

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

E&T VENTURES, LLC, a Nevada
limited liability company,

Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,
DISTRICT JUDGE,

Respondent,

EUPHORIA WELLNESS, LLC, a
Nevada limited liability company,

Real Party in Interest.

Electronically Filed
May 16 2022 03:59 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

Supreme Court Case No. 84336

District Court Case: A-19-796919-B

**MOTION TO STAY
DISTRICT COURT CASE PENDING DECISION ON PETITION
[ACTION REQUIRED ON OR BEFORE JUNE 30, 2022 AT 10:15 A.M.]¹**

LAW OFFICE OF MITCHELL STIPP

MITCHELL STIPP, ESQ. (Nevada Bar No. 7531)

1180 N. Town Center Drive, Suite 100 Las Vegas, Nevada 89144

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Counsel for Petitioner

¹ A jury trial is set for August 1, 2022, and a pretrial conference is scheduled for June 30, 2022 at 10:15 a.m.

MEMORANDUM OF POINTS AND AUTHORITIES

A. Background/Facts.

Petitioner, E&T Ventures, LLC (“Petitioner”), and Respondent, Euphoria Wellness, LLC (“Respondent”), are parties to an agreement whereby Petitioner operated the cannabis production facility leased by Respondent addressed as 5900 Emerald Avenue, Las Vegas, Nevada. See Declaration of Joseph Kennedy included herewith (“Kennedy Declaration”). The contractual arrangement did not entitle Respondent to any profits from the activities of Petitioner at the cannabis production facility.

Respondent conducted an inventory audit of the cannabis production facility between March 11, 2019 and March 14, 2019 and purportedly discovered variances (difference between physical inventory and inventory reported in METRC). Id. Respondent prepared and submitted a License Incident Report to the Nevada Department of Taxation (“DOT”) on March 15, 2019. Id. In response to the investigation by DOT arising from the report, Respondent blamed Petitioner for the variances. Id.

Respondent locked-down the cannabis production facility at 8am on March 15, 2019 and prohibited Petitioner from accessing the same (including even to remove its property and business records). Id. On April 4, 2019, Respondent

communicated to DOT its Complete Investigation Results. Id. Petitioner contends it was not provided an opportunity to explain the variances or confirm the results of Respondent's investigation. Id. On May 22, 2019, Respondent terminated the agreement with Petitioner. Id. As a result, Petitioner was forced out of business and has ceased operating as a going concern. Id. However, Respondent has been operating the cannabis production facility and retaining all profits. Id.

On or about July 9, 2019, DOT accepted Respondent's plan of correction and closed the investigation. Id. Respondent has not been disciplined by DOT, and Respondent's cannabis production licenses are not in any jeopardy. Id. Respondent also retained all furniture, fixtures, and equipment provided by Petitioner for the operation of the cannabis production facility. Id. There is no dispute that Respondent has not been harmed as a result of the variances. Respondent kept Petitioner's property and is now operating and retaining all profits from the cannabis production facility.

B. Brief Procedural History on Disqualification.

Petitioner filed a writ petition on March 7, 2022 ("Petition"). See Dkt. No. 22-07119. On April 29, 2022, the Nevada Supreme Court ordered Respondent to answer the Petition. See Dkt. No. 22-13615. Petitioner filed an application for disqualification of Judge Joanna Kishner (Department 31, Eighth Judicial District Court), on February 2, 2022. See Dkt. No. 22-07120 (Volume 1 of Appendix,

Exhibit 1 (Appendix 5-236) (“Motion No. 1”). Chief Judge Linda Bell denied Motion No. 1 on February 10, 2022. See Dkt. No. 22-07121 (Volume 2 of Appendix, Exhibit 3 (Appendix 256-263)) (“Decision No. 1”).² Petitioner filed a motion for withdrawal/reconsideration of Decision No. 1, for an evidentiary hearing on disqualification, or alternatively for a stay pending a writ petition, on February 10, 2022. See id. (Volume 2 of Appendix, Exhibit 4 (Appendix 264-286)) (“Motion No. 2”). Chief Judge Bell denied Motion No. 2 on March 3, 2022. See id. (Volume 2 of Appendix, Exhibit 9 (Appendix 332-337)) (“Decision No.2”).

The Petitioner seeks to have Decision No. 1 vacated as premature; to disqualify Judge Kishner from presiding over Case No. A-19-796919-B because Judge Kishner failed to respond to Motion No. 2; and to vacate as void Judge Kishner’s decisions entered after Motion No. 1. See Dkt. No. 22-07119. Chief Judge Bell’s jurisdiction to decide Motion No. 1 was conditional by the plain meaning of the statute. See NRS 1.235(6) (“if they are unable to agree”); see also Erwin v. State, 111 Nev. 1535,1538-39, 908 P.2d 1367, 1369 (1995) (“[w]here the language of a statute is plain and unambiguous, and its meaning clear and

² The Table of Contents included as part of Volume II of Petitioner’s Appendix (Dkt. No. 07121) contains errant references to “ppe i,” which appeared after the Appendix was filed. The Table of Contents included as part of Volume I of Petitioner’s Appendix (Dkt. No. 22-07120) can be used for both Volumes I and II of Petitioner’s Appendix.

unmistakable, there is no room for construction, and the courts are not permitted to search for its meaning beyond the statute itself.") (internal quotations omitted). NRS 1.235(5) required Judge Kishner to "immediately transfer the case to another department of the court" because she elected not to respond to Motion No. 2 (including Petitioner's new affidavit pursuant NRS 1.1235(1) which supports the allegations in the filing).

Judge Kishner received notice of Motion No. 1 (because it was filed in the district court case). However, on February 11, 2022, during an evidentiary hearing she scheduled after the petition was denied in Case No. 84133, Judge Kishner inexplicably refused to acknowledge it. See Transcript, pages 11-24 attached as Exhibit 1 hereto. As set forth in the transcript (Exhibit 1), Judge Kishner ignored the existence of Motion No. 2 and proceeded over the objection of Petitioner with the evidentiary hearing. Id. Despite claiming not to be bound by NRS 1.1235 (because personal service of Motion No. 2 was not complete at the time of the evidentiary hearing), Judge Kishner and her staff subsequently refused to accept personal service of Motion No. 2 and directed Petitioner's process server to deliver it to the chambers' "in-box" at the Regional Justice Center. See Certificate of Service, (Volume 2 of Appendix, Exhibit 6 (Appendix 289-325)).

The Nevada Supreme Court should note that Petitioner expressly informed Judge Kishner that Motion No. 2 included a new affidavit pursuant NRS 1.1235(1)).

See Transcript, page 5 (lines 9-11) attached as **Exhibit 1** hereto (“In that motion there is a new affidavit concerning disqualification and a request to disqualify the Court as briefed in that motion.”) Petitioner has provided notice to Judge Kushner of the Petition. See **Exhibit 2** hereto.³ Although not required to do so, Petitioner even requested that Judge Kushner transfer the case **by the same notice**. Id.

C. Applicable Law.

The Nevada Rules of Appellate Procedure provide a mechanism for seeking a stay pending a decision from the Nevada Supreme Court. Under NRAP 8(a)(1), a party must ordinarily first seek a stay from the district court. In considering whether to grant the requested stay, the Nevada Supreme Court considers: “(1) whether the object of the ... writ petition will be defeated if the stay ... is denied; (2) whether [] petitioner will suffer irreparable or serious injury if the stay or injunction is denied; (3) whether respondent/real party in interest will suffer irreparable or serious injury if the stay ... is granted; and (4) whether [] petitioner is likely to prevail on the merits in the appeal or writ petition.” NRAP 8(c); Hansen v. Eighth Jud. Dist. Ct., 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Any one factor is not more important than the others; however, where “one or two factors are especially strong, they may counterbalance other weak factors.” Mikohn Gaming Corp. v. McCrea, 120 Nev.

³ Appendix from Petition was excluded from **Exhibit 2** for purposes of this motion.

248, 251, 89 P.3d 36, 38 (2004). Here, the first and fourth factors justify Petitioner's request for a stay. The second and third factors are neutral.

1. Judge Kishner denied Petitioner's Request for a Stay.

On April 1, 2022, Petitioner filed a motion for a stay before Judge Kishner. See Dkt. 22-10245. The motion was heard on May 10, 2022. Judge Kishner denied the stay based on the following rationale: (a) the Petition concerns decisions of Chief Judge Bell who presides over cases in Department 14—not Department 31 (i.e., ruling of a different judge); (b) there is no irreparable or serious injury to Petitioner if the stay is denied (because the parties have been litigating); (c) there is no irreparable injury to Euphoria, but there may be serious injury if the stay is granted because of the time and expense of the delay and regulatory issues; and (d) Petitioner is not likely to prevail on the merits of the Petition (because the rule on disqualification is the rule and the Petition concerns Chief Judge Bell's decision). See Transcript, attached as **Exhibit 3** hereto.

2. The Object of the Writ Petition will be defeated if the Stay is not Granted.

"The right to an impartial judge is not one to be lightly disregarded. It has real constitutional significance." Marshall v. Jerrico, Inc., 446 U.S. 238, 242, 100 S. Ct. 1610, 1613 (1980). An impartial and disinterested forum "helps to guarantee that life, liberty, or property will not be taken on the basis of an erroneous or distorted

conception of the facts or the law," while at the same time "it preserves both the appearance and reality of fairness, 'generating the feeling, so important to a popular government, that justice has been done.'" Id. (quoting Anti- Fascist Committee v. McGrath, 341 U.S. 123, 172 (1951) (Frankfurter, J., concurring)).

All decisions made by the Judge Kishner after Motion No. 1 was filed are void (assuming Decision No. 1 was premature, should have been withdrawn, and now should be vacated). Debiparshad v. The Eighth Judicial Dist. Court of State, 137 Nev. Adv. Op. 71, 8 (Nev. 2021) (citing Christie v. City of El Centro, 37 Cal.Rptr.3d 718, 725 (Ct. App. 2006) ("[Disqualification occurs when the facts creating disqualification arise, not when disqualification is established.]), Hoff v. Eighth Judicial Dist. Court, 79 Nev. 108, 110, 378 P.2d 977, 978 (1963) ("That the actions of a district judge, disqualified by statute, are not voidable merely, but void, has long been the rule in this state."); and Frevert v. Smith, 19 Nev. 363, 11 P. 273 (1886) ("[T]he general effect of the statutory prohibitions ... [is] to render those acts of a judge involving the exercise of judicial discretion, in a case wherein he is disqualified from acting, not voidable merely, but void.")).

Trial in the district court is scheduled for a jury trial on August 1, 2022. The purpose of the Petition is to protect Petitioner's constitutional right to—and the public's interest in—an impartial tribunal. The Nevada Supreme Court has long recognized the importance of a neutral tribunal, stating that "any tribunal permitted

by law to try cases and controversies **not only must be unbiased but also must avoid even the appearance of bias.**” Matter of Ross, 656 P.2d 832 (Nev. 1983) (emphasis added) (quoting Commonwealth Coat. Corp. v. Continental Cas. Co., 393 U.S.145, 150 (1968)). Due process—basic fairness—requires that the Petition be decided before the parties go to trial. The Fourteenth Amendment to the United States Constitution, guarantees that no person shall be deprived of life, liberty, or property, without due process of law. The Fourteenth Amendment to the United States Constitution is a prohibition on all state agencies and a guaranty that no law and no court decision in any state shall be upheld where its effect would be to deny due process. There is no doubt that the right to a fair and impartial judge who has not pre-judged a case is guaranteed by the Due Process and Fair Trial clauses of the constitution. See In re Murchison, 349 U.S. 133, 75 S.Ct. 623, 99 L.Ed. 942 (1955).

Judge Kishner’s view that the object of the Petition would not be defeated if she denied the stay because the Petition does not concern her decisions in the case lacks merit. Judge Kishner seems to believe that the Petition does not impact her jurisdiction to preside over Case No. A-19-796919-B. The exact opposite is the case. See Kirskey v. State, 112 Nev. 980, 1007 (Nev. 1997).

3. Petitioner will not suffer serious irreparable or serious injury if the stay is denied, and Respondent will not suffer the same if the stay is granted.

The Nevada Supreme Court has held as follows:

Although irreparable or serious harm remains part of the stay analysis, this factor will not generally play a significant role in the decision whether to issue a stay. Normally, the only cognizant harm threatened to the parties is increased litigation costs and delay. We have previously explained that litigation costs, even if potentially substantial, are not irreparable harm. Similarly, a mere delay in pursuing discovery and litigation normally does not constitute irreparable harm. Of course, in certain cases, a party may face actual irreparable harm, and in such cases the likelihood of irreparable harm should be considered in the stay analysis.

Mikohn Gaming Corp. v. McCrea, 120 Nev. 248, 253 (Nev. 2004). Both parties are incurring substantial attorney's fees and costs preparing for trial. There is no harm to Respondent if the stay is granted. The investigation by the state is closed. Respondent is operating the cannabis production facility with Petitioner's property and retaining all profits.

Judge Kishner believes there is no harm to Petitioner by denying a stay, but there is harm to Respondent if a stay is granted. The primary basis is the cost and expense of litigation which both parties are incurring, but Judge Kishner believes constitutes only harm to Respondent. Judge Kishner's belief that there is also a regulatory basis that supports denying a stay was not argued by Respondent or even explained.

4. Petitioner is likely to prevail on the merits of the Petition.

There is no dispute Decision No. 1 was premature. There is also no dispute Judge Kishner elected not to respond to Motion No. 2 (including Petitioner's *new affidavit* pursuant NRS 1.1235(1)). Judge Kishner had notice of Motion No. 2, and service of process was completed. Respondent will argue that Judge Kishner was not required to respond to Motion No. 2. Petitioner agrees. However, the consequence is Judge Kishner must transfer the case, but she refuses to do so. Judge Kishner's view that the Petition will not likely be successful because the rule on disqualification is the rule and the Petition does not concern her decisions lack merit.

DECLARATION OF JOSEPH KENNEDY

The undersigned, Joseph Kennedy, declares under penalty of perjury as follows:

1. I am an authorized agent for Petitioner.
2. I submit the above-titled declaration in support of the motion to stay before the Nevada Supreme Court. I have personal knowledge of the fact set forth in the motion to stay as they are based on the record in this case (unless otherwise qualified by information and belief), I am competent to testify thereto, and such facts are true and accurate to the best of my knowledge and belief.

Dated this 16th day of May, 2022.

/s/ Joseph Kennedy

Joseph Kennedy, Authorized Agent for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 16th day of May, 2022, I filed the foregoing **MOTION**, using the court's electronic filing system.

Notice of the filing of the Motion was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center

200 Lewis Ave.

Las Vegas, NV 89155

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Euphoria Wellness, LLC as Real Parties-in- Interest:

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Nevada State Bar No. 11187

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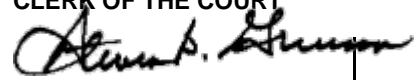
Email: nlovelock@joneslovelock.com

By:

/s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp

EXHIBIT 1



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

E&T VENTURES, LLC,)	
)	
Plaintiff,)	CASE NO. A-19-796919-B
)	
vs.)	DEPT. NO. XXXI
)	
EUPHORIA WELLNESS, LLC,)	
)	
Defendant,)	
)	
<u>and related parties and actions.</u>)	Transcript of Proceedings

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

FRIDAY, FEBRUARY 11, 2022

TRANSCRIPT RE:

ALL PENDING MOTIONS AND EVIDENTIARY HEARING

STATUS CHECK: TRIAL READINESS

APPEARANCES: *(Via BlueJeans Videoconference)*

FOR THE PLAINTIFF: MITCHELL D. STIPP, ESQ.

FOR THE DEFENDANT: JUSTIN C. JONES, ESQ. *(in court)*
NICOLE E. LOVELOCK, ESQ.
MARTA D. KURSHUMOVA, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER
TRANSCRIPTION BY: LGM TRANSCRIPTION SERVICE

1 **LAS VEGAS, NEVADA, FRIDAY, FEBRUARY 11, 2022, 3:48 P.M.**

2 * * * * *

3 THE COURT: Okay. Counsel, we're ready to move
4 forward if everybody is. Let's get going then. We're on
5 page 5, E&T Ventures versus Euphoria Wellness and related
6 entities on both sides; 796919.

7 Counsel for E&T Ventures in the various roles, go
8 ahead, counsel, please, and other parties.

9 MR. STIPP: Good afternoon, Your Honor. This is
10 Mitchell Stipp appearing on behalf of E&T Ventures.

11 THE COURT: Okay. And you're also, though, on
12 behalf of the cross-defendant CBD Supply, Happy Campers, Miral
13 Consulting; is that correct? Which other clients? I just
14 want to make sure. Go ahead, please.

15 MR. STIPP: Sure. I'm currently counsel of record
16 for Miral Consulting, CBD Supply and Happy Campers. However,
17 I will be filing a motion to withdraw as counsel for Miral
18 Consulting and CBD Supply.

19 THE COURT: Okay. Thank you so very much.

20 Okay. Counsel for Euphoria Wellness and whatever
21 entities.

22 MR. JONES: Good morning, Your Honor. Justin Jones
23 on behalf of Euphoria Wellness.

24 THE COURT: Thank you.

25 MS. LOVELOCK: Good morning, Your Honor. Nicole

1 Lovelock on behalf of Euphoria Wellness.

2 THE COURT: Okay, thank you. We also have a phone
3 number, like I said, it's a public courtroom, people are more
4 than welcome to attend and observe. And then also if it's an
5 individual with regards to today's hearing, does anyone know
6 who the phone number is or does the phone number wish to make
7 an appearance?

8 MS. KURSHUMOVA: Hello, Your Honor. Marta Kurshumova
9 observing the evidentiary hearing on the E&T versus Euphoria
10 matter.

11 THE COURT: Okay. Like I said, perfectly welcome
12 to do so. The students, apparently I guess they had somewhere
13 else to be on a Friday afternoon rather than sitting and
14 watching a hearing.

15 MR. JONES: Watching a thrilling hearing.

16 THE COURT: So we don't have that.

17 So what we have today is we have several things on,
18 and I was going to tell you the order of where we were going
19 to do these is we have the --

20 MR. STIPP: Your Honor, this is Mitchell Stipp.

21 THE COURT: Let me tell, so Madame Clerk and Madame
22 Court Recorder know each of the matters, right, so that they
23 can have it for their records, and then I'll be glad to have
24 counsel address. Give me just one second so we make it clear
25 on which are the matters so they can get that respectively

1 in their minutes and the court recording. Thank you so very
2 much.

3 Okay. So we have motion for protective order on
4 Euphoria's NRCP 30(b)(6) deposition of E&T Ventures, LLC.
5 And we have the evidentiary hearing based on the January 4th
6 hearing with relationship to discovery motions. We have
7 plaintiff's motion for attorney's fees and costs. It still
8 shows we have the motion to seal exhibits to Euphoria Wellness
9 motion for partial summary judgment, and we're just going to
10 revisit that in a moment. And it looks like it shows we still
11 have on the motion to seal exhibits to the reply in support
12 of Euphoria Wellness' motion for partial summary judgment and
13 Euphoria Wellness's motion for partial summary judgment. And
14 then a status check on trial readiness.

15 That's everything we show on for today. Now, a
16 couple of those motions to seal, I believe they got advanced
17 and granted, but the Court was just going to clarify when we
18 got there. Really the order the Court was intending to do to
19 minimize anything with regards to any witnesses, same as I did
20 in the last hearing, is do the evidentiary hearing portion
21 first and then address the other matters before the Court.
22 That way we minimize any time to any witnesses with regard to
23 an evidentiary hearing. Like I said, I did the same thing at
24 the last hearing.

25 So with regards to -- Mr. Stipp, you said -- we're

1 starting with the evidentiary hearing. Did you wish to do an
2 introduction or what were you going to say?

3 Go ahead, please, sir.

4 MR. STIPP: Thank you, Your Honor. This is Mitchell
5 Stipp speaking on behalf of E&T Ventures. I just wanted to
6 bring to the Court's attention the motion to withdraw and
7 the motion for reconsideration. That was filed on the 10th
8 at 7:10 p.m., regarding the decision by Chief Judge Bell
9 pertaining to disqualification. In that motion there is a
10 new affidavit concerning disqualification and a request to
11 disqualify the Court as briefed in that motion.

12 And so our position would be, given the pending
13 motion for disqualification and then the affidavit attached,
14 that the Court under the rules isn't permitted to proceed as
15 it relates to any matters that are currently before the Court
16 until the motion is resolved.

17 THE COURT: Okay. Thank you so very much. The
18 Court -- obviously it wouldn't have been submitted to me.
19 Never got served with anything. Don't know anything related
20 thereto. What the Court does know, and just so that we're
21 clear, the Court has the decision and order dated 2/10/2022 at
22 7:52 a.m. in this present case, decision and order. It says
23 that there is no disqualification, so the status of this under
24 NRS 1. -- well, under the NRS and applicable case law is that
25 this Court can move forward. There is no basis, nor has this

1 Court been provided any notice or any reason why it could
2 not move forward.

3 Nor -- so while the Court takes no position on
4 something that you may have done to some other entity, the
5 Court does know that under the rules it specifically states
6 after the determination on a 1.235 motion, the decision and
7 order the Court does have, it can move forward. The Court
8 also has the order denying the petition for writ of mandamus
9 for prohibition filed by the Nevada Supreme Court dated
10 February 10th, 2022. And said order denying the petition, it
11 not only denies the writ petition but it also in Footnote 1
12 says, "In light of this order, petitioner's emergency motion
13 for stay is denied as moot."

14 The Court has effective orders that were issued
15 after the decision and order was filed, or decision and
16 orders, I should say, were filed, and continued this hearing
17 for basically the convenience of counsel for various of the
18 plaintiff's parties to get resolved whatever issues needed
19 to get resolved. There's nothing that this Court has been
20 informed that it would not have the ability to move forward,
21 so the Court is intending to move forward, consistent with
22 the Nevada rules, consistent with the statutory provisions
23 and consistent with everything that this Court is, so we are
24 going to move forward with the evidentiary hearing.

25 Okay. So now that we're moving forward with the

1 evidentiary hearing, the first thing we need to look at is --

2 MR. STIPP: Your Honor.

3 THE COURT: Counsel, the Court needs to finish,
4 please, finish its statement. So counsel, we need to --

5 MR. STIPP: [Distortion; inaudible]. Your Honor --

6 THE COURT: Counsel, please let the Court finish,
7 okay, just from a pure courtesy standpoint; right?

8 MR. STIPP: I'm letting --

9 THE COURT: So the Court with regards to the
10 evidentiary hearing, the Court is going to go to the order
11 with regards to the evidentiary hearing. And the Court is
12 going to read directly from said order. And we have two
13 orders. We have the order --

14 MR. STIPP: Your Honor.

15 THE COURT: Counsel, the Court needs to please
16 finish. I'll be glad to let you speak in just a moment,
17 right, but from a courtesy standpoint if someone is talking
18 please let them finish. Thank you so very much.

19 With regards to the order for the evidentiary
20 hearing, we have two orders, as the parties are aware. And
21 the original -- remember, from January 4th we originally were
22 going to set the evidentiary hearing the following week, and
23 due to the consideration of counsel for plaintiff stating his
24 son was ill, the Court then gave the parties an opportunity to
25 try and select a new date if they could do so and the parties

1 -- and then the Court said if the parties could not do so, the
2 Court would then set an appropriate date and time. The Court
3 is appreciative, because of some pending matters that happened
4 in the interim, this got administratively moved to today's
5 date and time.

6 And so that was then consistent not only with the
7 order setting the evidentiary hearing from 1/20/2022, but then
8 you all got the amended order setting the evidentiary hearing.
9 And the only thing that amended order did is a couple of
10 things, just so that everyone understands. The first thing
11 is, it even says so in the footnote, is of course we had to
12 change the date and time to reflect it. And as you know, the
13 Court doesn't need to do an amended order, but we just wanted
14 for pure clarity's sake because we had already sent you the
15 notification of the date and time, but just in case anybody
16 wanted it in an order format we sent it in an order format.

17 The other thing we needed to do is in the
18 intervening time there was a change through the Governor's
19 directive with regards to masks. And so the prior order
20 setting evidentiary hearing was consistent with what was then
21 the administrative orders which required masks, but since that
22 got changed we wanted to make sure everyone felt perfectly
23 comfortable and understood about that change and what were
24 the requirements here in court in case anyone chose to come
25 to court, so we modified just the language to delete the

1 aspect about masks being required with regards to people
2 coming in person. Otherwise, of course, the full substance
3 of the order stayed the same.

4 And so since there is a specific order of this
5 Court setting this hearing for this date and time and the
6 order setting the evidentiary hearing also does require the
7 appearance of Kristin Taracki, who is also -- and I'm going
8 to mispronounce the last name but I'm going to try my best,
9 Kristin Ehasz, who is the person who had signed the October
10 25th, 2021 first supplemental responses and objections to
11 requests for the production of documents and interrogatories.

12 And on page 39, which is also labeled from an
13 appendix standpoint APP70, the declaration of Kristin Taracki,
14 K-r-i-s-t-i-n T-a-r-a-c-k-i, states as follows: "The above
15 responses to interrogatories by Euphoria Wellness, LLC to
16 E&T Ventures, LLC are true and accurate to the best of my
17 knowledge and belief as an authorized agent for E&T Ventures,
18 LLC." And the date says October 25, 2021. It then has a /s/
19 and then it has Kristin Taracki and they spelled out the same
20 spelling that I said a second ago. And then there's a
21 signature block and underneath that it says Kristin Taracki,
22 authorized agent for E&T Ventures, LLC.

23 And in that capacity as the authorized agent for
24 E&T Ventures, LLC, since an entity cannot speak on its own,
25 it needs to speak through agents, members, managing members

1 or some type of individual, is the reason why for purposes of
2 the E&T Ventures portion of the hearing it was necessary to
3 have her here under Bahena v. Goodyear, as well as Young v.
4 Johnny Ribeiro, which both cases and several other cases set
5 forth that a recommended or preferred method, although not
6 required, is to have an evidentiary hearing when you have
7 issues of either case-terminating sanctions or some type of
8 dispositive sanctions or some type of severe sanctions.

9 And so the Court wanted to ensure that all parties
10 had an opportunity in a full due process standpoint be able
11 to provide the information that they needed to provide. And
12 in order to have an appropriate witness who was the subject
13 of some of the issues with regards to said sanctions, have
14 that person purely in the corporate capacity, based on the
15 representations of counsel for E&T Ventures at the January 4th
16 hearing that the -- I'm going to paraphrase, it was references
17 in the transcript as far as the person having no reason to
18 believe, and I'm paraphrasing, that the individual's address
19 stated on this October 25th, which was the Henderson address,
20 was not correct, the Summerwind Circle, 2244 Summerwind
21 Circle, Henderson, 89053. It's his understanding that that
22 could have been correct and that there was not a basis to
23 believe that this declaration was submitted inappropriately.

24 And so, once again, the Court wanted to ensure
25 everyone had a full opportunity to be heard; hence, the

1 evidentiary hearing rather than ruling on the motion, as the
2 Court could have done on that particular day. But like I
3 said, wanted to ensure everyone had the full opportunity to be
4 heard and have the appropriate witnesses here that were here
5 from the issue. Of course, the parties could bring whatever
6 additional witnesses if they chose to do so.

7 So that's where we're at and we are here for the
8 evidentiary hearing. So the first question this Court is
9 going to ask is if all parties have complied with the Court
10 order setting this hearing. I do see the Court has ordered
11 the matter to be placed on calendar.

12 So, is Ms. Kristin Taracki here? She was more than
13 welcome to appear remotely. Mr. Stipp, is Ms. Taracki here,
14 please?

15 MR. STIPP: Your Honor, I'd like an opportunity to
16 address the motion for disqualification that was filed on
17 February 11th -- I'm sorry, that was filed on February 10th,
18 2022 at 7:10. It was filed in your department. There's an
19 affidavit attached to it. It has an independent and new basis
20 for disqualification. Under the Tobin decision, if grounds
21 for a judge's disqualification are discovered after the time
22 limit set forth in NRS 1.235, subsection 1 has passed, a party
23 may file a motion to disqualify as soon as possible after
24 becoming aware of the new information. We filed that motion.
25 It's on the docket in this case, and so the Court has

1 knowledge. A copy of the motion was sent down to chambers.

2 So our position would be that the rules are pretty
3 clear that this Court cannot move forward with respect to the
4 matters before it. It would be a violation of the rules and
5 also appropriate case law. It's very clear that while a
6 pending motion for disqualification remains pending that the
7 Court can't take any actions in this case. And so if the
8 Court wants an opportunity to pull a copy of the motion and
9 take a look at it before determining without review that it
10 has not received a copy of it and wasn't served with a copy
11 of it, I'm happy to take a five minute break so you have an
12 opportunity to do that.

13 THE COURT: I do appreciate that, counsel, but it's
14 not necessary. I've been here in court. Nobody has come into
15 the courtroom. There's cameras all over the place. No one
16 has served this Court with any document. And I'm appreciative
17 of what you said, but to the extent you said you filed a
18 document called a motion to withdraw or a motion for
19 reconsideration, you can appreciate as a district court judge
20 that would not come before me, based on your statements of
21 what you filed, so that would not be before me today.

22 MR. STIPP: I filed it --

23 THE COURT: What the Court has is the Court has the
24 decision and order dated 2/10/2022. The Court finds it is
25 fully appropriate to move forward with the evidentiary hearing

1 in accordance with the statutory provisions, in accordance
2 with the ethical rules, in accordance with appropriate case
3 law, and the Court is intending to move forward. You can
4 appreciate that there is not any basis that this Court has
5 been made aware of that there is some reason why this Court
6 should not move forward with today's evidentiary hearing.

7 So, Mr. Stipp, I would like to ask you --

8 MR. STIPP: All you have to do --

9 THE COURT: -- in accordance with the order of the
10 Court --

11 MR STIPP: All you have to do [indiscernible] there
12 is a matter on the docket.

13 THE COURT: Mr. Stipp.

14 MR. STIPP: And the motion will indicate very
15 clearly what the basis is, Your Honor. The fact that you
16 won't look at the docket, knowing that it's been filed, is
17 a little disappointing to me.

18 THE COURT: Counsel. Counsel, as you can appreciate,
19 right --

20 MR. STIPP: I cannot appreciate that, Your Honor.

21 THE COURT: Sorry. Mr. Stipp.

22 MR. STIPP: It was filed on the 10th.

23 THE COURT: Mr. Stipp. Mr. Stipp, this Court has
24 been here. There has not been anyone who has served this
25 Court with anything, okay. I am appreciative of what you're

1 saying, but there's cameras all over the courthouse, okay.
2 There has not been any service, okay, of anything, right, to
3 the Court or a member of my team. So I am appreciative of
4 what you're saying.

5 I will check with people who were here. Has anybody
6 here received anything?

7 THE CLERK: No, Judge.

8 THE COURT: Okay. No.

9 MR. STIPP: Why don't you check the docket, Your
10 Honor?

11 THE COURT: Wait. Mr. Stipp. Mr. Stipp, I'm
12 checking with everyone just to make sure, okay --

13 MR. STIPP: No, no -- [indiscernible].

14 THE COURT: -- because I know I didn't. I'm
15 checking with my law clerk. Checking. Anybody receive --

16 THE LAW CLERK: No, ma'am.

17 THE COURT: Okay. I'm hearing all negatories. But,
18 Mr. Stipp, it's not a matter --

19 MR. STIPP: Your Honor -- [distortion; inaudible].

20 THE COURT: It would not be appropriate for the
21 Court to look at something that you filed, right, with regards
22 to before somebody else, okay, and less than a judicial day
23 before the hearing that's already set. We do need to move
24 forward with the evidentiary hearing. This was set up. It
25 was appropriately set up. It was appropriately continued in

1 order to ensure that all parties had the full opportunity to
2 be heard. And then the Court additionally set a new order --

3 MR. STIPP: Your Honor, just because --

4 THE COURT: Wait. Mr. Stipp, you keep talking over
5 me. Mr. Stipp, can you please --

6 MR. STIPP: Because you don't give me an opportunity
7 to speak. You don't give me an opportunity to speak.

8 THE COURT: Mr. Stipp, I do pause at the end, but
9 you made a statement about being served, so I was double
10 checking with everyone in the court to see if any member of
11 the team had been served and they had not. Under the rules,
12 under the statute this evidentiary hearing, based on what has
13 been presented to this Court, filed by the supreme court,
14 filed by the Chief Judge, the decision and order. So this
15 Court does have the ability to move forward unless somebody
16 in a position, right, from either a chief or an appellate
17 determination would tell me I did not. That does not exist.

18 Are you saying that there is any order from any
19 appellate authority or the chief that says that this Court
20 cannot move forward? I did not hear you say that. I heard
21 you say you filed something called motion for reconsideration
22 and motion to withdraw yesterday at around 7:00 p.m., I
23 believe is what you said. A pending motion does not -- right?

24 MR. STIPP: Your Honor, the filing of the affidavit
25 and the motion automatically prevents this Court from moving

1 forward. You know that, I know that. The fact that you're
2 not willing to look at the docket and see the document and the
3 fact that you're disregarding the rules is indicative of the
4 reason why the motion was filed. So if you want to proceed
5 today, that's up to you. But we're noting this -- we're
6 noting this for purposes of filing an immediate writ and also
7 addressing this matter for purposes of disqualification.

8 It's absolutely astounding to me that this Court
9 states on the record it has not been served, when it has been
10 electronically served with a copy of this document yesterday.
11 The fact that you refuse to review it or even check is not my
12 issue, that's your issue.

13 THE COURT: Sir. Sir, please do read --

14 MR. STIPP: That's your issue, Your Honor.

15 THE COURT: Please do read the rule; right? Okay.
16 This Court has not been served in accordance --

17 MR. STIPP: I did read the rule. And a true and
18 accurate copy of the motion and the affidavit was sent down
19 to be personally delivered. I didn't do that. Now, the fact
20 that you're saying you weren't personally served yet doesn't
21 mean you don't have notice of it. You absolutely have notice
22 of it. And so if you want to disregard that by playing these,
23 you know, hey, I don't want to look, I don't want to know,
24 then that's up to you, Your Honor. But I'm going to make a
25 record -- [video distortion; inaudible].

1 THE COURT: So, Mr. Stipp, we need to move forward
2 with -- Mr. Stipp, we need to move forward with the
3 evidentiary hearing.

4 Counsel for Euphoria Wellness, are you ready to move
5 forward with the evidentiary hearing?

6 MR. JONES: Yes, Your Honor.

7 THE COURT: Okay. Counsel for Euphoria Wellness
8 is ready to move forward with the evidentiary hearing.

9 Counsel for E&T Ventures, as well as Miral
10 Consulting and -- just one second, let me go back to that
11 list. One second, please. CBD Supply, Miral Consulting and
12 Happy Campers. Are you read to move forward with the
13 evidentiary hearing?

14 MR. STIPP: Your Honor, we are prepared to move
15 forward with the evidentiary hearing under the express
16 objection that this Court cannot move forward with the
17 evidentiary hearing or any other matter before it, under NRS
18 1.235 and the decision made in Tobin Dodge, 121 Nev. 251.

19 THE COURT: Okay. So, Mr. Stipp, are you aware of
20 any order from the appellate court or the Chief Judge that
21 has stated that this Court cannot move forward today?

22 MR. STIPP: You don't need an order, Your Honor.
23 You just need to review the rules. And if you want, I can
24 read them to you, but you know what they say. And it's
25 disheartening that a judge in this country is presiding over

1 a matter when the rules make it very clear that you're not
2 permitted to do so. Now, if you want to move forward, you do
3 so. I can't stop you. All I can do is note it for the record
4 that we have an objection. The Court is not following the
5 rules. The decision made by the Court is clearly an abuse
6 of judicial power, ordering a non-party to appear at an
7 evidentiary hearing. Just because the Nevada Supreme Court
8 decided not to intervene doesn't mean that this Court has the
9 right to continue to abuse its judicial power.

10 THE COURT: So, Mr. Stipp, my simple question to you
11 was are you aware of any appellate order or ruling or anything
12 from the Chief Judge that states that this Court cannot move
13 forward today?

14 MR. STIPP: I'm aware, Your Honor, that this Court
15 cannot move forward under NRS 1.235 and the Tobin Dodge
16 decision. Whether Chief Judge Bell has made a decision on the
17 motion that was filed, I'm not sure, Your Honor. I haven't
18 checked the docket. I haven't received any service. However,
19 this Court is very well aware of the rules and it's up to you.
20 I disagree with what the Court is doing. I'm trying to be as
21 respectful as I can. But, you know, under the circumstances
22 this Court just refuses to consider other points of view
23 and the matters set forth in the rules. And so, you know,
24 we have to address it with an appellate court.

25 THE COURT: Counsel, what I'm trying to get an

1 understanding, right, is are you aware of any appellate order
2 or ruling? This Court is not. And I've been in court all
3 afternoon, so I don't know if something would have come
4 across, right, while I was sitting here addressing other
5 matters that are on my docket. So that's why I'm asking you,
6 sir, whether you are aware of any appellate authority or any
7 directive from the chief -- chief anybody, anybody saying
8 that this Court, right, any order --

9 MR. STIPP: Yes.

10 THE COURT: -- anything that says that this Court
11 cannot move forward today? Is there any order from anyone
12 that says this Court cannot move forward today that you're
13 aware of, sir?

14 MR. STIPP: Yes, Your Honor, and I'll state it
15 again for the record. A motion for disqualification,
16 including a request to withdraw the prior decision, a request
17 for an evidentiary hearing on disqualification, and the
18 Nevada Supreme Court's opinion in Tobin Dodge, which very
19 specifically says if new grounds for disqualification are
20 discovered -- and in the motion we have cited your response
21 to our original motion for disqualification wherein you
22 misrepresented the record in order to avoid disqualification
23 and also to set the evidentiary hearing, that if that
24 information is discovered and it was discovered at the
25 time you provided your response, we have a right to file a

1 follow-up motion to disqualify as soon as possible after
2 becoming aware. That's appellate authority. It's 121 Nev.
3 251. Now, I would encourage the Court to take a look at the
4 motion for withdrawal that was filed yesterday because it was
5 filed and accepted. Your court is aware of it.

6 THE COURT: Wait, wait.

7 MR. STIPP: A copy was sent to you personally.
8 Whether you received it or not is not my particular concern at
9 this point, but I will certainly follow up with my paralegal
10 and the process server for purposes of sending it down. But
11 I would encourage the Court to take a look at the motion and
12 I also would encourage the Court to take a look at the opinion
13 set forth in Tobin Dodge. If the Court wants to ignore that
14 and the Court has made a decision that you have the power to
15 do and proceed, I can't do anything about that other than
16 represent my clients and proceed with the evidentiary hearing
17 under very strong objections that the Court does not have
18 current jurisdiction to proceed because of a motion for
19 disqualification and an affidavit that were filed yesterday,
20 February 10th, at 7:10 p.m.

21 THE COURT: Okay. Thank you, counsel. So I believe
22 you're telling me that there is no order from the supreme
23 court that has said that the Court cannot move forward. Is
24 that correct or incorrect? Directly on this case; right?
25 On the case at issue, 796919. The only order I have from the

1 supreme court is the order that was filed February 10th, 2022
2 denying the petition for writ of mandamus for prohibition and
3 the footnote saying, "In light of this order, petitioner's
4 emergency motion for a stay is denied as moot."

5 Are you aware of any other appellate order relating
6 to this case that was filed after that February 10th, 2022
7 order, sir?

8 MR. STIPP: I'm not aware of an order. The matter
9 of disqualification wasn't before the Nevada Supreme Court.
10 The matter of disqualification was before the district court
11 and that matter has been briefed in a new motion. And so
12 if the Court refuses to consider the fact that a motion for
13 disqualification and an affidavit was filed prior to this
14 hearing and the Court has received e-service of it, then
15 there's not much I can do other than participate in the
16 evidentiary hearing on behalf of my clients with very strong
17 objections. And, of course, you know, we're going to take
18 this matter up before the supreme court on a writ.

19 THE COURT: Sure. No worries, counsel. You made
20 a statement, though, that wasn't accurate. The Court did not
21 receive any e-service; right? Courts aren't on e-service.
22 So this Court did not receive any personal service nor any
23 e-service of any document today or yesterday or even days
24 before that. You heard me in open court check with my team.

25 MR. STIPP: There's a hearing -- [inaudible].

1 THE COURT: Mr. Stipp, can I please finish the
2 sentence? You heard me check with my team to see if anybody
3 on the team received anything and they all have stated no.
4 I have no reason to believe that anybody would be dishonest.
5 In fact, they're absolutely wonderful to work with and I'm
6 very fortunate to work with the various individuals I work
7 with, some of which for the first time today and some of which
8 I've had the opportunity to work with before. And they've
9 been here in court with me, with all sorts of cameras all
10 around, to know where this Court has been. So I'm hearing
11 what you're saying, Mr. Stipp, but this Court was not served
12 with anything, so that point is clear. There is no order,
13 a decision and order that this Court sees --

14 MR. STIPP: Pending.

15 THE COURT: -- that has been filed in the E&T
16 Ventures matter by the chief or any other judge after the
17 one that was dated 2/10/2022 at 7:52 a.m., okay. So in that
18 regard the Court has not received any service, the Court has
19 not received any order, and that means I do need to proceed
20 with the evidentiary hearing that was initially going to be
21 scheduled in January.

22 MR. STIPP: Your Honor, do you have access -- do
23 you have access to the docket?

24 THE COURT: So, counsel, we're going to move
25 forward, okay. Thank you so much.

1 MR. STIPP: Your Honor, do you have access to the
2 docket entries in this case? Because the clerk of the court
3 has set a hearing on this matter for March the 7th at 8:30
4 a.m. Are you telling me that I didn't file something? Is
5 that what you're telling me?

6 THE COURT: No, sir. I was very clear. You stated
7 that it was electronically served upon the Court. Courts do
8 not receive electronic service.

9 MR. STIPP: No. I stated that it was filed.

10 THE COURT: You stated that you -- sorry. Sir, then
11 you stated that you had served me. I have been here in the
12 courthouse. I'm physically here. I was not served. I have
13 been here with numerous people all afternoon and various other
14 people throughout the morning handling several matters on the
15 Court's docket in a variety of different ways and I have not
16 been served. I've check with the members of my team. They
17 have not been served. And so that's what the Court is saying.
18 The Court is not --

19 MR. STIPP: Are you telling me you're not aware of
20 the motion? Is that what you're -- [distortion; inaudible].

21 THE COURT: So, Mr. Stipp -- Mr. Stipp, we do need
22 to move forward with the evidentiary hearing. I do appreciate
23 that you may need to check with your process server. I don't
24 know.

25 MR. STIPP: If you could just answer this question

1 for me, Your Honor. Are you telling me that you don't have
2 notice of the motion? Is that what you're telling me, that
3 you don't know that there's a motion for disqualification
4 on file in this case? Is that what you're telling me?

5 THE COURT: Mr. Stipp, you know what you said
6 probably about fifteen, twenty minutes ago.

7 MR. STIPP: I'm asking. You can answer yes or no.

8 THE COURT: Sir. Sir.

9 MR. STIPP: Are you telling me that you don't have
10 notice of the motion and that you don't have notice of the
11 hearing that's scheduled in this matter for March the 17th
12 at 8:30 a.m.? You don't have notice of that?

13 THE COURT: Counsel, can we move forward, please,
14 with the evidentiary hearing that today is set for?

15 MR. STIPP: I just would like a simple --

16 THE COURT: Thank you. So we're going to move
17 forward with the evidentiary hearing. It's one of the many
18 matters. I did ask you, counsel, whether Ms. Taracki was
19 here, as has been ordered by the Court. Now, I appreciate
20 that you said that you don't necessarily agree with that
21 order, but you do realize that there was a supreme court order
22 denying your writ of mandamus for prohibition, as well as
23 denying your emergency motion for a stay.

24 So that means at this juncture, without you waiving
25 any of your rights for purposes of appeal or anything else,

1 that Ms. Taracki would have needed to be here because no one
2 has stated that order is improper. And so what I need to
3 know -- and she is your client in another case. Is that not
4 correct, Mr. Stipp?

5 MR. STIPP: Your Honor, I'm filing a motion to
6 withdraw on that case. And it's not relevant to the matters
7 that are before the Court whether I represent her in that case
8 or any other case.

9 THE COURT: Mr. Stipp, didn't you --

10 MR. STIPP: However, I don't have any --

11 THE COURT: Sorry. Go ahead.

12 MR. STIPP: Let me finish. I let you finish but
13 you never let me finish. You're always trying to run over me.
14 And I want to be respectful, but I just don't think it's
15 appropriate.

16 The bottom line is, Your Honor, I don't represent
17 her. I have notified the court that I intend to file a motion
18 to withdraw in that case. Ms. Taracki is not here today.
19 She's not required to be. Your order is an abuse of judicial
20 power; number one. Number two, it's void. Just because the
21 Nevada Supreme Court didn't make a decision on my writ doesn't
22 make it so. They're not providing you authority to continue
23 to abuse your judicial power. They're just simply saying
24 we're not going to take action at this point because we don't
25 know what you're going to do. So if you're going to take

1 action on the fact that she's not here, then you can take
2 action. We object and we'll take it up with the Nevada
3 Supreme Court.

4 THE COURT: Okay. So here we have the evidentiary
5 hearing based on the motions by Euphoria Wellness, including
6 the responses to the first supplemental responses and
7 objections to requests for production of documents and
8 interrogatories that were electronically served on 10/25/2021.
9 The best process with regards to this and consistent process
10 is that the movant would have an opportunity first to give a
11 brief summation if they wish, and then I would have -- if
12 there's any witnesses on behalf of the movant, then they would
13 have an opportunity to name those witnesses and those could
14 be examined both by the -- each of the parties, if that is
15 the case. And then I would go to counsel for the respondent/
16 defendant -- excuse me, it would be the plaintiff/counter-
17 defendants. My apologies.

18 And we have the issues not only with E&T, but we
19 have it with the other entities because there's several issues
20 that were brought to the attention to the Court via a proper
21 motion. And as you know, the Court deferred ruling with
22 regards to the sanctions and other requested relief by
23 Euphoria Wellness to give E&T Ventures and the other parties
24 a full opportunity to have an evidentiary hearing and bring
25 forth whatever evidence they thought was appropriate for the

1 Court's consideration on the pending motion.

2 So let's move forward with that. That means,
3 counsel for Euphoria, do you have any introduction or do you
4 want to go forward? How would you --

5 MR. JONES: Thank you, Your Honor. We filed our
6 motion. Your Honor already considered that at the January 4th
7 hearing. And it wasn't just related to Ms. Taracki and her
8 appearance. It was very clear from that hearing that Your
9 Honor found that the discovery responses that were served by
10 both E&T and Miral Consulting, Happy Campers and CBD Supply
11 were, quote, "impermissibly non-responsive." So this hearing
12 is not just about Ms. Taracki appearing or not appearing.
13 It's about the overall issues that this Court found after
14 ordering the parties to provide the information with regards
15 to, amongst other things, their financial status.

16 As the Court also stated at the January 4th hearing,
17 the Court: "Even given the benefit of the supplementals way
18 back in October, it is absolutely incomprehensible to this
19 Court on how somebody with supposedly a very small company
20 can't provide basic records in a more than two month time
21 period, nor was there anything provided to this Court that
22 was any good faith effort to try and get that or obtain that
23 information." That's what the Court has already found.

24 Obviously, this evidentiary hearing was to discuss
25 the sanctions that would be appropriate. And the Court has

1 made it clear that terminating sanctions are under
2 consideration. We would certainly ask this Court to impose
3 the terminating sanctions that we have requested, and in
4 addition to that order them to pay the attorney's fees and
5 costs that have been incurred in not only the motion, the
6 evidentiary hearing, but frankly, all that's gone on since
7 the evidentiary hearing, including writs, including motions
8 before the Chief Judge.

9 And also, because the parties continue to refuse
10 to provide any financial information even after this order,
11 that the parties -- that the principals of the parties, Mr.
12 Kennedy, Ms. Taracki, Alex Taracki and Miro Taracki be deemed
13 to be alter egos of the E&T parties in this matter.

14 THE COURT: Okay. Let's walk through a couple of
15 different things just from a procedural basis first, please.
16 Okay. We had the hearing on November 4th, 2022 (sic) on the
17 various pending motions against the various entities that were
18 set forth. Between the time of January 4th, 2022 and today,
19 which is February 11th, 2022, has there been any additional
20 supplementation of -- I'll phrase it in the broadest terms,
21 of any of the discovery? And then if so, can you break it
22 down on what has been provided?

23 MR. JONES: Your Honor, there have been varying --

24 THE COURT: And remember to please state your name
25 each time you speak, even though -- go ahead, please.

1 MR. JONES: Sorry. Justin Jones on behalf of
2 Euphoria. There was, I believe, some nominal supplementation.
3 Just, frankly, prior to this hearing at two o'clock we
4 received a ninth supplement, though it did not relate to the
5 discovery responses here. However, as of today, there are
6 still no responses whatsoever, no documents produced by Miral
7 Consulting, Happy Campers or CBD Supply, other than referring
8 to documents that have been produced by Euphoria Wellness.

9 THE COURT: Okay. So just a quick point of
10 clarification. You mentioned there was some documentation
11 that was provided around 2:00 p.m. today. Were those
12 discovery responses or disclosures? What were they? Could
13 you please clarify so the Court understands?

14 MR. JONES: Sure. It was a ninth supplement to
15 the Rule 16.1 disclosures. It was, frankly, with regards
16 to adding two witnesses and to modifying their damages
17 calculations, obviously after the discovery cutoff. It did
18 not relate to the supplementation of discovery responses that
19 are at issue here.

20 THE COURT: And that's what the Court was trying to
21 determine. Was there any supplementary responses to any of
22 the interrogatories?

23 MR. JONES: I don't believe so, Your Honor. I can
24 go back and check. I apologize.

25 THE COURT: No worries. I'm just trying to get the

1 chronology to make sure since January 4th because I want to
2 make sure, for the benefit of all parties -- you know, the
3 same thing as I asked you when we had the issue with regards
4 to the privilege log, right, what was done in the intervening
5 time, because I want to take everything fully and fairly into
6 consideration.

7 So, Ms. Lovelock, it looks like you wanted to speak.
8 Do you know the answer to that? If so, you may go ahead and
9 proceed.

10 MS. LOVELOCK: I do, Your Honor. We received
11 supplemental responses as to E&T this week. It had changed to
12 Joseph Kennedy and I believe that he verified those responses.
13 They were substantially the same responses. I do not believe
14 there were any more documents besides the documents we
15 received today, which was an update as to the expert report.
16 But there were this week a second supplement and it changed
17 the signatory to Mr. Joseph Kennedy. But the answers, while
18 they said second supplement, I believe that they were
19 substantially similar. And, Your Honor, we apologize that we
20 did not submit that to the Court, but I do not believe that
21 the E&T parties did either.

22 THE COURT: I did not receive it. Like I said, I've
23 been here all afternoon, if somebody dropped off something.
24 I've asked everyone on my team. I've been told no. But if
25 somebody thinks they have, feel free to say where it was.

1 So, okay, so we have a second supplement --

2 MR. STIPP: Your Honor.

3 THE COURT: Just a second, Mr. Stipp. Let me
4 clarify with Euphoria. I'll get to you in just one second,
5 okay. But let them finish and then we'll go to you, please.
6 Thank you so much.

7 Okay. So a second supplement with Mr. Joseph
8 Kennedy and then a ninth supplement on the 16.1 disclosures.
9 Has there been anything else provided to Euphoria Wellness
10 between January 4th and today that would relate to today's
11 hearing?

12 MR. JONES: No, Your Honor.

13 THE COURT: Okay. Mr. Stipp, on behalf of E&T
14 Ventures, Miral Consulting, etcetera, let's walk through.
15 Do you concur that there was a second supplemental and
16 interrogatories?

17 MR. STIPP: Your Honor, we did the Court a favor
18 and also provided e-service to Euphoria by actually preparing
19 notices of the disclosures that have been provided by E&T
20 and the third party defendants in this case, which undermine
21 Euphoria's position in terms of what and how much was
22 disclosed. In addition to those disclosures which were filed,
23 we also provided a copy of the third supplemental disclosure,
24 which included a copy of the original expert report that at
25 the last hearing the Court had concerns about whether or not

1 it was disclosed, and as a matter of record it was. And we
2 supplemented the discovery responses on behalf of E&T
3 Ventures. Those supplemental responses were prepared and
4 served on the 9th.

5 So, Your Honor, the disclosures that were filed
6 today as a matter of record at 2:01 p.m. provides a notice of
7 the ninth supplemental disclosures that were actually filed on
8 1/24/2022, which was the end of discovery. Mr. Jones falsely
9 stated to the Court that these supplemental disclosures were
10 made after the end of discovery. That's false. The
11 supplemental disclosures were made on 1/24/2022 at 5:08 p.m.
12 They were attached to the notice filed today in this case on
13 February 11th, 2022 at 2:01 p.m.

14 As the Court can see in the ninth supplemental
15 disclosures by E&T and the third supplemental disclosures by
16 Happy Campers, Miral Consulting and CBD Supply, that several
17 thousand pages of documents have been produced by these
18 parties, as referenced on page 7, section B regarding those
19 disclosures.

20 With respect to the second supplemental responses
21 and objections, a copy of that was provided via notice today,
22 on February 11th today at 2:40 p.m. That included a copy
23 of the second supplemental responses that were e-served on
24 February 9th at 3:18 p.m. All of the responses, to the
25 extent they required supplementation have been supplemented,

1 including the provision of Joe Kennedy's address as the
2 principal now of E&T. And also a confirmation that requests
3 were made to the third party plan provider for payroll; that
4 no response was received as a result of that request and that
5 information was not provided. Otherwise it would have been
6 disclosed.

7 There's a redline attached to the supplemental
8 second -- I'm sorry, the second supplemental responses that
9 show the differences between these supplemental responses and
10 the ones that were before the Court on January the 4th. So,
11 you know, the only concern the Court expressed and Euphoria
12 expressed at the hearing were those two items, payroll and
13 the address. However, the other discovery requests were --
14 to the extent that it required supplementation, answers were
15 provided.

16 So, in addition to that, Your Honor, I'm happy to
17 answer questions with respect to those documents which were
18 filed as of record in this case. The Court doesn't need to
19 take judicial notice of them because they're filed as a matter
20 of record and they are part of the record in this case that
21 confirms the supplementation, the disclosures and the expert
22 report.

23 To the extent that Euphoria continues to take this
24 position that E&T and the third party defendants have only
25 disclosed, you know, minimal documents, it's just a false

1 statement. There are 1,432 pages, independent of the 1,300
2 pages that we obtained from the Nevada Department of Taxation
3 and the Cannabis Compliance Board. As labeled here,
4 Plaintiff's Documents 1 through 111, 112 through 371, the
5 expert report, then 428 through 610, 611 through 617, 618
6 through 652, 53 through 56 and 57 through 1432.

7 So it's absolutely a false statement for Mr. Jones
8 to stand before the Court and say no disclosures have been
9 made, no documents have been provided, and to the extent
10 there was any supplementation it occurred after the end of
11 discovery.

12 THE COURT: Okay. So, Mr. Stipp, let's walk through
13 the same question I was asking Euphoria Wellness. Between
14 January 4th, 2022, which was the date of the hearing that set
15 the -- precipitated the setting of the evidentiary hearing,
16 and today, as far as new supplementations -- let's walk first
17 through on behalf of E&T Ventures, what new supplementations.
18 And what I'm trying to get a distinction is a difference of
19 where you may be referencing prior documents that were
20 produced or prior answers, I'm trying to get new documents or
21 new supplementations to interrogatories.

22 What, on behalf of E&T Ventures, if anything -- and
23 they say there was a second supplemental for E&T and I just
24 want to see, is there anything else other -- first off, do you
25 -- let me stop. First off, do you concur there was a second

1 supplemental and anything else on behalf of E&T Ventures that
2 you've done between January 4th, 2022 and today? Anything
3 else on behalf of E&T Ventures from a supplemental standpoint,
4 please.

5 MR. STIPP: Your Honor, your question was fairly
6 complex, and so if you could rephrase it so I can answer it?

7 THE COURT: Sure. Of course. Okay. Between
8 January 4th, 2022, the date of the hearing, on behalf of
9 E&T Ventures have you provided any supplements to the first
10 supplemental responses and objections to the request for the
11 production of documents and interrogatories that was filed
12 on 10/25/2021? It might be easier just to break it down
13 that way.

14 MR. STIPP: Yes.

15 THE COURT: Okay. And what did you provide, as far
16 as were they new supplemental responses to interrogatories,
17 were they new documents, were they both? Or was there --
18 just, can you explain what you're stating was provided?

19 MR. STIPP: Sure. On February 9th, 2022 at 3:18,
20 second supplemental responses for the production of documents
21 and interrogatories was e-served and provided to Euphoria.
22 All of the responses to document requests and interrogatories
23 were supplemented, to the extent that they needed
24 supplementation. No additional documents were produced in
25 connection with their requests for production because

1 everything has been produced. To the extent that the requests
2 have been made and the documents are available, they've been
3 produced. Now, there were prior responses that may not have
4 had a reference to documents that were previously produced,
5 and so those matters were updated. Answers to interrogatories
6 that were subject to further discovery were revised to reflect
7 the fact that no documents are available and the condition to
8 being subject to discovery has been removed.

9 And so if the Court would like, you can -- you know,
10 just like the motion to disqualify, it's a matter of record.
11 You can pull it up and you can see attached to it is a redline
12 that shows each of the changes. If the Court is not inclined
13 to pull it up, I'll read it to you or I can share the screen
14 and you'll see that with respect to the documents -- and I'm
15 just looking at the redline here because I think the redline
16 itself which is attached I think is instructive in terms of
17 the changes.

18 Response to Document Request Number 1 was
19 supplemented. Supplemental response to Document Request
20 Number 6 was supplemented. There was a second supplemental
21 response to Document Request Number 7. That was supplemented
22 with reference to specific documents. There is a second
23 supplemental response to Document Request Number 8. There is
24 a second supplemental response to Document Request Number 9.
25 There is a second supplemental response to Document Request

1 Number 10.

2 There is a second supplemental response to Document
3 Request Number 11. There is a second supplemental response
4 to Document Request Number 12, which refers specifically to
5 Plaintiff's Documents 112 through 427 and 1431 through 32.
6 There is a second supplemental response to Document Request
7 Number 13, also referring to those same documents referenced.
8 There is a second supplemental response to Document Request
9 Number 14. There is a second supplemental response to
10 Document Request Number 15. There is a second supplemental
11 response to Document Request Number 16. There is a second
12 supplemental response to Document Request Number 17. There is
13 a second supplemental response to Document Request Number 18.
14 There is a second supplemental response to Document Request
15 Number 19. There is a second supplemental response to
16 Document Request Number 20.

17 There is a second supplemental response to Document
18 Request Number 22. There is a second supplemental response
19 to Document Request Number 23. There is a second supplemental
20 response to Document Request Number 24. There is a second
21 supplemental response to Document Request Number 25. There is
22 a supplemental response to Document Request Number 26. There
23 is a supplemental response to Document Request Number 27.
24 There is a supplemental response to Document Request Number
25 28. There is a supplemental response to Document Request

1 Number 29. There is a second supplemental response to
2 Document Request Number 30. There is a supplemental response
3 to Document Request Number 31. There is a second supplemental
4 response to Document Request Number 32. There is a second
5 supplemental response to Document Request Number 33.

6 With respect to interrogatories, there is a second
7 supplemental response to Interrogatory Number 1. There is, as
8 I scroll down quickly, there is a second supplemental response
9 to Interrogatory Number 14. There is a second supplemental
10 response to Interrogatory Number 15. There is a second
11 supplemental response to Interrogatory Number 17.

12 I'm happy to go through the specific requests and
13 I'm happy to put on the record the responses that were made
14 in connection with the requests for production and the
15 interrogatories if the Court prefers.

16 MS. LOVELOCK: Your Honor, if I may, I need to make
17 a point of clarification as to what I said previously.

18 THE COURT: Go ahead, counsel for Euphoria.

19 MS. LOVELOCK: Your Honor, we represented that no
20 documents had been disclosed, and then I did see when Mr.
21 Stipp stated that 657 to 1430 were disclosed and that is
22 accurate. But that is the CCB's response to a subpoena that
23 he redisclosed, and that information relates to Euphoria and
24 is not responsive to discovery requests. I just want to
25 make that clear. There were additional documents disclosed,

1 but those documents were the CCB's response to a subpoena that
2 he redisclosed. I just want to be clear that's why the number
3 goes up to 1430 now.

4 There are three Bates stamp ranges, 653 to 656 that
5 I at the moment don't know what those are, but those would be
6 the only three documents that have been disclosed that I can't
7 identify. But those other Bates ranges that were disclosed
8 after the January 4th hearing is the subpoena response from
9 the Cannabis Compliance Board. I just want to make a record
10 of that and clear up the previous misunderstanding.

11 THE COURT: Okay. Mr. Stipp, do you concur?

12 MR. STIPP: Your Honor --

13 THE COURT: Do you concur with what counsel for
14 Euphoria said with regards to that range is a response to a
15 subpoena to the Cannabis Compliance Board? Or are you stating
16 that those are brand new documents that have not been
17 disclosed yet in this case, Case Number 796919? Do you mind
18 responding to that, please?

19 MR. STIPP: Thank you, Your Honor. This is Mitchell
20 Stipp on behalf of E&T Ventures. No, we disagree with Ms.
21 Lovelock's assessment. Some of those documents are documents
22 that we requested from the CCB -- I'm sorry, strike that --
23 from the Nevada Department of Taxation. Not all of the
24 documents that were included in that disclosure were from
25 the CCB.

1 Having said that, Your Honor, the fact that we had
2 to subpoena the CCB for this information for purposes of
3 responding to discovery requests and also for purposes of
4 disclosure shouldn't be held against E&T. These are matters
5 that are relevant in the case. And to the extent that we
6 didn't have them in our possession and had to get them from
7 a third party should be rewarded rather than penalized.

8 And so we don't agree that Ms. Lovelock's assessment
9 -- in fact, as she states on the record, she doesn't know as
10 to a range of documents what they even are. And so we could
11 have filed those documents as a matter of record in this case
12 so that the Court could see the documents that were previously
13 disclosed, but we didn't do that. We're happy to do it if
14 that's what the Court would like in order to determine whether
15 or not the -- what I view, combined with the documents we
16 disclosed and obtained, we're talking about in excess of 4,000
17 pages of records.

18 THE COURT: Okay. So this Court has a clear point
19 of understanding, please, what I'm trying to get an
20 understanding is the difference between pages of documents
21 which may have been previously disclosed and now have a
22 reference to possibly either a document production number or
23 an interrogatory number versus brand new documents. When I'm
24 using the term brand new, that doesn't mean that they were
25 created in 2022. What I'm using is documents that had not

1 been previously disclosed by either party in this case.

2 So a very quick hypothetical. Say hypothetically
3 there were 5,000 pages that had been disclosed, combined, by
4 the parties as of January 4th. Is there now a 5,001 through
5 something or is what's been disclosed just clarified what it
6 applied to previously?

7 Counsel for E&T and then counsel for Euphoria, I'd
8 like to get each of your positions on that so I have a better
9 understanding. Thank you.

10 MS. LOVELOCK: Understood, Your Honor.

11 MR. STIPP: This is Mitchell Stipp on behalf of E&T.
12 I'm pulling up right now the documents that were disclosed.
13 I'm trying to get a date on the eighth and ninth disclosure.
14 I believe on the -- I believe after January the 4th there
15 were documents that were produced that were new and that
16 they were produced in connection with -- they were produced
17 in connection with E&T's and the third party defendants'
18 disclosures that were made after the hearing. They were new
19 documents that were provided. They were disclosed before
20 the end of discovery and they were, to the best of my
21 recollection, disclosed after the January 4th hearing on this
22 matter.

23 So on the -- I believe they were disclosed, and I'm
24 looking at it, on the eighth supplement that was disclosed
25 in this case. And I need to look at -- yes, on --

1 THE COURT: Do you have some page number ranges?
2 Mr. Stipp, do you have -- Sorry, go ahead.

3 MR. STIPP: On January the 21st at 4:00 p.m., and
4 I'm looking at the eighth supplemental disclosures and the
5 second supplemental disclosures by Happy Campers, Miral
6 Consulting and CBD Supply. I need to look at the numbers.
7 Just give me -- Court's indulgence.

8 THE COURT: Sure. Right. Because you understand
9 what the Court's question is; right? The Court is going to
10 ask you --

11 MR. STIPP: [Video distortion; inaudible].

12 THE COURT: -- the Bates range.

13 MR. STIPP: 00563.

14 THE COURT: 005 --

15 MR. STIPP: 005 -- I'm sorry. 00653 through 00656
16 and 00657 through 01432 were disclosed on January 21.

17 THE COURT: Sorry. I didn't hear the date. You
18 said January and then you dropped off. I didn't hear the end
19 of that, please.

20 MR. STIPP: I apologize, Your Honor. They were
21 electronically served as part of the eighth supplemental
22 disclosures by E&T Ventures and the second supplemental
23 disclosures by the third party defendants on January 21st,
24 2022 at 4:00 p.m.

25 THE COURT: Okay.

1 MR. STIPP: Three days before the end of discovery.

2 THE COURT: So you said a lot of things in there.
3 Can we break it down for a quick second? Was that same
4 document range produced on behalf of E&T Ventures and one of
5 the cross-defendants or more than one of the cross-defendants,
6 or were there unique documents produced by the cross-
7 defendants?

8 MR. STIPP: These documents were new documents and
9 they were produced in connection with a combined eighth
10 supplemental disclosure and second supplemental disclosure.
11 So the title of the document that was e-served is "Eighth
12 Supplemental Disclosures by E&T Ventures and Second
13 Supplemental Disclosures by Happy Campers, Miral Consulting
14 and CBD Supply." And pursuant to that disclosure it included
15 new documents referenced, as I indicated, Your Honor,
16 plaintiff's documents 653 through 656 and 657 through 1432.

17 THE COURT: Okay. Since they were disclosed as
18 eighth and ninth disclosures pursuant to 16.1 -- is that
19 correct? Because I'm going to ask you a follow-up question
20 if that part is correct. Is that correct?

21 MR. STIPP: Yeah, they were provided in connection
22 with the parties' 16.1 obligations. And then the second
23 supplemental response to Euphoria's written discovery included
24 then references to those documents to the extent that the
25 discovery request requested either -- references to those

1 documents in terms of identification or production.

2 THE COURT: Okay. So, counsel for Euphoria, do you
3 agree? I know you said you were not sure about the 653 to
4 656. So do you agree or disagree that these were cross-
5 referenced for both response to discovery purposes, is what
6 I heard counsel, Mr. Stipp, state, as well as eighth and ninth
7 supplemental?

8 MS. LOVELOCK: Your Honor, I don't necessarily
9 understand how he's describing it, but we delivered to your
10 chambers the evidentiary hearing exhibits and we have those
11 in there. So if I can reference you to them and I can walk
12 you through, I now know these -- the other ranges. And again,
13 that is not documents that belong to those businesses. The
14 range that I was referring to, he produced a State of Nevada
15 Performance Audit, Department of Taxation Marijuana Regulation
16 Enforcement page from 2019, and that was those documents.
17 When I said I wasn't sure what was 618 on, it was that
18 document. That was not business records.

19 But I am happy to walk you through. If you look at
20 Exhibit FF, that's E&T's seventh supplemental disclosures that
21 were e-served on January 6th, so that's two days after the
22 evidentiary hearing. And if you scroll down to or if you flip
23 to page -- we have them marked -- he will show you what has
24 been changed from the previous disclosure to that disclosure,
25 including the documents. And at that time he produced 618

1 to 652, and that's the Nevada document that I just referenced.
2 That's not a business record.

3 If you then flip to the next exhibit, Exhibit GG.
4 One second, Your Honor. Court's indulgence while I pull that
5 up. So I referenced the Exhibit FF, which was the seventh
6 supplement from January 6th. Exhibit GG is the January 21st
7 e-served eighth supplemental disclosure.

8 THE COURT: Uh-huh.

9 MS. LOVELOCK: And there there is a reference from
10 the 657 to the 1432, which again, as I referenced before, was
11 the CCB. And he said the Department of Taxation's response.
12 And I apologize if I thought it was just the CCB, but it's
13 a discovery subpoena response. So those are not business
14 records. And in there as well he has 653 to 656, Your Honor,
15 and I do not know what those just three pages are. However,
16 we then received as Exhibit HH on the last day of discovery,
17 January 24th, the ninth supplemental disclosure.

18 And I want to be clear, Mr. Jones referenced today
19 that we just received a new one at 2:00 p.m. We did not
20 understand that what he did was file what he had already
21 done. We were confused. As you know, we had this evidentiary
22 hearing set for 3:00. Mr. Jones was already down at the
23 courthouse. And I just want to be clear, we did not know that
24 he would be filing what he had already e-served. And if you
25 look at that document, the one that was served on the 9th,

1 no additional documents were served.

2 THE COURT: Okay.

3 MS. LOVELOCK: And I just wanted to make that clear.
4 And if you flip through, again, he shows how things have
5 changed. And in that one what he did, as Mr. Jones had said
6 previously, is added two more witnesses and then changed his
7 damages calculation.

8 So essentially, and I want to be clear, it is
9 Euphoria's position since January 4th he may have cross-
10 referenced documents among the businesses and he has purposely
11 only filed that ninth supplement that makes it appear that
12 1,000 or more documents have been disclosed, but that was a
13 CCB response. No business records have been disclosed, unless
14 it's those three pages which, Your Honor, I just can't tell
15 you what those three pages are. And if those are business
16 records, then it would be just three pages since January 4th.

17 And you have before you the second supplemental,
18 which I now understand that he filed, and you can see how
19 deficient they are. Essentially, as I said, he then changed
20 it to Joseph Kennedy and essentially repeated and identified
21 documents produced by the Department of Taxation or the CCB
22 which relates to Euphoria's documents, not the business
23 records of the third party defendants or E&T. So nothing
24 has changed besides the third parties referencing documents
25 from E&T and/or Euphoria or was served by the Department of

1 Taxation and/or the CCB. Nothing has changed. It's
2 substantially the same. And, Your Honor, if you have any
3 direct questions, we did produce those as exhibits so you
4 have it before you.

5 THE COURT: Okay. We're going to need to end --
6 we're going to need to end this.

7 MR. STIPP: Your Honor, I don't see where the
8 documents [inaudible].

9 THE COURT: Wait, wait. I'm just telling you it's
10 five minutes of 5:00; right? My team doesn't do overtime.
11 So I'm going to give two minutes to you, Mr. Stipp. I'm going
12 to give two minutes to Euphoria. And then what I'm going to
13 tell you both is there was a lot of exhibits presented to the
14 Court for purposes of today's hearing. I'm going to have to
15 continue today's hearing because you can appreciate I've got
16 in hard copy a lot of exhibits that were presented today and
17 have now been explained during the hearing.

18 And, Mr. Stipp, you filed a lot of things which I
19 will -- you filed it while I was already on the bench with
20 other matters. I'm not saying that's right, wrong or
21 indifferent, I'm just saying you can appreciate I was handling
22 other matters, and so I couldn't look at things when you
23 submit things, right, the same day as the hearing, you know,
24 without 24 hours. Remember, the courtesy copy rule, which can
25 be done electronically, it's not required to be hard copies

1 under the current administrative orders. But the Court is
2 going to have to look at a lot of these things to evaluate
3 the arguments from each of the counsel.

4 So, two minutes for you, Mr. Stipp, two minutes for
5 Euphoria, and then we're going to end it and I'm going to have
6 to circle back to you all as well on a continued hearing date
7 so we can get this done. And then figure out about how quickly
8 you can get done and your trial, or whether or not you all
9 want me to rule in chambers.

10 So, Mr. Stipp, your two minutes. Go ahead, please.

11 MR. STIPP: Thank you, Your Honor. I just want to
12 note that in Euphoria's response to the Court it didn't
13 address our eighth supplemental or our ninth supplemental.
14 Ms. Lovelock was focused on the seventh supplemental. I'll
15 also note that none of the exhibits that she has prepared
16 or that the firm of Jones Lovelock have prepared for their
17 clients have been admitted for purposes of this evidentiary
18 hearing.

19 Second of all, Ms. Lovelock intentionally
20 misrepresents to the Court that these supplemental disclosures
21 contain specific documents. I'm looking at her exhibits.
22 The exhibits don't contain the documents. They don't even
23 contain the actual supplemental disclosure. So she's
24 testifying to the Court as to what the documents -- what
25 documents were disclosed as part of the supplement and

1 referring to the Court that the exhibits include those
2 documents and that's false. It's a false statement. I'm
3 looking at her exhibits right now and they just contain the
4 body of the disclosures without the documents themselves. And
5 so to tell the Court during this hearing that the documents
6 have been included as part of their exhibits and the Court
7 can look at it and see that the documents that were disclosed
8 were not as represented, that evidence isn't before the Court.
9 And so she's misrepresenting to the Court what's actually
10 before the Court, assuming that any of these exhibits have
11 been offered into and accepted by the Court as evidence.

12 While I appreciate her explaining Mr. Jones's
13 material misrepresentations to the Court, the fact of the
14 matter is is that they didn't -- they didn't provide any of
15 their trial exhibits until less than 45 minutes before the
16 hearing. The reason why I filed what was relevant to this
17 case is so the Court could actually look, look at the document
18 and rule on the basis of actual evidence, rather than material
19 misrepresentations by Ms. Lovelock and Mr. Jones to this
20 Court. And while --

21 THE COURT: Okay. Mr. Stipp, I'm going to stop you
22 because remember, I said two minutes each, right, in fairness.
23 It's almost the five o'clock hour and the team with regards
24 to overtime. So your two minutes are up.

25 I do need now to go to -- Euphoria gets the same two

1 minutes. I'll cut you off if you also go longer, in fairness
2 to each side, in fairness to the team not having to work
3 overtime. Thank you so very much.

4 Go ahead, please, Euphoria.

5 MR. JONES: Thank you, Your Honor. We'd just
6 reiterate, as I stated at the beginning, this Court found at
7 the January 4th hearing that the responses by not only E&T
8 but Miral Consulting, Happy Campers and CBD were impermissibly
9 non-responsive. Although there has been some supplementation
10 since then, it has been simply pointing to documents that were
11 already produced in response to a subpoena.

12 To the extent that Your Honor is asking whether you
13 would like to continue this hearing for further consideration
14 or to rule on what's been submitted, Mr. Stipp has made
15 misrepresentations with regards to what the supplementation
16 is. As Ms. Lovelock identified, there is but a few pages
17 that have been actually produced by the E&T parties since the
18 evidentiary hearing was ordered. We are happy to provide
19 those documents.

20 And just to reiterate, Your Honor, this evidentiary
21 hearing was ordered by Your Honor. It was the E&T parties'
22 obligation, their burden to show that sanctions shouldn't be
23 ordered and they have failed to do so.

24 THE COURT: Thank you so very much. Okay. And you
25 had about 28 seconds to spare.

1 So then at this juncture what the Court is going
2 to do, we're going to say the first day of the evidentiary
3 hearing is completed due to the time issues. Appreciate
4 everyone providing the information that you provided. The
5 Court is going to have to evaluate whether there was or was
6 not compliance. The Court is going to evaluate whether or not
7 there needs to be an additional day.

8 What I'm going to do is I'm going to look at the
9 documents provided by both sides, right, whether you e-filed
10 them and therefore you want me to look at them, as counsel for
11 one set of parties is asking me to do, or whether they're in
12 hard copies, which the other side is asking me to do. I'm
13 going to look at it all to make a fair, well-reasoned ruling
14 with regards to this outstanding matters and determine whether
15 or not we need another portion of an evidentiary hearing. And
16 then I will contact the parties once I can take a look at each
17 of those. Thank you for the explanation provided by all
18 parties with regards to your positions and argument.

19 With regards to the outstanding motion for summary
20 judgment, I have to find you a date for that. You can
21 appreciate you can't do it right now because it's five o'clock
22 on a Friday and we have overtime considerations with regards
23 to the wonderful team that I have who's been working nonstop
24 for us today and several other different days.

25 So in that regard, I'm going to wish you all a very

1 nice weekend. We will get in touch with you on scheduling
2 another date and then figure out a time for some of the
3 matters that we did not have a chance to get to. Appreciate
4 everyone's time and efforts. Have a great rest of your day
5 and your weekend. And like I said, we'll get back to you the
6 early part of next week once we can figure out some time in
7 light of all the different trial schedules and everything else
8 going on in all of our other different matters.

9 Thank you so very much.

10 MR. STIPP: Have a nice weekend.

11 THE COURT: Thank you. So, remotely, we're going
12 to turn off remote. And then any counsel who's here in court,
13 we're going to thank you and please feel free to leave, pack
14 up and leave, okay.

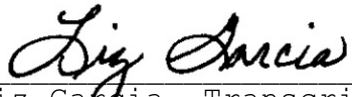
15 MR. JONES: Thank you, Your Honor.

16 THE COURT: I appreciate it. Thank you so much.
17 We'll go off the record. Appreciate it. Thank you.

18 (PROCEEDINGS CONCLUDED AT 5:01 P.M.)

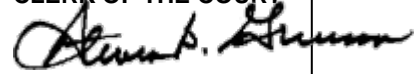
* * * * *

ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service

EXHIBIT 2



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IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA
IN AND FOR THE COUNTY OF CLARK

E&T VENTURES, LLC, a Nevada limited
liability company,

Plaintiff,

v.

EUPHORIA WELLNESS, LLC, a Nevada
limited liability company; DOE Individuals I-X,
inclusive; and ROE ENTITIES 1-10, inclusive;

Defendants.

ET AL.

CASE NO.: A-19-796919-B
DEPT. NO.: XXXI

**NOTICE OF WRIT PETITION AND
REQUEST TO TRANSFER CASE
PURSUANT TO NRS 1.235(5)(A)**

DATED this 4th day of March, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
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Attorneys for Plaintiff, E&T Ventures, LLC

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

E&T VENTURES, LLC,
Petitioner,

vs

EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF
NEVADA, IN AND FOR THE
COUNTY OF CLARK, THE
HONORABLE JOANNA KISHNER,

Respondents,

EUPHORIA WELLNESS, LLC a
Nevada limited liability company,

Real Party in Interest.

Supreme Court Case No. TBD

District Court Case: A-19-796919-B

**PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE,
PETITION FOR WRIT OF MANDAMUS**

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DISCLOSURE STATEMENT

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed. These representations are made in order that the judges of this Court may evaluate possible disqualification or recusal:

1. E&T Ventures, LLC is a private, Nevada limited liability company, which is no longer a going concern.
2. Joseph Kennedy is the beneficial owner of 100% of the membership interests in E&T Ventures, LLC.
3. Mitchell Stipp, Nevada Bar No. 7531, of the Law Office of Mitchell Stipp, represents E&T Ventures, LLC.

DATED this 4th day of March, 2022.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

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Counsel for Petitioner

I. Jurisdictional/Routing Statement.

Pursuant to Article 6, Section 4 of the Nevada Constitution: “[t]he court shall also have power to issue writs of mandamus, certiorari, prohibition, quo warranto, and habeas corpus and also all writs necessary or proper to the complete exercise of its appellate jurisdiction.” The decision to entertain a writ petition lies solely within the discretion of the Nevada Supreme Court. Smith v. Eighth Judicial Dist. Court, 107 Nev. 674, 677, 818 P.2d 849, 851 (1991). A writ of mandamus or prohibition may issue only "where there is not a plain, speedy and adequate remedy in the ordinary course of law." NRS 34.170; NRS 34.330; see also State ex rel. Dep’t Transp. v. Thompson, 99 Nev. 358, 662 P.2d 1138 (1983). However, “each case must be individually examined, and where circumstances reveal urgency or strong necessity, extraordinary relief may be granted.” See Jeep Corp. v. Dist. Ct., 98 Nev. 440, 443, 652 P.2d 1183, 1185 (1982) (citing Shelton v. Dist. Ct., 64 Nev. 487, 185 P.2d 320 (1947)).

The Nevada Supreme Court will also exercise its discretion to consider writ petitions, despite the existence of an otherwise adequate legal remedy, when an important issue of law needs clarification, and this Court’s review would serve considerations of public policy, sound judicial economy, and administration. See

Dayside Inc. v. Dist. Ct., 119 Nev. 404, 407, 75 P.3d 384, 386 (2003), overruled on other grounds by, Countrywide Home Loans, Inc. v. Thitchener, 124 Nev. Adv. Op. No. 64, 192 P.3d 243 (2008). The Nevada Supreme Court has noted that a petition for a writ of mandamus is the appropriate vehicle to seek disqualification of a judge. City of Sparks v. District Court, 112 Nev. 952, 954, 920 P.2d 1014, 1015-16 (1996).

II. Petitioner's Requested Relief.

For the reasons set forth in this Petition, the Petitioner seeks the following relief:

A. An order disqualifying Judge Joanna Kishner of Department 31 in the Eighth Judicial District Court, State of Nevada, from presiding over the district court case below.

B. An order instructing the Clerk of the Eighth Judicial District Court to re-assign the case to another Business Court Judge.

C. An order vacating any orders entered by Judge Kishner after the initial application/affidavit in support of disqualification was filed by Petitioner.

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III. Statement of the Issues Presented for Review.

1. Whether the Chief Judge of the Eighth Judicial District Court has the power and authority to decide the issue of disqualification in the absence of disagreement between the parties over the judge to consider the matter?

Answer: No.

2. Whether a district court judge has the power and authority to conduct an evidentiary hearing while a new affidavit under NRS 1.235(1) alleging bias or prejudice was filed?

Answer: No.

2. Whether a district court judge has the power and authority to refuse to transfer a case despite failing to provide a written response to a new affidavit under NRS 1.235(1) alleging bias or prejudice?

Answer: No.

IV. Statement of Facts.

Petitioner filed an application to disqualify Judge Kushner. See App., **Exhibit 1** (App. 5-236). Judge Kushner provided her written response to the application on

February 7, 2022 at 1:19 p.m. Id., **Exhibit 2** (App. 241-255). After Judge Kushner filed her response, counsel for real-party-in-interest, Euphoria Wellness, LLC (“Euphoria”), Nicole Lovelock, and Petitioner’s counsel worked to select a judge to decide the matter in accordance with NRS 1.235(6). Id., **Exhibit 4** (Exhibit 1 to motion, APP 264, 276-279) Before the parties reached an agreement on the judge to rule on disqualification (i.e., there was no disagreement), on February 10, 2022, at 7:52 a.m., Chief Judge Linda Bell issued her decision. Id., **Exhibit 3** (APP 256-263). In response, on February 10, 2022 at 7:10 p.m., Petitioner filed a motion for Chief Judge Bell to withdraw her decision as premature or in the alternative to reconsider the same based on a **new affidavit** pursuant to NRS 1.235(1) alleging bias or prejudice (as confirmed by the statements contained within Judge Kushner’s actual response to the original application for disqualification). Id., **Exhibit 4** (APP 264-286). The matter was scheduled for a hearing. Id., **Exhibit 5** (APP 287-288) Judge Kushner was provided notice of the motion (since the motion was filed on the docket in her department). A paper copy also was sent to Judge Kushner’s chambers for personal service. Id., **Exhibit 6** (APP 289-325).

After Chief Judge Bell issued her order denying disqualification on February 10, 2022, the Nevada Supreme Court denied Petitioner’s writ petition in Case No.

84133. See Dkt. No. 22-04532. The petition in that case concerned Judge Kushner’s order for Petitioner’s counsel to produce and serve an out-of-state, non-party witness with process to appear at an evidentiary hearing to consider case ending sanctions against Petitioner. See Dkt. No. 22-02590-97 (Petition as Supported by Volumes 1-7 of Appendix). Immediately after the Nevada Supreme Court denied the petition in that case, Judge Kushner *sua sponte* issued an amended order on February 10, 2022 at 2:34 p.m. **again ordering the appearance of the same out-of-state, non-party witness for an evidentiary hearing set for 3:00 p.m. on February 11, 2022.** See App., **Exhibit 7** (APP 326-329). While the Nevada Supreme Court’s order did not explain its decision, Petitioner assumed that this Court elected not to intervene because the evidentiary hearing had not yet occurred (i.e., “no harm, no foul”).

At the commencement of the evidentiary hearing on February 11, 2022, Petitioner’s counsel objected to Judge Kushner presiding because of the pending motion to withdraw/for reconsideration supported by a new affidavit pursuant to NRS 1.235(1). Judge Kushner overruled the objection, and the evidentiary hearing proceeded. See App., **Exhibit 8** (APP 330-331). On **March 3, 2022** (almost a month after the evidentiary hearing before Judge Kushner), Chief Judge Bell issued her decision on the motion to withdraw/for reconsideration. See App., **Exhibit 9**

(APP 332-337). Noteworthy. Judge Kishner *failed to respond to the motion* (including the *new affidavit* pursuant to NRS 1.235(1)).

V. Points and Authorities.

NRS 1.235(5) provides as follows:

5. *Except as otherwise provided in subsection 6*, the judge against whom an affidavit alleging bias or prejudice is filed *shall proceed no further* with the matter and shall:

(a) *If the judge is a district judge, immediately transfer the case to another department of the court*, if there is more than one department of the court in the district, or request the judge of another district court to preside at the trial or hearing of the matter;

6. *A judge may challenge an affidavit alleging bias or prejudice by filing a written answer with the clerk of the court within 5 judicial days after the affidavit is filed*, admitting or denying any or all of the allegations contained in the affidavit and setting forth any additional facts which bear on the question of the judge's disqualification. *The question of the judge's disqualification must*

thereupon be heard and determined by another judge agreed upon by the parties or, if they are unable to agree, by a judge appointed:

(a) If the judge is a district judge, by the presiding judge of the judicial district in judicial districts having more than one judge, or if the presiding judge of the judicial district is sought to be disqualified, by the judge having the greatest number of years of service[.]

(emphasis added).

Chief Judge Bell's initial decision was premature. Despite the lack of knowledge of whether the parties reached or failed to reach an agreement on the district court judge to decide the issue, she issued her decision. Chief Judge Bell's power and authority to decide the matter *was conditional* by the plain meaning of the statute. See NRS 1.235(6) ("*if* they are unable to agree"). It is not necessary to consider whether the decision should have been re-considered because it should have been withdrawn as premature. Even so, Chief Judge Bell did not consider the new bases for disqualification set forth in the motion as supported by Petitioner's affidavit pursuant to NRS 1.235(1).

Judge Kisher held an evidentiary hearing on February 11, 2022 in accordance with her amended order (notwithstanding Petitioner’s objection and actual notice of the motion). See App., **Exhibit 8** (APP 330-331). Judge Kishner had the right to respond to the motion as supported by the new affidavit in accordance with NRS 1.235(6). She failed to do so. Therefore, NRS 1.235(5) **requires** Judge Kishner to “immediately transfer the case to another department of the court[.]” As of the date of this Petition, Judge Kishner has failed to do so.

VI. Conclusion

For the reasons set forth in this Petition, Petitioner seeks the following relief:

A. An order disqualifying Judge Kishner from presiding over the district court case below.

B. An order instructing the clerk of the court to re-assign the case to another business court judge.

C. An order vacating any orders entered by Judge Kishner after the initial application/affidavit in support of disqualification was filed by Petitioner.

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DATED this 4th day of March, 2022

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.

Nevada Bar No. 7531

1180 N. Town Center Drive

Suite 100

Las Vegas, Nevada 89144

Telephone: (702) 602-1242

mstipp@stipplaw.com

Counsel for Petitioner

CERTIFICATE OF COMPLIANCE

1. The petition has been prepared in a proportionally spaced typeface using Microsoft Word, Version 16.11.1, in 14 point, Times New Roman.
2. The petition does not exceed 15 pages.

LAW OFFICE OF MITCHELL STIPP

.s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
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mstipp@stipplaw.com
Counsel for Petitioner

VERIFICATION

I hereby certify that I have read the petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 21. I understand that I may be subject to sanctions in the event that the petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

LAW OFFICE OF MITCHELL STIPP

/s/ Mitchell Stipp

MITCHELL STIPP, ESQ.
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Telephone: (702) 602-1242
mstipp@stipplaw.com
Counsel for Petitioner

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 4th day of March, 2022, I filed the foregoing **PETITION FOR WRIT OF PROHIBITION OR, IN THE ALTERNATIVE, PETITION FOR WRIT OF MANDAMUS**, using the court's electronic filing system. Notice of the filing of the Petition was made upon acceptance by the Nevada Supreme Court using the District Court's electronic filing system to the following e-service participants in District Court Case and by mail to the addresses as indicated:

Judge Joanna Kishner:

Dept31lc@clarkcountycourts.us

Regional Justice Center
200 Lewis Ave.
Las Vegas, NV 89155

Euphoria Wellness, LLC as Real Parties-in- Interest:

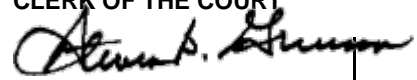
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By:

/s/ Mitchell Stipp

An employee of Law Office of Mitchell Stipp

EXHIBIT



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

E&T VENTURES, LLC,)	
)	
Plaintiff,)	CASE NO. A-19-796919-B
)	
vs.)	DEPT. NO. XXXI
)	
EUPHORIA WELLNESS, LLC,)	
)	
Defendant,)	
)	Transcript of
<u>and related parties and actions.</u>)	Proceedings

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

TUESDAY, MAY 10, 2022

TRANSCRIPT RE:

PLAINTIFF'S MOTION FOR STAY OF PROCEEDINGS PENDING DECISION
OF THE NEVADA SUPREME COURT ON PETITION FOR WRIT AND
REQUEST TO CLARIFY BASIS FOR COURT'S DECISION TO PRESIDE

APPEARANCES: (Via BlueJeans Videoconference)

FOR THE PLAINTIFF:	MITCHELL D. STIPP, ESQ.
FOR THE DEFENDANT:	JUSTIN C. JONES, ESQ.
	NICOLE E. LOVELOCK, ESQ.
	MARTA D. KURSHUMOVA, ESQ.

RECORDED BY: LARA CORCORAN, COURT RECORDER
TRANSCRIPTION BY: LGM TRANSCRIPTION SERVICE

1 **LAS VEGAS, NEVADA, TUESDAY, MAY 10, 2022, 8:57 A.M.**

2 * * * * *

3 THE COURT: So now let's go to pages 2 and 3, which
4 is also on our 8:30 calendar, E&T Ventures/Euphoria Wellness,
5 which is Case 796919.

6 Counsel for E&T Ventures, please.

7 MR. STIPP: Good morning, Your Honor. This is
8 Mitchell Stipp appearing on behalf of E&T Ventures.

9 THE COURT: Appreciate it.

10 On behalf of Euphoria Wellness, please.

11 MR. JONES: Good morning, Your Honor. Justin Jones
12 on behalf of Euphoria Wellness. Also observing are Nicole
13 Lovelock and Marta Kurshumova.

14 THE COURT: Okay, so let's move forward, then.
15 What we have today is we have plaintiff's motion for a stay
16 of proceedings pending the Nevada Supreme Court on petition
17 for writ and request to clarify basis for decision. Document
18 373 is the motion. I have the opposition thereto, which is
19 Document 402. A reply, Document 411.

20 So let me give a Court's inclination. The Court's
21 inclination is to deny for a variety of different reasons.
22 The Court looks directly to the provision, right, to consider
23 four factors whether a stay is warranted, whether the object
24 of the writ petition will be defeated if the stay is denied.
25 Realistically, the Court doesn't find that the object is

1 really going to be denied because the issue before the supreme
2 court isn't any ruling of this Court. It's really a ruling
3 of a different judge and whether -- so the Court doesn't see
4 how that object would be defeated.

5 Looking to prong number two, whether E&T will
6 suffer irreparable or serious injury if the stay is denied.
7 The Court doesn't find that that happened. You all have
8 been moving along with this case. You've taken depositions.
9 You've called me in the middle of depositions. So you're
10 moving along with different discovery, you're moving along
11 with this case. You have a variety of different deadlines.
12 The Court has granted extensions where appropriate for each
13 of the parties. The Court has accommodated people who have
14 had family illnesses; a whole bunch of different procedural
15 factors. And so realistically the Court doesn't see there's
16 any irreparable or serious injury.

17 The Court looks at whether Euphoria will suffer
18 irreparable or serious injury if the stay is granted. Here,
19 this one is a little closer call. I would find Euphoria --
20 serious injury, yes; irreparable, no. And the reason why the
21 Court said serious is because of the time, expense --

22 (Noise interruption)

23 THE COURT: Okay. Whoever has not muted themselves,
24 please, please, please mute yourselves in fairness to the
25 parties who would like to hear a Court's inclination and in

1 fairness to every other case. We do appreciate it. Thank you
2 so very much. Okay. Remember, the Court can require people
3 to come in person. Administrative orders; everything allows
4 us to do so. We're trying to accommodate everyone. But if
5 parties or people choose not to mute themselves, then we may
6 have to change our practice. So, please, we're trying to
7 assist everyone. Thank you so very much.

8 Okay, so now let's go on. I was talking about the
9 third prong about Euphoria. I stated that not irreparable,
10 but the Court would find there's some serious injury because
11 realistically, and this part of you all's various discovery
12 issues and the various documentation that's out there and the
13 ripe issues, and you had the regulatory basis that you have
14 through the Cannabis Compliance Board, so the Court would see
15 that there's some serious injury there because there's also
16 already been some investigations, etcetera. So, serious but
17 not irreparable.

18 Going to four, whether E&T is likely to prevail on
19 the merits of the appeal or writ petition. The Court doesn't
20 find that E&T is likely to prevail. Realistically, the reason
21 why the Court says it's not likely to prevail is the rule --
22 well, the rule is the rule and realistically the only caveat
23 the Court would have on this particular one is the writ
24 petition isn't regarding any ruling of this Court. However,
25 based on what the writ petition is, it doesn't appear that

1 it would, based on the history, applicable provisions and
2 how things are done under the statutory provisions, the Court
3 has to look at that in just a very generalized, neutral
4 standpoint, as it does, and wouldn't find that E&T is likely
5 to prevail.

6 When I look at all those factors, they all weigh
7 in favor of not granting the stay, so the Court's inclination
8 is not to grant the stay of proceedings.

9 Counsel for movant, feel free to go ahead. It's
10 your motion and that's just the Court's inclination. Thank
11 you so very much.

12 MR. STIPP: Good morning, Your Honor. This is
13 Mitchell Stipp appearing on behalf of E&T Ventures. If that's
14 the Court's ruling, we don't have anything further to add to
15 the Court's decision unless there's questions that the Court
16 has that we can answer. Certainly the Court has reviewed the
17 motion, the opposition and the reply. And if the basis for
18 the Court's decision has already been set forth on the record,
19 then it doesn't appear that there's anything that we can
20 provide that would change the Court's mind.

21 THE COURT: Counsel, as the Court stated, it's the
22 Court's inclination; right? And as you know from various
23 hearings, sometimes the Court has made inclinations which have
24 been modified after hearing the applicable facts, information
25 provided through oral argument.

1 MR. STIPP: Okay.

2 THE COURT: The parties have a full opportunity to
3 give oral argument in an efficient manner; right?

4 MR. STIPP: Okay.

5 THE COURT: The Court -- that's why the Court gives
6 an inclination, to assist the parties on where the Court is
7 inclined to go, but the Court has not made any final ruling.
8 Thank you so very much.

9 MR. STIPP: Okay. Let me address the four factors
10 that the Court did in its inclination before oral argument.
11 Certainly the object of the petition would be defeated if the
12 stay isn't granted. If the Nevada Supreme Court grants the
13 writ petition, Your Honor would be disqualified. As a result
14 of the disqualification, all decisions made by the Court after
15 the original affidavit of disqualification was filed would
16 become void.

17 Here we're litigating before Your Honor when the
18 client has serious issues about whether the Court can be
19 impartial as to its decision making in this case. The fact
20 that the Court was quick to dismiss any injury, either
21 irreparable or serious injury as it relates to E&T, is an
22 example of the Court's disparate treatment of the parties.
23 The Court concludes that E&T would not be affected if the
24 stay is denied, but indicates that Euphoria would suffer
25 potentially some injury. And yet it isn't clear what that

1 injury is. In fact, what the Court stated on the record in
2 terms of its inclination, frankly I don't understand what the
3 basis of that would be. Euphoria has made multiple requests
4 to extend discovery, to extend trial, all of which have been
5 granted. I'm not aware of any pending matter before the
6 Cannabis Compliance Board or the Nevada Department of Taxation
7 that would be impacted by the stay.

8 Your Honor, you know, the parties are spending
9 tens of thousands of dollars each month in anticipation of
10 preparing for trial when, as I'll indicate the fourth prong,
11 while the Court disagrees that the petitioner is not likely
12 to prevail on the merits, the Nevada Supreme Court has ordered
13 Euphoria to answer our writ petition. As the Court is aware,
14 generally the Nevada Supreme Court does not intervene on these
15 types of matters and has discretion not to consider them.
16 Certainly if the court didn't view the matter as having merit,
17 it could have denied the writ petition without an answer.
18 The fact of the matter the supreme court is asking Euphoria to
19 answer the writ petition suggests to me that there is a high
20 likelihood that the court would agree under the circumstances
21 that the writ petition should be granted.

22 The Court has indicated that the rules and the case
23 law are clear. Clearly, that's not the case. Chief Judge
24 Bell's decision was premature. In fact, the parties were
25 negotiating as to the particular judge who would decide the

1 application for disqualification before Chief Judge Bell
2 issued her decision. The statute provides that Chief Judge
3 Bell's power is conditional if the parties don't agree. That
4 hadn't occurred before she issued her decision.

5 In addition, the motion for reconsideration that was
6 filed after Chief Judge Bell denied the original application
7 included a new affidavit. Certainly the Court was aware of
8 the motion, was aware of the new affidavit. In fact, the
9 motion and affidavit were personally served on the Court, as
10 set forth in the briefing. The fact that this Court elected
11 not to respond, that is its right to do so. However, the
12 statute provides that if you don't respond to an affidavit
13 for disqualification, then you're required under the statute
14 to transfer the case. Your Honor, you've refused to do that
15 and it's not clear what basis you're relying on by refusing
16 to comply with the statute to transfer the case as required.

17 We've briefed, you know, the additional issues
18 raised by Euphoria in terms of irreparable harm. Attorney's
19 fees can serve as a basis for irreparable harm. And it's rare
20 that the Nevada Supreme Court would order a party to answer
21 a writ petition if there wasn't merit to the petition. So
22 to dismiss the matter as not likely to prevail on the merits,
23 knowing that the Nevada Supreme Court has ordered an answer
24 to the petition I don't think is a fair assessment under the
25 circumstances.

1 Granting the stay will give the parties an
2 opportunity to get resolution of this matter, rather than
3 continue to spend thousand and thousands of dollars litigating
4 matters that are likely to be considered by a new department.

5 So, Your Honor, we would ask that you'd reconsider
6 your initial inclination; grant the stay. Alternatively,
7 we'll move the supreme court for a stay. Thank you.

8 THE COURT: Thank you.

9 Counsel for Euphoria, would you like to be heard
10 in response?

11 MR. JONES: Yes, Your Honor. I appreciate the
12 tentative ruling from this Court. I agree with the Court's
13 assessment on the four factors for a stay. As Your Honor has
14 noted, it's procedurally improper because it has to do with
15 Judge Bell's order, not this Court, which has already been
16 denied by the supreme court.

17 Just a note on the irreparable harm. Euphoria is
18 incurring irreparable harm right now because it is, as Mr.
19 Stipp has noted, incurring tens of thousands of dollars
20 responding to multiple attempts at delay and also avoidance
21 of this Court's final ruling on the evidentiary hearing in
22 which Euphoria sought terminating sanctions.

23 So with that, Your Honor, we believe that the four
24 factors weigh in favor of Euphoria and that a stay would
25 simply delay this Court's final ruling on the evidentiary

1 hearing. And as a result of the request for terminating
2 sanctions, Euphoria continues to spend tens of thousands of
3 dollars responding and preparing for trial, when if this Court
4 were to find terminating sanctions it would not have to.

5 Thank you.

6 THE COURT: Counsel, can you give a point of
7 clarification? You referenced terminating sanctions. The
8 only issue before the Court today is the motion for a stay.
9 So are you saying that the Court should stay it because of
10 the costs incurred by Euphoria? Would you mind clarifying
11 that point, please?

12 MR. JONES: Your Honor, we are preparing for trial
13 right now. And as a result of the delays to this Court's
14 ruling, that is why we're incurring additional fees and costs.
15 If this Court will rule on the evidentiary hearing we can
16 simply prepare for trial, understanding the issues that will
17 be required for trial. So, no, Your Honor, we are not asking
18 for a stay. We would prefer that this matter go forward and
19 that the Court rule on the evidentiary hearing so that we can
20 properly prepare for trial.

21 THE COURT: The evidentiary hearing is not before
22 the Court today, nor have the parties concluded that the
23 evidentiary hearing has been fully completed, to this Court's
24 understanding. Do both parties state that the evidentiary
25 hearing has been fully completed? That's not before the Court

1 today, but since you raised it I will ask that question.

2 Counsel, Mr. Stipp, do you believe that the
3 evidentiary hearing has been fully completed and it's ready
4 for the Court's ruling?

5 MR. STIPP: Your Honor, this is Mitchell Stipp
6 speaking on behalf of E&T Ventures. After we conducted the
7 half day evidentiary hearing on February the 11th, the Court
8 indicated that it would review the matter and issue a
9 decision. Euphoria then asked for another session. The
10 Court scheduled another session, but at that session Euphoria
11 indicated that it had nothing further to present. And I
12 wasn't aware that additional evidence needed to be provided
13 other than what was provided before where we clearly showed
14 E&T's compliance with disclosure and discovery obligations.

15 THE COURT: Okay. So, E&T, have you requested or
16 are you requesting that there is any additional information
17 that you wish the Court to consider with regards to the
18 terminating sanctions request of Euphoria, or do you feel
19 that the Court shouldn't even ask that question today? If
20 you don't feel it should be answered, that's fine. I'm just
21 trying to get a clarification because this Court understood
22 that E&T still had something that they wanted outstanding
23 for the Court to address before it made a ruling on the
24 evidentiary hearing. But if you both concur that the Court
25 needs to make -- should be making its ruling, then the Court

1 will move forward and do so.

2 MR. STIPP: I think it would be my preference, Your
3 Honor, for that matter not to be decided today.

4 THE COURT: Okay. Because the Court doesn't see
5 that there's anything pending. Okay. I will double check on
6 that independent issue.

7 But circling back to the stay concept, here's what
8 the Court's ruling is going to be. The Court in its
9 inclination did analyze each of the factors. And a couple
10 of points the Court does not agree from the premise as to the
11 interpretation of NRS 1.25, and it's a matter of record of
12 what was the pending motion. The motion is the reconsideration
13 motion for purposes --

14 MR. JONES: And to be clear, Your Honor -- this is
15 Justin Jones on behalf of --

16 THE COURT: Sorry, counsel for Euphoria, I was
17 starting to give my ruling. Did you wish to say something?
18 You're cutting in and out, so I wasn't sure. Your video is
19 going on and off, so it's not clear whether you're trying to
20 speak or not.

21 MR. JONES: My apologies, Your Honor. I'm having
22 some technical difficulties. But I just want to chime in and
23 say that we are not aware of anything else that is required
24 for the evidentiary hearing.

25 THE COURT: Okay. The only issue before the Court

1 today is the plaintiff's motion for a stay of the proceedings
2 pending the Nevada Supreme Court on the petition for writ and
3 request to clarify the Court's decision to preside, Document
4 373.

5 That document, before the Court's decision, that
6 court is not Department 31. That court was the Chief making
7 a determination under NRS 1.25 and the reconsideration. That
8 issue about whether or not it was or was not premature was not
9 made by this department, Department 31. The Court really
10 doesn't see how that would impact with regards to whether or
11 not it was premature or not. It does not go to the underlying
12 bases of whether or not there should or should not be a
13 disqualification under NRS 1.25. That's a multi-step
14 procedure; one of the factors that the Court needed to take
15 into account when analyzing the stay.

16 The Court also does not agree with the statements
17 made with regards to what this Court should or should not have
18 done when a motion for reconsideration was filed before the
19 Chief Judge. NRS 1.25 is clear on what needs to be done and
20 what doesn't need to be done. And in a motion -- and the
21 rules and the service issues and everything like that is
22 really pursuant to statute. The Court is really not going to
23 readdress those, but the Court just had to take that generally
24 into consideration when evaluating the factors under Hansen v.
25 Eighth Judicial District Court, 116 Nev. 650, 2000, which is

1 -- of course the Court looked at that. Also, of course, the
2 Court looked at Mikohn Gaming v. McCrea, 120 Nev. 248, 2004.

3 (Noise interruption)

4 THE COURT: And whoever -- please do put yourselves
5 on mute. We are hearing some very unusual noises and we do
6 want to make sure everyone gets a nice, clear record. Thank
7 you so very much.

8 Of course there was citations to Matter of Ross,
9 Marshall v. Jerrico and several other cases which the Court
10 took fully into consideration, including the statutory basis.

11 So in so doing, the Court needs to deny the motion
12 for the stay of proceedings, incorporating its inclination
13 as far as its analysis with regards to the various factors
14 to consider and other factors the Court can consider, and
15 additionally the additional statements made after. The Court
16 had an opportunity to hear the full oral argument of all the
17 parties.

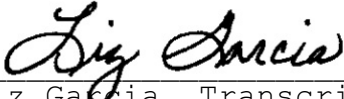
18 So the Court is going to deny the motion for all
19 the reasons stated. The Court is going to ask counsel for
20 Euphoria to please prepare an order. Please circulate it to
21 opposing counsel, provide it back to the Court in accordance
22 with EDCR 7.21 and the administrative orders. And wish you
23 all a great rest of your week. Thank you so very much.

24 Okay. Now let's get to some of our nine o'clock
25 matters. Thank you so very much.

(PROCEEDINGS CONCLUDED AT 9:16 A.M.)

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ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service