terrence?

1 PROSPECTIVE JUROR 370: Yeah. I'm Terry --

2 MR. JONES: Terry.

3 PROSPECTIVE JUROR 370: -- badge 370. So I'm passionate
4 about a lot of things, music, play the drums. I like all kind of music.
5 Anything with wheels, motors or not, bicycles, motorcycles, cars,
6 skateboards, love it all, anything on wheels.

7 I'm a gardener, love the outdoors, love to garden. Love to
8 cook. Basically I'm a homebody. At work put in like 70 hours a week, so
9 when I get home I like to turn it all off, and just kind of go introvert, and
10 just work around the house, do chores, build things, work on cars, listen
11 to music, gardening.

12 MR. JONES: What do you like for music?

13 PROSPECTIVE JUROR 370: Music has no boundaries for me.
14 So I go from Reggae, punk rock, rock and roll, I like it all.

15 MR. JONES: Awesome, awesome.

16 PROSPECTIVE JUROR 370: Old, yeah, I like it all.

17 MR. JONES: Thank you, Terry.

18 PROSPECTIVE JUROR 370: You're welcome.

19 MR. JONES: Is there anyone else who would like to tell us
20 about something they're passionate about? Come on. Let's pass it
21 forward.

22 PROSPECTIVE JUROR 418: Dareal Thomas, 418. I'm
23 passionate about, like he said, music. I sing, I write, and I love sports, so
24 yeah.

25 MR. JONES: What sports do you love?

1 PROSPECTIVE JUROR 418: Basketball. I play basketball all
2 junior high, high school and college.

3 MR. JONES: Where did you play?

4 PROSPECTIVE JUROR 418: I went to Lassen Community
5 College.

6 MR. JONES: Fantastic.

7 PROSPECTIVE JUROR 418: Yes.

8 MR. JONES: That's quite an achievement.

9 PROSPECTIVE JUROR 418: Yeah. It's cool.

10 MR. JONES: So do you play still?

11 PROSPECTIVE JUROR 418: No, I don't.

12 MR. JONES: Okay.

13 PROSPECTIVE JUROR 418: No.

14 MR. JONES: But you watch it?

15 PROSPECTIVE JUROR 418: I watch it. I mean, I'll get out
16 there every now and then, you know, just go with it a little bit, but not
17 really up. More so focusing on my music, and getting all that together,
18 so --

19 MR. JONES: Awesome. What kind of music?

20 PROSPECTIVE JUROR 418: I do gospel, but I'm kind of going
21 back and forth with RNB, you know, stuff like that. So I'm kind of getting
22 everything together.

23 MR. JONES: So you write your own music?

24 PROSPECTIVE JUROR 418: I do.

25 MR. JONES: Have you produced an album, or anything like

1 that?

2 PROSPECTIVE JUROR 418: I'm currently working on that
3 now. A single, at the end of the year, so be looking out for it, you know.
4 So, yeah.

5 MR. JONES: That is tremendous, that's awesome.

6 PROSPECTIVE JUROR 418: Very passionate about it.

7 MR. JONES: What is it about that? Why?

8 PROSPECTIVE JUROR 418: My music?

9 MR. JONES: Yeah.

10 PROSPECTIVE JUROR 418: Because I feel like I can really
11 express me --

12 MR. JONES: Uh-huh.

13 PROSPECTIVE JUROR 418: -- you know, instead of talking to
14 somebody, and they kind of understand what I'm saying, and but really,
15 they're like, no, I don't really understand, you know. But in my music, I
16 can be in a way you're going to understand; do you know what I'm
17 saying?

18 MR. JONES: Yeah.

19 PROSPECTIVE JUROR 418: So --

20 MR. JONES: No, that's awesome, freedom to be exactly who
21 you are.

22 PROSPECTIVE JUROR 418: Yeah.

23 MR. JONES: It's interesting, a lot of you have mentioned,
24 you know, you do different things, and in some cases, kind of for some
25 of the same reasons. You know, you get out there so you can be free

1 from all of this day-to-day stress of the world, right?

2 PROSPECTIVE JUROR 418: Yeah. Make it --

3 MR. JONES: You know --

4 PROSPECTIVE JUROR 418: Make the music, just happy, you
5 know.

6 MR. JONES: That's phenomenal. Thank you. Do you want
7 to pass that down one.

8 PROSPECTIVE JUROR 417: Belinda Hightower, 417.

9 MR. JONES: Can you -- Belinda, what are your thoughts
10 about what was just said?

11 PROSPECTIVE JUROR 417: Golly, it's great. I like her music,
12 writing her own, and just being herself, and expressing herself, and
13 doing that.

14 MR. JONES: And it tells you she's being her, right? She's
15 somebody who -- I mean, college basketball, now dropping her own
16 single. It's kind of amazing, she goes out and does what she thinks she
17 should she do, right?

18 PROSPECTIVE JUROR 417: Exactly.

19 MR. JONES: Tell us about what you're passionate about?

20 PROSPECTIVE JUROR 417: Sewing, working, caregiver,
21 childcare. And I was raised by my father and five brothers, so --

22 MR. JONES: And you survived?

23 PROSPECTIVE JUROR 417: Yeah. I did. Yeah. They -- they
24 taught me well.

25 MR. JONES: That is fantastic. Now I didn't quite catch you.