

IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioners,

vs.

THE EIGHTH JUDICIAL DISTRICT
COURT OF THE STATE OF NEVADA,
CLARK COUNTY; AND THE
HONORABLE JOANNA S. KISHNER,
DISTRICT JUDGE,

Respondents,

and

TITINA FARRIS; AND PATRICK
FARRIS,

Real Parties in Interest.

No. 85143

Electronically Filed
Aug 24 2022 06:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**OPPOSITION TO PETITIONERS' EMERGENCY MOTION
UNDER NRAP 27(e) FOR STAY PENDING WRIT PROCEEDING**

INTRODUCTION

Real Parties in Interest, Titina Farris and Patrick Farris (collectively “Plaintiffs”), hereby oppose the Emergency Motion Under NRAP 27(e) for Stay Pending Writ Proceeding filed by Petitioners, Barry James Rives, M.D., and Laparoscopic Surgery of Nevada, LLC (collectively “Defendants”). Defendants come to this Court at this late date asking to vacate the September 6, 2022, trial date that they agreed to during the June 7, 2022, District Court hearing to set a new trial date. *See Exhibit 1* (Court Minutes of June 7, 2022, Hearing). In fact, Defendants asked this Court for a new trial, which was ordered in consolidated Case Nos. 80271/81052. Now that the trial date is approaching, Defendants, for some reason, do not want to proceed to trial. Defendants present their motion as an emergency. But, they knew from this Court’s prior opinion that they had several unresolved issues. *See Rives v. Farris*, 138 Nev., Adv. Op. 17, at *17 n.8, 506 P.3d 1064, 1072 n.8 (Nev. 2022) (indicating that several of Defendants’ issues raised on appeal were not addressed). Defendants attempted to resolve their unaddressed issues through their June 8, 2022, letter to Plaintiffs. *See Exhibit 2* (letter dated June 8, 2022 from Thomas J. Doyle, Esq.). So,

the issues that Defendants now raise in their emergency motion should not come as a surprise.

Defendants have agreed to the form of the two orders that have been submitted to the District Court for signature from Defendants' motion to reopen discovery and Plaintiffs' motion to strike the motions in limine. See **Exhibit 3** (submitted draft Order Denying Defendants' Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time); **Exhibit 4** (submitted draft Order Granting Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time). Yet, Defendants' emergency motion does not track the breadth of the briefing before the District Court and the extensive rulings placed on the record in both the draft orders and the filed transcripts. See **Exhibit 5** (July 14, 2022, Hearing Transcript for Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time, filed on July 26, 2022); **Exhibit 6** (August 2, 2022, Hearing Transcript for Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time). Thus, under the NRAP 8(c) analysis, Defendants are not likely to prevail on the merits of their writ petition. See NRAP 8(c)(4). None of the other NRAP 8(c)

factors weigh in favor of Defendants’ requested stay relief. Importantly, Defendants have not demonstrated why an appeal from a final judgment is not an adequate remedy for the several issues they raise, particularly because this trial is scheduled from September 6 through 27. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev. 222, 224, 88 P.3d 840, 841 (2004) (“Under NRS 34.170, a writ of mandamus is proper only when there is no plain, adequate and speedy legal remedy. This court has previously pointed out, on several occasions, that the right to appeal is generally an adequate legal remedy that precludes writ relief.”) (citations omitted). In other words, in the time it would take for Plaintiffs to file an answer to Defendants’ writ petition, Defendants would already have an appeal right following the retrial of this case.

Defendants’ emergency motion does not contain any supporting evidence or compelling legal arguments to support a stay, which is very similar to the motion they filed in the District Court. **Exhibit 7** (Defendants’ August 15, 2022, Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time). In contrast, Plaintiffs provided the District Court with supporting evidence and legal authorities. **Exhibit 8** (Plaintiffs’ August 18, 2022,

Opposition to Defendants’ Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time [not including the same exhibits attached to this opposition]). Defendants also filed a cursory reply. **Exhibit 9** (Defendants’ August 18, 2022, Reply in Support of Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition). In a hearing on August 23, 2022, the District Court weighed the NRAP 8(c) factors in favor of Plaintiffs and denied Defendants’ requested stay relief. Since the hearing was just yesterday, the court minutes, transcript, and written order are not yet available. Since Defendants have not satisfied the NRAP 8(c) factors for obtaining a stay, this Court should deny Defendants’ emergency motion in its entirety.

LEGAL ARGUMENT

I. STANDARDS FOR OBTAINING A STAY.

In determining whether to issue a stay or injunction, NRAP 8(c) outlines four factors for this Court to consider: (1) the object of the writ petition will be defeated absent a stay, (2) petitioners will suffer irreparable or serious harm without a stay, (3) real party in interest will suffer irreparable or serious harm if a stay is granted, and (4) petitioners

are likely to prevail on the merits of the petition. NRAP 8(c); *see Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Based upon this Court's weighing of these four factors, Plaintiffs urge this Court to deny Defendants' requested stay relief.

II. DEFENDANTS DO NOT SATISFY THE NRAP 8(c) FACTORS FOR OBTAINING A STAY.

A. THE OBJECT OF THE WRIT PETITION WILL NOT BE DEFEATED IF A STAY IS DENIED.

In their District Court motion, Defendants argued, without citing to any authority, that they are entitled to a "clean slate" for the retrial, without any regard for the District Court's previous orders that this Court did not disturb in the prior appeal. *See Exhibit 7*. Defendants now similarly argue that they are entitled to have these several unanswered issues from the prior appeal resolved before the retrial of this case. But, this bare argument contradicts both this Court's opinion specifically leaving several issues unanswered, as well as defense counsel's own letter. *See Rives*, 138 Nev., Adv. Op. at *17 n.8, 506 P.3d at 1072 n.8 (indicating that several of Defendants' issues raised on appeal were not addressed); **Exhibit 2**. Noticeably missing from Defendants' motion is an explanation of why an appeal from a final judgment is an

inadequate remedy, particularly given the approaching September 6, 2022, trial date. *See Pan*, 120 Nev. at 224, 88 P.3d at 841 (“Under NRS 34.170, a writ of mandamus is proper only when there is no plain, adequate and speedy legal remedy. This court has previously pointed out, on several occasions, that the right to appeal is generally an adequate legal remedy that precludes writ relief.”) (citations omitted). Even though Plaintiffs have not increased their requested damages, Defendants speculate that they are entitled to reopen discovery. But, they do not discuss the EDCR 2.35(a) standards outlined by the District Court in denying Defendants’ motion to reopen discovery. *See Exhibits 3 & 5*. For these several reasons, Defendants have not satisfied this first NRAP 8(c) factor for their requested stay relief.

B. DEFENDANTS WILL NOT SUFFER ANY IRREPARABLE HARM.

Defendants’ motion outlines that they will be irreparably harmed by having to go through a second trial, an expected second appeal, and their claimed third trial. Defendants further claim that this Court will now review these issues in a writ petition, such that the entire District Court litigation, including the trial date, should be halted. However, the substantive issues in Defendants’ writ petition are the very issues this

Court elected to not consider—while giving direction to the District Court to retry the case. “Accordingly, we reverse the district court’s judgment, vacate the corresponding fees and costs order, and remand for a new trial.” *Rives*, 138 Nev., Adv. Op. at *18, 506 P.3d at 1072. As a matter of law, such litigation expenses and unknown future proceedings categorically do not constitute irreparable harm for purposes of an NRCP 8(c) analysis. *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 658, 6 P.3d 982, 986–987 (2000) (“Fritz Hansen would not suffer irreparable or serious injury if the stay is denied. It argues that it should not be required to participate ‘needlessly’ in the expense of lengthy and time-consuming discovery, trial preparation, and trial. Such litigation expenses, while potentially substantial, are neither irreparable nor serious.”) (citing *Wisconsin Gas Co. v. F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (noting that “mere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay are not enough” to show irreparable harm) (cleaned up). Therefore, Defendants have failed to satisfy the second NRAP 8(c) factor.

C. PLAINTIFFS WILL SUFFER SERIOUS INJURY IF A STAY IS GRANTED.

Defendants argue that their prevailing writ petition would obviate the need for future appeals, remands, and trials. However, in several conversations with Plaintiffs' counsel, Defendants have vowed to appeal from any verdict following the pending retrial regardless of the issues. In other words, even if this Court were to intervene now and grant Defendants' writ petition following briefing, Plaintiffs would still have their right to a new trial. But, Defendants would still appeal from the verdict following this retrial. So, Defendants' argument that the litigation would somehow be shorter with a stay is inaccurate.

This case was filed in July 2016, over six years ago. **Exhibit 10** (District Court Docket). In *Fritz Hansen*, this Court observed that the third NRAP 8(c) factor weighed in favor of the non-moving party because "the underlying proceedings could be unnecessarily delayed by a stay. . . ." *Fritz Hansen*, 116 Nev. at 658, 6 P.3d at 987. Ultimately, proceedings in the district courts should be "just, speedy, and inexpensive. . . ." NRCP 1. As the Federal District Court of Nevada, United States Magistrate Judge Cam Ferenbach observed, "The plaintiff has an interest in pursuing his case without delay. A well-known saying, generally attributable to

William Gladstone, is that ‘Justice delayed is justice denied.’ A lesser known saying, known to be attributable to prominent defense lawyers from major law firms, is that ‘Justice delayed is justice [for the defendants].’” *Cadeaux v. Doe*, Case No. 2:19-cv-01584-JAD-VCF, 2022 U.S. Dist. LEXIS 12091, at *7 n.1, 2022 WL 203390 (D. Nev. 2022) (citing *Grewal v. Jammu*, 191 Cal. App. 4th 977, 999, 119 Cal. Rptr. 3d 835, 852 (2011)). Therefore, this Court should find in favor of Plaintiffs for this third NRAP 8(c) factor.

**D. DEFENDANTS ARE NOT LIKELY TO PREVAIL
ON THE MERITS OF THEIR WRIT PETITION.**

Aside from offering the standard for this fourth NRAP 8(c) factor, Defendants do not offer any legal argument suggesting that they will actually prevail on the merits of their writ petition. Tellingly, Defendants ignore the actual basis of the District Court’s two challenged orders. *See Exhibits 3 & 4*. They make no mention of EDCR 2.35(a), including the good cause and excusable neglect standards. They also make no mention of EDCR 2.47 and the District Court’s prior July 7, 2022, order reflecting that the deadline for motions in limine was closed. Additionally, Defendants’ reliance upon *Dechambeau v. Balkenbush*, 134 Nev. 625, 631, 431 P.3d 359, 364 (Ct. App. 2018) (Silver, C.J., concurring)

is inapposite because it was not central to the District Court's analysis in striking Defendants' motions in limine. Rather, the District Court's discussion of *Dechambeau* was merely an observation. See **Exhibit 4**. Thus, Defendants have not presented any meritorious reason sufficient to satisfy the fourth factor of NRAP 8(c).¹

CONCLUSION

For the foregoing reasons, this Court should deny Defendants' Emergency Motion Under NRAP 27(e) for Stay Pending Writ Proceeding.

Dated this 24th day of August 2022.

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¹ Defendants' suggestion (Mot. at 9 n. 2) that Plaintiffs intend to violate this Court's opinion regarding the Vickie Center case is simply unfounded.

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*Attorneys for Real Parties in Interest,
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **REAL PARTIES IN INTEREST OPPOSITION TO PETITIONERS' EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PROCEEDING** was filed electronically with the Supreme Court of Nevada on the 24th day of August 2022. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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/s/ Anna Gresl

Anna Gresl, an employee of
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EXHIBIT 1

EXHIBIT 1

REGISTER OF ACTIONS

CASE NO. A-16-739464-C

Titina Farris, Plaintiff(s) vs. Barry Rives, M.D., Defendant(s)

§
§
§
§
§
§
§
§

Case Type: **Malpractice - Medical/Dental**
Date Filed: **07/01/2016**
Location: **Department 31**
Cross-Reference Case Number: **A739464**
Supreme Court No.: **80271**
81052

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Plaintiff **Farris, Titina**

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EVENTS & ORDERS OF THE COURT

06/07/2022 **Hearing** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Pursuant to Notice of Hearing to Set New Trial Date

Minutes

06/07/2022 9:00 AM

- Upon Court's inquiry, Counsel confirmed the issues regarding costs were resolved. Colloquy regarding trial scheduling and exhibits. Mr. Doyle stated he had firm trials set in California and also scheduled a prepaid vacation for the middle of October through the middle of November. Ms. Daehnke stated she had another case set in Department 11 in September, however, someone else could likely cover that trial in lieu of her. Counsel estimated approximately three (3) weeks for trial. COURT ORDERED, matter SET for trial. Court NOTED discovery and motion matters raised by Defendant's Counsel were not before the Court and needed to be filed accordingly. 8/04/22 10:15 A.M. PRETRIAL CONFERENCE 8/30/22 10:00 A.M. CALENDAR CALL 9/06/22 1:00 P.M. JURY TRIAL 9/06/22 - 9/27/22 (Dark on 9/26/22)

[Parties Present](#)

[Return to Register of Actions](#)

EXHIBIT 2

EXHIBIT 2

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June 8, 2022

Via Electronic Service & E-mail

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Re: Farris v. Rives

Gentlemen:

Before filing a motion to reopen discovery, we would like to meet and confer. I am starting a trial on June 13, 2022 so Bridget Foley or Patricia Daehnke will follow up with you next week. We want to do the following discovery: identify Titina Farris' treating healthcare providers and the healthcare facilities she has visited since trial; obtain authorizations for those records and obtain the records; depose one or two key treating physicians; schedule an independent medical examination; schedule a 30(b)(6) deposition of someone at MGM to determine if Ms. Farris' health insurance is provided by a self-funded ERISA plan; and again disclose expert witnesses which might include some new ones. Based on my conversation with Kimball Jones on June 7, 2022 we assume you will not agree to any of this, but we still need to meet and confer.

We are going to ask the Honorable Joanna Kishner to revisit some of her rulings during trial unless we can agree on these issues. Can we lodge and use Dr. Michael Hurwitz' original deposition at trial? Can we include as an exhibit at trial the complete hospital records for Ms. Farris' admission to St. Rose Dominican Hospital-San Martin? Can we use the demonstrative exhibits we prepared? Will you agree not to cross-examine Dr. Brian Juell about his own history as a defendant in medical malpractice cases? Can we call our

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Steven T. Scully (1948-1994)

George F. Hand/Kimball Jones
Re: Farris v. Rives
June 8, 2022
Page 2

causation and damages expert witnesses without any limitations on their testimony? Will you agree not to use the reptile theory? Finally, if Ms. Farris' health insurance is not provided by a self-funded ERISA plan, can we introduce payments for her hospital and medical expenses as an admissible collateral source?

We look forward to our meet and confer discussion.

Very truly yours,

**SCHUERING ZIMMERMAN
& DOYLE, LLP**

/s/ Thomas J. Doyle

Thomas J. Doyle

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cc: Patricia Daehnke, Esq.
Bridget Foley, Esq.
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EXHIBIT 3

EXHIBIT 3

ODM

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS; and PATRICK FARRIS,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-739464-C

Dept. No. 31

**ORDER DENYING DEFENDANTS'
MOTION TO REOPEN LIMITED
DISCOVERY AND TO SET
PRETRIAL SCHEDULING ORDER
ON AN ORDER SHORTENING
TIME**

Date of Hearing: July 14, 2022

Time of Hearing: 9:00 a.m.

On July 7, 2022, Defendants, Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC (collectively “Defendants”), filed their Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time. On July 11, 2022, Plaintiffs, Titina Farris and Patrick Farris (collectively “Plaintiffs”), filed their opposition. On July 12, 2022, Defendants filed their reply. On July 14, 2022, the Court heard oral argument from respective counsel for the parties. Having considered the motion, opposition, reply, and oral argument of counsel, the Court hereby orders as follows:

1. The Court hereby DENIES Defendants’ Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time.

2. The Court concludes that there is no legal basis to reopen discovery. This case was previously tried to verdict before a jury upon which the Court entered judgment. On appeal, the Supreme Court reversed the judgment and remanded for a new trial: “Accordingly, we reverse the district court’s judgment, vacate the corresponding fees and costs order, and remand for a new trial.” *Rives v. Farris*, 138 Nev., Adv. Op. 17, at *18, 506 P.3d 1064, 1072 (2022). Thus, the scope of the Supreme Court’s opinion directs this Court to hold a new trial.

3. In their motion, Defendants cited to *Cynthia Pickett, MSW, LCSW, LADC, Inc. v. McCarran Mansion, LLC*, Dkt. No. 77124-COA, 2019 Nev. App. Unpub. LEXIS 1091, 2019 WL 7410795 (Dec. 31, 2019) (unpublished disposition). NRAP 36(c)(3) does not allow the Court to consider *Cynthia Pickett* because it is an unpublished Court of Appeals order: “Except to establish issue or claim preclusion or law of the case as permitted by subsection (2), unpublished

1 dispositions issued by the Court of Appeals may not be cited in any Nevada court
2 for any purpose.” However, the Court is aware that this limitation in
3 NRAP 36(c)(3) may not exist in the near future based upon statements made in
4 the recent State Bar of Nevada annual meeting.

5 4. Out of an abundance of caution, the Court considers *Cynthia Pickett*
6 on its merits. But, the Court concludes that *Cynthia Pickett* does not support
7 Defendants’ requested relief to reopen discovery. *Cynthia Pickett* involved a
8 summary judgment order that was previously reversed on appeal. On remand
9 from the first appeal, the Court of Appeals “instructed the district court to
10 (1) consider the testimony of Pickett’s expert pursuant to the *Hallmark* factors,
11 and (2) allow evidence of Pickett’s damages from 2015.” *Id.* at *5. But, the district
12 court directly violated the Court of Appeals’ instructions, which was “mandatory
13 authority.” *Id.* at *4. In analyzing the issue, the district court reasoned that the
14 parties “might incur additional expenses, and that the case was ripe for
15 settlement.” *Id.* at *3. As such, the district court never analyzed any good cause
16 standard or excusable neglect standard. Thus, in the second appeal, the Court of
17 Appeals again reversed, for a variety of reasons, including that the district court
18 did not adequately explain why it violated the Court of Appeals’ instructions on
19 remand following the first appeal, and why it declined to reopen discovery. *Id.* at
20 *5. In this case, upon questioning from the Court, Defendants’ attorney could not
21 identify any legal authority that allowed a district court on remand to reopen
22 discovery in a case that did not involve pretrial issues. Additionally, Defendants
23 did not identify what “essential element” of their case that they wanted to
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1 establish by moving this Court to reopen discovery in this case. Accordingly, the
2 Court concludes that *Cynthia Pickett* is inapposite to the facts and circumstances
3 of this case.

4 5. The Court additionally relies upon EDCR 2.35(a) to deny
5 Defendants' motion. EDCR 2.35(a) requires a "showing of good cause" to "extend
6 any date set by the discovery scheduling order. . . ." This rule further provides
7 that a "request made beyond the period specified above shall not be granted
8 unless the moving party, attorney or other person demonstrates that the failure
9 to act was the result of excusable neglect." The Court finds that Defendants have
10 not satisfied either the good cause standard or the excusable neglect standard.

11 6. Defendants could have performed the majority of their requested
12 discovery prior to the first trial when discovery was still allowed. But, Defendants
13 do not explain how their failure to conduct a majority of the newly-requested
14 discovery prior to the first trial amounts to good cause or excusable neglect. The
15 Nevada Supreme Court recently elaborated on EDCR 2.35(a), stating that
16 "[b]ecause EDCR 2.35(a) is also relevant in the underlying situation, the court
17 must also consider whether the moving party demonstrated that its failure to act
18 was the result of excusable neglect. Excusable neglect is 'not because of the
19 party's own carelessness, inattention, or willful disregard of the court's process,
20 but because of some unexpected or unavoidable hindrance.'" *Torremoro v. Eighth*
21 *Judicial Dist.* Court of Nev., 138 Nev., Adv. Op. 54, at *7 (Jul. 7, 2022) (citing
22 *Excusable Neglect*, BLACK'S LAW DICTIONARY (11th ed. 2019)).
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24

1 7. The Court has considered Defendants’ arguments that they should
2 be able to obtain new medical records from Plaintiff Titina Farris because it has
3 been three years since the first trial. Defendants contend that Titina has several
4 progressive conditions, including uncontrolled diabetes and peripheral
5 neuropathy. But, Defendants do not present any medical records, medical
6 testimony, or other evidence to support their position. Thus, the Court does not
7 give any weight to the unsupported arguments of counsel. *See Jain v. McFarland*,
8 109 Nev. 465, 475–476, 851 P.2d 450, 457 (1993) (“Arguments of counsel are not
9 evidence and do not establish the facts of the case.”) (citations omitted).

10 8. Since Defendants have not met their burden to reopen discovery
11 under EDCR 2.35(a), the burden to rebut Defendants’ arguments has not shifted
12 to Plaintiffs. Nevertheless, Plaintiffs confirmed in both their written opposition
13 to Defendants’ motion, as well as in open court at the hearing, that Plaintiff Titina
14 Farris will be presenting the same evidence, witnesses, and expert testimony for
15 her past medical expenses, as well as future medical expenses in the second trial
16 that were presented in the first trial. Under these circumstances, the Court
17 further finds that Plaintiffs have not put anything new at issue since the first
18 trial that warrants reopening discovery. *See Schlatter v. Eighth Judicial Dist.*
19 *Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343 (1977) (“The scope of discovery in
20 civil actions is limited to matter, not privileged, ‘which is relevant to the subject
21 matter involved in the pending action,’”) (citing NRCP 26(b)(1)).
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1 Therefore, for these multiple reasons, the Court hereby DENIES
2 Defendants' Motion to Reopen Limited Discovery and to Set Pretrial Scheduling
3 Order on an Order Shortening Time.

4 IT IS SO ORDERED.

5
6 Submitted by:

7 CLAGGETT & SYKES LAW FIRM

8 /s/ Micah S. Echols

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21 COLLINSON, DAEHNKE, INLOW &
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[*Farris v. Rives, M.D.*; Case No. A-16-739464-C; Dept. No. 31; Order Denying
Defendants' Motion to Reopen Limited Discovery and to Set Pretrial Scheduling
Order on an Order Shortening Time]

From: [Micah Echols](#)
To: [Brigitte Foley](#); [Anna Gresl](#); cordt@clarkcountycourts.us
Cc: [Erickson Finch](#); ["kimball@bighornlaw.com"](mailto:kimball@bighornlaw.com); [ghand](#); [Thomas J. Doyle](#); [Patricia Daehnke](#); [Robert L. Eisenberg, Esq](#); [Deborah Rocha](#); [Riesa R. Rice](#); [David Snyder](#)
Subject: RE: A-16-739464-C - Farris v. Rives, M.D.
Date: Saturday, July 30, 2022 7:38:14 PM
Attachments: [2022-07-28 Order Denying Defendants' Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time \(clean copy\).docx](#)
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[image011.png](#)
[image012.png](#)
[image013.png](#)
[image014.png](#)
[image015.png](#)

Thanks. Here is a clean copy of the draft order denying Defendants' motion to reopen discovery. Do we have your approval to use your electronic signature of this version? If so, we'll submit the approved order to the DC31 Inbox email.

Micah Echols, Esq.
Partner, Appellate Division

4101 Meadows Lane, Ste. 100 Las Vegas, NV 89107
100 N. Sierra St., Ste. 220 Reno, NV 89501
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From: Brigitte Foley <brigitte.foley@cdiglaw.com>
Sent: Friday, July 29, 2022 10:49 AM
To: Anna Gresl <Anna@claggettlaw.com>; cordt@clarkcountycourts.us
Cc: Micah Echols <Micah@claggettlaw.com>; Erickson Finch <erick@bighornlaw.com>; 'kimball@bighornlaw.com' <kimball@bighornlaw.com>; ghand <ghand@handsullivan.com>; Thomas J. Doyle <TJD@szs.com>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Robert L. Eisenberg, Esq <rle@lge.net>; Deborah Rocha <deborah.rocha@cdiglaw.com>; Riesa R. Rice <RRR@szs.com>; David Snyder <David@claggettlaw.com>
Subject: RE: A-16-739464-C - Farris v. Rives, M.D.

Our office will approve the proposed Order Plaintiffs' counsel submitted as to form.



Brigitte E. Foley | Attorney
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From: Anna Gresl <Anna@claggettlaw.com>
Sent: Thursday, July 28, 2022 9:54 PM
To: cordt@clarkcountycourts.us
Cc: Micah Echols <Micah@claggettlaw.com>; Brigitte Foley <brigitte.foley@cdiglaw.com>; Erickson Finch <erick@bighornlaw.com>; 'kimball@bighornlaw.com' <kimball@bighornlaw.com>; ghand <ghand@handsullivan.com>; Thomas J. Doyle <TJD@szs.com>; Patricia Daehnke <Patricia.Daehnke@cdiglaw.com>; Robert L. Eisenberg, Esq <rle@lge.net>; Deborah Rocha <deborah.rocha@cdiglaw.com>; Riesa R. Rice <RRR@szs.com>; David Snyder <David@claggettlaw.com>
Subject: A-16-739464-C - Farris v. Rives, M.D.

Conforming to this Court's Department Guideline regarding submission of orders when there is a dispute, attached is the *Order Denying Defendants' Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time* for this Court consideration/signature.

In addition to the proposed order with the disputed provisions (in Word), we are also including a clean copy of the order in Word and PDF, and a copy of the hearing transcript.

Sincerely,

Anna Gresl
Paralegal, Appellate Division

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EXHIBIT 4

EXHIBIT 4

OGM

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS; and PATRICK
FARRIS,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-739464-C

Dept. No. 31

**ORDER GRANTING
PLAINTIFFS' MOTION TO
STRIKE DEFENDANTS'
MOTIONS IN LIMINE ON
ORDER SHORTENING TIME**

Date of Hearing: August 2, 2022

Time of Hearing: 9:00 a.m.

1 On July 28, 2022, Plaintiffs, Titina Farris and Patrick Farris (collectively
2 “Plaintiffs”), filed their Motion to Strike Defendants’ Motions in Limine on Order
3 Shortening Time. On that same day, July 28, 2022, Defendants, Barry Rives,
4 M.D. and Laparoscopic Surgery of Nevada, LLC (collectively “Defendants”), filed
5 their opposition. On August 1, 2022, Plaintiffs filed their reply.

6 On August 2, 2022, the Court heard oral argument from respective counsel
7 for the parties. Having considered the motion, opposition, reply, and oral
8 argument of counsel, the Court hereby orders as follows:

9 1. Plaintiffs’ Motion to Strike Defendants’ Motions in Limine on Order
10 Shortening Time (“Motion to Strike”) is hereby GRANTED.

11 2. In Plaintiffs’ Motion to Strike, they asked the Court to strike
12 Defendants’ 13 motions in limine filed on July 22, 2022, which were assigned
13 Document Numbers 212 through 234.

14 3. For their argument, Plaintiffs rely, in part, on the Court’s July 7,
15 2022, Amended Order Setting Civil Jury Trial, Pre-Trial/Trial Setting Conference,
16 and Calendar Call/Final Pre-Trial Conference (“Amended Order Setting Civil
17 Jury Trial”). On page 2 of this order under Section D entitled “Motions in Limine,”
18 it states: “The Motion in Limine filing date has not been extended.” The Court
19 agrees with Plaintiffs’ argument and enforces the language of this Amended
20 Order Setting Civil Jury Trial to Strike Defendants’ 13 rogue motions in limine.

21 4. The Court notes that Defendants’ Motion to Reopen Limited
22 Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time,
23 filed on July 7, 2022 (“Defendants’ Motion to Reopen Limited Discovery”),
24

1 previously asked this Court to reopen discovery and set a filing deadline of August
2 17, 2022 for motions in limine. *See id.* at page 12, lines 23–24. The Court
3 previously denied Defendants’ Motion to Reopen Limited Discovery in the hearing
4 on July 14, 2022. If Defendants had any questions about filing dates, they could
5 have clarified this point in the reply in support of their Motion to Reopen Limited
6 Discovery or during the July 14, 2022, hearing. In light of this context, the Court
7 finds that it was not reasonable for Defendants to assert that the filing deadline
8 for motions in limine was still open.

9 5. Defendants cannot reasonably rely upon the language in the Court’s
10 July 7, 2022, Amended Order Setting Civil Jury Trial, Section D, page 2, stating
11 **“Omnibus Motions are not accepted. Orders shortening time will not be**
12 **signed except in extreme emergencies.”** (emphasis in original). This is
13 standard language and, in any event, does not serve to justify the filing of
14 Defendants’ 13 motions in limine. The Court also notes that Defendants’ Motions
15 in Limine (9–11), Document Number 230, was, in fact, an omnibus motion in
16 limine, which was prohibited by this standard language.

17 6. EDCR 2.47 does not justify Defendants’ filing of the 13 motions in
18 limine. Although this rule normally sets a filing deadline for motions in limine
19 of 45 days before trial, this rule is prefaced by the operative provision: “Unless
20 otherwise provided for in an order of the court. . . .” Since the Court’s July 7, 2022,
21 Amended Order Setting Civil Jury Trial already confirmed that the time to file
22 motions in limine was closed, the Court’s order controls over the general filing
23 deadline for motions in limine stated in EDCR 2.47.
24

1 7. The Court further points out that concurring opinion of then-Chief
2 Judge Silver of the Nevada Court of Appeals in *Dechambeau v. Balkenbush*, 134
3 Nev. 625, 631, 431 P.3d 359, 364 (Ct. App. 2018) (Silver, C.J., concurring)
4 supports the Court’s decision to strike Defendants’ rogue motions in limine. In
5 *Dechambeau*, Chief Judge Silver held that “the district court erred by sua sponte
6 issuing a new scheduling order extending the time for expert disclosures.” *Id.* In
7 reaching this conclusion, the concurring opinion in *Dechambeau* relied, in part,
8 upon *Douglas v. Burley*, 134 So. 3d 692 (Miss. 2012). The relevant holding of
9 *Douglas* was that “upon remand, prior orders governing discovery remain in place
10 absent a party’s motion to extend deadlines and a subsequent order by the trial
11 court.” *Id.* at 697. While not precedential, this *Dechambeau* concurrence is
12 illustrative to the issues before the Court. Yet, the Court’s Amended Order
13 Setting Civil Jury Trial, Section D, page 2 clearly prohibited the filing of any
14 motions in limine. And, given the September 6, 2022, trial date, Plaintiffs would
15 be severely prejudiced by having to respond to Defendants’ motions in limine. In
16 the end, Defendants simply cannot demonstrate good cause for filing their
17 motions in limine.

18 8. In their Opposition to Plaintiffs’ Motion to Strike, Defendants
19 argued that sanctions should be assessed against Plaintiffs for filing their motion.
20 However, since Plaintiffs prevailed in their Motion to Strike, there is no basis to
21 sanction Plaintiffs. Therefore, Defendants’ request to sanction Plaintiffs is
22 hereby DENIED.

1 9. Therefore, the Court hereby orders Defendants' motions in limine,
2 Document Numbers 212, 213, 214, 215, 216, 217, 218, 219, 220, 221, 222, 223,
3 224, 225, 226, 227, 228, 229, 230, 231, 232, 233, and 234 stricken from the record.

4 IT IS SO ORDERED.

5
6
7 Submitted by:

8 CLAGGETT & SYKES LAW FIRM

9 /s/ Micah S. Echols

10 _____
11 Micah S. Echols, Esq.
12 Nevada Bar No. 8437
13 David P. Snyder, Esq.
14 Nevada Bar No. 15333

15 BIGHORN LAW
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19 George F. Hand, Esq.
20 Nevada Bar No. 8483
21 *Attorneys for Plaintiffs*

22 Approved as to form:

23 COLLINSON, DAEHNKE, INLOW & GRECO

24 /s/ Brigitte E. Foley

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Attorneys for Defendants

[*Farris v. Rives, M.D.*; Case No. A-16-739464-C; Dept. No. 31; Order Granting Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time]

From: [Brigette Foley](#)
To: [Anna Gresl](#)
Cc: [Micah Echols](#); [Erickson Finch](#); kimball@bighornlaw.com; [ghand](#); [Thomas J. Doyle](#); [Patricia Daehnke](#); [Robert L. Eisenberg, Esq](#); [Deborah Rocha](#); [Riesa R. Rice](#); [David Snyder](#)
Subject: Re: A-16-739464-C - Farris v. Rives, M.D. / Draft Order Granting Plaintiffs' Motion to Strike Defendants' Motions in Limine
Date: Monday, August 15, 2022 5:50:20 PM
Attachments: [image001.png](#)
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[image007.png](#)
[2022-08-12 Order Granting Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time.docx](#)

Hi Anna -

I informed Micah on Friday that you may use my electronic signature for submission.

Thanks,

Brigette Foley

Sent from my iPhone

On Aug 15, 2022, at 4:42 PM, Anna Gresl <Anna@claggettlaw.com> wrote:

Good afternoon,

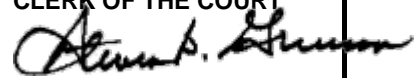
Following up to see if you have any edits as to the draft order granting Plaintiffs' motion to strike Defendants' motions in limine. If you do not have edits, please provide authorization to use your electronic signature. We are submitting the order tomorrow (8/16) afternoon.

Sincerely,

Anna Gresl
Paralegal, Appellate Division

EXHIBIT 5

EXHIBIT 5



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

TITINA FARRIS,)
)
Plaintiff,)
)
vs.)
)
BARRY RIVES, M.D.,)
)
)
Defendant.)
)
AND RELATED PARTIES)

CASE NO. A-16-739464-C
DEPT NO. XXXI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

THURSDAY, JULY 14, 2022

**RE: MOTION TO REOPEN LIMITED DISCOVERY AND TO SET PRETRIAL
SCHEDULING ORDER ON AN ORDER SHORTENING TIME**

APPEARANCES:

FOR THE PLAINTIFFS:

MICAH S. ECHOLS, ESQ.
KIMBALL JONES, ESQ.
GEORGE F. HAND, ESQ.
JACOB G. LEAVITT, ESQ.

FOR THE DEFENDANTS:

BRIGETTE E. FOLEY, ESQ.
THOMAS J. DOYLE, ESQ.
via BlueJeans
ROBERT L. EISENBERG, ESQ.
via BlueJeans

RECORDED BY: LARA CORCORAN, COURT RECORDER
TRANSCRIBED BY: JD REPORTING, INC.

1 **LAS VEGAS, CLARK COUNTY, NEVADA, JULY 14, 2022, 9:13 A.M.**

2 * * * * *

3 THE COURT: Thank you. So I'm going to recall
4 pages 4 and 5 now that we're on the record. No worries.

5 Case Number 739464. Farris versus Rives.

6 Counsel, who's in court, feel free to approach.

7 Counsel, if you're on remotely, the very first
8 question I'm going to ask you is the date that you filed your
9 notice of remote appearance in order to be able to participate
10 remotely, as required by Nevada Supreme Court rule, as
11 reasserted in the administrative orders, and we even reminded
12 you last time, plus in memos.

13 So let's take the appearance remotely first because I
14 need to find out if parties actually have filed their notice of
15 remote appearances.

16 So whoever is on remotely, who's going first?

17 (No audible response.)

18 THE COURT: Mr. Eisenberg or Mr. Doyle, who's going
19 first for your appearance?

20 MR. EISENBERG: Your Honor, this is Robert Eisenberg
21 for the defendant, and I did not file a separate document
22 regarding this remote appearance.

23 THE COURT: And how would that be allowed for you to
24 be -- isn't that a per se violation of the Supreme Court rule;
25 right? And it even restated in the administrative order,

1 administrative order on April 29th, 2022, Administrative
2 Order 22-7. And the Court even reminded the parties last time.

3 MR. EISENBERG: Your Honor, I apologize. I did read
4 the Court's memorandum. I read it again this morning.

5 THE COURT: The one in all bold.

6 MR. EISENBERG: I do not intend to argue anything.
7 I'm here solely as an observer for purposes of this hearing,
8 and so I request permission to observe remotely.

9 THE COURT: Okay. If you are just observing, then it
10 falls within the public courtroom viewpoint. As long as you're
11 not saying anything, we're not -- okay, and you're not
12 participating either directly or indirectly, you're welcome to
13 observe. It's a public courtroom, and so you can have that
14 same status as anybody else. That's fine.

15 With regards to --

16 (Pause in the proceedings.)

17 THE COURT: Well, no, but it's only by the Daehnke
18 firm, and she's here. You can't file things on behalf of --
19 that -- right, it's the Supreme Court rule requires -- what my
20 wonderful JEA, and I saw that there was one that's filed, but
21 it's filed by your firm, and you're here in person.

22 MS. FOLEY: Yes.

23 THE COURT: On what basis under the Supreme Court
24 rule can a firm do it on behalf of another firm; right? Isn't
25 it an individual attorney's obligation under the rule and

1 specifically articulated in the administrative order and the
2 actual form that's on the Clark County Court website, the first
3 form under forms in the Eighth Judicial District?

4 MS. FOLEY: Yes, Your Honor. We are local counsel
5 for Mr. Doyle's law firm. So we did file specifically on his
6 behalf and put that in the text of the notice. That was
7 filed --

8 THE COURT: But you can't -- you can't do that
9 because there's two different issues; right? Okay. First off,
10 the way you filed it, it says you said counsel for defendant.
11 You haven't even identified who those, quote, counsel are;
12 right?

13 And doesn't the Supreme Court rule specifically say
14 that the counsel has to do it because, right, there's an
15 affirmation by the actual counsel that they are fully going to
16 participate, right, et cetera? That's why it has to be filed
17 by the counsel who wishes to appear. You can't
18 prophylactically say, oh, anybody on defendants, right, because
19 you can't -- you're local counsel. You can do it for your own
20 firm, right, but you can't do it for --

21 Yeah, you just say it's for Thomas Doyle. Okay.
22 Well, you don't even have Mr. Eisenberg on here anyway. You
23 just have Mr. Doyle.

24 MS. FOLEY: Yes.

25 THE COURT: Mr. Eisenberg is taken care of because he

1 says he's not speaking. It's a public courtroom. He's more
2 than welcome to observe. Anyone is more than welcome to
3 observe as long as he's not speaking or arguing, right, because
4 the rule goes to people who are speaking or arguing, okay.

5 As far as Mr. Doyle for this time, it's going to be
6 okay because understanding you may have had a misunderstanding,
7 but he needs to file it because he's the one who's making
8 affirmation, right. While you need -- right, the local rules
9 require that you need to be here for hearings, right, but you
10 can't -- and that you have to comply with the rules, by feel
11 free to let me know if you think that there's a provision in
12 the Supreme Court rule that says that you can make an
13 affirmation on his behalf of his ability to appear
14 audiovisually.

15 MS. FOLEY: No, Your Honor. I understand what the
16 Court is saying, and --

17 THE COURT: That's my reading of it. If you have a
18 different reading of it, let me know. I mean, I've never had
19 somebody tell me that they could do it on behalf of somebody
20 else.

21 MS. FOLEY: No. We -- I understand Your Honor, and
22 we won't do it this way in the future.

23 THE COURT: He just has to put his own name on it,
24 right.

25 MS. FOLEY: I'm sorry. I didn't hear it.

1 THE COURT: Oh, he can put his own name on it, right.
2 He can still do the pleadings, right, but he has to have his
3 own name on it because he's the one who's attesting; right?

4 MS. FOLEY: Right, Your Honor. I believe Mr. Doyle
5 is also just appearing to observe today. So.

6 THE COURT: Well, let's find out. Let's find out if
7 this is even a moot point. Okay.

8 MS. FOLEY: All right. Yes, Your Honor.

9 THE COURT: We should have started there.

10 Mr. Doyle, are you making the argument, or are you
11 just observing?

12 MR. DOYLE: I'm observing, Your Honor, and I'm also
13 available to answer any questions if something comes up that
14 Ms. Foley is not able to answer.

15 THE COURT: Okay. Well, we'll take it in the
16 observation capacity, and we'll see if we even need to get to
17 the other capacity because the Court is going to realize that
18 it was your intention to comply. So that's --

19 Is there any objection from plaintiffs? Let's just
20 jump to that one.

21 MR. JONES: No, Your Honor.

22 THE COURT: Okay. So there. It's done. Taken care
23 of. Know for the future. Right? We're good?

24 MS. FOLEY: Yes.

25 THE COURT: Okay.

1 MS. FOLEY: Thank you, Your Honor.

2 THE COURT: Let's go to -- I don't think I actually
3 got to your appearance because I started to ask a different
4 question.

5 Go ahead, please.

6 MS. FOLEY: It's okay. Brigitte Foley, Bar Number
7 12965 on behalf of defendants Dr. Rives and Laparoscopic
8 Surgery of Nevada.

9 THE COURT: Thank you so much.
10 Counsel for plaintiffs.

11 MR. ECHOLS: Good morning, Your Honor. Micah Echols
12 for plaintiffs.

13 MR. JONES: Kimball Jones, Your Honor, also for
14 plaintiffs.

15 MR. HAND: George Hand for plaintiffs, Bar Number
16 8483.

17 MR. LEAVITT: And Jacob Leavitt, Your Honor, 12608.

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

19 So what we have before us today is we have
20 defendants' motion to reopen limited discovery and to set
21 pretrial scheduling order on an order shortening time,
22 Document 206, Opposition 209, and Reply 211.

23 So let me give you the Court's inclination and let
24 you do the arguing that you'd like to do. Okay.

25 So the Court's inclination really is to deny. And

1 really the reasoning for the denial is the Court doesn't see
2 that there's any basis for it.

3 Realistically, while I do appreciate that in the
4 pleading it talks about the fact that this is a remand, right,
5 but remember the nature of the remand was not pretrial rulings
6 or inability to get certain witnesses in, et cetera, right.

7 The basis of the remand, we all read the order, it
8 says what it says, but in essence it was regarding trial
9 conduct, okay. So there isn't anything that there would be a
10 basis under the Supreme Court, and I'm going to do a
11 multipronged inclination. So under the Supreme Court ruling,
12 that would necessitate, find it appropriate, mandate a
13 reopening of discovery, okay. That's the first part of the
14 inclination.

15 The second part of the inclination is even
16 independent of the Supreme Court order, when I read through
17 this, realistically, and I'm going to have to ask a question of
18 plaintiff's counsel, but it's not addressed during oral
19 argument -- my inclination is based on what was in the
20 pleadings before the Court, which is what I have to look at, is
21 that I don't see that they're going to be asserting something
22 that is going to have that new temporal component because part
23 of the request of relief is an IME, some updated records,
24 et cetera.

25 So remember this is a remand, right, and it's a new

1 trial on things as if we were, you know, the same point in
2 time. So when I look at that and I look at the bases for what
3 really is the request, is I'm not seeing how any of those
4 further any of the case law, direct case law, any of the
5 policies of the case law or any of the rules.

6 The Court would also note, while I did set this on
7 order shortening time because I wanted to makes you sure you
8 all, because of your trial date, et cetera, realistically,
9 these things could have been done. The depositions you chose
10 to take, the information you chose, let's take the MGM, okay,
11 MGM information.

12 Now, I appreciate that that issue is even raised in
13 trial and why it wasn't done, but that was defense counsel's at
14 the time decision to do what they wanted to do to find out what
15 type of plan it was, right, self-funded or ERISA, et cetera, or
16 any other information. So I don't see any reason, just because
17 counsel for defendant chose not to do it beforehand that
18 somehow, this being a remand would necessitate, allow, both,
19 those two alternatives, right, that specifics.

20 And then with regards, like I said, the IME, I've
21 already discussed. You're not talking about the new condition.
22 You're talking as if it was beforehand.

23 And the question I'm going to have for plaintiff's
24 counsel is I'm basing that statement basing on your pleading.

25 If you tell me in oral argument that you're going

1 somewhere else, of course, I'm going to have to revisit that
2 inclination, okay.

3 So I'm basing it on what they're saying they're going
4 to be addressing, which is what I have to do as well as what
5 the requested relief is in the motion and in the reply.

6 So, Counsel, that is the Court's semi-quick
7 inclination. Go ahead, please.

8 MS. FOLEY: Thank you, Your Honor. Brigitte Foley,
9 Bar Number 12965, for the defendants.

10 I will just get to the heart of what the Court's
11 inclination is, which is the Court's inclination to deny the
12 motion based on the representation by plaintiff's counsel that
13 they're not going to bring in any sort of updated care and
14 treatment, anything like that, and plaintiff's declaration that
15 she is essentially in the same overall condition as she was
16 back in 2019.

17 The concern defendants have with that is that it's
18 been three years since that trial happened, and she has several
19 progressive conditions, including uncontrolled diabetes and
20 peripheral neuropathy. In three years, it's reasonable to
21 assume that those conditions have changed, worsened, whatever
22 you may -- whatever the case may be.

23 And even if plaintiffs do not bring in any new
24 medical specials, medical records, changes into her condition,
25 the fact of the matter is she's three years further along than

1 she was at the time of the first trial.

2 And defendants need to have an opportunity, a
3 meaningful opportunity to assess plaintiff as she is today, as
4 she's going to present to a jury today, which could be quite
5 different than how she presented to a jury three years ago.
6 She could be better than expected three years ago. She could
7 be worse than expected three years ago, but that's something
8 that needs to be investigated with limited discovery, and we've
9 set forth the time period in which to do it that would not
10 necessitate a continuance of the trial.

11 Plaintiff stated in their opposition that their only
12 prejudice would be a potential trial continuance, but we're not
13 seeking that. So there's no prejudice to plaintiffs that
14 they've articulated, and there's a lot of prejudice to
15 defendants to not allowing some limited discovery to assess the
16 plaintiff's current condition, whatever it may be.

17 We realize again, that even if she doesn't bring in
18 substantial new records or doesn't allege any substantial
19 changes in condition, again, it's been three years. We've gone
20 through a global pandemic. We assume and have reason to
21 believe she's continued to see healthcare providers, that her
22 conditions have continued to progress over time, and we just
23 want a meaningful opportunity before trial to assess the
24 current state of those conditions to see if they have changed
25 or have not changed.

1 So that is the basis for our motion, and we will
2 respectfully submit on that for now, and request --

3 THE COURT: Counsel, let me ask you a question, all
4 right. And I appreciate what you want, right, okay. Remember,
5 the Court was two prongs. There's one, the Supreme Court order
6 in separate and apart, there wasn't any good cause, right.
7 There's nothing mandating it from the Supreme Court order.
8 There's nothing even inferring allowing it.

9 I'm going to ask a question on the Court of Appeals
10 in just a second, but you say you want, but was there a single
11 citation other than the general concept about, right, that you
12 can amend, et cetera, right, you know what I mean, for equity
13 and all that kind of good -- all those things; right?

14 Is there a single citation to a single case where it
15 was allowed on a remand that did not relate to pretrial conduct
16 where it was said that discovery should be reopened and so that
17 you're looking at the time frame of the plaintiff at the new
18 time frame, right, of the new trial, a year, two years,
19 whatever the time frame is?

20 I didn't see a citation to any authority. I saw the
21 general citations, right, of you can reopen things in general,
22 right. You have -- the Court is not going to choose to ignore
23 *Pickett*. The Court is going to follow the current Supreme
24 Court rules on what I can and cannot do, and I'm fully
25 appreciative at the State Bar conference there's is an

1 indication there may be some rule changes, right, but as of
2 today, the rules are what the rules are, and I, as a District
3 Court Judge, have to follow the rules in place. I don't think
4 anyone is going to disagree with that concept. So I can take
5 into account what I can take into account, but even looking at
6 your *Pickett* case, right, how do you have the authority to get
7 what you want?

8 MS. FOLEY: So, Your Honor, I think it does -- it
9 would fall under the more general case law citations that we
10 reference that leave should be freely granted and that the --
11 it is the Nevada public policy to adjudicate the case fully on
12 its merits. And so what we have in this situation, I will
13 admit there was not much case law at all that we could find on
14 this. So it would seem that there would be a lot of discretion
15 that would have to be used in making this decision since
16 there's not a lot of previous authority to go off of.

17 But, again, because it's been three years since the
18 previous trial, it's reasonable to assume that the plaintiff's
19 condition has changed. Again, it could be for the better. It
20 could benefit the plaintiffs. It could benefit the defendants.
21 Maybe it didn't change, and while we appreciate her declaration
22 saying that her conditions did not change, at the end of the
23 day, she's not a provider of healthcare who is appropriately
24 tasked with making that assessment beyond what she subjectively
25 feels and things like that.

1 But that's what we're wanting is to get her medical
2 records from now and do very limited discovery within the
3 Court's broad discretion to reopen a case to allow some
4 discovery, to see what she actually -- what her conditions
5 truly are today so that we can prepare this case for a retrial
6 because the fact of the matter is we're not getting a -- the
7 plaintiff as she was three years ago.

8 Even if she comes in and testifies that everything is
9 the same, the fact of the matter is three years have passed,
10 and we can't choose to ignore that, because doing so would
11 severely prejudice defendants, and there's really not prejudice
12 to plaintiffs to see if -- to reopen discovery on a limited
13 basis to get updated records and things like that.

14 You know, we're willing to let some of these
15 discovery requests go by the wayside, but really we would like
16 to get an updated understanding of her overall condition
17 because that has to have changed in the last three years in
18 some way or fashion, and we --

19 THE COURT: Why? Why has to have?

20 MS. FOLEY: She has two progressive diseases, the
21 uncontrolled diabetes and the peripheral neuropathy.

22 THE COURT: But you're saying has to. Isn't that
23 just speculation on your part; right? You -- I appreciate I
24 don't have a DO or an MD or an RN after my name. To my
25 knowledge, no one in this hearing has a DO, MD or RN after

1 their name. I didn't see any declaration from anyone with any
2 medical, right?

3 I have an argument that, you know, progressive
4 diseases must be the same, but don't know if taking the
5 medication. Don't know any of this, right. I mean, is there
6 any information that you have or just the assumption? And I
7 appreciate you weren't counsel in the first case, you know what
8 I mean. So that's why I'm trying to ask some of these
9 questions, because how do you know it's happened.

10 MS. FOLEY: So we have -- and it's our understanding
11 that the plaintiff is still treating with certain providers,
12 like a neurologist for the neuropathy, potentially a physical
13 therapist, perhaps plaintiff's counsel can confirm that, and it
14 would be reasonable to assume she's still seeing her primary
15 care physician once a year, and that they would have updates
16 about the current state of her physical condition, and that's
17 what we're really looking for so that we can get -- again, so
18 we can get an understanding of how she's going to present in
19 September of 2022, at her trial, which, given her age, given
20 the comorbidities she has, given the alleged injuries she
21 sustained, they are very likely to have changed or progressed
22 in some regard over a three-year time period.

23 It would have been ideal if we had -- I understand
24 what the Court's saying. It would have been ideal if we had an
25 expert to say that, but we don't have -- we didn't have the

1 opportunity to get updated records or anything like that from
2 the plaintiff yet to give to an expert to say yes, it has
3 changed, or, no, it hasn't changed.

4 So we're really looking for a current status of the
5 plaintiff's overall condition, and I appreciate the Court's
6 observation that we don't, you know, none of us have a DO, MD
7 or RN behind our names, but neither does the plaintiff. And so
8 if the Court is going off her declaration, and it --

9 THE COURT: I'm going off, just to be clear, is I
10 have to look at what case law, right, what law rules or
11 evidence do you, as the movant, right, because as a movant, you
12 have, right, because it's contested, do you have, okay, before
13 even get to what plaintiff has; right?

14 MS. FOLEY: Right.

15 THE COURT: And I didn't see anything in yours. I
16 have to look at yours first, right. I look at your motion
17 first, and I look at your reply to see is there anything in
18 there that provides any support for these contentions for the
19 good cause for the request to reopen discovery since it's
20 contested.

21 So I'm hearing what you're saying, but don't I
22 initially have to initially have to look at you because you're
23 the movant, right, and I have to look at the defendant, you
24 meaning the defendants, right, defendants are the movants. So
25 I have to look did you meet any initial burden? Have you

1 provided the Court any evidence, any rules, any authority;
2 right? I'm using authority in the broad sense, okay. If you
3 want me to go to constitutional rules (indiscernible), okay,
4 but you understand, a whole panoply, okay.

5 And that's why I didn't see anything. I didn't
6 see -- the only thing that you even cited at all that involved
7 any appellate action, your *Pickett* case was a summary judgment,
8 right, and the summary judgment was on supplementing an expert,
9 which is a portion of a case from a pretrial concept.

10 MS. FOLEY: Right, Your Honor.

11 THE COURT: So I didn't see anything in what was
12 provided to the Court that provided any support, in a posttrial
13 remand concept; right? Which would be very different because,
14 right, in the summary judgment concept, if they're saying,
15 guess what, you should have granted summary judgment because we
16 needed to do an expert, right, so you have to look at the
17 material; the standard is different under 56 versus a trial,
18 okay, all of that.

19 So even taking, even if I were to take *Pickett* into
20 account, based on your website from July 12th, it still -- I
21 really don't see it as applying here because, not only is it
22 summary judgment versus a trial, but also the issue was very
23 different, and their citations in their case, right, it was
24 talking about an essential element of a party's case can be
25 easily and readily established by reopening the case. That's

1 not here. This is not an essential element of the party's case
2 and easily be established.

3 There they were asserting right, but the lack of
4 having the expert was -- they should have precluded summary
5 judgment.

6 Here basically I appreciate that you -- because I'm
7 hearing you all want more information, but I'm not hearing
8 where it goes to any essential element, claims or defenses, A.

9 But, B, also from a posttrial concept, how you are
10 getting the plaintiff in the 2022, your potential view, right.
11 I have no evidence. I have nothing from a doctor, right. And
12 you could have had your own experts, okay, say, well, because
13 of this ongoing treatment -- I'm not saying you could or
14 couldn't, but there's nothing that precluded you from providing
15 whatever evidence you wished to provide to the Court for the
16 Court to review for today.

17 You're the ones that chose to do it on OST, a remand
18 has been around for a while, right. The hearing on setting
19 this case has been around for a while. You all chose when you
20 wanted to do the OST and how long you wanted to wait for that,
21 all of those. Nothing precluded any of that. It was all on
22 defendant's time schedule. So I'm not seeing that you were --
23 it's not like I made a -- like the Court made a decision one
24 day and put you for the following week to have your trial, you
25 know what I mean.

1 You had the passage of time. You had passage of time
2 between the hearing and actually when you decided to file your
3 OST. So it looks like everyone had enough time to do whatever
4 they needed to get before the Court, but I don't see the
5 evidence before the Court. Just so that you understand; I'm
6 not just going on Ms. Farris's declaration. I'm going on
7 looking at your initial burden to provide information, the
8 evidence that is necessary for this Court to make the ruling
9 that you want, okay.

10 Counsel for plaintiff, I spoke a little bit to
11 explain that. I just want to make sure everyone is
12 understanding where we are here.

13 Who's handling this one?

14 MR. JONES: Your Honor, it's going to be Mr. Echols.
15 I just want to say --

16 THE COURT: Then only one horse, one rider.

17 MR. JONES: Okay.

18 THE COURT: In fairness.

19 MR. ECHOLS: Okay. Judge, I don't know that there's
20 a whole lot I need to say based upon the Court's comments, but
21 I can reiterate what's in our opposition just to highlight the
22 points if the Court would like. If not, I will just sit down.

23 THE COURT: No. Feel free to do whatever you think
24 is appropriate. I want to make sure everyone has a full and
25 fair opportunity to be heard.

1 MR. ECHOLS: Okay. So the motion starts out and says
2 this case should be heard on the merits. Well, it is going to
3 be heard on the merits. There's no procedural bar to this case
4 going forward on September 6. We have this case set on a firm
5 trial setting.

6 So the interesting thing, Judge, about the timeline
7 that defendants have proposed in their motion is some of the
8 dates have already passed, and some of the deadlines in there
9 are so tight that it's just -- it's bone crushing. For
10 example, they have motions for summary judgment due on
11 Wednesday, and oppositions due on a Friday. And so not only
12 would this be prejudicial to plaintiffs because the schedule
13 that they presented is unworkable, but -- and I didn't have
14 this in my opposition, because at the time I wrote it, I wasn't
15 sure, but my firm had, at the time of writing this, five trials
16 in August, and what I do is I will join any active trials as
17 appellate counsel, and so I kind of just shift from different
18 trials.

19 Well, on Friday last week and then confirmed on
20 Monday this week, one trial has settled. I was in a hearing
21 all day Monday, and in the beginning of that hearing,
22 Judge Barisich, continued our trial that was supposed to start
23 in August.

24 Another trial got moved, but we still have two
25 trials, Judge. One that starts in July 28th and one that

1 starts on August 8th, and so -- and then Mr. Jones also has a
2 trial in August. So there's no way that we can do all this
3 discovery, even if the Court were inclined to allow this.

4 THE COURT: Can you address the legal merits as to
5 whether or not there is any basis to flip the question?

6 MR. ECHOLS: Sure.

7 THE COURT: I asked them, is there any authority that
8 allows the Court, right, or has the Court reopen discovery?
9 How about on your side? Is there going to be an issue of the
10 client coming in and trying to get future pain and suffering,
11 which is no longer applicable? Is there any legal basis that I
12 should be denying their request? And, yes, I read your
13 opposition, obviously, but --

14 MR. ECHOLS: Basic --

15 THE COURT: I'm trying to focus on the law aspect
16 here, folks, okay.

17 MR. ECHOLS: Right. So, Judge, based upon EDCR
18 2.35(a), and then the additional NRCP 6(b) (1)(B), little
19 number (2), the good cause and excusable neglect standards, we
20 didn't find anything remotely similar to what the defendants
21 are asking, any authority is what I mean, and the Court has
22 already pointed out the *Cynthia Pickett* case is in opposite.

23 You know, the only thing that I was thinking is okay,
24 if plaintiff was actually putting something at issue that were
25 new, that would be a different story, but we're not putting

1 anything at new -- you know, anything new at issue. In fact,
2 the same past medical expenses are going to be the same. The
3 damages are all going to be the same. We're going to present
4 the same numbers.

5 THE COURT: Okay. How about future? Future care and
6 future pain and suffering? What's going to happen there,
7 without giving away your trial strategy? I'm just -- I have
8 to, realistically, that's the point that pretty much is being
9 made, because past medicals, past medical, you can easily say
10 we're not introducing any new bills, fine, but if I'm
11 evaluating, as I am evaluating the issues on the merits, right.
12 What's the merits of the case?

13 MR. ECHOLS: And, Judge --

14 THE COURT: Presumably you all last time had a
15 pain-and-suffering component. So that would be one of the
16 merit type issues, the future medical care is another issue.
17 So how do those get addressed?

18 MR. ECHOLS: And those are all going to be exactly
19 the same, Your Honor. Same -- same categories of damages, same
20 amounts of damages that we will request. And so that's why
21 there's no need to reopen discovery because everything is the
22 same.

23 THE COURT: Okay.

24 MR. JONES: Your Honor, I hesitate.

25 THE COURT: I can't. Unless I have defendants agree

1 that you can have two horses, two riders, in fairness, you know
2 how it goes, right, because then we open up to everyone.

3 So, Defense Counsel, do you object, or are you okay
4 with two attorneys on behalf of plaintiff speaking.

5 MS. FOLEY: As long as they don't object to Mr. Doyle
6 jumping in on our end as needed.

7 THE COURT: Do you understand, and I've got other
8 hearings folks. So that's why we try and keep it, right,
9 efficient. This is supposed to be on the pleadings, and oral
10 arguments are --

11 MR. JONES: Your Honor, we're correct. We're fine.

12 THE COURT: Okay.

13 MR. JONES: Thank you. I'm sorry.

14 MR. ECHOLS: So the only other point I'll make, Your
15 Honor, is in this case, Titina Farris, the plaintiff, has
16 complete nerve destruction, and so there's not going to be any
17 different damage that the defense is talking about below the
18 knees, Your Honor.

19 THE COURT: Pardon?

20 MR. ECHOLS: She has complete nerve destruction
21 below --

22 THE COURT: So you're saying her medical --

23 MR. ECHOLS: -- below the knees.

24 THE COURT: -- condition is the same as it was back
25 at the first trial, and so the treatment that she's receiving

1 is the future treatment that was already set forth in the first
2 trial, or what are you saying that she is not progressing so
3 you're disagreeing with defendant's statement on progressing?
4 Can you just clarify what you mean by that, please. I wasn't
5 sure exactly what you're said.

6 MR. JONES: Your Honor, if I guess --

7 THE COURT: Then we're going to jump --
8 realistically, I have to keep it to one person. It's, to be
9 fully prepared, because otherwise it's opening it up to
10 everyone, and that's not fair, and that's not fair to other
11 matters that we have coming on. So.

12 MR. ECHOLS: And, Your Honor, in conferring with
13 counsel, what he's telling me is that because this is a case of
14 foot drop, it's the same, same symptoms, same injury. She
15 still has foot drop. And we're not asking for any additional
16 damage. We haven't put anything new at issue. It's the same
17 case we'll be trying.

18 THE COURT: Okay. Counsel, you get last word. It's
19 your motion. Go ahead, please.

20 MS. FOLEY: Sure. Thank you, Your Honor.

21 I would -- the real issue I think that this motion is
22 going to turn on is whether plaintiff's condition has changed
23 at all since the last trial such that it would change any of
24 the damages allegations. And so we have reason to believe that
25 she's been still seeing a neurologist, seeing a primary care

1 provider.

2 Again, it's not clear whether her condition has
3 changed because we don't have those records. If we could just
4 get those records at least and see if there has been a change
5 in condition, it seems like that would be a reasonable
6 resolution to this issue at this time, and it would not be
7 prejudicial to plaintiffs to produce those updated records for
8 her current treaters to the defense to, you know, within a
9 shortened time period just to see if the condition is
10 substantially the same as what it was alleged at the first
11 trial or if it has worsened than expected or been better than
12 expected. But that seems like it would be a very minimally
13 prejudicial approach to resolving this issue at this time
14 because it still seems like there is a question mark as to what
15 is her current condition, and how does that impact any future
16 damages claims.

17 Even if they don't try -- even if they don't seek
18 additional future damages, even if they say everything is the
19 same as before, again, three years have passed. So it's
20 reasonable to assume -- or it would be reasonable for them to
21 just provide us with those records that show everything is the
22 same.

23 THE COURT: But how do you have the legal basis to be
24 asking is the heart of what the Court keeps asking. Right.
25 There was nothing in your pleadings that gave it, the *Pickett*

1 case, right, I gave one citation to *Pickett*. But you can read
2 another part of *Pickett*, remember, there was two -- the bases;
3 right. And the Court even said in *Pickett*, we also note, and
4 once again, I'm not saying I'm relying on it or even taking it
5 as persuasive, I'm just giving the full benefit, the most
6 possible benefit of the doubt to the movant, right, because the
7 Court's inclination is I don't think we have the bases. So I'm
8 trying to make sure I'm covering everything to give you the
9 broadest possible opportunity.

10 But there it also -- we also note that the District
11 Court failed to follow this Court's first order, which was
12 mandatory authority; see NRAP 36(c)(2). Forester (phonetic),
13 36 Nevada at 281, and another citation.

14 This Court's previous order, with respect to the
15 admissibility of evidence, dash, instructed the District Court
16 to, paren, one, consider the testimony of *Pickett*'s expert
17 pursuant to the *Hallmark* factors, and two, allow evidence of
18 *Pickett*'s damages from 2015. And then it says *Pickett* docket.
19 Number 701.27 at 5-8.

20 And that was the last (indiscernible).

21 In denying *Pickett*'s motion to reopen discovery, the
22 District Court did not follow -- did not allow *Pickett* to
23 supplement the evidence of her damages from 2015. In addition,
24 no consideration was given to the proposed expert testimony
25 despite the *Hallmark* factors.

1 So there it said the District Court there, and then
2 I'm not saying another sentence, but it really doesn't apply,
3 but the concept is there the District Court -- sorry, the
4 District Court therefore disregarded controlling law. And it
5 cite -- gives a citation. That's what they consider the abuse
6 of discretion.

7 Here, that's why I started out part of my inclination
8 is, right, if you look at the Supreme Court order, was the
9 Supreme Court order directing this Court to reopen discovery?
10 No. Was it saying that certain information should have been
11 allowed to be brought in that wasn't brought in? No.

12 Actually, you had the opposite, right. It was that
13 made a ruling that certain information was allowed in through a
14 jury instruction, and then it was stated too many times, I
15 guess, during, you know, the trial. So that was all trial
16 things.

17 So that's really why I see *Pickett* on both grounds
18 completely inapposite, because, A, the issue before *Pickett*.
19 Well, first you've got its Court of Appeals, unpublished, but
20 even taking it fully into account, right, to see if there's
21 something in there that the Court should be looking at, right,
22 and any advanced crystal balling or whatever if the rule gets
23 changed.

24 So doing that, even that, two different bases. One,
25 summary judgment and on something that was specifically an

1 issue that was excluded.

2 Here you're asking for more information that's
3 posttrial with no support to this Court that how that would be
4 allowed or how that's ever been allowed, and this isn't the
5 first remanded case posttrial, right. So if it was allowable,
6 presumably someone would have gotten the Supremes or the Court
7 of Appeals, right, to have a nice little decision, published or
8 unpublished. And since you gave me one unpublished, I can't
9 think of the fact that you have not given me two unpublished if
10 there was another one out there that was more directly on
11 point.

12 So I just don't see it.

13 I'm hearing what you're saying, but I'm seeing it
14 really as speculation. This is speculation that someone would
15 have something that might potentially come up in a trial with
16 no legal authority for it being allowed, no basis in the
17 Supreme Court order, no, even anyone in the medical profession
18 or anyone from a doctor standpoint saying that this would be
19 appropriate for something that would change anyone's opinion or
20 come in from a medical -- 'cause this is medical. This isn't
21 lay, okay. Or even anyone from a layperson saying that this
22 would've made some impact or some difference, right, because
23 this isn't a situation that she had a new preexisting condition
24 that your client didn't know about, okay.

25 This is you're asking for posttrial records, and

1 that's really how narrow this ruling is. It's the specific
2 posttrial records, and I'm not seeing any -- if it was
3 posttrial records, and then there was the MGM, okay, and I'm
4 parsing those out a little bit differently.

5 Posttrial record is (indiscernible) the whole
6 analysis. The MGM is everything I just said, plus the fact the
7 status of what MGM's insurance aspect is, readily easily
8 available, okay. Readily easily available, even on websites at
9 some points in time, okay. So why that wasn't done during the
10 long tenure brief pretrial really was defense counsel's
11 opportunity to do so and chose not to do it. So you don't get
12 the advantage of doing something now that you wish you would
13 have done before the first trial. So I see that one parsed out
14 a little bit different from the medical records, okay.

15 But all the analysis of the postmedical, and there's
16 no basis to say that there is no excusable neglect. In fact, I
17 didn't see any argument on excusable neglect on the insurance
18 concept anywhere in the pleadings, and since it would be so
19 easily available, and it could have gotten from her through
20 deposition. There is interrogatories. There's subpoenas.
21 There's so many things that could have been done.

22 And yes, I appreciate for those counsel who were
23 actually here during, of course, that issue did come up, and
24 the only thing was you could have easily gotten this before,
25 but you chose not to. So if you chose not to do so, then you

1 don't get the benefit because there's a remand on a completely
2 different issue to go back and do something you wish you had
3 done before.

4 I'm not seeing any good cause. I don't see any
5 excusable neglect.

6 So for the totality of the reasons of everything the
7 Court said, the Court turns its inclination into an order,
8 supplementing with what parties have said, supplementing with
9 what the Court said at the end and getting to the net result of
10 while I'm appreciative of defendant's motion to reopen limited
11 discovery and set a pretrial scheduling order on order
12 shortening time, Document 26 -- 206, excuse me, not 26, it is
13 denied for all the reasons stated.

14 You all are where you're at. You have your pretrial
15 conference on August 4th. Calendar call August 30th. Firm
16 trial setting 9/6 through 9/27 with the caveat that we
17 mentioned at the time we set the trial, that there was going to
18 be a dark day for religious accommodation. And there may need
19 to be a second dark day. But we'll get that figured out a
20 little bit closer to trial.

21 So I appreciate everyone's time. Appreciate the
22 excellent briefing. Wish everyone a great rest of your week,
23 and thank you so very much.

24 And that means counsel for plaintiffs are preparing
25 the order, EDCR 7.21. Circulate it to opposing counsel.

1 Provide it back to the Court to the DC XXXI in box in
2 accordance with the administrative orders, please. Thank you
3 so very much.

4 MS. FOLEY: One more question, Your Honor.

5 THE COURT: (video interference).

6 MS. FOLEY: Do you have any handouts for jury trials
7 available right now that we could take?

8 THE COURT: It's a yes and no question.

9 MS. FOLEY: Okay.

10 THE COURT: Okay. We are in the process of modifying
11 it. Because the one that's on the website, okay, which has
12 been on the website, and you'll see the date. It's a preCOVID
13 date, and there's been some -- there's been a whole
14 (indiscernible) of administrative orders, different things
15 that, you know what I mean. So we have been dealing with it
16 more.

17 So that is mostly up-to-date with a couple of
18 caveats, okay. And I can tell you I've got -- I don't have
19 other counsel yet on the line. So I -- do you all want me to
20 take a moment and walk through some of those things?

21 MR. JONES: That would be wonderful, Your Honor. If
22 you don't mind.

23 MS. FOLEY: We would appreciate it. Thank you.

24 THE COURT: Okay. Well, if somebody needs to be
25 somewhere else, so whoever needs to be somewhere else, you are

1 not required to stay on this, but since I was asked a couple of
2 questions, and I have both sides requesting me to do so, then I
3 will do so.

4 Okay.

5 The exhibit issues is modified because it doesn't
6 fully take into account electronic exhibits and electronic
7 exhibit protocol.

8 So the realistic question is are you all doing
9 electronic exhibits, or are you doing paper exhibits? If
10 you're doing electronic exhibits, then you need to have them
11 timeframewise, you're getting real close on timeframe because
12 you have to put those on the appropriate drives. You have to
13 get them checked by the IT department. Remember, there's 32
14 departments that they're working with. They're absolutely
15 wonderful, but when I say IT, but now it's clerk, slash, IT.
16 So are you -- well, let me see. Before I finish through
17 electronic, are you doing paper or electronic? Before I start
18 going through those.

19 MR. JONES: We're going to do paper, Your Honor.

20 MS. FOLEY: I think we're going to --

21 THE COURT: You both have to agree to the same thing.
22 We can't have one side paper and one side electronic.

23 MR. JONES: We have one video.

24 THE COURT: Okay. Let me be clear. When I use the
25 term electronic, that means everything shows up on a drive,

1 okay. Depending on the amount of data, it depends on the type
2 of drive, right. I've got some cases I'm up to multiple
3 terabytes.

4 Others, it's a little baby jump drive, okay. So you
5 all have to agree which format. The clerk's office doesn't
6 allow for one side to do paper and one side to do electronic,
7 okay.

8 The mandatory requirements of electronic that were in
9 place during certain periods, which I'm going to call COVID in
10 a general sense, I'm going to say certain periods because COVID
11 still exists, and subject to an administrative order that I
12 don't yet know about that may exist that has not yet been sent
13 to me in an e-mail, okay, so with those caveats, there's no
14 longer mandatory electronic.

15 So this Court has been offering people the option of
16 whichever they wish to do, okay. Obviously the larger cases,
17 more data, it's more efficient to do electronic.

18 And remember, that gets taken into account when the
19 Court looks at fees and costs, right, because efficiency versus
20 multiple, multiple binders. But people are allowed to do
21 whatever. I just --

22 MR. DOYLE: Your Honor, we did discuss at the last
23 hearing, and my recollection is that the parties agreed that it
24 would be paper with the exception of I think the video that's
25 being referred to was an exhibit at the prior trial.

1 THE COURT: Right. Right. A video or a couple of
2 videos doesn't change it from paper to electronic. We're
3 talking about the whole kit and caboodle, the whole medical
4 records, and all those type of things, right. So doing a video
5 or two gets me to my next caveat. Okay. So we'll ignore the
6 electronic.

7 But for other cases, do remember you've got to really
8 be prepared for those like a month or so in advance in order to
9 get them checked out and get everything done and cleared and
10 all sorts of drives.

11 And the electronic protocol I know is on everybody's
12 websites. I know it was at multiple bench bars, and I you know
13 you can get it if you need it.

14 But, okay. So now let's go to paper, the paper
15 exhibits. Paper exhibits are the same; that pretty much is the
16 same that's currently on our --

17 Do we have any of the Goldenrod standard, those
18 golden --

19 If not it should be pretty much the same.

20 The only difference in the paper is are you all
21 planning on utilizing what is in the vault for exhibits for --
22 or are you planning on doing something different?

23 For example, the trial that we're starting next --
24 we're picking a jury next Tuesday -- it's a remand from a
25 Judge Gonzalez case. Obviously they are doing all the exhibits

1 and everything that they did before. So those are in the
2 vault. So if you need to know what's in the vault, you need to
3 let us know, okay.

4 You all should have your own record of what's in the
5 vault, right, what got admitted, and it's a public record,
6 right, of the things like that. So presumably you're using the
7 same exhibits that were previously. So we're just taking them
8 out of the vault, and they're coming back?

9 MR. JONES: That's correct, Your Honor.

10 MR. DOYLE: With the defendant (video interference)
11 will be --

12 THE COURT: I'm sorry. Mr. Doyle, Mr. Doyle, you cut
13 in and out. So would you mind starting over.

14 MR. DOYLE: Sure. We plan on using not what is in
15 the vault, but we will be -- and I don't know if the Court
16 recalls the issue previously about the scope of the records in
17 terms of the exhibit that was used, but we will be -- we will
18 be (video interference) entire hospital chart.

19 THE COURT: The Court is not going to take a position
20 at this juncture because there's nothing before this Court.
21 You all asked just some general information about whether or
22 not the procedural aspect.

23 So to the extent that there is a disagreement, you
24 can appreciate anything that needs a ruling needs to be brought
25 to the Court in the proper format in order to have a ruling on

1 it, okay. So the Court -- please don't say anybody say when
2 the Court was asking whether you were using prior exhibits or
3 not that somehow I was saying you had that option. The rules
4 are what the rules are. I'm just not going there because it's
5 not before me. So you all need to determine what is the proper
6 format. I was just going to the idea that we have things in
7 the vault if we need to get those out, then we need to deal
8 with what we need to do.

9 If there's some stipulation or agreement between the
10 parties, then the Court would review said stipulation and
11 agreement between the parties. Okay.

12 But exhibits are pretty much the same as you will
13 find on the website to the direct thing, okay.

14 A reminder that if you have any videos or anything
15 that is not in a paper format, you do need to have a clean
16 laptop; similarly it would apply with full electronic exhibits.
17 Something, something that allows whatever is admitted, whether
18 it be a video, I'm going to use a video for an easy example, to
19 be played. Because the Court doesn't supply those, right.

20 So if you have it on a jump drive, then you need
21 something that, you know, can plug it in through a jump drive.
22 If you have it on a DVD, then you need to have something that
23 has an external DVD or an internal DVD player, right, some DVD,
24 something that it can be played on. You have to ensure that
25 you have, that whatever goes back to the jury, so you can play

1 whatever video format, or if you have something unique there.
2 Okay.

3 So exhibits generally the vault is what we've already
4 got. It is what it is, subject to what I don't yet know about,
5 okay.

6 With regards to jury instructions, we're going to
7 have to work through that in a time frame that we're going to
8 have to talk through. The parties, of course, are going to --
9 you all (indiscernible) do it in your own little 2.67 and
10 everything. You have to walk through what you all are
11 intending and what agreements are going to be made, and this is
12 the kind of thing, like in this other case, they did a lot of
13 stipulations for agreements. So it was clear what was there
14 and what was possible some points of contention.

15 So that is better to work, you know, have a nice
16 discussion among you all, see what stipulations you can come
17 to. I don't know if you're thinking of -- whatever you're
18 planning on doing with regards to jury instructions and
19 proposed voir dire questions, right.

20 If there's not an agreement, then please don't ask me
21 at the time of the calendar call. This is something that would
22 have to be preset, right, so that if we need some time to do
23 either an extended calendar call or whatever, let's make sure
24 we know what the issues are because this isn't the kind of
25 things that we're going to bring up orally, right, for the

1 Court to be ruling on the spot.

2 If there's a disagreement, you'll know about it
3 hopefully pretty soon. I hope there's lots of agreements, but
4 if there, you know what I mean, so it can be brought to the
5 Court in a format that we can address it and make the
6 appropriate rulings on it, okay.

7 So if you are finding your areas of contention.

8 So I've gone over voir dire. I've gone over jury
9 instructions. I've gone over exhibits.

10 Remote appearances. Remote appearances, I think I've
11 made it very -- well, I haven't made it very clear. The
12 Supreme Court has made it clear. The administrative orders
13 have made it clear. We send you all memos to make it even more
14 clear. We're going to be stopping with the memos. It's taking
15 a huge amount of our time to remind people, you know, to do
16 their -- to file their things, but in any event, two different
17 areas on remote appearances.

18 The standard remote appearance. This Court is fine
19 with remote appearances. This Court is fine with in person,
20 okay. It's going to be up to the parties subject to some
21 factor that I'm not thinking of right now because no one has
22 brought it to my attention, meaning if there was some dispute
23 that somehow people's presence is needed or whatever, no one
24 has brought that to my attention yet. So I'm not -- it's not a
25 global ruling. It's just in general I'm fine with in person.

1 I'm fine with remote. There's -- now, if it's remote, there's
2 a couple of rules.

3 Remote, if it's a person who is in state, then you
4 have to ensure that there's a method by which they can be
5 identified, right, and the clerk can swear them in.

6 If the witness is residing out of state, then you
7 have the additional aspect that they have to have a notary
8 there. Or if their state requires something different than a
9 notary, to identify their information, or you need to fill out
10 the form that says that they can specifically be sworn in by
11 our clerk. Because remember the clerk's only have the
12 jurisdiction within our lovely shape of the State of Nevada.
13 So if somebody is sitting in their house in California, they
14 have to agree that they can be sworn in in Nevada.

15 The third thing with remote appearances, and this is
16 something that we have been working with our JAV system --

17 Are you all bringing your own tech people? Or are
18 you planning on using the ELMO?

19 MR. JONES: Your Honor, we definitely will be using
20 the ELMO, but we are undecided if we're going to separately
21 have PowerPoint.

22 THE COURT: Okay. Counsel for defense.

23 MR. DOYLE: Probably both.

24 THE COURT: Okay. So I have to tell you an ELMO
25 issue. If you are planning on having anyone remotely, there

1 sometimes is an issue, and I understand it's in the process of
2 trying to be worked out. So I'm just going to leave it as a
3 you're going to need to follow up with IT on this is that there
4 was an issue where if somebody was on remote that you could not
5 utilize the ELMO for it to be shown here either in court or
6 potentially for that witness to see it.

7 Most the way this has all gotten around is somebody
8 is tech savvy enough they know how to do a share screens,
9 et cetera, and that's not an issue. If that is an issue that
10 you all are planning on having a remote person that would
11 preclude the other side from utilizing the ELMO and both sides
12 have said you're planning on utilizing ELMO, you do realize the
13 Court may have to make a ruling in that regard if you're not
14 going to provide a method by which that fixes that issue.

15 Does that make sense what I'm saying?

16 MS. FOLEY: Yes, Your Honor.

17 MR. JONES: It does, Your Honor.

18 THE COURT: Okay. Now, that also applies, just to
19 let you know, sometimes people like to observe remotely because
20 they may be doing other things, and so we have other counsel
21 that may not be participating in a trial and like to just
22 generally appear remotely. That same issue may occur. Once
23 again, speak with your techie people, right, and you can
24 coordinate with IT to find your own work around if you need it.

25 Is that making sense?

1 We're more than glad people want to sit in on the
2 whole trial remotely, right, and listen and watch in, but I
3 can't do it if it's going to impact somebody here in court's
4 ability to use the ELMO. So if you all have a workaround, and
5 the other side is agreeable to it, the Court is going to be
6 fine with it. It's just it's you all's obligation to find a
7 workaround, right. We're more than glad to accommodate. You
8 just have to find your work around if it's an issue. Okay.

9 Is that making sense? Any questions in that regard?

10 MR. JONES: It does, Your Honor.

11 THE COURT: Yeah. Okay. Okay. That's witnesses'
12 accommodations.

13 Last time there wasn't any needed accommodations. To
14 the extent that there's an accommodation for a witness, client
15 or juror, that's a little bit different than different things,
16 witness or client, if you think you're going to need
17 accommodation, you see what you see, right. This is not a
18 courtroom that has a ramp, okay. However, if somebody needs an
19 accommodation that you don't want to -- that they can't
20 necessarily sit in the witness box, if you all work it among
21 yourselves on something else you would like done, if not, bring
22 it to the Court's attention, and we'll have to find something
23 we need to do.

24 Is that an issue? Do I need to find another
25 courtroom with a ramp?

1 MR. JONES: No, Your Honor.

2 THE COURT: Okay. Because there are -- we have
3 accessibility. It's just not all every courtroom has it.
4 Okay.

5 MR. JONES: Yeah. My client, with her disability, we
6 were able to -- we're just fine. There's no issue.

7 THE COURT: Okay. No worries. I was just -- no
8 worries. Okay. That's for both sides. I don't -- I don't
9 know what's happening in intervening time frames.

10 So with regards to -- and that's not for any other
11 concept. I'm just saying I don't -- you know, I'm glad to do
12 that.

13 There was not any interpreter issues in this case.
14 That hasn't popped up, has it? No. Okay.

15 So jury accommodations, if we have any --

16 (Pause in the proceedings.)

17 THE COURT: Okay. As you notice, this courtroom is
18 set up, and I'm not sure if you can see.

19 Can you see remotely that the courtroom is set up
20 with sheets of paper? If not, Ms. Foley can give you a heads
21 up.

22 Okay. It is our current intention, because of --
23 COVID is not over, okay. And so by the way, masks, people are
24 more than welcome to wear masks. People are more than welcome
25 not to wear masks. This Court does not impose anything that is

1 not prescribed by rules, et cetera. So people choose to do so,
2 you're fine to do so.

3 If people choose not to do so, but what you can't do
4 is you can't ask a witness or a juror to take off their mask,
5 okay. Or to put on a mask. We just will find ways, and we've
6 found ways of having people speak more articulately, right, or
7 slower to ensure. So that's all fine.

8 In light of the current still health situation and
9 our jurors, including the trial that was earlier this week,
10 find at work -- have told us -- have expressed to us they find
11 it more comfortable to have every other seat, okay, which is
12 why you still see sheets of paper that show every other seat in
13 this courtroom. Okay. Some of this stuff is stuff I would
14 normally do at a calendar call, but since I have a few minutes,
15 I'm trying to explain it to you in case you have an issue.

16 So remember when you are doing your voir dire
17 selection, which by the way we only get a maximum of 45. We
18 get 40 or 45 potential jurors, okay, in general, and that's not
19 subject to us. That's subject to jury services. We are
20 assigned a date in a particular time. So since you all are
21 already Tuesday, September 6, that means it wouldn't be on
22 Monday. At Tuesday, so what time we will get assigned.
23 Sometime between 9:00 and 2:00 o'clock. We don't know. I
24 presume you're going to ask me to request the earliest part of
25 the day as possible. We generally try and ask for a

1 9:00 o'clock, realizing that everybody else asks for a
2 9:00 o'clock, right. Sometimes in light of that counsel ask us
3 to pick a later time because they're more likely to get the
4 time, and then they can plan it, versus waiting to like the
5 week before to know exactly what time you're starting.

6 So you might want to take that into consideration
7 when you're speaking. Remind me at the calendar call if you
8 are wanting something different, okay.

9 When the jury comes in, like I said, that's per jury
10 services because of this process of every hour, and because
11 they're doing both criminal and civil. We usually get a
12 maximum of 45. So the days when you can ask for 60 panelists,
13 our current understanding, subject to things that may change
14 before September 6 that I don't yet know about, is the maximum
15 45. Presumably for this case you want the Court to ask for the
16 maximum of 45 and see if we can get it. And sometimes we're
17 told only 40 because of how many jurors that come in.

18 And then we have to early announce if we potentially
19 need more jurors, and if they have leftover jurors, then
20 potentially we could have them or maybe the next day, but
21 please do not think that there's going to be a whole bunch of
22 excusals at the front end, right, just for the fun of it. And
23 fun of it is probably not my best choice of words, but you
24 understand what I'm saying. Some people like to be very
25 generous on stip and a whole bunch of things because, as our

1 wonderful marshals will tell you, there's not a lot of jurors.
2 So the idea that, you know, there's 200 people waiting
3 downstairs to come up does not exist. So if anyone still has
4 that concept, please delete that from your viewpoint.

5 So the 45 jurors, they come in. We do them every
6 other seat. We do sit a box. Currently that orange sheet of
7 paper is set up for two alternates, and we just do a visual
8 because of the every other seat. If you look directly behind,
9 like, Mr. Hand, you can see two rows back. See that orange
10 sheet of paper. Okay. That's set up if we have a box of 22.
11 I mean excuse me, a box of 20. So for two alternates. And
12 what I mean is since we sit people every other seat during the
13 venire panel, you're obviously not going to get 20 people in
14 our traditional box. So the box really goes to partway through
15 that second row that used to be the left gallery, okay.

16 If you all are requesting four alternates, then we
17 move that sheet of paper over two -- the only reason why we had
18 that sheet of paper is many people find it helpful kind of,
19 like, handy guide when you're doing your voir dire questions
20 since you can visually see where your box stops, right.

21 If you don't want it, we'll take it down. So far
22 everybody has said that they have found it kind of helpful. We
23 turn the podium for you, okay, to make it easier, you know. If
24 it doesn't work for you, let us know. We're not stuck to those
25 ideas, but so far they've worked.

1 As far as the preparation aspect, you all, like I
2 said, have to work (indiscernible) voir dire.

3 What other questions, Ms. Foley? You probably had a
4 couple other questions. But I've gone through the general
5 things. What have I skipped?

6 MS. FOLEY: Generally I know you want exhibits and
7 original depositions at calendar call. Do you prefer that we
8 actually make an appointment with your JEA to deliver those, or
9 just bring it all at calendar call?

10 THE COURT: Okay. I'm not going to answer of the
11 exhibit portion because there may be a difference of opinion
12 between you all on exhibits, okay, and whether or not the
13 current exhibits are the only exhibits that would come into
14 this case. I'm not making a ruling. I'm not making a
15 determination on that because I don't know if that's a
16 contested issue between you all.

17 In a general sense, not specific to this case, in a
18 general sense, right, in a nonremanded trial, in a general
19 sense, the answer is we are fine. Some attorneys like to bring
20 them at calendar call because they like to read out the depositions,
21 okay, and they like to confirm what they have. And sometimes
22 they're only prepared a few minutes before to get in time for
23 the calendar call. Other people like to bring them the day
24 before, okay.

25 From us, as long as it's at or before, and if you're

1 seeing it says on your order, at or before, okay. Please do
2 not come to a calendar call and say, oh, we didn't think we
3 needed to bring it. I mean, you all know that. You've all
4 done trials in this department and everything. And the reason
5 why is because, remember, I have one wonderful clerk, okay.
6 And she's not only doing your trial. She's doing everybody
7 else's, and the wrap up from the others. And if we don't have
8 things by the time of the calendar call, it puts in a real
9 crunch. And, you know, if you really want to sit here for
10 hours while she has to do the various things and the issues,
11 that's not fair to jurors.

12 So that's why, yes, depositions and in a general case
13 exhibits here, if there's a disputed issue on exhibits, that
14 needs to be addressed, how it needs to be addressed, how the
15 parties wish to be addressed and beforehand, and then I gave
16 you the general. Okay.

17 So, but remember, I don't want to go too far into
18 exhibits because generally, you know, the numbers and the
19 letters, but once again, the joints and the issues, that's in a
20 general sense here without making any determinations on what's
21 currently in the vault and what can and cannot be used, that is
22 not before the Court.

23 Any other questions?

24 MS. FOLEY: Binder sizes. Do you still have a
25 standard maximum size?

1 THE COURT: We do. Is that -- that wasn't ours.
2 Usually I think we put 3 or 4 inches, and the reason why we did
3 that really is, in fairness to our wonderful clerks, again,
4 because they only have very limited space to put things in,
5 right, and from lifting and carrying, and realistically when
6 you use those, those are usually -- is that a 4-inch? I think
7 it's a 4-inch.

8 This isn't even our initial trial. So, yeah, it's
9 about a 4-inch binder. Okay. Because if you use those other
10 really big 7-inch, and that's from a prior trial. That's
11 straight from the vault. So that's not ours. Well, it is ours
12 now, but it's inherited. That just becomes really unwieldy,
13 particularly when you have a witness on the stand, you know,
14 and doing it. So we do that.

15 Is there some reason somebody thinks that you need
16 really bigger binders for any reason? Most people don't like
17 it anyway from an attorney standpoint.

18 MS. FOLEY: Oh, I think the original trial we just
19 brought some 6 inch binders, and we were told that those were
20 two big. So I just wanted to make sure.

21 THE COURT: I'm sure my clerk did because,
22 realistically, do you see how narrow and skinny there is to
23 this thing.

24 MS. FOLEY: Yeah.

25 THE COURT: Okay. And remember, the clerks have an

1 obligation to maintain custody and control. And also, you
2 know, trying to minimize issues and weight and things like that
3 for people in consideration so that they can do what they need
4 to do. So we would ask for the 4-inch binders. They usually
5 will fit in our little -- you can see there's a small little
6 storage closet there, but when I use the term small little
7 storage closet, it is, and those other things are real
8 unwieldy, and it's high up. So it's challenging to get to.

9 So 4-inch binders. So I believe -- whatever's on
10 my -- I think the sheet says 4-inch binders. If it does, then
11 that's what it is.

12 MS. FOLEY: Okay. My last question is just I know
13 sometimes color binders makes a difference for defendants or
14 plaintiffs or the binder that goes up at the witness podium.

15 THE COURT: We don't care.

16 MS. FOLEY: Okay.

17 THE COURT: We don't -- and, okay.

18 MS. FOLEY: Thank you, Your Honor.

19 THE COURT: And you are not planning on doing juror
20 notebooks; right?

21 MS. FOLEY: I don't --

22 THE COURT: Verdict form -- proposed verdict forms,
23 subject to any agreement or disagreements between the parties
24 that the Court is not making any ruling on also due at or
25 before calendar call. Basically is read 2.67 through 2.69.

1 We're not saying anything different.

2 Is -- you all planning any depositions in lieu of live
3 testimony? Has anyone passed away?

4 MR. JONES: No, Your Honor.

5 I do have one question. On the juror notebooks, like
6 the notebooks that are on their seats, like that.

7 THE COURT: Okay. I'm sorry. That's not what I
8 meant by juror notebooks.

9 MR. JONES: Okay. We don't plan on anything else.

10 THE COURT: For the first time in basically 12 years,
11 some parties -- and it's fine, they used in their first case,
12 they actually did use a notebook of exhibits, and the jurors
13 had them. Most attorneys have said that they find it
14 distracting. So you all didn't use it the first time. So no
15 reason to believe.

16 MR. JONES: No. No --

17 THE COURT: -- but once again, I'm just trying to
18 take care of a wide panoply of different things happening.

19 So we went through -- yeah.

20 So on the website, the 8819, the audiovisual
21 appearance, I told you modifications to that. We are (video
22 interference) jury notebook, voir dire, proposed and verdict
23 forms. Yes. Do remember -- well, subject to issues that you
24 all might have on the jury instructions that's not yet before
25 me. So we'll have to do some kind of status check, which you

1 probably are going to request probably in mid-August or
2 something to walk through some of these, but we'll see what you
3 want.

4 We even put on there all straight from EDCR,
5 demonstratives. You've got to get together. Same thing that
6 you always do.

7 The court reporter.

8 Oh, the other issue that pops up sometimes, and I
9 think it may have even popped up in this trial the first time,
10 please do not ask the court recorder once the trial starts that
11 all of a sudden you want dailies. It's not going to happen.
12 There's a very limited resource of people who do dailies and
13 have that ability.

14 Is that still correct, Madam Court Recorder?

15 THE COURT RECORDER: Absolutely.

16 THE COURT: You heard the absolutely. Okay. So if
17 you all are thinking that you're wanting day of's, you've got
18 to reserve -- you've got to send a notification. Is it still
19 four weeks in -- order --

20 THE COURT RECORDER: I think that's the best, three
21 to four.

22 THE COURT: Okay. Three to four weeks in advance,
23 okay. So please don't say, hey, guess what, I know I didn't
24 ask beforehand, but can you do me the favor and download
25 something for us right now and stay or get a daily. I will

1 unfortunately have to stay in the courtroom and politely say no
2 because my court recorder, it's not fair to put her on the
3 spot, okay. It just it's not feasible. We're doing so many
4 different other things, all the other hearings and cases and
5 trials, and there's really a limited resource.

6 So that's nothing new, but I'm just reminding people
7 because people may have forgotten when they weren't doing as
8 many trials in the last couple years.

9 So anything else on plaintiff side? Go ahead.

10 MR. JONES: Your Honor, just a quick question about
11 that. In terms of JAVS, requesting JAVS, what -- is that what
12 we're talking about with dailies or we're talking about --

13 THE COURT: There's two different things I'm talking
14 about when I'm saying dailies. One, a written transcript,
15 okay. Not going to happen if you're asking that at the time of
16 trial for dailies, okay. It just there's not the resources is
17 my understanding. There is a very limited number of people,
18 and think of -- think of how many trials you all are in right
19 now, right, in your trial schedules. Think of how many people
20 are asking for different things, right, relating to
21 transcripts, hearings, et cetera. Think that there are, I
22 don't want to misquote. Is there less than a dozen that are
23 doing --

24 THE COURT RECORDER: Outside?

25 THE COURT: Yeah.

1 THE COURT RECORDER: Probably about that.

2 THE COURT: Yeah. About a dozen or less. So you can
3 appreciate there's just not the resource pool to allow the
4 typewritten daily transcripts, okay.

5 So with regards to a JAVS disc, a JAVS disc also has
6 to be requested at least a couple weeks in advance that you're
7 going to be wanting some dailies because that's going to impact
8 your trial time. We have to stop at the end of the day
9 earlier, right, because, remember, you can't download anything
10 until everybody is completely off the record, right, et cetera,
11 and don't have the overtime component. So the idea that you
12 all -- you've heard me say I stop at 4:47 generally, it's not
13 4:47 if anybody is going to be wanting a JAVS disc, right. You
14 can't say the day of because it's not fair to the other person
15 and the witness, right.

16 So if you all are going to think you're going to be
17 wanting JAVS discs, then we need to stop by 4:25, 4:30 at the
18 very latest. Yeah, 4:25 to 4:30, right. Because in fairness
19 it takes about 15 to 17 minutes to usually download it, but
20 remember we can't get started until everything is done done,
21 not just jury leaving. That means nothing, and then ask to
22 have that aspect, and it has to have the time to be able to
23 leave before the 5:00 o'clock hour.

24 Does that get to your question?

25 MR. JONES: It does. It fully answers it. Thank

1 you, Your Honor.

2 MS. FOLEY: Do you want -- do you want a separate
3 notice or request for JAVS?

4 THE COURT RECORDER: Just e-mail me.

5 MS. FOLEY: Just e-mail. Okay. Thank you.

6 THE COURT: E-mail but make sure you cc the other
7 side.

8 MS. FOLEY: Okay.

9 THE COURT: Okay. Because if you are impacting your
10 daily trial time, you both have to agree to it; right?

11 MS. FOLEY: Yes. Uh-huh.

12 THE COURT: Because it wouldn't be fair for one side,
13 you know. So and that's just fair is fair, right. And then if
14 there's a dispute, let me know, okay. There's usually never a
15 dispute. If either one side wants it, the other side will
16 usually wants the access to it too, but just remember we do
17 have to stop, and that's not the, Judge, one more question,
18 okay. One more question, one more question, one more question,
19 okay, because it does balance out with your experts and things,
20 right. So you have to allocate some time.

21 For those of you who haven't been here for the first
22 trial, morning break, lunch break, afternoon break, usually the
23 lunch break is around an hour and 15 minutes unless you all are
24 requesting something else. Remember, and I'll repeat this at
25 the calendar call, but even if I don't repeat it at the

1 calendar call, although I generally always do, if you want
2 something, part of the official record, you must tell the Court
3 before when you first come to bench, generally we do, you know,
4 like the challenges -- the hardships like events. I'll give
5 you an easy example. For some reason you want those hardships
6 recorded and you want the whole venire panel excused, when you
7 come up, then you can just say, Your Honor, we'll just
8 (indiscernible), okay, that way before -- that's before we
9 start giving any arguments, before any ruling of the Court.

10 If you're partway through an argument, and then you
11 decide, guess what, I want this, that's not going to be
12 appropriate. I've given everyone a fair warning because
13 honestly you don't get to reargue things twice or three times,
14 right, okay.

15 So remember, not part of the official transcript if
16 it is at bench. Everybody understands that, including the
17 appellate attorneys. I'm more than glad to do everything at
18 counsel table, but you all have to tell me, okay, but please
19 don't do it after I've made a ruling or partway through the
20 argument, okay, et cetera.

21 MR. ECHOLS: I have a question on that, Your Honor.

22 THE COURT: Sure. Go ahead.

23 MR. ECHOLS: And so if the bench conferences are not
24 recorded --

25 THE COURT: They are not part of the official

1 transcript.

2 MR. ECHOLS: But we need to put something on the
3 record, we just do that at a break or something? Or let the
4 jury come in five minutes --

5 THE COURT: Two ways to handle that. Okay. And
6 that's going to -- this is not a per se. This is -- I mean,
7 it's going to be flexible based on what kind of issue it is,
8 okay.

9 My easy example, the hardships, right. That's easy.
10 The parties come up. Your Honor, instead of us doing hardships
11 at bench, we would like these to be on the record. We went to
12 excuse the whole venire panel, realizing that's taking part of
13 your trial time, right, okay. You could do that, but that's
14 easy. Do it right then and there, okay.

15 Let's give a more difficult one. Sometimes there may
16 be simple objections the Court is just going to address. But
17 say there's something that is objected to that needs a fuller
18 fleshing out, okay. The better course is state your objection
19 without a speaking objection, right, in front of the jury,
20 jury, whatever that objection, that evidentiary objection is.
21 I'll ask you to approach, and then you say, Your Honor, this is
22 one of those issues that we need to excuse the jury because we
23 want it fully discussed outside their presence, okay. So that
24 way you're doing that.

25 The challenge with what sometimes people like to do

1 is to kind of have a small bench conference, have a ruling, and
2 then want to put it on the record later on is may have
3 mentioned one thing at bench, and all of a sudden they're
4 mentioning 15 things and trying to say the Court ruled when you
5 only told me the one thing. So if you don't give me the other
6 14, you can't say I ruled on 15 things when I ruled on one.
7 I'm not saying anybody ever does that, but I try and minimize
8 that. So and that's the fair way to do it, okay. If you want
9 it, tell me at the front end.

10 Does that answer your question?

11 MR. ECHOLS: Yes, Judge. Thank you.

12 THE COURT: Okay. Now, okay. So is that agreeable
13 to both sides? That's fair is fair?

14 MR. JONES: Yes, Your Honor.

15 MS. FOLEY: Yes, Your Honor.

16 THE COURT: Okay.

17 MS. FOLEY: Thank you.

18 THE COURT: Anything else? I've got a hearing in
19 about two or three minutes. So I'm going to have to -- they're
20 not on yet.

21 (Pause in the proceedings.)

22 THE COURT: Anything else, or shall we conclude?

23 MR. JONES: That's everything for the plaintiffs,
24 Your Honor. Thank you.

25 THE COURT: Anything else from defendants?

1 MS. FOLEY: That's it for us. Thank you.

2 THE COURT: Appreciate it. Have a great one. Have a
3 great rest of your week.

4 (Proceedings concluded at 10:23 a.m.)

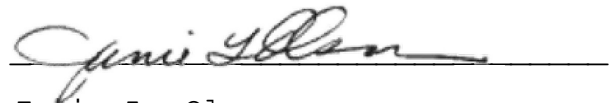
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7 ATTEST: I do hereby certify that I have truly and correctly
8 transcribed the audio/video proceedings in the above-entitled
9 case to the best of my ability.

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Janie L. Olsen
Transcriber

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<div>MR. DOYLE: [5] 6/12 33/22 35/10 35/14 39/23</div> <div>MR. ECHOLS: [16] 7/11 19/19 20/1 21/6 21/14 21/17 22/13 22/18 23/14 23/20 23/23 24/12 55/21 55/23 56/2 57/11</div> <div>MR. EISENBERG: [3] 2/20 3/3 3/6</div> <div>MR. HAND: [1] 7/15</div> <div>MR. JONES: [24] 6/21 7/13 19/14 19/17 22/24 23/11 23/13 24/6 31/21 32/19 32/23 35/9 39/19 40/17 41/10 42/1 42/5 50/4 50/9 50/16 52/10 53/25 57/14 57/23</div> <div>MR. LEAVITT: [1] 7/17</div> <div>MS. 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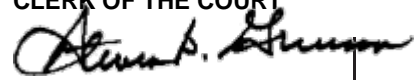
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EXHIBIT 6

EXHIBIT 6



TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

* * * * *

TITINA FARRIS,)	
PATRICK FARRIS,)	CASE NO. A-16-739464-C
)	
Plaintiffs,)	DEPT. NO. XXXI
)	
vs.)	
)	
BARRY RIVES, M.D., et al,)	
)	
Defendants.)	
)	

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

TUESDAY, AUGUST 2, 2022

TRANSCRIPT RE:

PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' MOTIONS IN LIMINE
ON ORDER SHORTENING TIME

APPEARANCES:

FOR THE PLAINTIFFS:	KIMBALL JONES, ESQ.
	JACOB G. LEAVITT, ESQ.
	GEORGE F. HAND, ESQ.
	MICAH S. ECHOLS, ESQ.
FOR THE DEFENDANTS:	BRIGETTE E. FOLEY, ESQ.
(Via video conference):	THOMAS J DOYLE, ESQ.
	ROBERT L. EISENBERG, ESQ.

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

1 **LAS VEGAS, NEVADA, TUESDAY, AUGUST 2, 2022, 9:03 A.M.**

2 * * * * *

3 THE COURT: Pages 7 & 8, Titina Farris versus Barry
4 Rives; 739464. And I'm going to do the appearances here in
5 court first and then we'll do the appearances remotely. And
6 of course I'll ask you on the remote appearances the date you
7 filed your notice of your remote appearances.

8 Okay. Counsel for plaintiffs first. It looks like
9 you have a party of four. Go ahead, please.

10 MR. JONES: We have a number of us here, Your Honor.
11 Kimball Jones for the plaintiff, George Hand for the
12 plaintiff, Jacob Leavitt and Micah Echols, all for the
13 plaintiffs.

14 THE COURT: Thank you.

15 On behalf of defendant, it's going to be a mixture.
16 Go ahead, please.

17 MS. FOLEY: Good morning, Your Honor. Brigitte
18 Foley, Bar Number 12965, on behalf of defendants.

19 THE COURT: And then remotely, please.

20 MR. DOYLE: Thomas Doyle for the defendants. Bar
21 Number 1120.

22 THE COURT: And the notice of remote appearance was
23 filed when, please?

24 MR. DOYLE: Last week. I don't remember the exact
25 day.

1 MS. FOLEY: 7/28, Your Honor.

2 THE COURT: Appreciate it. Thank you so much.
3 Counsel?

4 MR. EISENBERG: Your Honor, Robert Eisenberg, Bar
5 Number 950, appearing for defendants. My notice was filed
6 yesterday.

7 THE COURT: Okay. So a further reminder about
8 please checking the rules, right, with regards to what the
9 supreme court rule requires with regards to the timing of
10 that, but we're going to move on for today. We're just going
11 to get people taken care of.

12 So what we have is I have plaintiffs' motion to
13 strike defendants' motions in limine on OST, Document 239,
14 opposition, 242 and reply, 244. So, folks, I'm sure you all
15 are appreciative that everybody is aware of the amended order
16 that was setting the civil jury trial, pretrial/trial setting
17 conference, calendar call, final pretrial conference, and
18 everybody is aware, since you both have cited it, with regards
19 to the paragraph on motions in limine, D, okay. And it says
20 specifically, "The motion in limine filing date has not been
21 extended."

22 I will appreciate that -- I'm going to tell you my
23 inclination. And then you know that that was on 7/7. You
24 also know -- everybody knows because you all were here either
25 audio-visually or in person at the hearing, and that hearing

1 that the Court is referencing is the hearing with regards to
2 defendants' motion, right, and defendants' motion which was --
3 let's go to it. One second. That would have been the motion
4 to reopen limited discovery and set pretrial scheduling order
5 on an order shortening time. It was heard on July 14th.

6 And then you all are aware that the said purported
7 attempted motions in limine were not filed until after said
8 hearing. And there was nothing requested at said hearing,
9 which was going over all of the issues with regards to
10 anything that was being asked to be extended. And those
11 motions were filed approximately one week later on 7/22.
12 So I say approximately one week because it was a day more
13 than one week, so I'll say approximately one week, when the
14 parties all were aware of the Court's ruling and the Court's
15 ruling thereon, but yet still chose to file said motions,
16 contrary to the direct language of the order, contrary to
17 the direct ruling of the Court.

18 And while this Court is fully appreciative of
19 *Division of Family Services* and *Rust v. Clark County*, I don't
20 think anyone is going to say when they were personally here
21 that the fact that there was not an order submitted yet
22 because you all were working on orders, purportedly, between
23 you all, that somehow that did not make it an effective ruling
24 of the Court, that everyone heard this Court's ruling. And
25 if anyone thought it somehow was a carveout for motions in

1 limine, someone -- I have seven counsel, very experienced
2 counsel -- somebody could have mentioned it to the Court.
3 And, in fact, if you look at your own -- defendants' own
4 motion with regards to what was before the Court to address
5 it.

6 Now, the Court is fully appreciative that as it
7 turned out the amended order was the same day as that OST.
8 However, that shouldn't play any role whatsoever because you
9 all were here in court and the motions on the 14th and the
10 motions in limine -- purported motions in limine that violated
11 the amended order and contrary to -- could be viewed as
12 contrary to the Court's ruling was not submitted until the
13 22nd. And the Court is also appreciative that on this
14 particular trial order it does have Justice Cherry's signature
15 because he was sitting for this department. However, that
16 makes no difference because it's still a Department 31 order,
17 it still was filed with a certificate of service.

18 So you can appreciate that the Court's inclination
19 is to grant said motion to strike because the purported
20 motions in limine are rogue documents that were filed on July
21 22nd. In so doing, the Court would also note that it would
22 look at EDCR 2.47. Here we had a specific ruling. The Court
23 would also look -- while I appreciate *Southern Nevada*
24 *Homebuilders* was cited, the plain meaning -- there was no
25 order shortening time, so no one can interpret that somehow

1 language about an order shortening time means that somehow
2 motions in limine would be appropriate because these weren't
3 on an order shortening time, so the Court doesn't see how
4 there's any possibility. And that was bolded and underlined
5 that just in general you can't have orders shortening time
6 on any of the motions; right? And so -- and omnibus motions.
7 These weren't omnibus, so nobody thought that these were
8 anyway that part, so the Court really doesn't see how that
9 applies.

10 Now, the Court also was looking at -- one second,
11 please. The Court also -- I'm sure you're familiar with the
12 court of appeals case, which I will cite in just a second
13 because I need to grab it again, and the concurrence therein.

14 So the Court's inclination is to grant plaintiffs'
15 motion to strike the motions in limine because the Court was
16 really in the process of drafting its own order when I saw
17 those as rogue documents.

18 Counsel for movant, it's your motion. So whoever
19 is taking it for plaintiff remember, one horse, one rider.
20 Thank you.

21 MR. JONES: Yes. Thank you, Your Honor. Your
22 Honor, in conversations with defense counsel we scheduled a
23 2.67. They never brought up the idea of motions in limine at
24 any time. We didn't hear anything about that at all until a
25 couple of days before the 2.67 conference, which the defense

1 said they would like to notice. They noticed it and they also
2 included something about a 2.47. And so that was -- of course
3 that caught us by surprise, given the Court's order that was
4 very clear.

5 The big picture issue is that the case was remanded
6 for retrial, not for rediscovery, not for new motions in
7 limine, not for other things like that. And the defense, they
8 make some arguments within their motion about the law of the
9 case and they say that we have it all wrong about the law
10 of the case, as though the entire case is reset and that the
11 Court's evidentiary orders that were not disturbed in any
12 way on appeal are somehow now called into question, which is
13 of course absurd. And so they're seeking to relitigate these
14 issues but through a back door that they know they don't have
15 authority to do, Your Honor.

16 The Court's September -- the Court's order was very
17 specific with respect to the deadlines not being reopened.
18 And if the defense wanted to obtain a new deadline, they
19 certainly should have filed a motion to seek for that relief,
20 or at the very least brought it up to the Court during the
21 last hearing when everyone was here and present.

22 The defense points out in their opposition that the
23 Court has discretion to issue sanctions against a party based
24 on litigation abuses, and they claim that us filing a motion
25 to strike their improper motions is somehow a litigation abuse

1 and that therefore the Court should sanction the plaintiff for
2 simply asking the Court to not permit them to abuse the orders
3 that are here that are clearly known. And so, Your Honor, we
4 believe that certainly based on the defendants' own language
5 in their opposition that sanctions are certainly appropriate
6 for them thumbing their nose at the Court's clear order,
7 filing these motions and requiring everyone to be here today
8 unnecessarily. That's all I have, Your Honor.

9 THE COURT: Counsel for defense, who's going to be
10 handling the argument? Go ahead.

11 MS. FOLEY: Thank you, Your Honor. Brigitte Foley,
12 Bar Number 12965, for the defendants. I want to pretty much
13 just make a record of our position. We were not intending
14 to thumb the nose at the Court's order or anything of the
15 like. Our position remains the same as it was stated in our
16 opposition, that the scheduling order that is operative at
17 this point controls and it does not say that motions in limine
18 are not permitted. In fact, it qualifies what types of
19 motions in limine can be filed. It cannot be omnibus and
20 orders shortening time will not be accepted. If motions in
21 limine were not permitted by that scheduling order, then
22 it would have -- under rules of interpretation that would
23 interpret the scheduling order, it should have said something
24 along the lines of no motions in limine would be accepted
25 on a --

1 THE COURT: But counsel, I've got to ask you how.
2 I appreciate you want to say what you want to say for purposes
3 of whatever you wish to preserve and feel free to do so, okay.

4 MS. FOLEY: Sure.

5 THE COURT: But realistically --

6 MS. FOLEY: Uh-huh.

7 THE COURT: -- the line says it's not been extended.
8 It's a scheduling order; right?

9 MS. FOLEY: Correct.

10 THE COURT: There's a brand new sentence. These
11 were not omnibus motions in limine. They were not orders
12 shortening time. So how can it possibly apply? And how could
13 you possibly, if you thought that, have not said something
14 to the Court? Because this scheduling -- you were here a
15 week afterwards talking about wanting to do pretrial motions,
16 which the Court explained everything about why you couldn't
17 have pretrial motions; right? And a motion in limine is a
18 pretrial motion. That's really where the Court doesn't see
19 it. Listening to the whole hearing from last time, right --

20 MS. FOLEY: Uh-huh.

21 THE COURT: -- reading your whole pleading, I can't
22 see how anyone possibly could have thought that you could have
23 filed those motions. And some of them aren't even motions in
24 limine; right?

25 MS. FOLEY: Uh-huh.

1 THE COURT: Replacing experts is not a motion in
2 limine. It's not asking to include or exclude; you know what
3 I mean. It's basically everything that you asked for in your
4 motion that the Court specifically denied, that you then
5 popped it into things that you called motions n limine eight
6 days later. You were here in court. You were discussing
7 what you needed, the reasons why you needed it. And this is
8 a pretrial motion. So I'm not seeing how you possibly could
9 have interpreted, as the very smart people that you are.

10 MS. FOLEY: So to answer your question, Your Honor,
11 on the previous hearing we were asking to reopen discovery,
12 which our position would be that's a different request from
13 the motions in limine. The reason we did not bring up filing
14 motions in limine is we assumed that EDCR 2.47 would control,
15 that they would need to be filed -- I believe it says 45 days
16 before the trial date, which we did.

17 THE COURT: Unless -- remember the -- you're
18 forgetting the rest of 2.47; right?

19 MS. FOLEY: Unless the Court --

20 THE COURT: There you go.

21 MS. FOLEY: -- orders otherwise. So looking back,
22 we also reviewed the hearing transcript from the last hearing
23 and our position was that that motion was only on reopening
24 discovery and trying to -- we offered a scheduling order in
25 that motion just for the sake of convenience to show we could

1 do the discovery we wanted in that time. But I do not recall
2 asking about pretrial motions in that motion. I could be
3 wrong, though, but that's my recollection.

4 So we didn't ask or bring up motions in limine
5 because, one, we assumed that it would be governed by the
6 45 days under EDCR 2.47. We also assumed that the scheduling
7 order made it clear that motions in limine were not
8 prohibited, that the deadline wouldn't be extended to go
9 beyond the 45 days under EDCR 2.47, but that it didn't mean
10 they were not allowed. So that's our position as far as that
11 goes.

12 THE COURT: Counsel, how many times have you
13 appeared collectively of you all, including counsel who tried
14 this case the first time? I appreciate you weren't here;
15 right?

16 MS. FOLEY: Uh-huh.

17 THE COURT: Did you go back into the history of
18 this case?

19 MS. FOLEY: Yes, Your Honor.

20 THE COURT: And happened to look -- I mean, counsel
21 knows the trial orders are the trial orders. Date is not
22 extended means date is not extended; right? Because if you go
23 back historically and look at all the trial orders, you'll see
24 when dates are extended it says the dates are extended; right?

25 And 2.47, it just -- I'm hearing what you're saying,

1 but I'm just not seeing how possibly -- unless -- remember,
2 it doesn't start out with the 45 days; right? The language
3 of EDCR 2.47 is very clear: "Unless otherwise provided for in
4 an order of the court." It doesn't actually say specifically
5 order; right? "Unless otherwise provided for in an order of
6 the court," which applies here. There were dates. Those
7 dates historically in this case were extended at certain
8 points. And you had an appeal; right? And then they
9 specifically were not extended, okay.

10 And the language of 2.47, which is parallel to the
11 order, also says, "The court may refuse to sign orders
12 shortening time and to consider any oral motion in limine and
13 any motion in limine which is not timely filed or noticed."
14 Right? It's right there in the language.

15 So let me let you finish, but you understand I'm
16 hearing you say things but I'm not seeing how you could assume
17 the 2.47 when the very beginning language of it says, Unless
18 otherwise ordered by the court." And you all had a scheduling
19 order that you got seven days --

20 MS. FOLEY: Yes, Your Honor.

21 THE COURT: So -- and you have scheduling orders.
22 This is not the first scheduling order in this case, nor is it
23 the first scheduling order that any of you all have seen from
24 many departments, including this department.

25 But please go ahead. My apologies. Go ahead.

1 MS. FOLEY: Thank you, Your Honor. Our other
2 position is that good cause justifies the Court to hear the
3 motions in limine on their substance and rule on them. It
4 would streamline the trial and reduce the risk of prejudice to
5 either party to have these issues decided before the retrial.
6 We cited to case law in our opposition that supports that
7 proposition.

8 Even the single case that plaintiffs cited in their
9 motion to strike, *Major v. Benton*, supports defendants'
10 position. It states that the law of the case doctrine should
11 be applied with good sense. The sensible thing is to right
12 itself to try avoid a subsequent reversal. Our position is
13 that that indicates that good cause supports the Court's
14 review and deciding on the motions in limine on their
15 substance. It would definitely streamline the issues in trial
16 and promote judicial economy. There wouldn't be the need to
17 take time out outside the presence of the jury to make any
18 evidentiary rulings.

19 We believe that the Nevada Supreme Court's remand
20 order also supports our position. For example, we need to
21 address how the *Center* case is going to be handled on retrial.
22 That's the subject of one of our motions in limine. There
23 are other evidentiary concerns we have going into the retrial.
24 And the case law that we've cited is clear that there's a
25 clean slate on remand. Parties can present evidence

1 differently. Those are some of the issues that we've
2 addressed in our motions in limine that we would like for
3 the Court to review on the substance.

4 As far as plaintiffs' request for sanctions, our
5 position is that this motion was brought in good faith. We
6 respect what the Court is saying about its inclination and
7 its ruling, but it seems clear from this hearing especially
8 that the scheduling order at best is ambiguous, that the
9 phrase "the deadline would not be extended" could mean several
10 things, that it's not being extended beyond the 45 days. It
11 could mean something else.

12 We're putting forth to the Court that statutory
13 interpretation, which also translates to interpreting
14 scheduling orders, would promote defendants' position and
15 support defendants' position that the scheduling order
16 considers motions in limine to be accepted at least 45 days
17 before trial. Otherwise, there would not be that further
18 clarifying language in the phrase of the -- in the written
19 language of the order.

20 THE COURT: Okay. Counsel, can you please go to
21 page 12 of your motion, right, that the Court heard? If you
22 need a moment, I'm going to --

23 MS. FOLEY: Yes, please.

24 THE COURT: Okay. Because the reason why the Court
25 asked this question, right, and the reason why the Court said

1 it is because it's right there on page 12, okay. I tried to
2 ask it in a very generic manner, but since you were saying it
3 wasn't, I had to go back; right? Line 23. It says, "Motion
4 in limine and dispositive motion deadline equals Wednesday,
5 August 17th, 2022. The following briefing schedule." I'm
6 going right to the heart of it. It's right there in your
7 motion. It was right before the Court. The Court already
8 ruled on it. You could also look at Mr. Doyle's letter of
9 June 8th, right, and doesn't that address topics in your
10 purported motions in limine, which is your Exhibit A to that
11 motion?

12 MS. FOLEY: I just need one moment to pull it up,
13 Your Honor.

14 THE COURT: Sure, no worries. No worries. I'm
15 giving both sides the same equal time, so everyone can pop up
16 their laptops if you need to.

17 MR. JONES: Your Honor, where is this that you're
18 referencing? I apologize.

19 THE COURT: Page 12, line 23. Document filed
20 7/7/2022 at 11:51; right? A motion to reopen limited
21 discovery and to set pretrial scheduling order on order
22 shortening time. Page 12 of said document, line 23, folks.

23 Counsel, did you have a chance to pop that up?

24 MS. FOLEY: I'm just waiting for my computer to
25 connect to my --

1 THE COURT: No worries. You even put a briefing
2 schedule.

3 MS. FOLEY: So may I address that, Your Honor?

4 THE COURT: I'm just saying, isn't that your motion
5 and isn't that page 12 of your motion? Isn't that a requested
6 extended date in your motion on line 23?

7 MS. FOLEY: Yes, Your Honor.

8 THE COURT: Doesn't it say, MILs and dispositive
9 motion deadline equals Wednesday, August 17, 2022. The
10 following briefing schedule. And you used a box, opposition
11 deadline Friday, August 19th. Reply is Monday, August 22nd,
12 2022. That's why the Court stated in its inclination it was
13 before the Court because I read all of that when I ruled.
14 That's why I went through everything back at the last hearing
15 and talking about all the pretrial information and making the
16 distinction between -- and I appreciate you weren't on the
17 first case, okay? I appreciate you're the one arguing.

18 But that's part of the reason why the Court went
19 through all the distinctions; right? Not only case law makes
20 distinctions, the supreme court order makes distinctions, but
21 there specifically I saw what you had put, everything that
22 you had put before me. That's why I tried to cover it all
23 with all the pretrial aspects and made a distinction between
24 pretrial and the matters that were at the trial, which was the
25 supreme court order, so it's there. I'm not sure -- are you

1 going to contend it wasn't before me, even though it's in
2 your pleading?

3 MS. FOLEY: No. We're not contending that we didn't
4 ask for the deadline to be extended. The only thing we're
5 contending is that we filed the motions without -- since that
6 deadline, the request to extend the deadline was denied, we
7 filed them at least 45 days before trial. That's our only
8 position as far as that goes.

9 THE COURT: But, counsel --

10 MS. FOLEY: Yes.

11 THE COURT: -- there was a trial order that the
12 Court ruled on. Okay, I'm hearing what you're saying. Okay.
13 Counsel for plaintiff, you get last word. Go ahead,
14 please.

15 MR. JONES: Thank you, Your Honor. The whole 45
16 days idea, it's only if there is no deadline. There was
17 in fact a deadline, which the parties missed and the parties
18 are well aware of it, given the history. And I know that
19 Ms. Foley was not here with that history, and so I -- but
20 certainly defense counsel did know better. And the Court's
21 order was not unclear, it was well understood. The motion
22 to reopen discovery was very clear in terms of what they were
23 asking and it was denied.

24 My impression at the 2.67 when this issue was
25 discussed was that the Court's intention was fully understood

1 by both plaintiffs and the defense. And perhaps not by Ms.
2 Foley, but otherwise certainly it was understood by defense
3 counsel. And filing the motions in limine was not permitted,
4 but the defense was going to file them anyway; that they were
5 just going to do it regardless, even though we said that was
6 not appropriate.

7 Now, the defense did hire a court reporter and I
8 think that that transcript, if produced by the defense, would
9 clearly bear out that there was no confusion on this issue.

10 THE COURT: Wait. I'm sorry. There's no court
11 reporter. We have one official transcript.

12 MR. JONES: Your Honor --

13 THE COURT: Lara Corcoran is the official -- we
14 have JAVS. It's the only official -- it is the only thing
15 that can ever be utilized for purposes of this Court. There
16 is no motion practice at all before the Court for anything
17 different. People can't create their own -- whoever is to
18 do whatever they wish to do. The official transcript is the
19 official transcript. The official transcript is through our
20 JAVS system on the recording and we have a court recorder and
21 we have transcribers if you wish to pay to have an official
22 transcript.

23 So please do not tell me about people who want to
24 hire whoever they want to hire and then to try and then say
25 somehow that that is an official record. I'm not sure if

1 anyone was trying to go there, but you can't. There's only
2 one official record.

3 MR. JONES: And, Your Honor, absolutely --
4 absolutely understood. So at the 2.67 the defense hired a
5 court reporter to be there to type up what was said back and
6 forth during the --

7 THE COURT: Between you all? Well, that's whatever.

8 MR. JONES: Absolutely. That's all it was.

9 THE COURT: That's not the Court. That's not in
10 front of the Court.

11 MR. JONES: Yeah. And I was just referencing that,
12 you know, we didn't pay for that; right? We didn't need that
13 transcript. But I was just saying that ultimately it was very
14 clear to everybody there that the Court's order was pretty
15 well understood, and that was certainly my impression. And
16 the defense was going to file these anyway.

17 And so, Your Honor, we believe that the defense,
18 they have taken a fall-back position that no sanctions should
19 be issued because what they did was in good faith, but yet
20 they have sought sanctions when they knew that we had an
21 absolute good basis for what we have been requesting and that
22 they did not. And so, Your Honor, it's a lot more of the
23 same, frankly, that we saw last time around and it's
24 troubling. And so we do believe sanctions should be issued.
25 We do have a motion that we're putting together that deals

1 with this issue a little bit more broadly and we're happy to
2 incorporate the sanctions portion of this into that. We'll
3 be filing that in the next week or so, Your Honor.

4 THE COURT: As you know, the Court takes no position
5 on anything that's not before me, but I do take positions on
6 things that are before me and rule extensively on everything
7 that is before me, okay. If it's in a pleading, it's before
8 me.

9 So let the Court go to its ruling. The Court's
10 ruling is it is going to grant the motion to strike. The
11 Court is incorporating everything that it stated in its
12 inclination. I also referenced that there was a concurrence
13 in the court of appeals decision, which was back in my
14 chambers until my wonderful law clerk went and grabbed it.
15 *Dechambeau v. Balkenbush*, published, 134 Nev. 626, 2018.

16 So if you look at that particular case, what you
17 would see -- and I'm looking at the concurrence, so it's not
18 precedential. It's informative for the Court to look at;
19 right? And the person who happened to write that concurrence
20 happens to no longer be on the court of appeals, happens to
21 be one of our supreme court justices. I take no position on
22 that. But when you look at it, is you look at the only thing
23 that really kind of addresses even this generalized topic
24 would be that concurrence of Justice Silver where she talks
25 about *Douglas v. Burley*, a Mississippi case from 2012, where

1 she talks about -- well, in *Dechambeau v. Balkenbush* that
2 court had sua sponte extended some deadlines without there
3 being a motion.

4 And so while she concurred on the end result, she
5 didn't concur in all the analysis, said it should be governed
6 by -- well, it says, "I concur in the result only. I do
7 believe, however, that the basis of this opinion should have
8 focused on the issue of whether, on remand by the Nevada
9 Supreme Court with discovery closed, the district court erred
10 by sua sponte issuing a new scheduling order extending the
11 time for expert disclosures. Nevada law is silent in this
12 situation, but the Mississippi case of *Douglas v. Burley*,
13 134 So. 3d 692, Mississippi 2012, is illustrative here."

14 So it's 2018 silent but it's saying what it's
15 looking at. There, the Mississippi Supreme Court reversed,
16 holding that "upon remand, prior orders governing discovery
17 remain in place absent a party's motion to extend deadlines
18 and a subsequent order by the trial court. Here, similar
19 to *Burley*, the district court granted summary judgment after
20 discovery closed, and upon remand from the Nevada Supreme
21 Court the district court inexplicably sua sponte entered a new
22 scheduling order extending the time for expert disclosures at
23 a status check prior to resetting the trial. Coincidentally,
24 like *Burley*, respondents noticed a new expert for the trial
25 setting -- moved to strike and filed a motion in limine to

1 preclude the new expert. I believe this court should have
2 followed *Burley* and held that prior discovery orders remain
3 in place absent either a party's motion to extend deadlines
4 or absent a subsequent district court order to the contrary."

5 So, realistically, I looked at that for guidance
6 just to try and find something as close as on point. And I
7 can't find anything that tells me I shouldn't grant the motion
8 to strike. In fact, everything tells me I should and I am.
9 I mean, I have a clear scheduling order, a clear scheduling
10 order that sets forth that that deadline has not been
11 extended, okay. That is 7/7/2022, okay. It says, "The motion
12 in limine filing date has not been extended." Okay. So that
13 means it's governed by the closed deadline. The same thing
14 with everything else.

15 Now, I appreciate attorneys wanting to argue things
16 to try and create records, but there is no way that you can
17 read omnibus motions are not accepted to somehow indicate that
18 somehow you could file something, when the very preceding
19 sentence says it's not been extended. Or that orders
20 shortening time shall not be signed except in extreme
21 emergencies. Well, that's a standard statement for every
22 single thing; right? And, in fact, EDCR 2.47 specifically
23 goes into that. EDCR 2.47(a): "The court may refuse to sign
24 orders shortening time and to consider any oral motion in
25 limine and any motion in limine which is not timely filed

1 or noticed." It's right there in EDCR 2.47. That's straight
2 from the language.

3 It's the standard language that stays in there. The
4 first sentence tells you whether or not you have a date or you
5 don't have a date, okay. The same thing when you put in other
6 information. And if there was any question whatsoever, and
7 I appreciate that the original OST was filed on the same day,
8 7/7, but you still had a reply on that OST. So if there was
9 any question about that, that somehow there was an issue with
10 regards to the scheduling order, and you all remember having
11 an affirmative obligation -- do you want me to start, I can
12 cite a whole bunch of case law where you have to read your
13 own schedule orders in your own case.

14 So you were before this Court one week later.
15 Presumably people had read the scheduling order by then. You
16 maybe hadn't read it the day that the motion was filed or even
17 read it before the reply was filed. You had to have read it
18 -- supposed to have read it, required to read it under the
19 rules, etcetera, ethics, by the time you came for hearing.

20 The issue of motions in limine was specifically in
21 the order shortening time by defendants, requesting that it be
22 extended. The Court denied the motion in its entirety. While
23 the Court is appreciative that you all decided to do competing
24 orders, decided to spend time more than the 14 days to get the
25 Court the order, but that does not change the Court's ruling.

1 The Court went through the ruling and the concept all about
2 how this was a remand from a trial, not pretrial. Went
3 through that whole analysis and there was no basis, no good
4 cause. It was all speculative, etcetera, for all the reasons
5 the Court previously stated for any pretrial motion.

6 So if anyone had any question if there was any
7 carveout, you had a scheduling order that told you it had not
8 been extended. You had the Court's ruling orally. You had
9 the inclination and then its ruling and you all had a full
10 opportunity to argue. And if you felt there should be a
11 carveout or if there was any lack of clarity, which I don't
12 think there is, but if anyone thought that you had a week
13 between when the scheduling order came out and you were right
14 before the Court with the very motion addressing motions in
15 limine, and say, well, Your Honor, maybe you're not extending
16 the 45 days but can we still have the 45 days, or anything
17 like that. There was nothing brought to the Court. It was
18 clear, not extended, okay. Consistent with EDCR 2.47, the
19 very beginning preference statement, "Unless otherwise
20 provided by an order of the court"; right?

21 So you had prior orders that did extend it. This
22 one told you it was not extended. It was the prior thing.
23 Discovery was closed. Everybody knew discovery was closed.
24 You had a motion to try to reopen discovery and pretrial
25 motions. Page 12 of the very OST that the Court cited in

1 that document to you all. And even the fact you even wanted
2 to have a briefing schedule.

3 So clearly on the scheduling order, closed, gone,
4 done. B, the status of this case. Everything was closed.
5 Everybody knew that. Everything was closed. That's the
6 reason why you all did a motion to reopen certain things,
7 okay. Everything that you asked to be reopened the Court
8 already fully addressed July 14th. Everybody knew it. There
9 was no basis whatsoever to file any motions in limine on July
10 22nd. If anyone had any confusion, any lack of clarity -- and
11 I don't see how anyone can think that EDCR 2.47 would govern,
12 when the scheduling order specifically says that. So does
13 every historical order in this case. I looked to see if by
14 any chance I put EDCR 2.47 for the first time in twelve years
15 in a scheduling order, but I hadn't. I hadn't put the 45
16 days. And I said twelve years, I may have done it the first
17 year. I really looked back about six or seven, but regardless.

18 Then you have these motions filed. These motions,
19 not only are they not in addition, those aren't even -- some
20 of them aren't even what could be potentially considered
21 motions in limine; right? There is -- even the ones that
22 could, the time is way past. These aren't any new information.

23 So that's addressing all the preclusion aspects.
24 So then I look for the good cause. Is there any good cause
25 to extend it? No, there's not, okay. First off, this is a

1 second bite of the apple, independent -- and when I say second
2 bite of the apple, because the order shortening time already
3 addressed this and the Court already gave its whole analysis.
4 So there would be no basis really to raise the argument for
5 good cause now because nobody provided anything between the
6 last time you were all here on July 14th and today. While
7 it's wonderful to see you, there's been no new facts, no new
8 information, nothing that's been provided to the Court that
9 would say somehow there would be something new for the Court
10 to address.

11 The fact that you look at the timing of the trial.
12 The trial is now even a lot closer, so I do see the prejudice
13 of plaintiffs if all of a sudden all of these matters which
14 clearly these are back -- other than potentially the only one
15 that even potentially ties into the supreme court one is the
16 Motion in Limine Number 1 regarding the *Center* case, but
17 that's not a motion in limine; right? There's a supreme court
18 directive telling the Court what to do. If you all think
19 that you can't figure that out at your 2.67, I think you
20 can. I think you're all very smart and I think you're very
21 experienced and I think you can get that taken care of.

22 And if I think plaintiffs' counsel is going to
23 repeat the issues, then plaintiffs' counsel knows what the
24 supreme court has said, you know. But remember, there was
25 a difference on certain things that had happened and conduct

1 that resulted in that particular ruling and it wasn't
2 necessarily -- well, the supreme court order says what the
3 supreme court order says, but that doesn't give you license
4 to all of a sudden do a motion in limine which is basically --
5 even with the argument in the opposition it says, guess what,
6 it's the supreme order. The supreme court order says what the
7 supreme court order says and no one needs a motion in limine
8 -- for me as a district court judge to say see supreme court
9 order. It's a supreme court order. I'm going to follow it.
10 I will follow it. I always do follow them. I mean, that's
11 not something that needs a motion in limine.

12 And realistically, some of these are even
13 boilerplate ones. The reptile tactics. And that was back
14 in the June 8th letter that was attached as Exhibit A. Look
15 at the last paragraph of Mr. Doyle's letter, okay. So these
16 aren't new information and this is nothing new. These aren't
17 things that need a motion in limine. You knew that they
18 didn't agree with it back before you filed your motion on July
19 7th because you already knew it from July 8th -- I mean June
20 8th because Mr. Doyle's letter even states I understand --
21 not going to agree to these things, okay.

22 So, folks, there is no good cause. This was known
23 way back on June 8th, some of these matters, changing a whole
24 bunch of different people, all the things that have happened.
25 And, you know, and your appendices on all these are just

1 voluminous, like trying to redo everything that was not done
2 back the first time this case from 2016. So, A, there is no
3 good cause, in addition to all the other aspects.

4 Now I have to get to the sanction component. Well,
5 the opposition is asking for sanctions. Of course the Court
6 is not going to grant sanctions in light of what I've told
7 you my ruling is. There was good cause to file the motion to
8 strike. These motions in limine should have never been filed
9 because of the Court's prior order, because of the scheduling
10 order, and because some of them don't even comply with the
11 idea of being motions in limine. Some of them really are
12 asking the Court to rule on things already ruled by the
13 supreme court.

14 So therefore, in light of granting the motion to
15 strike, the Court is going to have to strike -- let's go to
16 what the documents are so we get these clearly for the record.
17 So it's the -- and by the way, your exhibits don't even really
18 follow some of your motions in limine, but that's separate and
19 independent. Okay. So the motions in limine that were filed,
20 it was Documents 212, 213, 214, 215, 216, 217, 218, 219, 220,
21 221, 222, 223, 224, 225, 226, 227, 228, 229, 230, 231, 232,
22 233, 234. And you realize you even violated the scheduling
23 order in an additional way because you did a motion in limine
24 9 through 11, which is an omnibus motion in limine. So I
25 can't see how you potentially could have thought that that

1 somehow allowed you to do it when that is in bolded, all caps
2 and underlined, and you still did it, okay.

3 So the Court sees that as a per se noncompliance and
4 it also goes against the idea that somehow people thought that
5 that would allow things because you violated the very thing
6 that you're trying to utilize to say that somehow it allowed,
7 okay, because you filed in Document 230 -- one second --
8 Document 230 is defendants' motion in limine numbers 9 through
9 11. That's an omnibus motion in limine specifically precluded
10 by the trial order and it goes specifically outside of how
11 things could be referenced.

12 So those are all stricken. It is granted. I need
13 an order, EDCR 7.21. I need a notice of entry of order
14 thereon. And, yes, I received your competing orders which,
15 once again, folks, you're not supposed to do competing orders.
16 But if you're going to do something you've got to give the
17 Court a heads up, right, and it has to be timely submitted
18 under EDCR 7.21.

19 So with that, the Court has made its ruling. It is
20 so ordered. Thank you so very much. Wish everyone a great
21 rest of your day. One other thing I should just mention is
22 -- well, those are the only things before the Court, right?

23 So everybody knows the official court recorder.
24 But the Court takes no position if you all want a reporter
25 at your own private matters; right? It's just the Court's

1 got the official JAVS system and that's our official one.

2 I do appreciate it. Wish everyone a great, like I
3 said, rest of the day, rest of the week. Sorry for those of
4 you who are patiently waiting, we'll get you taken care of
5 next. Thank you so very much.

6 MS. FOLEY: Thank you, Your Honor.

7 MR. JONES: Thank you, Judge.

8 (PROCEEDINGS CONCLUDED AT 9:41 A.M.)

* * * * *

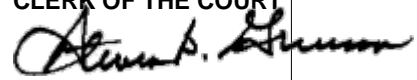
ATTEST: I do hereby certify that I have truly and correctly
transcribed the audio/video proceedings in the above-entitled
case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service

EXHIBIT 7

EXHIBIT 7



NOTC

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DISTRICT COURT
CLARK COUNTY, NEVADA

TITINA FARRIS and PATRICK FARRIS;

Plaintiffs,

vs.

BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC, et al.,

Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: 31

NOTICE OF MOTION TO VACATE
TRIAL AND STAY LITIGATION
PENDING NEVADA SUPREME
COURT WRIT PETITION ON AN
ORDER SHORTENING TIME

HEARING REQUESTED

Defendants, BARRY RIVES, M.D. (“Dr. Rives”) and LAPAROSCOPIC SURGERY
OF NEVADA, LLC (“LSN”) by and through their attorneys of record, filed the MOTION TO
STAY TRIAL ON AN ORDER SHORTENING TIME, attached hereto as Exhibit A.

DATED: August 15, 2022

Schuering Zimmerman & Doyle, LLP

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*Attorneys for Defendants Barry Rives M.D.
and Laparoscopic Surgery of Nevada, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of August 2022, a true and correct copy of
**NOTICE OF MOTION TO VACATE TRIAL AND STAY LITIGATION PENDING
NEVADA SUPREME COURT WRIT PETITION ON AN ORDER SHORTENING
TIME** was served by electronically filing with the Clerk of the Court using the Odyssey File
& Serve system and serving all parties with an email address on record, who have agreed to
receive Electronic Service in this action.

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EXHIBIT “A”

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Hearing Date: AUGUST 23, 2022

Hearing Time: 9:00 A.M.

*Attorneys for Defendants Barry Rives M.D.
and Laparoscopic Surgery of Nevada, LLC*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITINA FARRIS and PATRICK FARRIS;

Plaintiffs,

vs.

BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC, et al.,

Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: 31

**MOTION TO VACATE TRIAL AND
STAY LITIGATION PENDING
NEVADA SUPREME COURT WRIT
PETITION ON AN ORDER
SHORTENING TIME**

HEARING REQUESTED

COME NOW Defendants, BARRY RIVES, M.D. ("Dr. Rives") and
LAPAROSCOPIC SURGERY OF NEVADA, LLC ("LSN") by and through their attorneys
of record, and files this MOTION TO STAY TRIAL ON AN ORDER SHORTENING TIME.

1 This Motion is based upon all the points and authorities set forth herein, the pleadings, papers,
2 and records on file, and upon such oral argument as may be permitted at the time of the
3 hearing in this matter. Because the retrial of this action is set to commence on September 6,
4 2022 good cause exists for this Motion be heard on an Order Shortening Time.

5 DATED: August 12, 2022

6 **Schuerig Zimmerman & Doyle, LLP**

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*Attorneys for Defendants Barry Rives M.D.
and Laparoscopic Surgery of Nevada, LLC*

ORDER SHORTENING TIME

Upon application and good cause appearing therefore:

It is HEREBY ORDERED that the foregoing MOTION TO VACATE TRIAL AND STAY LITIGATION PENDING WRIT PETITION ON AN ORDER SHORTENING TIME in the above-entitled action is set for the 23 day of August, 2022, at the hour of 9:00 a.m./~~p.m.~~ in Department 31 of the Eighth Judicial District Court, as soon thereafter as counsel can be heard. The Motion must be served by 5:00 p.m. on August 15, 2022. The Opposition must be filed/served by noon on August 18, 2022; Reply must be filed and served by noon on August 19, 2022.

Janne S. Kishner

Respectfully submitted by:

COLLINSON, DAEHNKE, INLOW & GRECO

/s/ *Brigette E. Foley*

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Attorneys for Defendants

**DECLARATION OF BRIGETTE E. FOLEY IN SUPPORT OF MOTION AND
ORDER SHORTENING TIME**

STATE OF NEVADA)
).ss
CLARK COUNTY)

I, Brigitte E. Foley, depose and state the following under the penalties of perjury of the laws of the State of Nevada:

1. I am over 18 years of age and I have personal knowledge of all facts contained in this declaration and, I would and could competently testify with respect thereto if called so upon.

2. I am an attorney with the law firm of COLLINSON DAEHNKE INLOW AND GRECO, counsel for Defendants in the above-captioned case. I am duly authorized to practice law in the State of Nevada.

3. I make this Declaration in support of Defendants' Motion to Vacate Trial and Stay Litigation Pending Writ Petition on an Order Shortening Time.

4. On Thursday, August 11, 2022, I spoke with Kimball Jones of BIGHORN LAW, counsel for Plaintiffs to inquire as to whether Plaintiffs would stipulate to vacating the trial and staying litigation pending Defendants' Writ Petition.

5. Mr. Jones advised me that Plaintiffs would not stipulate to vacating the trial and staying litigation for the following reasons:

- a. Plaintiffs do not believe the issues Defendants raise in the Writ Petition are legitimate;
- b. The District Court's orders denying reopening of discovery and striking Defendants' Motions in Limine following remand were well within the District Court's discretion and should not be disturbed; and
- c. Plaintiffs do not believe that Defendants have a reasonable chance of prevailing on their Writ Petition.

6. Because the parties have been unable to reach an agreement on these issues, Court intervention is necessary and proper.

INTRODUCTION

Defendants have filed a Writ Petition with the Nevada Supreme Court that challenges this Court's orders (1) denying Defendants' Motion to Reopen Discovery following remand for new trial, and (2) striking Defendants' Motions in Limine in anticipation of the retrial of this action. The primary basis for the Writ Petition is to seek clarity and guidance from the Nevada Supreme Court on these issues of allowable discovery and status of evidentiary rulings not previously overturned following remand for a new trial. In fact, this Court conceded that these are issues that have not been addressed in Nevada, but this Court followed the concurring opinion in *DeChambeau v. Balkenbush*, 134 Nev. App. 625, 631, 431 P.3d 359, 364 (Nev. Ct. App. 2018; Silver, J. concurring), which recognized: "**Nevada law is silent in this situation....**" (emphasis added). 8/3/22 tran p. 21. This is a statewide question with significant policy implications for the public and the judiciary.

Indeed, Nevada law is also unsettled regarding the extent to which a personal injury defendant should be allowed to conduct supplemental discovery regarding the plaintiff's damages after a reversal. There is no definitive rule or caselaw on this issue. The upcoming trial will take place approximately three years since the first trial, yet Defendants are being deprived on any opportunity to conduct supplemental discovery concerning Titina Farris's treatment and medical visits since the first trial, or whether her medical and disability conditions have improved or gotten worse. Accordingly, it is appropriate to vacate the trial and stay further litigation pending the disposition of Defendants' Writ Petition, as the appellate court's decisions would likely impact substantive pretrial and trial issues.

FACTUAL STATEMENT

Plaintiffs initiated this medical malpractice action against Dr. Rives and Laparoscopic Surgery of Nevada in 2016, alleging that Dr. Rives fell below the standard of care in performing hernia repair surgery on and monitoring of Plaintiff Titina Farris in 2014 and 2015. *Barry Rives, M.D., et al. v. Titina Farris, et al.*, 138 Nev. Adv. Op. 17 (March 31, 2022). Plaintiffs allege that as a result of Dr. Rives' negligent care and treatment, Titina Farris suffered from multiple post-surgical problems, including sepsis, colon leakage

1 requiring surgical repair by another surgeon, and bilateral drop foot that hindered her ability
2 to walk unassisted. *Id.*

3 On March 21, 2022, the Nevada Supreme Court reversed and remanded for a new trial.
4 *Rives v. Farris*, 138 Nev. Adv. Op. 17, 506 P.3d 1064 (2022). The reversal was based primarily
5 upon the district court’s abuse of discretion in admitting evidence of another malpractice case
6 against Defendants (the Vicki Center case). This court also determined that the district court
7 abused its discretion by giving an adverse-inference jury instruction. The opinion did not
8 address any other arguments. *Id.* at fn. 8 (“In light of our conclusion, we need not address
9 appellants’ remaining arguments.”).

11 After the remand, this Court scheduled the new trial for September 6, 2022. Defendants
12 moved to reopen discovery, based upon the nearly three-year time period since the first trial.
13 Defendants argued that they were entitled to know medical information concerning Titina
14 Farris’s medical care, and any changes in her medical condition or disabilities since the first
15 trial. This Court denied the request in its entirety, refusing to allow any discovery whatsoever
16 regarding Titina Farris’s medical information since the first trial.

18 Defendants also filed a series of motions in limine (MILs), primarily intending to deal
19 with the evidentiary and procedural issues that had been raised on appeal, but which the Nevada
20 Supreme Court did not address in the reversal opinion. Plaintiffs moved to strike the MILs as
21 untimely. The district court granted the motion and struck the MILs, ruling that the original
22 deadline—before the first trial in 2019—still applied. Moreover, the district court essentially
23 ruled that none of the earlier evidentiary and procedural rulings could be revisited on remand,
24 and that the parties were bound by the prior rulings.

26 Defendants have now filed a Writ Petition with the Nevada Supreme Court seeking
27 additional guidance and clarification of these issues prior to the retrial of this action. Because
28 Defendants’ Writ Petition raises questions of law that are unsettled in Nevada and are likely to

1 impact many cases concurrently and in the future, there is a likelihood that the Nevada Supreme
2 Court will order additional briefing on Defendants' Writ Petition in order to consider these
3 issues on the merits. Accordingly, good cause exists for this Court to vacate the current trial
4 date and enter a stay of litigation pending the Nevada Supreme Court's decision on Defendants'
5 pending Writ Petition.
6

7 **LEGAL STANDARD**

8 **I. GOOD CAUSE EXISTS TO VACATE THE TRIAL AND STAY LITIGATION 9 PENDING THE OUTCOME OF DEFENDANTS' WRIT PETITION.**

10 "A party must ordinarily move first in the district court for a stay of the judgment or order
11 of, or proceedings in, a district court pending appeal or resolution of a petition to the Supreme
12 Court or Court of Appeals for an extraordinary writ." NRAP 8(a)(1). In deciding whether to
13 issue a stay, the Court should consider the following factors:

- 14 (1) Whether the object of the appeal or writ petition will be defeated if the stay is denied;
- 15 (2) Whether appellant/petitioner will suffer irreparable or serious injury if the stay is
16 denied;
- 17 (3) Whether respondent/real party in interest will suffer irreparable or serious injury if the
18 stay is granted; and
- 19 (4) Whether appellant/petitioner is likely to prevail on the merits in the appeal or writ
20 petition.

21 *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000)
(internal citations omitted).

22 **LEGAL ARGUMENT**

23 **I. THE OBJECT OF THE WRIT PETITION WILL BE DEFEATED IF THE 24 STAY IS DENIED.**

25 The object of the writ petition is to challenge the District Court's orders denying
26 Defendants' Motion to Reopen Discovery following remand, as well as the District Court's
27 order granting Plaintiffs' Motion to strike Defendants' Motions in Limine that were filed in
28 anticipation of the retrial of this action. Specifically, Defendants filed the writ petition with
the intent to have the Nevada Supreme Court provide additional guidance to the district court

1 for reopening limited discovery and providing “clean slate” of evidentiary issues going into
2 retrial, so that the parties are not faced with a second appeal and a potential third trial. If a
3 stay is denied, the object of the writ petition will be rendered moot and will be defeated
4 because the retrial of the action would go forward essentially as a carbon copy of the first trial
5 – the only exception being the admissibility of evidence of the *Center* case. Therefore, if a
6 stay is denied, the object of the writ petition will be completely defeated.

7 **II. DEFENDANTS WILL SUFFER IRREPARABLE HARM IF THE STAY IS**
8 **DENIED.**

9 Defendants seek the Nevada Supreme Court’s intervention to permit them to conduct
10 limited discovery to determine the current status of Plaintiff, Titina Farris’s, medical
11 condition, because 3 years have passed since the first trial of this matter, which the district
12 court denied. Defendants are currently being precluded from getting updated information
13 about the status of Titina Farris’s overall condition. If this case proceeds to trial and then
14 appeal, etc., it could be another 3-4 years of time that will have passed and her condition will
15 likely have further changed, Defendants need to be able to go into trial with an opportunity to
16 accurately assess her condition and prohibiting Defendants from doing that will cause
17 irreparable harm.

18 Also, this is now a second trial of this action, and potential second appeal. Although
19 time and money are real factors that impact all parties, another concern is the witnesses who
20 are being forced to return and appear for a second trial, and potentially a third if the parties
21 have to appeal again and get another remand. With the passing of each year, memories fade,
22 making witnesses inherently less reliable. Also, witnesses may not be as eager/willing to
23 participate in a second or third trial of this action, which undoubtedly will impact the quality
24 of their trial testimony. The Supreme Court needs to step in and resolve these issues on a writ
25 because irreparable harm will befall all parties because witnesses’ memories will fade, and
26 their appetite for participating in additional retrials will dwindle.

27 ///

28 ///

1 **III. PLAINTIFFS WILL NOT SUFFER ANY IRREPARABLE OR SERIOUS**
2 **HARM IF THE TRIAL IS VACATED AND STAY GRANTED.**

3 Although the Parties would have to endure a brief delay if the trial is vacated and
4 litigation stayed pending the determination on Defendants' pending Writ Petition, all Parties
5 would ultimately benefit from a brief litigation stay because the Court's decision on
6 Defendants' Writ Petition would likely obviate the need for subsequent appeals and future
7 potential remands and retrials. It would be in Plaintiffs' best interest to only have to endure
8 one more trial of this action and reduce the chance of having to endure subsequent appeals.
9 Therefore, Plaintiffs will not suffer any irreparable or serious harm if this Motion is granted.

10 **IV. DEFENDANTS' WRIT PETITION IS LIKELY TO PREVAIL ON THE**
11 **MERITS.**

12 "When moving for a stay pending an appeal or writ proceedings, a movant does not
13 always have to show a probability of success on the merits, the movant must present a
14 substantial case on the merits when a serious legal question is involved and show that the
15 balance of equities weighs heavily in favor of granting stay." *Hansen*, 116 Nev. at 659, 6P.3d
16 at 987. Lastly, there is a good chance that the Nevada Supreme Court will order an answer, to
17 consider the substance of the issues Defendants raised in their Writ Petition because they
18 highlight an unsettled issue of law in Nevada, for which additional guidance and clarity are
19 needed and would undoubtedly impact other cases in this jurisdiction. Therefore, it is
20 appropriate to vacate the current trial setting and stay litigation in the District Court pending
21 the outcome of Defendants' Writ Petition.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

///

CONCLUSION

For the reasons stated herein, Defendants respectfully request that the Court grant this motion in its entirety.

DATED: August 12, 2022

Schuering Zimmerman & Doyle, LLP

/s/ Thomas J. Doyle

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*Attorneys for Defendants Barry Rives M.D.
and Laparoscopic Surgery of Nevada, LLC*

CERTIFICATE OF SERVICE

I hereby certify that on this 12 day of August 2022, a true and correct copy of
**MOTION TO VACATE TRIAL AND STAY LITIGATION PENDING NEVADA
SUPREME COURT WRIT PETITION ON AN ORDER SHORTENING TIME** was
served by electronically filing with the Clerk of the Court using the Odyssey File & Serve
system and serving all parties with an email address on record, who have agreed to receive
Electronic Service in this action.

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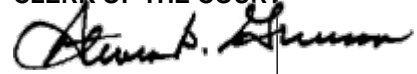
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By /s/ Deborah Rocha
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EXHIBIT 8

EXHIBIT 8



OPPM

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Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

TITINA FARRIS; and PATRICK
FARRIS,

Plaintiffs,

v.

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

Defendants.

Case No. A-16-739464-C

Dept. No. 31

**PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION TO
VACATE TRIAL AND STAY
LITIGATION PENDING
NEVADA SUPREME COURT
WRIT PETITION ON AN ORDER
SHORTENING TIME**

HEARING DATE: August 23, 2022
HEARING TIME: 9:00 a.m.

Plaintiffs, TITINA FARRIS and PATRICK FARRIS (collectively “Plaintiffs”), by and through their counsel of record, Bighorn Law; Hand & Sullivan, LLC; and Claggett & Sykes Law Firm, hereby file this Opposition to Defendants’ Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time. This opposition is based upon the records and pleadings on file herein, the points and authorities attached hereto, and any oral argument that the Court may allow.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Defendants come to this Court at this late date asking to vacate the September 6, 2022, trial date that they agreed to during the June 7, 2022, hearing to set a new trial date. *See Exhibit 1* (Court Minutes of June 7, 2022, Hearing). In fact, Defendants asked the Supreme Court for a new trial, which was ordered. Now that the trial date is approaching, Defendants, for some reason, do not want to proceed to trial. Defendants present their motion as an emergency. But, they knew from the Supreme Court’s opinion that they had several unresolved issues. *See Rives v. Farris*, 138 Nev., Adv. Op. 17, at *17 n.8, 506 P.3d 1064, 1072 n.8 (Nev. 2022) (indicating that several of Defendants’ issues raised on appeal were not addressed). In fact, Defendants attempted to resolve their unaddressed issues through their June 8, 2022, letter to Plaintiffs. *See Exhibit 2* (letter dated

1 June 8, 2022 from Thomas J. Doyle, Esq.). So, the issues that Defendants now
2 raise in their emergency motion should not come as a surprise.

3 Defendants have agreed to the form of the two orders that have been
4 submitted to the Court for signature from Defendants' motion to reopen discovery
5 and Plaintiffs' motion to strike the motions in limine. *See Exhibit 3* (submitted
6 draft Order Denying Defendants' Motion to Reopen Limited Discovery and to Set
7 Pretrial Scheduling Order on an Order Shortening Time); **Exhibit 4** (submitted
8 draft Order Granting Plaintiffs' Motion to Strike Defendants' Motions in Limine
9 on Order Shortening Time). Yet, Defendants' motion does not track the breadth
10 of the briefing before this Court and the extensive rulings placed on the record in
11 both the draft orders and the filed transcripts. *See Exhibit 5* (July 14, 2022,
12 Hearing Transcript for Motion to Reopen Limited Discovery and to Set Pretrial
13 Scheduling Order on an Order Shortening Time, filed on July 26, 2022); **Exhibit**
14 **6** (August 2, 2022, Hearing Transcript for Plaintiffs' Motion to Strike Defendants'
15 Motions in Limine on Order Shortening Time). Thus, under the NRAP 8(c)
16 analysis, Defendants are not likely to prevail on the merits of their writ petition.
17 *See* NRAP 8(c)(4). None of the other NRAP 8(c) factors weigh in favor of
18 Defendants' requested stay relief. Importantly, Defendants have not
19 demonstrated why an appeal from a final judgment is not an adequate remedy
20 for the several issues they raise. *See Pan v. Eighth Judicial Dist. Court*, 120 Nev.
21 222, 224, 88 P.3d 840, 841 (2004) ("Under NRS 34.170, a writ of mandamus is
22 proper only when there is no plain, adequate and speedy legal remedy. This court
23 has previously pointed out, on several occasions, that the right to appeal is
24

generally an adequate legal remedy that precludes writ relief.”) (citations omitted). Therefore, the Court should deny Defendants’ motion in its entirety.

LEGAL ARGUMENT

I. STANDARDS FOR OBTAINING A STAY.

Although NRAP 8(c) does not specifically apply to district court cases, the stay analysis in district courts will often follow these NRAP 8(c) factors. These are the same factors that the Supreme Court analyzes when considering whether to enter a stay. “[W]e consider the following factors when deciding whether to grant a stay pending writ proceedings: whether (1) the object of the writ petition will be defeated absent a stay, (2) petitioners will suffer irreparable or serious harm without a stay, (3) real party in interest will suffer irreparable or serious harm if a stay is granted, and (4) petitioners are likely to prevail on the merits of the petition. NRAP 8(c); see *Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000). Based upon the Court’s weighing of these factors, Plaintiffs urges this Court to deny Defendants’ requested stay relief.

II. DEFENDANTS DO NOT SATSIFY THE NRAP 8(c) FACTORS FOR OBTAINING A STAY.

A. THE OBJECT OF THE WRIT PETITION WILL NOT BE DEFEATED IF THE COURT DENIES A STAY.

In their motion, Defendants argue, without citing to any authority, that they are entitled to a “clean slate.” But, this bare argument contradicts both the Supreme Court’s opinion leaving several issues unanswered, as well as defense counsel’s own letter. See *Rives*, 138 Nev., Adv. Op. at *17 n.8, 506 P.3d at 1072 n.8 (indicating that several of Defendants’ issues raised on appeal were not

1 addressed); **Exhibit 2.** Noticeably missing from Defendants’ motion is an
2 explanation of why an appeal from a final judgment is an inadequate remedy.
3 *See Pan*, 120 Nev. at 224, 88 P.3d at 841 (“Under NRS 34.170, a writ of mandamus
4 is proper only when there is no plain, adequate and speedy legal remedy. This
5 court has previously pointed out, on several occasions, that the right to appeal is
6 generally an adequate legal remedy that precludes writ relief.”) (citations
7 omitted). Without this necessary explanation, Defendants have not satisfied this
8 first NRAP 8(c) factor.

9
10 **B. DEFENDANTS WILL NOT SUFFER ANY
IRREPARABLE HARM.**

11 Defendants’ motion outlines that they will be irreparably harmed by
12 having to go through a second trial, an expected second appeal, and their claimed
13 third trial. Defendants further claim that the Supreme Court will now review
14 these issues in a writ petition, such that the entire District Court litigation,
15 including the trial date, should be halted. However, the substantive issues in
16 Defendants’ writ petition are the very issues the Supreme Court just elected to
17 not consider—while giving direction to this Court to retry the case. “Accordingly,
18 we reverse the district court’s judgment, vacate the corresponding fees and costs
19 order, and remand for a new trial.” *Rives*, 138 Nev., Adv. Op. at *18, 506 P.3d at
20 1072. As a matter of law, such litigation expenses and unknown future
21 proceedings categorically do not constitute irreparable harm for purposes of an
22 NRCP 8(c) analysis. *See Fritz Hansen A/S v. Eighth Judicial Dist. Court*, 116
23 Nev. 650, 658, 6 P.3d 982, 986–987 (2000) (“Fritz Hansen would not suffer
24

1 irreparable or serious injury if the stay is denied. It argues that it should not be
2 required to participate ‘needlessly’ in the expense of lengthy and time-consuming
3 discovery, trial preparation, and trial. Such litigation expenses, while potentially
4 substantial, are neither irreparable nor serious.”) (citing *Wisconsin Gas Co. v.*
5 *F.E.R.C.*, 758 F.2d 669, 674 (D.C. Cir. 1985) (noting that “mere injuries, however
6 substantial, in terms of money, time and energy necessarily expended in the
7 absence of a stay are not enough” to show irreparable harm) (cleaned up).
8 Therefore, Defendants have failed to satisfy the second NRAP 8(c) factor.

9
10 **C. PLAINTIFFS WILL SUFFER SERIOUS INJURY IF A
STAY IS GRANTED.**

11 Defendants argue that their prevailing writ petition would obviate the
12 need for future appeals, remands, and trials. However, in several conversations
13 with Plaintiffs’ counsel, Defendants have vowed to appeal from any verdict
14 following this retrial regardless of the issues. In other words, even if the Supreme
15 Court were to intervene now and grant Defendants’ writ petition following
16 briefing, Plaintiffs would still have their right to a new trial. But, Defendants
17 would still appeal from the verdict following this retrial. So, Defendants’
18 argument that the litigation would somehow be shorter with a stay is inaccurate.

19 This case was filed in July 2016, over six years ago. In *Fritz Hansen*, the
20 Supreme Court observed that the third NRAP 8(c) factor weighed in favor of the
21 non-moving party because “the underlying proceedings could be unnecessarily
22 delayed by a stay. . . .” *Fritz Hansen*, 116 Nev. at 658, 6 P.3d at 987. Ultimately,
23 proceedings in the district courts should be “just, speedy, and inexpensive. . . .”
24

1 NRCP 1. As the Federal District Court of Nevada, United States Magistrate
2 Judge Cam Ferenbach observed, “The plaintiff has an interest in pursuing his
3 case without delay. A well-known saying, generally attributable to William
4 Gladstone, is that ‘Justice delayed is justice denied.’ A lesser known saying,
5 known to be attributable to prominent defense lawyers from major law firms, is
6 that ‘Justice delayed is justice [for the defendants].’” *Cadeaux v. Doe*, Case No.
7 2:19-cv-01584-JAD-VCF, 2022 U.S. Dist. LEXIS 12091, at *7 n.1, 2022 WL
8 203390 (D. Nev. 2022) (citing *Grewal v. Jammu*, 191 Cal. App. 4th 977, 999, 119
9 Cal. Rptr. 3d 835, 852 (2011)). Therefore, the Court should find in favor of
10 Plaintiffs for this third NRAP 8(c) factors.

11
12 **D. DEFENDANTS ARE NOT LIKELY TO PREVAIL ON
THE MERITS OF THEIR WRIT PETITION.**

13 Defendants do not offer any argument that they will actually prevail on
14 the merits of their writ petition. Instead, they argue that there is a good chance
15 that the Supreme Court will order an answer. But, the ordering of an answer is
16 quite different than actually prevailing. The same issues remain for this final
17 NRAP 8(c) factor. Additionally, Defendants’ reliance upon *Dechambeau v.*
18 *Balkenbush*, 134 Nev. 625, 631, 431 P.3d 359, 364 (Ct. App. 2018) (Silver, C.J.,
19 concurring) is inapposite because it was not central to the Court’s analysis in
20 striking Defendants’ motions in limine. Rather, the Court’s own July 7, 2022,
21 order reflecting that the deadline for motions in limine was closed, as well as
22 EDCR 2.47 support the Court’s order to strike motions in limine. See **Exhibit 4**.
23 With respect to the Court’s earlier order denying Defendants’ motion to reopen
24

1 discovery, Defendants simply ignore that they could not show good cause or
2 excusable neglect to reopen discovery, as required by EDCR 2.35(a). Thus,
3 Defendants have not presented any meritorious reason sufficient to satisfy the
4 fourth factor of NRAP 8(c).

5 CONCLUSION

6 For the foregoing reasons, the Court should deny Defendants' motion to
7 vacate the trial date and stay this entire District Court litigation.

8 Dated this 18th day of August 2022.

9 CLAGGETT & SYKES LAW FIRM

10 /s/ Micah S. Echols

11 _____
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CERTIFICATE OF SERVICE

I hereby certify that I electronically submitted the foregoing
**PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO VACATE
TRIAL AND STAY LITIGATION PENDING NEVADA SUPREME COURT
WRIT PETITION** for filing and/or service with the Eighth Judicial District
Court on the 18th day of August 2022. I made electronic service of the foregoing
document in accordance with the E-Service List as follows:

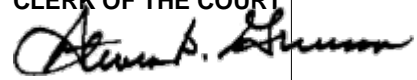
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Claggett & Sykes Law Firm

EXHIBIT 9

EXHIBIT 9



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**DISTRICT COURT
CLARK COUNTY, NEVADA**

TITINA FARRIS and PATRICK FARRIS;

Plaintiffs,

vs.

BARRY RIVES, M.D.; LAPAROSCOPIC
SURGERY OF NEVADA, LLC, et al.,
Defendants.

CASE NO.: A-16-739464-C
DEPT. NO.: 31

**DEFENDANTS' REPLY IN SUPPORT
OF MOTION TO VACATE TRIAL AND
STAY LITIGATION PENDING
NEVADA SUPREME COURT WRIT
PETITION**

**Hearing: August 23, 2022
Hearing Time: 9:00a.m.**

POINTS AND AUTHORITIES

I. PLAINTIFFS HAVE VIOLATED EDCR 2.27.

This court should reject and ignore all of Plaintiffs' appendix documents, which have been filed with three flagrant violations of EDCR 2.27:

First, Plaintiffs' appendix contains two documents that were already filed with this Court [Exh. 5 and 6 (file-stamped transcripts)]. This is a clear violation of EDCR 2.27(e), which plainly states that copies of pleadings or other documents filed in the pending matter "**shall not** be attached as exhibits or made part of an appendix." (Emphasis added.). The phrase "shall not" is mandatory. Plaintiffs did not seek permission to file nonconforming exhibits, and their opposition offers no excuse for the violation. These exhibits should be rejected and ignored.

Second, EDCR 2.27(1) provides that exhibits in excess of 10 pages "**must** be numbered consecutively in the lower right-hand corner of the document." (Emphasis added.). The word "must" is mandatory. Yet Plaintiffs have violated this rule, without offering an excuse and without requesting leave to file nonconforming exhibits.

Third, EDCR 2.27(b) provides that exhibits collectively in excess of 100 pages "**must** be filed as a separate appendix and **must** include a table of contents identifying each exhibit and the numbering sequence of the exhibits." (Emphasis added.). Once again, the word "must" is mandatory. Plaintiffs undeniably violated these two mandatory requirements, because their exhibits consist of more than 120 pages, yet they did not file the exhibits as a separate appendix, and they did not include a table of contents.

Accordingly, the court should reject and refuse to consider all exhibits provided with the opposition.

II. DEFENDANTS' MOTION WAS TIMELY.

Plaintiffs start their opposition by arguing that the stay motion was too late because Defendants have known about unresolved issues since the Supreme Court issued its reversal order, and the issues raised in Defendants' motion "should not come as a surprise." (Opp. pp.

2-3.) The argument is meritless. The writ petition challenges two of this Court’s rulings: the denial of Defendants’ request for post-reversal discovery, and striking Defendants’ motions in limine. Both rulings were only recently rendered, as clearly set forth in the writ petition. The writ petition was filed with a few days after this court’s ruling on August 2, 2022. The petition was timely, as explained on page 31 of the petition, footnote 3. And Defendants filed the stay motion on the third judicial day after having filed the writ petition. As such, the motion was not untimely.

III. DEFENDANTS HAVE SATISFIED NRAP 8 FACTORS

Plaintiffs contend that Defendants fail to satisfy NRAP 8 factors. This contention is without merit.

A. The object of the petition will be defeated if the stay is denied.

The first factor identified in NRAP 8 is whether the object of the writ petition will be defeated if the stay is denied. One of the objects of the petition is to allow Defendants to obtain updated medical discovery **before the second trial**, regarding Titina Farris’s medical conditions and disabilities during the three years since the first trial. This Court’s ruling has the effect of preventing defense counsel from finding out any information whatsoever—before the second trial—regarding any of Farris’s medical examinations, testing, or treatment, during the entire three-years before the 2022 trial. A denial of the stay will completely defeat the object of the writ petition regarding updated medical discovery.

A denial of the stay will also defeat the other object of the petition, regarding the numerous motions in limine that were stricken. Rulings on these motions are critical to the parties being able to understand—before the second trial—what evidence is admissible or inadmissible; what procedures are appropriate or inappropriate; and the extent to which prior rulings from the 2019 trial can be revisited. If the trial proceeds without a stay, the writ petition on these issues will be rendered moot.

Moreover, one of the primary objects of the petition is to avoid a waste of judicial resources, wasted time for jurors, and potentially a waste of time for everyone involved in this

1 case if a second appeal is necessitated by avoidable error that will occur in the September
2 2022 trial. This object of the petition will be defeated if a stay is denied.

3 Plaintiffs argue that Defendants have not demonstrated the lack of a plain, speedy, and
4 adequate remedy at law, which is generally a requirement for extraordinary relief. (Mot. p.
5 5.). That requirement, however, is subject to exceptions. Whether there is a lack of a plain,
6 speedy, and adequate remedy is argued extensively in the writ petition. Defendants contend
7 that an eventual second appeal will not provide a sufficient remedy for the contentions raised
8 in the petition, and in any event, exceptions apply because public policy and judicial
9 administration considerations apply in the writ case. In any event, the Supreme Court will
10 decide whether to accept or reject Defendants' argument regarding whether there is a plain,
11 speedy, and adequate remedy.

12 **B. Defendants will suffer irreparable harm if the stay is denied.**

13 Analysis of this NRAP 8 factor is similar to the analysis of the first factor. Without a
14 stay, the second trial will proceed without any updated medical discovery, and without rulings
15 on evidentiary and procedural issues that are critical to a fair and efficient second trial.
16 Defendants will be irreparable harmed, because the point of the petition is to avoid
17 unnecessary delays during trial, and to avoid prejudice at the second trial, likely leading to a
18 second appeal, a second reversal, and a third trial. Indeed, if the trial proceeds without a stay,
19 and if there is a second appeal, this will result in another three or four years that will have
20 passed. Farris's condition will likely have further changed by that time; memories will have
21 faded even more; and there could be an endless circle of litigation and appeals.

22 **C. Plaintiffs will not suffer irreparable or serious injury if the stay is granted.**

23 After the remand, this case was set for an expedited retrial within a very short time frame,
24 only slightly more than four months since this Court regained jurisdiction after the Supreme
25 Court issued the remittitur on April 25, 2022. There is no emergency situation that compels
26 holding the new trial on an expedited basis. Although Plaintiffs' opposition **contends** they
27
28

1 will be injured by a delay, Plaintiffs have provided no real showing of an “irreparable or
2 serious injury” from a delay of the trial.

3 Of course, Plaintiffs would like to advance their case to trial quickly. But in reality, a
4 stay would postpone the trial for only a relatively short time while the Supreme Court
5 considers the writ petition. There will be no irreparable or serious injury from a relatively
6 short postponement of the trial.

7 **D. Defendants are likely to prevail on the writ petition.**

8 No party moving for a stay must show with absolute certainty that the party will
9 prevail in the writ petition. A party moving for a stay “does not always have to show a
10 probability of success on the merits.” *Hansen v. Eighth Judicial Dist. Court*, 116 Nev. 650,
11 659, 6 P.3d 982, 987 (2000). The moving party only needs to “present a substantial case on
12 the merits when a serious legal question is involved.” *Id.*

13 The writ petition in the present case presents a unique situation in which a large
14 personal injury judgment was reversed; there has been a three-year gap in time since the first
15 trial; this Court denied all supplemental discovery relating to Titina Farris’s medical status
16 since the first trial; this Court struck multiple motions in limine, which raised substantial
17 evidentiary and procedural questions that need to be decide before the second trial; and this
18 Court appears to have the belief that the second trial should essentially be a mirror image of
19 the first trial, with the exception of evidence relating to the Center case. This is exactly the
20 type of situation in which a writ of mandamus is appropriate.

21 In ruling on one of the motions being challenged in the writ petition, this Court relied
22 upon and quoted a Nevada Court of Appeals concurring opinion, which indicated: “Nevada
23 law is silent in this situation.” 3P.App.677. Therefore, the petition deals with a precedent-
24 setting issue on which the parties and the judiciary need guidance. This weighs heavily in
25 favor of the Supreme Court granting the petition.

Accordingly, the writ petition is a legitimate good faith effort to obtain rulings from the Supreme Court on issues that are important to the parties and to the judiciary generally. Defendants contend they are likely to prevail.

CONCLUSION

For the reasons set forth in the stay motion and in this reply, the stay should be granted, and this case should be taken off calendar until the Nevada Supreme Court can rule on the petition for writ of mandamus pending in that court.

DATED: August 18, 2022

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Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of August, 2022, a true and correct copy of
DEFENDANTS' REPLY IN SUPPORT OF MOTION TO VACATE TRIAL AND
STAY LITIGATION PENDING NEVADA SUPREME COURT WRIT PETITION was
served by electronically filing with the Clerk of the Court using the Odyssey File & Serve
system and serving all parties with an email address on record, who have agreed to receive
Electronic Service in this action.

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By /s/ Deborah Rocha

An employee of COLLINSON, DAEHNKE,
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EXHIBIT 10

EXHIBIT 10

REGISTER OF ACTIONS

CASE NO. A-16-739464-C

Titina Farris, Plaintiff(s) vs. Barry Rives, M.D., Defendant(s)

§
§
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§
§
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§

Case Type: **Malpractice - Medical/Dental**
 Date Filed: **07/01/2016**
 Location: **Department 31**
 Cross-Reference Case Number: **A739464**
 Supreme Court No.: **80271**
81052

PARTY INFORMATION

Defendant	Laparoscopic Surgery of Nevada LLC	Lead Attorneys Robert L. Eisenberg <i>Retained</i> 775-786-6868(W)
Defendant	Rives, Barry, M.D.	Robert L. Eisenberg <i>Retained</i> 775-786-6868(W)
Plaintiff	Farris, Patrick	Micah S. Echols <i>Retained</i> 702-655-2346(W)
Plaintiff	Farris, Titina	Micah S. Echols <i>Retained</i> 702-655-2346(W)

EVENTS & ORDERS OF THE COURT

DISPOSITIONS	
11/01/2019	Verdict (Judicial Officer: Kishner, Joanna S.) Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Titina Farris (Plaintiff) Judgment: 11/01/2019, Docketed: 11/08/2019 Total Judgment: 12,083,479.94 Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Patrick Farris (Plaintiff) Judgment: 11/01/2019, Docketed: 11/08/2019 Total Judgment: 1,557,000.00
11/14/2019	Judgment Upon the Verdict (Judicial Officer: Kishner, Joanna S.) Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Titina Farris (Plaintiff) Judgment: 11/14/2019, Docketed: 11/15/2019 Total Judgment: 6,170,387.67 Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Patrick Farris (Plaintiff) Judgment: 11/14/2019, Docketed: 11/15/2019 Total Judgment: 197,417.85 Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Titina Farris (Plaintiff), Patrick Farris (Plaintiff) Judgment: 11/14/2019, Docketed: 11/15/2019 Total Judgment: 6,367,805.52
03/30/2020	Order (Judicial Officer: Kishner, Joanna S.) Debtors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Creditors: Titina Farris (Plaintiff), Patrick Farris (Plaintiff) Judgment: 03/30/2020, Docketed: 03/30/2020 Total Judgment: 1,136,924.86
04/29/2022	Clerk's Certificate (Judicial Officer: Kishner, Joanna S.) Debtors: Titina Farris (Plaintiff), Patrick Farris (Plaintiff) Creditors: Barry Rives, MD. (Defendant), Laparoscopic Surgery of Nevada LLC (Defendant) Judgment: 04/29/2022, Docketed: 05/05/2022 Comment: Supreme Court No. 80271/81052; Reversed in part, Vacated in part, and Remanded
OTHER EVENTS AND HEARINGS	
07/01/2016	Complaint Doc ID# 1 <i>[1] Complaint</i>
07/01/2016	Initial Appearance Fee Disclosure Doc ID# 2 <i>[2] Initial Appearance Fee Disclosure(NRS Chapter 19)</i>

08/25/2016 **Affidavit of Service Doc ID# 3**
[3] Affidavit of Service

09/14/2016 **Answer Doc ID# 4**
[4] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Answer to Complaint

09/14/2016 **Demand for Jury Trial Doc ID# 5**
[5] Demand for Jury Trial

09/14/2016 **Initial Appearance Fee Disclosure Doc ID# 6**
[6] Defendants' Initial Appearance Fee Disclosure

09/29/2016 **Notice Doc ID# 7**
[7] Notice of Early Case Conference

10/24/2016 **Disclosure of Documents and Witnesses Pursuant to NRCP 16.1 Doc ID# 8**
[8] Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Initial NRCP 16.1 Disclosure of Witnesses and Documents

10/31/2016 **Joint Case Conference Report Doc ID# 9**
[9] Joint Case Conference Report

11/28/2016 **Notice to Appear for Discovery Conference Doc ID# 10**
[10] Notice to Appear for Discovery Conference

12/13/2016 **Discovery Conference (8:55 AM) (Judicial Officer Bulla, Bonnie)**
[Parties Present](#)
[Minutes](#)
 Result: Scheduling Order Will Issue

01/12/2017 **Order Setting Medical/Dental Malpractice Status Check Doc ID# 11**
[11] Order Setting Medical/Dental Malpractice Status Check and Trial Setting Conference

01/12/2017 **Scheduling Order Doc ID# 12**
[12] Scheduling Order

02/06/2017 **Status Check: Medical/Dental Malpractice (1:00 PM) (Judicial Officer Wiese, Jerry A.)**
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

02/23/2017 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call Doc ID# 13**
[13] Order Setting Civil Jury Trial

11/07/2017 **Stipulation to Extend Discovery Doc ID# 14**
[14] Stipulation and Order to Extend Discovery (First Request)

11/09/2017 **Amended Order Setting Jury Trial Doc ID# 15**
[15] First Amended Order Setting Civil Jury Trial

12/19/2017 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call Doc ID# 16**
[16] Order Setting Civil Jury Trial

02/05/2018 **Stipulation and Order to Extend Discovery Deadlines Doc ID# 17**
[17] Stipulation and Order to Extend Discovery (Second Request)

04/19/2018 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call Doc ID# 18**
[18] Order Setting Civil Jury Trial

04/20/2018 **Stipulation and Order Doc ID# 19**
[19] Stipulation and Order to Continue Trial and Extend Discovery Deadlines and Trial Date

06/07/2018 **CANCELED Calendar Call (9:00 AM) (Judicial Officer Sturman, Gloria)**
Vacated - per Order

07/09/2018 **CANCELED Jury Trial (9:00 AM) (Judicial Officer Sturman, Gloria)**
Vacated - per Order

08/08/2018 **Status Check: Medical/Dental Malpractice (1:00 PM) (Judicial Officer Wiese, Jerry A.)**
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

09/20/2018 **CANCELED Calendar Call (9:00 AM) (Judicial Officer Sturman, Gloria)**
Vacated - per Stipulation and Order

09/21/2018 **Stipulation and Order Doc ID# 20**
[20] Stipulation and Order to Extend Discovery Deadlines (Fourth Request)

09/24/2018 **CANCELED Status Check (10:30 AM) (Judicial Officer Jones, David M)**
Vacated

09/26/2018 **Notice of Entry of Stipulation and Order Doc ID# 21**
[21] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Fourth Request)

10/04/2018 **Notice of Taking Deposition Doc ID# 22**
[22] Notice of Taking the Deposition of Barry Rives, M.D.

10/05/2018 **Order Setting Civil Jury Trial, Pre-Trial, and Calendar Call Doc ID# 23**
[23] Amended Order Setting Civil Jury Trial, Pre Trial Conference, Calendar Call and Status Check

10/08/2018 **CANCELED Pre Trial Conference (10:30 AM) (Judicial Officer Jones, David M)**
Vacated

10/15/2018 **CANCELED Jury Trial (9:30 AM) (Judicial Officer Sturman, Gloria)**
Vacated - per Stipulation and Order

10/17/2018 **CANCELED Calendar Call (10:30 AM) (Judicial Officer Jones, David M)**
Vacated

10/22/2018 **CANCELED Jury Trial (10:30 AM) (Judicial Officer Jones, David M)**
Vacated

11/27/2018 **Stipulation and Order Doc ID# 24**
[24] Stipulation and Order to Extend Discovery Deadlines (Fifth Request)

11/30/2018 **Notice of Entry of Stipulation and Order Doc ID# 25**
[25] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Fifth Request)

12/18/2018 **Status Check (9:00 AM) (Judicial Officer Kishner, Joanna S.)**
[Parties Present](#)
[Minutes](#)
 12/18/2018 Reset by Court to 12/18/2018
 Result: Matter Heard

01/07/2019 **Telephonic Conference** (9:30 AM) (Judicial Officer Kishner, Joanna S.)
Telephonic Conference Regarding Resetting Trial
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

01/22/2019 **Amended Order Setting Jury Trial Doc ID# 26**
[26] Amended Order Setting Jury Trial, Pre-Trial Conference, Calendar Call, and Status Check

01/23/2019 **Stipulation and Order Doc ID# 27**
[27] Stipulation and Order to Reset Trial and Waive Three Year Trial Rule

02/14/2019 **CANCELED Pre Trial Conference** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - per Stipulation and Order

02/21/2019 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated

03/12/2019 **CANCELED Calendar Call** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - per Stipulation and Order

03/18/2019 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer Sturman, Gloria)
Vacated

03/18/2019 **CANCELED Jury Trial** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - per Stipulation and Order
Moving Trial to 10/14/19 pending receipt of Stipulation waiving 3 year rule thru October 2019

03/19/2019 **Stipulation and Order Doc ID# 28**
[28] Stipulation and Order to Extend Discovery Deadlines (Sixth Request)

03/19/2019 **Notice of Entry Doc ID# 29**
[29] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Sixth Request)

05/15/2019 **Objection Doc ID# 30**
[30] Defendants' Objection to Plaintiffs' Fifth Supplement to Early Case Conference Disclosure of Witnesses and Documents

06/26/2019 **Stipulation and Order Doc ID# 31**
[31] Stipulation and Order to Extend Discovery Deadlines (Seventh Request)

06/27/2019 **Notice of Entry Doc ID# 32**
[32] Notice of Entry of Stipulation and Order to Extend Discovery Deadlines (Seventh Request)

07/15/2019 **Notice of Association of Counsel Doc ID# 33**
[33] Notice of Association of Counsel

07/16/2019 **Status Check** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

07/16/2019 **Amended Notice of Taking Deposition Doc ID# 34**
[34] Amended Notice of Deposition of Dr. Michael Hurwitz

09/05/2019 **Status Check** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Mandatory In-Person Status Check per Court's Memo Dated August 30, 2019
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

09/06/2019 **Notice Doc ID# 35**
[35] Notice of 2.67 Conference

09/10/2019 **Notice Doc ID# 36**
[36] Notice of Scheduling Settlement Conference

09/12/2019 **Pre Trial Conference** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

09/13/2019 **Motion to Compel Doc ID# 37**
[37] Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on Order Shortening time

09/13/2019 **Clerk's Notice of Hearing Doc ID# 38**
[38] Notice of Hearing

09/13/2019 **Pre-Trial Disclosure Doc ID# 39**
[39] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's NRCP 16.1(A)(3) Pretrial Disclosure

09/16/2019 **Trial Subpoena Doc ID# 40**
[40] Trial Subpoena - Civil Regular

09/16/2019 **Application Doc ID# 41**
[41] Application for an Order Shortening Time on Defendants Barry River MD's and Laparoscopic Surgery of Nevada LLC's Motion to Compel the Deposition of Gregg Ripplinger MD and Extend the Close of Discovery (9th Request)

09/18/2019 **Motion for Sanctions Doc ID# 42**
[42] Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

09/19/2019 **Receipt of Copy Doc ID# 43**
[43] Receipt of Copy-Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

09/19/2019 **Motion to Strike Doc ID# 44**
[44] Plaintiffs Motion to Strike Defendants Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D. and Scott Kush, M.D., and to Limit the Testimony of Lance Stone, D.O. and Kim Erlich, M.D., for Giving Improper Rebuttal Opinions, on Order Shortening Time

09/19/2019 **Order Doc ID# 45**
[45] Order Denying Stipulation Regarding Motions in Limine and Order Setting hearing for September 26, 2019

09/20/2019 **Objection Doc ID# 46**
[46] Plaintiffs Objections to Defendants Pre-Trial Disclosure Statement Pursuant to NRCP 16.1(a)(3)(C)

09/20/2019 **Objection Doc ID# 47**
[47] Plaintiffs Objection to Defendants Second Amended Notice of Taking Deposition of Dr. Gregg Ripplinger

09/20/2019 **Minute Order** (3:15 PM) (Judicial Officer Truman, Erin)
Minute Order: Vacate Plaintiffs' Motion to Strike set 9-25-19
[Minutes](#)

Result: Minute Order - No Hearing Held

09/20/2019 **Objection Doc ID# 48**
[48] Plaintiffs Objection to Defendants Trial Subpoena of Naomi Chaney, M.D.

09/24/2019 **Opposition to Motion Doc ID# 49**
[49] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigatoin and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

09/24/2019 **Declaration Doc ID# 50**
[50] Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time

09/24/2019 **Transcript of Proceedings Doc ID# 51**
[51] Transcript: Telephonic Conference 1/7/19

09/24/2019 **Transcript of Proceedings Doc ID# 52**
[52] Transcript: Mandatory In-Person Status Check Per Court's Memo Dated August 30, 2019 - 9/5/19

09/24/2019 **Transcript of Proceedings Doc ID# 53**
[53] Transcript of Proceedings Pretrial Conference 9/12/19

09/25/2019 **CANCELED Motion to Strike** (9:30 AM) (Judicial Officer Truman, Erin)
 Vacated
Plaintiffs Motion to Strike Defendants Rebuttal Witnesses Sarah Larsen, R.N., Bruce Adornato, M.D. and Scott Kush, M.D., and to Limit the Testimony of Lance Stone, D.O. and Kim Erlich, M.D., for Giving Improper Rebuttal Opinions, on Order Shortening Time

09/25/2019 **Objection Doc ID# 54**
[54] Defendants' Objection to Plaintiffs' 9th Supplement to Early CAs Conference Disclosure of Witnesses and Documents

09/26/2019 **Motion for Sanctions** (10:00 AM) (Judicial Officer Kishner, Joanna S.)
09/26/2019, 10/07/2019, 10/10/2019
Plaintiffs' Motion for Sanctions Under Rule 37 for Defendants' Intentional Concealment of Defendant Rives' History of Negligence and Litigation and Motion for Leave to Amend Complaint to Add Claim for Punitive Damages on Order Shortening Time
[Parties Present](#)
[Minutes](#)

Result: Evidentiary Hearing

09/26/2019 **Objection Doc ID# 55**
[55] Plaintiffs Objection to Defendants Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents

09/26/2019 **Objection Doc ID# 56**
[56] Defendants' Objections to Plaintiffs' Initial Pre-Trial Disclosures

09/27/2019 **Opposition to Motion Doc ID# 57**
[57] Plaintiffs' Opposition to Defendants Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time

09/27/2019 **Motion to Strike Doc ID# 58**
[58] Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

09/27/2019 **Receipt of Copy Doc ID# 59**
[59] Receipt of Copy

09/30/2019 **Pre-trial Memorandum Doc ID# 60**
[60] Defendants' Separate Pretrial Memorandum

09/30/2019 **Objection Doc ID# 61**
[61] Defendants' Supplemental Objection to Plaintiffs' Initial Pre-Trial Disclosures

09/30/2019 **Supplement Doc ID# 62**
[62] Defendants 1st Supplemental NRCP 16.1(A)(3) Pretrial Disclosur

09/30/2019 **Pre-trial Memorandum Doc ID# 63**
[63] Plaintiffs Pre-Trial Memorandum Pursuant to EDCR 2.67

10/01/2019 **Transcript of Proceedings Doc ID# 64**
[64] Transcript: All Pending Motions 9/26/19

10/02/2019 **Settlement Conference** (10:00 AM) (Judicial Officer Bixler, James)
[Minutes](#)

Result: Not Settled

10/02/2019 **Order Denying Doc ID# 65**
[65] Order Denying Defendants' Order Shortening Time

10/02/2019 **Opposition to Motion Doc ID# 66**
[66] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

10/02/2019 **Declaration Doc ID# 67**
[67] Declaration of Chad Couchot in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

10/02/2019 **Declaration Doc ID# 68**
[68] Declaration of Thomas J. Doyle in Support of Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

10/03/2019 **Reply in Support Doc ID# 69**
[69] Reply in Support of Plaintiffs Motion to Strike Defendants Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time

10/07/2019 **Evidentiary Hearing** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
 Result: Matter Heard

10/07/2019 **Motion to Strike** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
10/07/2019, 10/10/2019
Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplement to NRCP 16.1 Disclosure of Witnesses and Documents on Order Shortening Time
 Result: Continued

10/07/2019 **Hearing** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
10/07/2019, 10/10/2019
Continued Hearing from September 26, 2019 Re: Non Compliance (Per Order Filed September 19, 2019)
09/26/2019 Reset by Court to 10/07/2019
Result: Continued

10/07/2019 **All Pending Motions** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
All Pending Motions (10/07/2019)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

10/07/2019 **Proposed Voir Dire Questions** **Doc ID# 72**
[72] Defendants' Proposed Voir Dire

10/07/2019 **Jury Instructions** **Doc ID# 73**
[73] Joint Agreed Upon Jury Instructions

10/07/2019 **Jury Instructions** **Doc ID# 74**
[74] Defendants' Proposed Special Jury Instructions Objected to by Plaintiffs (Cited)

10/07/2019 **Jury Instructions** **Doc ID# 75**
[75] Defendants' Proposed Special Jury Instructions Objected to by Plaintiff (Uncited)

10/07/2019 **Exhibits** **Doc ID# 76**
[76] Defendants' Proposed Exhibit List

10/08/2019 **Calendar Call** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

10/10/2019 **Reply to Opposition** **Doc ID# 77**
[77] Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Reply to Plaintiff's Opposition to Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on an Order Shortening Time

10/10/2019 **All Pending Motions** (1:30 PM) (Judicial Officer Kishner, Joanna S.)
All Pending Motions (10/10/2019)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

10/14/2019 **CANCELED Jury Trial - FIRM** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - Duplicate Entry

10/14/2019 **Jury Trial** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
10/14/2019, 10/15/2019, 10/16/2019, 10/17/2019, 10/18/2019, 10/21/2019, 10/22/2019, 10/23/2019, 10/24/2019, 10/28/2019, 10/29/2019, 10/30/2019, 10/31/2019, 11/01/2019
Jury Trial - Med Mal #1
[Parties Present](#)
[Minutes](#)
10/14/2019 Reset by Court to 10/14/2019
Result: Trial Continues

10/14/2019 **Recorders Transcript of Hearing** **Doc ID# 78**
[78] Transcript: Status Check 7/16/19

10/14/2019 **Recorders Transcript of Hearing** **Doc ID# 79**
[79] Transcript: All Pending Motions 10/7/19

10/14/2019 **Recorders Transcript of Hearing** **Doc ID# 80**
[80] Transcript: Calendar Call 10/8/19

10/14/2019 **Recorders Transcript of Hearing** **Doc ID# 81**
[81] Transcript: All Pending Motions 10/10/19

10/14/2019 **Trial Brief** **Doc ID# 82**
[82] Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding Their Request to Preclude Defendants Expert Witnesses Involvement as a Defendant in Medical Malpractice Actions

10/14/2019 **Trial Brief** **Doc ID# 83**
[83] Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding the Need to Limit Evidence of past Medical Expenses to Actual Out-of-Pocket Expenses or the Amounts Reimbursed

10/14/2019 **Trial Brief** **Doc ID# 84**
[84] Defendants Barry Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Trial Brief Regarding the Need to Preclude Evidence of the Cap on Non-Economic Damages

10/15/2019 **CANCELED Motion to Compel** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated
Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Compel the Deposition of Gregg Ripplinger, M.D. and Extend the Close of Discovery (9th Request) on Order Shortening time

10/16/2019 **Jury List** **Doc ID# 90**
[90]

10/18/2019 **Motion to Strike** **Doc ID# 85**
[85] Plaintiffs' Motion to Strike Defendants' Trial Briefs On Order Shortening Time

10/21/2019 **Opposition to Motion** **Doc ID# 86**
[86] Defendants Barry Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion to Strike Defendants' Trial Briefs on Order Shortening Time

10/21/2019 **Audiovisual Transmission Equipment Appearance Consent** **Doc ID# 87**
[87] Audiovisual Transmission Equipment Appearance Consent

10/21/2019 **Audiovisual Transmission Equipment Appearance Request** **Doc ID# 88**
[88] Audiovisual Transmission Equipment Appearance Request

10/22/2019 **Motion to Strike** (1:00 PM) (Judicial Officer Kishner, Joanna S.)
Plaintiffs' Motion to Strike Defendants' Trial Briefs on Order Shortening Time
[Parties Present](#)
[Minutes](#)
Result: Denied Without Prejudice

10/22/2019 **Opposition to Motion Doc ID# 89**
 [89] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Renewed Motion to Strike

10/22/2019 **Reply in Support Doc ID# 91**
 [91] Reply in Support of, and Supplement to, Plaintiffs' Renewed Motion to Strike Defendants' Answer for Rule 37 Violations, Including Perjury and Discovery Violations on an Order Shortening Time

10/22/2019 **Trial Brief Doc ID# 92**
 [92] Defendant's Trial Brief in Support of their Position Regarding The Property of Dr. Rives' Responses to Plaintiffs' Counsel's Questions Eliciting Insurance Information

10/23/2019 **Motion to Strike (1:00 PM) (Judicial Officer Kishner, Joanna S.)**
10/23/2019, 11/01/2019, 11/07/2019, 11/13/2019, 11/14/2019
 Plaintiffs' Renewed Motion to Strike
[Parties Present](#)
[Minutes](#)
 10/28/2019 Reset by Court to 10/29/2019
 10/29/2019 Reset by Court to 10/30/2019
 Result: Continued

10/23/2019 **Trial Brief Doc ID# 93**
 [93] Plaintiffs' Trial Brief Regarding Improper Arguments, Including "Medical Judgment", "Risk of Procedure" and "Assumption of Risk"

10/23/2019 **Notice of Entry of Order Doc ID# 94**
 [94] Notice of Entry of Order

10/23/2019 **Order Doc ID# 95**
 [95] Order on Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplements to NRCP 16.1 Disclosures

10/24/2019 **Trial Brief Doc ID# 96**
 [96] Plaintiffs Trial Brief on Rebuttal Experts Must Only be Limited to Rebuttal Opinions Not Initial Opinions

10/27/2019 **Trial Brief Doc ID# 97**
 [97] Plaintiffs Trial Brief on Admissibility of Malpractice Lawsuits Against an Expert Witness

10/28/2019 **Trial Brief Doc ID# 98**
 [98] Plaintiffs' Trial Brief Regarding Disclosure Requirements for Non-Retained Experts

10/28/2019 **Trial Brief Doc ID# 99**
 [99] Defendants' Barry Rivas, MD's and Laparoscopic Surgery of Nevada, LLC's Trial Brief on Rebuttal Experts Being Limited to Rebuttal Opinions Not Initial Opinions

10/29/2019 **Trial Brief Doc ID# 100**
 [100] Plaintiffs' Trial Brief on Defendants' Retained Rebuttal Experts' Testimony

10/29/2019 **Trial Subpoena Doc ID# 101**
 [101] Trial Subpoena - Civil Regular

10/29/2019 **Trial Brief Doc ID# 102**
 [102] Defendants' Barry Rivas, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Trial Brief Regarding Propriety of Disclosure of Naomi Chaney, M.D. as a Non-retained Expert Witness

10/29/2019 **Objection Doc ID# 103**
 [103] Plaintiffs Objection to Defendants Misleading Demonstratives (11-17)

10/29/2019 **Trial Brief Doc ID# 104**
 [104] Plaintiffs Trial Brief Regarding the Testimony of Dr. Barry Rives

10/29/2019 **Motion to Quash Doc ID# 105**
 [105] Plaintiffs Motion to Quash Trial Subpoena of Dr. Naomi Chaney on Order Shortening Time

10/30/2019 **Clerk's Notice of Hearing Doc ID# 106**
 [106] Notice of Hearing

10/31/2019 **Clerk's Notice of Nonconforming Document Doc ID# 107**
 [107] Clerk's Notice of Nonconforming Document

10/31/2019 **Amended Jury List Doc ID# 119**
 [119]

11/01/2019 **All Pending Motions (8:30 AM) (Judicial Officer Kishner, Joanna S.)**
[Parties Present](#)
[Minutes](#)
 Result: Verdict for Plaintiff

11/01/2019 **Special Verdict Form Doc ID# 115**
 [115]

11/01/2019 **Jury List Doc ID# 116**
 [116] Second Amended Jury List

11/01/2019 **Jury Instructions Doc ID# 117**
 [117]

11/04/2019 **CANCELED Jury Trial (9:00 AM) (Judicial Officer Kishner, Joanna S.)**
 Vacated

11/04/2019 **Miscellaneous Filing Doc ID# 118**
 [118] Correspondence from Schuering Zimmerman & Doyle, LLP

11/05/2019 **Order to Show Cause Doc ID# 120**
 [120] Order to Show Cause

11/07/2019 **Status Check (9:30 AM) (Judicial Officer Kishner, Joanna S.)**
 Status Check: Judgment
 Result: Matter Heard

11/07/2019 **Show Cause Hearing (9:30 AM) (Judicial Officer Kishner, Joanna S.)**
11/07/2019, 11/13/2019, 11/14/2019
 11/18/2019 Reset by Court to 11/20/2019
 Result: Hearing Continued

11/07/2019 **All Pending Motions (9:30 AM) (Judicial Officer Kishner, Joanna S.)**
 All Pending Motions (11/07/2019)
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

11/13/2019 **Motion for Sanctions** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
11/13/2019, 11/14/2019, 11/20/2019
Plaintiffs' Motion for Sanctions
[Parties Present](#)
[Minutes](#)
11/18/2019 Reset by Court to 11/20/2019
Result: Continued

11/13/2019 **All Pending Motions** (10:15 AM) (Judicial Officer Kishner, Joanna S.)
All Pending Motions (11/13/2019)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

11/14/2019 **All Pending Motions** (1:30 PM) (Judicial Officer Kishner, Joanna S.)
All Pending Motions (11/14/19)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

11/14/2019 **Recorders Transcript of Hearing** **Doc ID# 123**
[123] Partial Transcript: Jury Trial Day 5 - Testimony of Michael Hurwitz, M.D. 10/18/19

11/14/2019 **Recorders Transcript of Hearing** **Doc ID# 124**
[124] Partial Transcript: Jury Trial Day 8 - Testimony of Michael Hurwitz, M.D. 10/23/19

11/14/2019 **Judgment on Jury Verdict** **Doc ID# 125**
[125] Judgment on Verdict

11/19/2019 **Order to Statistically Close Case** **Doc ID# 126**
[126] Civil Order to Statistically Close Case on Judgment on Jury Verdict

11/19/2019 **Notice of Entry of Judgment** **Doc ID# 127**
[127] Notice of Entry of Judgment

11/19/2019 **Memorandum of Costs and Disbursements** **Doc ID# 128**
[128] Plaintiffs Verified Memorandum of Costs and Disbursements

11/20/2019 **Transcript of Proceedings** **Doc ID# 129**
[129] Partial Transcript: Trial by Jury - Day 4 - Testimony of Justin Willer, M.D. 10/17/19

11/22/2019 **Motion to Retax** **Doc ID# 130**
[130] Defendants Barry J Rivers MD's and Laraposcopic Surgery of Nevada LLC's Motion to Re-Tax and Settle Plaintiffs Costs

11/22/2019 **Clerk's Notice of Hearing** **Doc ID# 131**
[131] Notice of Hearing

11/22/2019 **Motion for Attorney Fees and Costs** **Doc ID# 132**
[132] Plaintiffs Motion for Fees and Costs

11/25/2019 **Clerk's Notice of Hearing** **Doc ID# 133**
[133] Notice of Hearing

11/26/2019 **Opposition to Motion** **Doc ID# 134**
[134] Plaintiffs' Opposition to Defendants Barry J. Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Motion to Re-Tax and Settle Plaintiffs Costs

11/27/2019 **Reply to Opposition** **Doc ID# 135**
[135] Defendants Barry J Rives MD's and Laparoscopic Surgery of Nevada LLC's Reply to Plaintiffs' Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs

12/02/2019 **Notice of Change of Hearing** **Doc ID# 136**
[136] Notice of Change of Hearing

12/02/2019 **Opposition to Motion** **Doc ID# 137**
[137] Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Opposition to Plaintiffs' Motion for Fees and Costs

12/02/2019 **Transcript of Proceedings** **Doc ID# 138**
[138] Transcript: Status Check: Judgment / Show Cause Hearing 11/7/19

12/03/2019 **CANCELED Motion to Quash** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated - Moot
Plaintiffs Motion to Quash Trial Subpoena of Dr. Naomi Chaney on Order Shortening Time

12/05/2019 **Recorders Transcript of Hearing** **Doc ID# 139**
[139] Transcript: All Pending Motions 11/13/19

12/05/2019 **Recorders Transcript of Hearing** **Doc ID# 140**
[140] Recorder's Transcript of All Pending Motions 11/14/19

12/05/2019 **Recorders Transcript of Hearing** **Doc ID# 141**
[141] Recorder's Transcript of All Pending Motions 11/20/19

12/18/2019 **Notice of Appeal** **Doc ID# 142**
[142] Notice of Appeal

12/18/2019 **Case Appeal Statement** **Doc ID# 143**
[143] Case Appeal Statement

12/18/2019 **Notice of Filing Cost Bond** **Doc ID# 144**
[144] Notice of Filing Cost Bond

12/18/2019 **Notice** **Doc ID# 145**
[145] Notice of Filing Supersedeas Bond

12/30/2019 **Notice of Appeal** **Doc ID# 146**
[146] Notice of Cross-Appeal

12/30/2019 **Case Appeal Statement** **Doc ID# 147**
[147] Case Appeal Statement

12/31/2019 **Reply in Support** **Doc ID# 148**
[148] Reply in Support of Plaintiffs Motion for Fees and Costs

01/07/2020 **Motion to Retax** (10:00 AM) (Judicial Officer Kishner, Joanna S.)
01/07/2020, 02/11/2020
Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs
[Parties Present](#)
[Minutes](#)
12/03/2019 Reset by Court to 01/07/2020

Result: Continued

01/07/2020 **Motion for Attorney Fees and Costs** (10:00 AM) (Judicial Officer Kishner, Joanna S.)
Plaintiffs' Motion for Fees and Costs

Result: Granted

01/07/2020 **All Pending Motions** (10:00 AM) (Judicial Officer Kishner, Joanna S.)
All Pending Motions (1/07/2020)
[Parties Present](#)
[Minutes](#)

Result: Matter Heard

01/21/2020 **Memorandum of Costs and Disbursements** **Doc ID# 149**
[149] Plaintiffs Supplemental Verified Memorandum of Costs and Disbursements

01/21/2020 **Supplemental Brief** **Doc ID# 150**
[150] Plaintiffs Supplemental Opposition to Defendants Barry J. Rives, M.D. s and Laparoscopic Surgery of Nevada, LLC s Motion to Re-Tax and Settle Plaintiffs Costs

02/03/2020 **Reply to Opposition** **Doc ID# 151**
[151] Defendants Barry J. Rives, M.D.'s And Laparoscopic Surgery Of Nevada, LLC's Supplemental Reply to Plaintiffs' Supplemental Opposition to Motion to Re-Tax and Settle Plaintiffs' Costs

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 152**
[152] Transcript: Jury Trial Day 1 - 10/14/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 153**
[153] Transcript: Jury Trial Day 2 - 10/15/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 154**
[154] Transcript: Jury Trial Day 3 - 10/16/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 155**
[155] Transcript: Jury Trial Day 4 - 10/17/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 156**
[156] Transcript Jury Trial Day 5 - 10/18/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 157**
[157] Transcript: Jury Trial Day 6 - 10/21/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 158**
[158] Transcript: Jury Trial Day 7 - 10/22/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 159**
[159] Transcript: Jury Trial Day 8 - 10/23/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 160**
[160] Transcript: Jury Trial Day 9 - 10/24/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 161**
[161] Transcript: Jury Trial Day 10 - 10/28/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 162**
[162] Transcript: Jury Trial Day 11 - 10/29/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 163**
[163] Transcript: Jury Trial Day 12 - 10/30/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 164**
[164] Transcript: Jury Trial Day 13 - 10/31/19

03/02/2020 **Recorders Transcript of Hearing** **Doc ID# 165**
[165] Transcript: Jury Trial Day 14 - 11/1/19

03/30/2020 **Order** **Doc ID# 166**
[166] Order on Plaintiff's Motion for Fees and Costs and Defendant's Motion to Re-tax and Settle Plaintiff's Costs

03/31/2020 **Notice of Entry of Order** **Doc ID# 167**
[167] Notice of Entry of Order on Plaintiffs Motion for Fees and Costs and Defendants Motion to Re-Tax and Settle Plaintiffs Costs

04/08/2020 **Substitution of Attorney** **Doc ID# 168**
[168] SUBSTITUTION OF ATTORNEYS

04/08/2020 **Substitution of Attorney** **Doc ID# 169**
[169] SUBSTITUTION OF ATTORNEYS

04/13/2020 **Amended Notice of Appeal** **Doc ID# 170**
[170] Defendants Barry J. Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Supplemental and/or Amended Notice of Appeal

04/13/2020 **Case Appeal Statement** **Doc ID# 171**
[171] Supplemental Case Appeal Statement

04/13/2020 **Notice of Filing Cost Bond** **Doc ID# 172**
[172] Supplemental Notice of Filing Cost Bond

04/13/2020 **Amended Notice of Appeal** **Doc ID# 173**
[173] Supplemental and/or Amended Notice of Appeal w/Exhibits

04/20/2020 **Supplement** **Doc ID# 174**
[174] Supplemental Notice of Filing Supersedeas Bond

04/29/2020 **Notice of Appearance** **Doc ID# 175**
[175] Notice of Appearance of Counsel

06/01/2020 **Recorders Transcript of Hearing** **Doc ID# 176**
[176] Transcript: All Pending Motions 1/7/20

06/01/2020 **Recorders Transcript of Hearing** **Doc ID# 177**
[177] Transcript: Defendants Barry J. Rives, M.D.'s and Laparoscopic Surgery of Nevada, LLC's Motion to Re-Tax and Settle Plaintiffs' Costs 2/11/20

06/03/2020 **Request** **Doc ID# 178**
[178] Request for Transcript of Proceedings

07/12/2021 **Substitution of Attorney** **Doc ID# 179**
[179] SUBSTITUTION OF LOCAL COUNSEL

04/27/2022 **Association of Counsel** **Doc ID# 180**
[180] Notice of Association of Counsel

04/29/2022 **NV Supreme Court Clerks Certificate/Judgment -Remanded** **Doc ID# 181**
[181] Nevada Supreme Court Clerk's Certificate/Remittitur Judgment - Reversed in Part, Vacated in Part and Remand

04/29/2022 **Memorandum of Costs and Disbursements** **Doc ID# 182**
[182] Defendants' Memorandum of Costs on Appeal

04/29/2022 **Motion for Costs** **Doc ID# 183**
[183] Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Motion for Costs on Appeal

04/29/2022 **Declaration** **Doc ID# 184**
[184] Declaration of Thomas J. Doyle in Support of Motion for Costs on Appeal

04/29/2022 **Declaration Doc ID# 185**
[185] Declaration of Robert L Eisenberg in Support of Motion for Costs on Appeal

04/29/2022 **Declaration Doc ID# 186**
[186] Declaration of Darryl Thomas in Support of Motion for Costs on Appeal

04/29/2022 **Proof of Service Doc ID# 187**
[187] Proof of Service

05/02/2022 **Clerk's Notice of Hearing Doc ID# 188**
[188] Notice of Hearing

05/02/2022 **Stipulation and Order Doc ID# 189**
[189] Stipulation and Order for Release and Discharge of Supersedeas Bond and Cost Bond

05/02/2022 **Notice of Entry of Stipulation and Order Doc ID# 190**
[190] Notice of Entry of Stipulation and Order for Release and Discharge of Supersedeas Bond and Cost Bond

05/02/2022 **Motion to Retax Doc ID# 191**
[191] Plaintiffs' Motion to Retax Defendants' Claimed Costs on Appeal

05/03/2022 **Clerk's Notice of Hearing Doc ID# 192**
[192] Notice of Hearing

05/04/2022 **Notice of Hearing Doc ID# 193**
[193] Notice of Order Setting Hearing

05/04/2022 **Stipulation and Order Doc ID# 194**
[194] Stipulation and Order Regarding Filing Deadlines as to Defendant's Memorandum of Costs and Motion for Costs

05/09/2022 **Notice of Entry of Stipulation and Order Doc ID# 195**
[195] Notice of Entry of Stipulation and Order

05/16/2022 **Opposition to Motion Doc ID# 196**
[196] Opposition to Plaintiffs' Motion to Retax Defendants' Claimed Costs on Appeal

05/31/2022 **Reply in Support Doc ID# 197**
[197] Reply in Support of Plaintiffs' Motion to Retax Defendants' Claimed Costs on Appeal

05/31/2022 **Memorandum of Costs and Disbursements Doc ID# 198**
[198] Defendants' Supplemental Memorandum of Costs on Appeal

05/31/2022 **Notice Doc ID# 199**
[199] Defendants' Notice Regarding Plaintiffs' Failure to File Opposition to Motion for Costs on Appeal

06/01/2022 **Objection Doc ID# 200**
[200] Plaintiffs' Objection and Opposition to Defendants' Motion for Costs on Appeal

06/01/2022 **Objection Doc ID# 201**
[201] Plaintiffs' Objection to Defendants' Supplemental Memorandum of Costs

06/01/2022 **Objection Doc ID# 202**
[202] Defendants' Objection to Plaintiffs' Late Opposition to Defendants' Motion for Costs on Appeal

06/04/2022 **Stipulation and Order Doc ID# 203**
[203] 2022-06-04 SAO re Defs Costs on Appeal (Farris)

06/04/2022 **Notice of Entry of Stipulation and Order Doc ID# 204**
[204] Notice of Entry of Stipulation and Order Regarding Defendants' Motion for Costs on Appeal and Plaintiffs' Motion to Relax Costs

06/06/2022 **Memorandum Doc ID# 205**
[205] Court's Memo RE: Remote Appearance Information for JUNE 7, 2022, Hearing **PLEASE REVIEW IN ITS ENTIRETY**

06/07/2022 **CANCELED Motion for Costs (9:00 AM)** (Judicial Officer Kishner, Joanna S.)
Vacated - per Attorney or Pro Per
Defendants Barry Rives, M.D. and Laparoscopic Surgery of Nevada, LLC's Motion for Costs on Appeal
05/31/2022 Reset by Court to 06/07/2022

06/07/2022 **CANCELED Motion to Retax (9:00 AM)** (Judicial Officer Kishner, Joanna S.)
Vacated - per Attorney or Pro Per
Plaintiffs' Motion to Retax Defendants' Claimed Costs on Appeal
05/31/2022 Reset by Court to 06/07/2022

06/07/2022 **Hearing (9:00 AM)** (Judicial Officer Kishner, Joanna S.)
Pursuant to Notice of Hearing to Set New Trial Date
[Parties Present](#)
[Minutes](#)
Result: Trial Date Set

07/07/2022 **Order Shortening Time Doc ID# 206**
[206] Motion to Reopen Limited Discovery and to Set Pre-Trial Scheduling Order on Order Shortening Time

07/07/2022 **Amended Order Setting Jury Trial Doc ID# 207**
[207] Amended Order Setting Jury Trial, Pre-Trial/Trial Setting Conference, and Calendar Call/Final Pre-Trial Conference

07/08/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 208**
[208] Audiovisual Transmission Equipment Request

07/11/2022 **Opposition to Motion Doc ID# 209**
[209] Plaintiffs' Opposition to Defendants' Motion to Reopen Limited Discovery and Set Pretrial Scheduling Order on Order Shortening Time

07/12/2022 **Memorandum Doc ID# 210**
[210] Court's Memo RE: Remote Appearance Information for JULY 14, 2022, Hearing **PLEASE REVIEW IN ITS ENTIRETY**

07/12/2022 **Reply Doc ID# 211**
[211] Defendant's Reply in Support of Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time

07/14/2022 **Motion (9:00 AM)** (Judicial Officer Kishner, Joanna S.)
MOTION TO REOPEN LIMITED DISCOVERY AND TO SET PRETRIAL SCHEDULING ORDER ON AN ORDER SHORTENING TIME
[Parties Present](#)
[Minutes](#)
Result: Denied

07/25/2022 **Clerk's Notice of Hearing Doc ID# 235**
[235] Notice of Hearing

07/26/2022 **Court Recorders Invoice for Transcript Doc ID# 236**
[236]

07/26/2022 **Recorders Transcript of Hearing Doc ID# 237**
[237] Transcript of Proceedings: Re: Motion to Reopen Limited Discovery and to Set Pretrial Scheduling Order on an Order Shortening Time, July 14, 2022

07/27/2022 **Errata Doc ID# 238**
[238] DEFENDANTS ERRATA TO THEIR MOTIONS IN LIMINE NOS. 1-13

07/28/2022 **Order Shortening Time Doc ID# 239**
 [239] Plaintiffs Motion to Strike Defendants Motions in Limine on Order Shortening Time

07/28/2022 **Objection Doc ID# 240**
 [240] Plaintiffs' Objections to Defendants' E.D.C.R. 2.67 Proposed List of Exhibits and Witnesses

07/28/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 241**
 [241] Defendants Audiovisual Transmission Equipment Appearance Request

07/28/2022 **Opposition Doc ID# 242**
 [242] Defendants' Opposition to Plaintiffs' Motion to Strike Defendants' Motions in Limine on an Order Shortening Time

07/29/2022 **Memorandum Doc ID# 243**
 [243] Court's Memo RE: Remote Appearance Information for AUGUST 2, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/01/2022 **Reply in Support Doc ID# 244**
 [244] Reply in Support of Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time

08/01/2022 **Court Recorders Invoice for Transcript Doc ID# 245**
 [245] Recording Fee 6-7-22

08/01/2022 **Notice of Association of Counsel Doc ID# 246**
 [246] Notice of Association of Counsel

08/01/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 247**
 [247] Defendant's Audiovisual Transmission Equipment Appearance Request 2022.08.04

08/01/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 248**
 [248] Defendant's Audiovisual Transmission Equipment Appearance Request 2022.08.23

08/01/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 249**
 [249] Defendant's Audiovisual Transmission Equipment Appearance Request 2022.08.30

08/01/2022 **Recorders Transcript of Hearing Doc ID# 250**
 [250] Transcript of Hearing Re: Pursuant to Notice of Hearing to Set New Trial Date -- 6-7-22

08/02/2022 **Motion to Strike (9:00 AM) (Judicial Officer Kishner, Joanna S.)**
PLAINTIFFS MOTION TO STRIKE DEFENDANTS MOTIONS IN LIMINE ON ORDER SHORTENING TIME
[Parties Present](#)
[Minutes](#)
 Result: Granted

08/02/2022 **Memorandum Doc ID# 251**
 [251] Court's Memo RE: Remote Appearance Information for Pre-Trial Conference AUGUST 4, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/03/2022 **Court Recorders Invoice for Transcript Doc ID# 252**
 [252] Recording Fee -- 8/2/22

08/03/2022 **Recorders Transcript of Hearing Doc ID# 253**
 [253] Transcript Re: Plaintiffs' Motion to Strike Defendants' Motions in Limine on Order Shortening Time -- 8-2-22

08/04/2022 **Pre Trial Conference (10:15 AM) (Judicial Officer Kishner, Joanna S.)**
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

08/05/2022 **Objection Doc ID# 254**
 [254] Plaintiffs' Objections to Defendants' Fourth and Fifth Supplements to NRCP 16.1 Disclosure of Witnesses and Documents

08/08/2022 **Memorandum Doc ID# 255**
 [255] Court's Memo RE: Remote Appearance Information for AUGUST 10, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/09/2022 **Memorandum Doc ID# 256**
 [256] Court's Memo RE: Viewing of Admitted Exhibits on August 10, 2022

08/09/2022 **Order Shortening Time Doc ID# 257**
 [257] Plaintiffs' Motion to Strike Defendants' Fourth Supplement and Fifth Supplements to 16.1 Disclosures on Order Shortening Time

08/10/2022 **Hearing (1:00 PM) (Judicial Officer Kishner, Joanna S.)**
 Review of exhibits from the vault
[Parties Present](#)
[Minutes](#)
 Result: Matter Heard

08/10/2022 **Objection Doc ID# 258**
 [258] Plaintiffs' Objection to Defendants' Pre-Trial Disclosures

08/10/2022 **Order Shortening Time Doc ID# 259**
 [259] Plaintiffs Motion to Strike Defendants Pre-Trial Disclosures on Order Shortening Time

08/11/2022 **Notice Doc ID# 260**
 [260] Defendants Notice of Filing Petition for Writ of Mandamus

08/11/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 261**
 [261] Defendants Audiovisual Transmission Equipment Appearance Request

08/12/2022 **Opposition to Motion Doc ID# 262**
 [262] Defendants' Opposition to Plaintiffs' Motion to Strike Defendants' Fourth and Fifth Supplemental NRCP 16.1(a)(1) Disclosures on an Order Shortening Time

08/12/2022 **Audiovisual Transmission Equipment Appearance Request Doc ID# 263**
 [263] Audiovisual Transmission Appearance Request

08/15/2022 **Reply in Support Doc ID# 264**
 [264] Reply in Support of Plaintiffs' Motion to Strike Defendants' Fourth Supplement and Fifth Supplements to 16.1 Disclosures on Order Shortening Time

08/15/2022 **Opposition to Motion Doc ID# 265**
 [265] Defendants' Opposition to Plaintiffs' Motion to Strike Defendants' Pretrial Disclosures on an Order Shortening Time

08/15/2022 **Notice Doc ID# 266**
 [266] Notice of Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time

08/15/2022 **Notice Doc ID# 267**
 [267] Notice of Compliance Re Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time

08/15/2022 **Notice Doc ID# 268**
 [268] Notice of Association of Counsel

08/15/2022 **Motion for Sanctions Doc ID# 269**
 [269] Plaintiffs Renewed Motion for Sanctions for Rule 37 Violations on Order Shortening Time

08/15/2022 **Order Shortening Time** **Doc ID# 270**
[270] MOTION TO VACATE TRIAL AND STAY LITIGATION PENDING NEVADA SUPREME COURT WRIT PETITION ON ORDER SHORTENING TIME

08/15/2022 **Order Shortening Time** **Doc ID# 271**
[271] on Order Shortening Time

08/16/2022 **Reply in Support** **Doc ID# 272**
[272] Reply in Support of Plaintiffs' Motion to Strike Defendants' Pre-Trial Disclosures on Order Shortening Time

08/16/2022 **Audiovisual Transmission Equipment Appearance Request** **Doc ID# 273**
[273] Defendant's Audiovisual Transmission Equipment Appearance Request

08/16/2022 **Audiovisual Transmission Equipment Appearance Request** **Doc ID# 274**
[274] Defendants' Audiovisual Transmission Equipment Appearance Request

08/16/2022 **Notice of Intent** **Doc ID# 275**
[275] Notice of Intent to Appear by Simultaneous Audiovisual Transmission Equipment

08/16/2022 **Memorandum** **Doc ID# 276**
[276] Court's Memo RE: Remote Appearance Information for AUGUST 17, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/16/2022 **Objection** **Doc ID# 277**
[277] Defendants Objection to Order Shortening Time on Plaintiffs Renewed Motion for Sanctions

08/17/2022 **Memorandum** **Doc ID# 278**
[278] Court's Memo RE: Remote Appearance Information for AUGUST 19, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/18/2022 **Opposition to Motion** **Doc ID# 279**
[279] Defendants' Opposition to Plaintiffs' Renewed Motion for Sanctions on an Order Shortening Time

08/18/2022 **Opposition to Motion** **Doc ID# 280**
[280] Plaintiffs' Opposition to Defendants' Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time

08/18/2022 **Appendix** **Doc ID# 281**
[281] Defendants Appendix Vol 1 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Appendix** **Doc ID# 282**
[282] Defendants Appendix Vol .2 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Appendix** **Doc ID# 283**
[283] Defendants Appendix Vol 3 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Appendix** **Doc ID# 284**
[284] Defendants Appendix Vol 4 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Appendix** **Doc ID# 285**
[285] Defendants Appendix Vol 5 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Appendix** **Doc ID# 286**
[286] Defendants Appendix Vol6 Exhibits In Support of Their Opposition to Plaintiffs Renewed Motion for Sanctions, Pursuant to EDCR 2.27

08/18/2022 **Reply** **Doc ID# 287**
[287] Defendants Reply In Support Of Motion To Vacate Trial And Stay Litigation Pending Nevada Supreme Court Writ Petition

08/19/2022 **Motion to Strike** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
PLAINTIFFS MOTION TO STRIKE DEFENDANTS FOURTH SUPPLEMENT AND FIFTH SUPPLEMENTS TO 16.1 DISCLOSURES ON ORDER SHORTENING TIME
08/17/2022 Reset by Court to 08/19/2022
Result: Granted

08/19/2022 **Motion to Strike** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
PLAINTIFFS MOTION TO STRIKE DEFENDANTS PRE-TRIAL DISCLOSURES ON ORDER SHORTENING TIME
08/17/2022 Reset by Court to 08/19/2022
Result: Granted

08/19/2022 **Order Shortening Time** **Doc ID# 288**
[288] Plaintiffs Objection and Motion to Strike Defendants Additional Demonstrative Exhibits on Order Shortening Time

08/19/2022 **Reply in Support** **Doc ID# 289**
[289] Reply in Support of Plaintiffs' Renewed Motion for Sanctions for Rule 37 Violations on Order Shortening Time

08/19/2022 **Memorandum** **Doc ID# 290**
[290] Court's Memo RE: Remote Appearance Information for AUGUST 23, 2022, Hearing ****PLEASE REVIEW IN ITS ENTIRETY****

08/19/2022 **Errata** **Doc ID# 291**
[291] Errata to Reply in Support of Plaintiffs' Renewed Motion for Sanctions for Rule 37 Violations on Order Shortening Time

08/19/2022 **All Pending Motions** (8:30 AM) (Judicial Officer Kishner, Joanna S.)
[Parties Present](#)
[Minutes](#)
Result: Matter Heard

08/19/2022 **Order Shortening Time** **Doc ID# 292**
[292] Plaintiff's Objection and Motion to Strike Defendants' "Additional Demonstrative Exhibits" on Order Shortening Time

08/19/2022 **Pre-trial Memorandum** **Doc ID# 293**
[293] Plaintiffs' Pre-Trial Memorandum

08/19/2022 **Pre-trial Memorandum** **Doc ID# 294**
[294] Defendants' Pre-trial Memorandum

08/19/2022 **Memorandum** **Doc ID# 295**
[295] Court's Memo RE: ORDER DENYING DEFENDANTS MOTION TO REOPEN LIMITED DISCOVERY AND TO SET PRETRIAL SCHEDULING ORDER ON AN ORDER SHORTENING TIME

08/22/2022 **Court Recorders Invoice for Transcript** **Doc ID# 296**
[296] Recording Fee 8/19/22 Foley

08/22/2022 **Recorders Transcript of Hearing** **Doc ID# 297**
[297] Transcript of Hearing Re: Plaintiffs' Motion to Strike Defendants' Fourth Supplement and Fifth Supplements to 16.1 Disclosures on Order Shortening Time; Plaintiffs' Motion to Strike Defendants' Pre-Trial Disclosures on Order Shortening Time -- 8-19-22

08/22/2022 **Objection** **Doc ID# 298**
[298] Defendants Objection to Plaintiffs Errata Reply In Support of Renewed Motion for Sanctions

08/22/2022 **Response** **Doc ID# 299**
[299] Response to Defendants' Objection to Plaintiffs' Errata to Reply in Support of Renewed Motion for Sanctions for Rule 37 Violations on Order Shortening Time

08/23/2022 **CANCELED Motion in Limine** (9:00 AM) (Judicial Officer Kishner, Joanna S.)
Vacated
Defendants' Motion in Limine No. 1 to Prohibit Evidence of and References to the Center Case, Which Irrelevant, Highly Inflammatory, and Prejudicial to Defendants

08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 2 to Prohibit Plaintiffs and Their Counsel's Use of "Reptile Tactics"</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 3 to permit Defendants to Introduce Evidence of Collateral Source Payments Pursuant to NRS 42.021</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 4 to Permit Defendants' Rebuttal Expert Witnesses to Testify in Unrestricted Manner Consistent With their Reports and Deposition Testimony</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 5 to permit Defendants to Introduce the Complete St. Rose San Martin Chart into Evidence</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 7 to Exclude the Evidence of and References to Experts Witnesses and Parties' Involvement in Other Malpractice Cases</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 13 to Permit Defendants to Call Dr. Carter instead of Dr. Juell at Trial</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 6 to permit Defendants to lodge Dr. Hurwitz's Original Deposition Transcript for Use at Trial</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 8 to Permit Use of Defendants' Demonstrative Exhibits at Trial</i>
08/23/2022	CANCELED Motion in Limine (9:00 AM) (Judicial Officer Kishner, Joanna S.) <i>Vacated</i> <i>Defendants' Motion in Limine No. 12 to Prohibit Plaintiffs from Questioning Dr. Rives about His Board Certification Status and Whether He Refunded Payment Received for cCare and Treatment of Titina Farris</i>
08/23/2022	Motion to Vacate (9:00 AM) (Judicial Officer Kishner, Joanna S.) MOTION TO VACATE TRIAL AND STAY LITIGATION PENDING NEVADA SUPREME COURT WRIT PETITION ON AN ORDER SHORTENING TIME
08/23/2022	Motion for Sanctions (9:00 AM) (Judicial Officer Kishner, Joanna S.) PLAINTIFFS RENEWED MOTION FOR SANCTIONS FOR RULE 37 VIOLATIONS ON ORDER SHORTENING TIME Result: Granted
08/30/2022	Calendar Call (10:00 AM) (Judicial Officer Kishner, Joanna S.)
08/30/2022	Motion to Strike (10:00 AM) (Judicial Officer Kishner, Joanna S.) PLAINTIFFS OBJECTION AND MOTION TO STRIKE DEFENDANTS ADDITIONAL DEMONSTRATIVE EXHIBITS ON ORDER SHORTENING TIME
09/06/2022	Jury Trial - FIRM (11:00 AM) (Judicial Officer Kishner, Joanna S.) 09/06/2022, 09/07/2022, 09/08/2022, 09/09/2022, 09/12/2022, 09/13/2022, 09/14/2022, 09/15/2022, 09/16/2022, 09/19/2022, 09/20/2022, 09/21/2022, 09/22/2022, 09/23/2022, 09/27/2022

FINANCIAL INFORMATION

	Defendant Laparoscopic Surgery of Nevada LLC		
	Total Financial Assessment		30.00
	Total Payments and Credits		30.00
	Balance Due as of 08/24/2022		0.00
09/14/2016	Transaction Assessment		30.00
09/14/2016	Efile Payment Receipt # 2016-89023-CCCLK Laparoscopic Surgery of Nevada LLC		(30.00)
	Defendant Rives, Barry, M.D.		
	Total Financial Assessment		457.50
	Total Payments and Credits		457.50
	Balance Due as of 08/24/2022		0.00
09/14/2016	Transaction Assessment		223.00
09/14/2016	Efile Payment Receipt # 2016-89022-CCCLK Rives, Barry		(223.00)
04/20/2018	Transaction Assessment		3.50
04/20/2018	Efile Payment Receipt # 2018-27415-CCCLK Rives, Barry		(3.50)
10/14/2019	Transaction Assessment		3.50
10/14/2019	Efile Payment Receipt # 2019-62551-CCCLK Rives, Barry		(3.50)
12/18/2019	Transaction Assessment		24.00
12/18/2019	Efile Payment Receipt # 2019-75570-CCCLK Rives, Barry		(24.00)
12/18/2019	Transaction Assessment		3.50
12/18/2019	Efile Payment Receipt # 2019-75610-CCCLK Rives, Barry		(3.50)
07/26/2022	Transaction Assessment		80.00
07/26/2022	Online Payment Receipt # 2022-42433-CCCLK Patricia Daehnke		(80.00)
08/01/2022	Transaction Assessment		40.00
08/01/2022	Payment (Phone) Receipt # 2022-43595-CCCLK Leo H Schuring		(40.00)
08/03/2022	Transaction Assessment		40.00
08/03/2022	Online Payment Receipt # 2022-44050-CCCLK Patricia Daehnke		(40.00)
08/22/2022	Transaction Assessment		40.00
08/22/2022	Online Payment Receipt # 2022-48216-CCCLK Patricia Daehnke		(40.00)

	Plaintiff Farris, Patrick			
	Total Financial Assessment			30.00
	Total Payments and Credits			30.00
	Balance Due as of 08/24/2022			0.00
07/05/2016	Transaction Assessment			30.00
07/05/2016	Efile Payment	Receipt # 2016-63897-CCCLK	Farris, Patrick	(30.00)
	Plaintiff Farris, Titina			
	Total Financial Assessment			681.50
	Total Payments and Credits			681.50
	Balance Due as of 08/24/2022			0.00
07/05/2016	Transaction Assessment			270.00
07/05/2016	Efile Payment	Receipt # 2016-63896-CCCLK	Farris, Titina	(270.00)
12/30/2019	Transaction Assessment			24.00
12/30/2019	Efile Payment	Receipt # 2019-77523-CCCLK	Farris, Titina	(24.00)
01/13/2021	Transaction Assessment			381.50
01/13/2021	Payment (Phone)	Receipt # 2021-02257-CCCLK	Claggett & Sykes Law Firm	(381.50)
06/28/2022	Transaction Assessment			6.00
07/06/2022	Payment (Mail)	Receipt # 2022-38128-CCCLK	Bighorn Law LLC	(6.00)