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

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

Real Parties in Interest, Titina Farris and Patrick Farris (collectively "Plaintiffs"), hereby respond to Petitioners' Supplement to Emergency Motion for Stay Under NRAP 27(e) for Stay Pending Writ Proceeding.

On the morning of August 30, 2022 at 10:00 a.m., the District Court held the scheduled calendar call hearing pursuant to EDCR 2.69. One of the items to bring to the calendar call is "[c]ourtesy copies of legal briefs on trial issues." EDCR 2.69(a)(7). EDCR 7.27 (Filing of civil trial memoranda) specifically authorizes such legal briefs: "Unless otherwise ordered by the court, an attorney may elect to submit to the court in any civil case, a trial memoranda of points and authorities at any time prior to the close of trial." During the calendar call hearing, both Plaintiffs and Defendants indicated that they wanted to rely upon their prior trial briefs filed in the first trial. Plaintiffs filed one additional trial brief that is attached to Defendants' supplement. Thus, Defendants mischaracterize the procedural basis for Plaintiffs' trial brief, even though EDCR 7.27 is cited on page 2 of the brief. Defendants also improperly suggest that this authorized trial brief is a substitute for a motion in limine. So, the Court should reject Defendants' related argument.

Defendants next argue that during the retrial, Plaintiffs intend to thumb their noses at the Court's opinion excluding evidence from the Vickie Center case. But, Defendants' representation about Plaintiffs' position is not based upon Plaintiffs' trial brief. Rather, the point of Plaintiffs' trial brief is to deal with the potential issue if ***Defendants*** try to bring in documentary or testimonial evidence that calls into question the Vickie Center case, such that Plaintiffs would be entitled to contradict such evidence with impeachment evidence. Tr. Br. at 4–5. Plaintiffs' position is well founded because Defendants have proposed a jury instruction on habit evidence, suggesting that they want to bolster Dr. Rives' surgical history, which would then call into question Dr. Rives' surgery in the Vickie Center case. *See* **Exhibit 1** (omitting other attachments). Plaintiffs' position is in line with the legal citations to NRS 50.085(3) and *Cox v. Copperfield*, 507 P.3d 1216, 1224 (Nev. 2022) outlined in their trial brief. Overall, Defendants completely ignore Plaintiffs' statement repeated twice in their trial brief: "It is Plaintiffs' sincere hope that during the retrial, the Vickie Center case is not mentioned." Tr. Br. at 7; *see id.* at 2. As such, the Court should not be persuaded by Defendants' contrary arguments.

Plaintiffs also attach the hearing transcript from Defendants' District Court motion for stay, which just became available yesterday (August 29, 2022). *See* **Exhibit 2** (August 23, 2022, Hearing Transcript for Defendants' Motion to Vacate Trial and Stay Litigation Pending Nevada Supreme Court Writ Petition on an Order Shortening Time—filed on August 29, 2022), at 7–45. Based upon the District Court's proper weighing of the NRAP 8(c) factors, Plaintiffs ask this Court to deny Defendants' requested stay relief.

Dated this 30th day of August 2022.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **RESPONSE TO PETITIONERS' SUPPLEMENT TO EMERGENCY MOTION UNDER NRAP 27(e) FOR STAY PENDING WRIT PROCEEDING** was filed electronically with the Supreme Court of Nevada on the 30th 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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EXHIBIT 1

EXHIBIT 1

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Re: Farris v. Rives

Gentlemen:

As you are aware, we are required to meet and discuss jury instructions and a special verdict form. During the first trial the court gave Instruction Nos. 1-45. We will agree to the instructions with the following exceptions: Instruction No. 26 unless the first paragraph that begins with "medical malpractice" is deleted; Instruction No. 27 unless it includes "including that of the defendant"; Instruction No. 32; and Instruction No. 36. Attached are copies of those instructions for your reference.

We will submit the attached special jury instructions labeled Defendants' SJI 1-6. We assume you will not agree to these special jury instructions because you objected to them for the first trial.

We look forward to hearing from you. We also look forward to receiving your proposed additional special jury instructions.

Very truly yours,

SCHUERING ZIMMERMAN & DOYLE, LLP

Thomas J. Doyle

TJD:cap
1737-10881\01481361.WPD

Enclosures

cc: Brigette Foley
Patricia Daehnke

Evidence of a physician's habit or routine practice is relevant to prove what he did on a particular occasion. Evidence of the habit or routine practice, whether corroborated or not and regardless of the presence of any eyewitnesses, is relevant to prove that the conduct of the physician was in conformity with the habit or routine practice during the treatment of plaintiff.

Habit or routine practice may be proved by testimony in the form of an opinion or by specific instances of conduct sufficient in number to warrant a finding that the habit existed or that the practice was routine.

NRS 48.059; *Thomas v. Hardwick*, 126 Nev. 142, 231 P.3d 1111 (2010)

EXHIBIT 2

EXHIBIT 2

Electronically Filed
8/29/2022 4:00 PM
Steven D. Grierson
CLERK OF THE COURT

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

TUESDAY, AUGUST 23, 2022

TRANSCRIPT OF PROCEEDING RE:

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

PLAINTIFFS' RENEWED MOTION FOR SANCTIONS FOR RULE 37 VIOLATIONS ON ORDER SHORTENING TIME

SEE NEXT PAGE FOR APPEARANCES

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

Case Number: A-16-739464-C

A P P E A R A N C E S

FOR THE PLAINTIFFS:	MICAH S. ECHOLS, ESQ. KIMBALL JONES, ESQ. JACOB G. LEAVITT, ESQ.
FOR THE DEFENDANTS:	THOMAS J. DOYLE, ESQ. ROBERT L. EISENBERG, ESQ. A. WILLIAM MAUPIN, ESQ. PATRICIA E. DAEHNKE, ESQ. BRIGETTE E. FOLEY, ESQ.

LAS VEGAS, CLARK COUNTY, NEVADA, AUGUST 23, 2022, 10:53 A.M.

*** * * * ***

THE COURT: Right. 14 and 15, 739464. We'll start with the whole grouping at the plaintiffs' table, and then we'll go to the whole grouping at the defense table. And I do not believe I have anybody on remotely today; right? It looks like I have everyone here in person; right? I've got everyone's groupings. Okay.

So, Counsels for plaintiffs, once you have a chance to put your stuff down, feel free to make your appearances, and then we'll go to defense counsel.

MR. LEAVITT: Very good. Good morning, Your Honor. Jacob Leavitt on behalf of plaintiffs.

MR. JONES: Kimball Jones as well, Your Honor.

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

THE COURT: Are we waiting for Mr. Hand today or not?

MR. LEAVITT: We are not, Your Honor.

THE COURT: Okay. If you wouldn't mind here at defense table. You've added. Go ahead, please.

MR. DOYLE: Tom Doyle for the defendants.

MR. EISENBERG: Your Honor, good morning, Robert Eisenberg for the defendants.

THE COURT RECORDER: I can't hear you, sir. Is there -- I'm sorry. Could you guys move back right in the

middle of the table for now while we do appearances.

MR. DOYLE: Is that -- is this what this is?

THE COURT: Yes.

THE COURT RECORDER: That is.

THE COURT: That is a mic, yes.

Realistically, as long as you're an arm's length from the mic, we're usually okay, just to give you a heads up. So if different people are talking, just to make sure there's an arm's length.

Thank you. Go ahead, please.

MR. EISENBERG: Robert Eisenberg for the defense.

MR. MAUPIN: Bill Maupin for the defense.

MS. DAEHNKE: Good morning, Your Honor. Patricia Daehnke, 4976, for the defense.

MS. FOLEY: Good morning, Your Honor. Brigette Foley, Bar Number 12695 for the defense.

THE COURT: Okay. Folks. Welcome. You can sit down, stand up, whatever makes you comfortable.

Getting to we have two matters on for today. We have a motion to vacate the trial date and stay of litigation pending Nevada Supreme Court writ petition on order shortening time, and plaintiffs' renewed motion for sanctions for Rule 37 violations on order shortening time.

It seems to me that I should do the motion to vacate first because that's going to make the most sense. Does

anybody wish me to do it in reverse order?

MR. JONES: That works for the plaintiff, Your Honor.

MR. EISENBERG: No, Your Honor.

THE COURT: That seems -- sorry. No meaning you're okay with that order?

MR. EISENBERG: That's correct, Your Honor.

THE COURT: Okay. No worries. Okay.

So the first thing I need is to remind the parties again -- we've asked you verbally. We send you a memo. We still don't have an order on the motion to continue discovery. We even sent you a memo that showed you that the signature said that Ms. Foley did not agree, and then the confusion in court because you verbally said you did. So you then sent a memo saying submit us a new order. Submit us a joint letter that says you agree so that I can actually address those -- that order, please.

I've been waiting patiently. I need someone to actually get this done, please, so I can address the order because it's the parties precluding this Court from addressing that order. So please do so.

MR. ECHOLS: Your Honor, I think that was submitted this morning.

THE COURT RECORDER: I can't hear you. I --

THE COURT: Mr. Echols, no. It was on the other motion.

MR. ECHOLS: Oh, I'm --

THE COURT: The motion in limine. Which is why it got returned with another statement of please insure you do, folks, okay.

I can't address an order if I have something that it was declined to sign, right. We sent you the memo that showed you that section, okay. We're trying to get it done, but we can't get things done unless we're clear on what is ready for the Court to review it. So, please. It's been a very long time. Please get it done. EDCR 7.21 is alive and well. Thank you so very much.

Now, let's get to your stay motion.

Okay. So motion to vacate and motion to stay. The Court's read everything. The Court's familiar with the standards for a stay. We've got a little nuance here because the parties wouldn't get me an order. So I've kind of got that interesting nuance on your issue because of the parties saying that they didn't sign something. So the Court couldn't address something. So I'm not sure if you want to -- I'm not even sure if you were aware of that or not, but you should have because everyone got e-served with our memo where we attached the actual signature caption.

So, Counsel for movant, feel free. Nobody asked for any extra time. So that's five to seven minutes, folks.

MR. EISENBERG: I'm sorry, Your Honor. I --

THE COURT: Oh, nobody asked for any special setting. So everybody knows the standard setting, same thing as like Gonzalez. I don't have a little clock here, but it's five to seven minutes total for argument unless people ask for a special setting. Everybody knows we're in trial. We set these -- we were supposed to be five to seven minute hearings. Unfortunately it doesn't include any questions by the Court, but --

MR. EISENBERG: If you're talking about the stay motion, Your Honor, I think five minutes will be more than enough.

THE COURT: Beautiful. Go for it.

MR. EISENBERG: At least for me.

THE COURT: I am going to hold you both to the same, five to seven minutes in totality.

Go ahead, Counsel.

THE COURT RECORDER: Okay. We're going to have to get that mic right in front of you. I'm just struggling to hear.

Okay. Thank you.

THE COURT: So you're welcome to sit down, stand up, go to podium. We can give you a pocket microphone, whatever you want.

MR. EISENBERG: This is fine with me if that's okay with you, Your Honor.

THE COURT: Sure. Of course.

MR. EISENBERG: Our motion for a stay is based on in our AP 8. There are four factors to consider, and we contend that all four factors weigh in favor of the stay.

The first one is whether the object of the writ petition will be defeated if a stay is denied. We think that's pretty obvious. The purpose of the writ petition is to obtain medical discovery before the trial and to obtain rulings on the motions in limine before the trial.

And so if there's no stay, then both of those will be defeated.

The second factor is whether the defendants will suffer irreparable harm. That essentially -- it doesn't mirror, but it's almost the same as the first factor, and there again, we contend that relief is needed before the trial, and if we don't get the relief before the trial, it can't be cured at the trial.

The third factor is whether the plaintiffs will suffer irreparable or serious harm.

Now, the rule doesn't say just any harm or any inconvenience. It says that they have to suffer irreparable or serious harm, and we contend that a temporary stay pending the outcome of the Supreme Court writ petition will not cause any irreparable or serious harm.

The plaintiffs might want to rush the case to trial

on September 6th, but if it doesn't go to trial then, there won't to be any irreparable or serious harm to them.

The final factor is the likelihood of prevailing on the writ petition. There's, of course, no absolute certainty required under that factor, but the Supreme Court has not taken action yet. It's already been I think 12 days. There's been no summary denial, which tells me that the Court is at least seriously looking at the petition. And we believe that the petition has merit and perhaps optimistically we think it will be granted, but at the very least, we think it has merit and that the fourth factor is satisfied.

So with that said, unless the Court has any questions.

THE COURT: Sure. I do, but I think what I'm going to do is I'm going to wait until opposing counsel gives their argument and then ask you when you do your final summation if there's still outstanding questions. Okay?

MR. EISENBERG: Thank you, Your Honor.

THE COURT: I appreciate it. Thank you so much.

Go ahead, Counsel.

MR. ECHOLS: Thank you, Your Honor. Micah Echols for the plaintiff.

So these -- the motion in the reply addressed the NRAP 8(c) factors, which Mr. Eisenberg has gone over.

But we didn't see a whole lot of case law in support

of those four factors. Our opposition, we tried to support everything with a piece of evidence or case law or both.

So on the first factor, the object of the writ petition, we cited the *Pan versus District Court* case, very common case that's cited in the Nevada Supreme Court of, hey, if you want extraordinary relief, tell us why under NRS 34 an appeal is not an adequate remedy, a plain, speedy and adequate remedy. And so that's what they have to overcome.

And so the way the opinion came out, Your Honor, is they knew that there were these unresolved issues, and it doesn't make sense for us to say, okay, well, the Supreme Court deliberately chose not to answer these questions that they've already presented to the Court. They only decided a limited issue in the prior opinion, and then to now say, well, before the trial we want them to decide the rest of the issues. It just doesn't make sense, Judge. That would be an issue, you know, they have the right to an appeal after a trial.

Defendants' irreparable harm, they talk a lot about, hey, we're going to go through a trial. We're going to go through another appeal. We're going to go through a third trial, a third appeal on to infinity, but the *Fritz Hansen* case we cited says litigation expenses do not constitute irreparable harm.

And so on the flip side of that, the third factor, plaintiffs' irreparable harm, *Fritz Hansen* does say the

unnecessary delay weighs against the moving party. And then there's also NRCP 1, just, speedy and inexpensive proceedings in the courts, the purpose of the NRCP in general.

And then the last factor of 8(c), Your Honor, of NRAP 8(c), the likelihood of prevailing on the merits of the writ petition. So they cite the *Fritz Hansen* standard that says you've got to show at least some serious controversy. And we just don't see the serious controversy. Because what they do here is they skip over the EDCR 2.35, Subsection A, where we talked about good cause and excusable neglect. And then the motions in limine, you know, we had the order, and then, of course, EDCR 2.47 was subject to the Court's order. They don't talk about that.

Instead they just jump down to what was really just an observation of the Court, I think, citing the Justice Silver at the time Chief Judge Silver in the Court of Appeals concurring decision in *Dechambeau versus Balkenbush*, where she said, hey, this is kind of an interesting issue. Here's a case that talks about it. That wasn't the basis of the Court's opinion. That was really just the Court telling us I've looked at this myself. I've done some independent research, and this is what I found. But it was like the third or fourth step down in the Court's analysis. And so we don't think there's any likelihood of success on this writ petition.

And if you go back to the Pan versus District Court

case that talks about an appeal as a plain, speedy and adequate remedy precluding extraordinary relief. Judge, we're assigned to -- or we're on a firm setting September 6, and I think the Court reserved until September 27th. We're pretty close to 30 days, and so if the Court were to order an answer today, you know, we would already -- we would be pretty close to having our judgment. So it wouldn't make sense for the Court to order an answer when they have their appeal right in almost the same time.

And unless the Court has any questions, that's all I have.

THE COURT: I do.

MR. ECHOLS: Okay.

THE COURT: Plaintiffs' irreparable harm, one of the prongs the Court has to look at. There's a contention that -- well, it was stated as a temporary stay. You all know how long stays happen, how long writs happen. Sometimes they can take years and years, and sometimes they don't. So what is your irreparable harm or regardless of what time frame is, and no one's got a crystal ball to know what the time frame is, but...

MR. ECHOLS: Correct, Your Honor. So our understanding on this is even a short stay at this point, because we're so close to the trial date, would end up kicking our trial date, and then all of a sudden we're going to be thrown in with, you know, trying to find a new trial date.

I know when we were here I think in June to select trial dates, the Court had a very small window in which to give us this trial date in September. Otherwise --

THE COURT: Wait a sec. That was because Mr. Doyle is going on vacation out of the country, and he wasn't available for a long time period. We were trying to accommodate his vacation. You all said you were available for three months. He had a vacation time which gave me that narrow time frame in September. Remember? Because the Court was offering it, but Mr. Doyle said I think it was October out of the country with wife's anniversary or something.

THE COURT RECORDER: You'll have to be near a microphone, Mr. Doyle.

THE COURT: It's all in the record. It's specifically in the transcript, the discussion, because I even said at the end, I said, okay, does this not interfere with the plan -- I believe it was an anniversary trip. I may be off.

MR. ECHOLS: I do remember that, and I think what he said is he got in trouble because he got nixed from other events that got in the way.

So the irreparable harm, Your Honor, to plaintiff is based on the quotation from *Fritz Hansen*, NRCP 1, and then we also cited Magistrate Judge Cam Ferenbach where he says justice delayed is justice denied, which is --

THE COURT: I think some people sitting in the

courtroom have also said that. You all have cited it in other briefs to the Court.

MR. ECHOLS: Yeah.

THE COURT: Lots of people have.

Okay. But other than the time aspect, is there anything else that you're asserting is your irreparable harm?

I'm going to ask the same question on the defense side.

MR. ECHOLS: That's the only thing we put in our brief, Your Honor, but just generally, we want our day in court.

THE COURT: Okay. Have you already expended the costs (indiscernible) experts, everything like that? Because usually, so 30 days before -- I don't know because it wasn't -- it's alluded to but not specifically stated. So I don't know if you're contending that it should be considered or not be considered. I'm not saying I will or won't. I'm just wanting to know what your position is.

MR. ECHOLS: Okay. Thank you, Judge.

So we did not put that in our written opposition. But in conferring with counsel here in the courtroom, they have indicated to me that our experts have been paid, and so that --

MR. JONES: Not all. Some.

MR. ECHOLS: That some of our experts have been paid. So that would be a concern.

THE COURT: Okay. Circling back. Defense, you get the last word. Do you want to know a couple of my questions beforehand, or do you want me to wait until you finish. I'm fine either way.

MR. EISENBERG: I'm fine either way. I do have a couple of points I'd like to --

THE COURT: Then go ahead. I'll ask them at the end. Go ahead, please.

MR. EISENBERG: This has red around it --

THE COURT RECORDER: You're good. Red is on.

MR. EISENBERG: Green --

THE COURT: Red means go, and green mean stop. It's -- it's District Court.

MR. EISENBERG: Okay.

THE COURT: That's called welcome to District Court. Go ahead, please.

MR. EISENBERG: Only in Las Vegas.

THE COURT: I didn't do the systems, but, yeah.

MR. EISENBERG: Just a couple of points before I get to the Court's questions.

As far as the adequate remedy at law, plain, speedy and adequate remedy at law, that is a requirement, but it's frequently outweighed by other factors such as an issue that's a matter of first impression or of widespread importance, something that could be helpful to the bench and the bar.

And if you think about it, every single writ of mandamus that's issued in an interlocutory basis before trial, the Supreme Court has decided that those factors outweigh the need -- the lack of a plain, speedy and adequate remedy at law.

Now, Counsel -- or the Court actually said that sometimes writs can take years and years, and, Your Honor, I have been working on writ petitions in Nevada for 40 years. I've never seen one that has taken years and years. The average time, like in this case, if the Supreme Court were to an issue an order requiring an answer tomorrow, they most likely would give about three weeks for the answer.

I anticipate that because plaintiffs' counsel had our writ petition for 12 days or whatever, they're probably, at least I assume, have already started working on the answer in anticipation that it might be ordered, but even if they hadn't, they can file that answer relatively quickly. If the Supreme Court orders a reply, we would file it relatively quickly, and the whole thing would be fully briefed in probably four weeks perhaps.

And then the average time, what I've observed is more in the range of two to three months for the Supreme Court to issue a decision. They don't have oral arguments except in very rare occasions, and they act pretty quickly on writ petitions. And I think they would in this case, particularly knowing that the trial would be held in abeyance.

So we believe that there's absolutely no irreparable harm to the plaintiffs if this gets put out a while.

And then finally, the issue of the experts being paid, even though the Court brought it up, counsel conceded that they never brought it up in their opposition. So we never had a chance to deal with that or to respond to it, and I can't respond to that question now.

THE COURT: Okay. Fair enough.

As the Court said, I'm not necessarily considering or not considering. It was inferred. There's some reference in general. So I wasn't sure where they were going.

Okay. So here's the Court's couple questions if you don't mind. You already anticipated the ones that I thought I was going to ask you about irreparable harm. So anything else you want to say on defendants' irreparable harm?

MR. EISENBERG: Well, our irreparable harm is the fact that we are asking the Supreme Court to issue a writ on two things that are critical to be decided before trial, and they become moot if they're not decided before trial.

THE COURT: But why are they critical? I mean, realistically, and this is where the Court has a question is the Court had to look, okay. First off, there's still no orders because the parties, okay, your table and the other table, wouldn't get me one, okay, on the extension of discovery. So you don't even have an order, okay, *Division of*

Family Services, *Rust versus Clark County*. So there's not even an order from this Court yet because I can't get the parties to give me a compliant order that both parties -- first it was they're going to do a competing order. I have a, you know, would not authorize the e-signature. That was on you all's side; right?

It was on the -- so and then I've been asking, can you give me one because I shouldn't have to ask because it was supposed to be resubmitted appropriately, right. And I shouldn't have to ask. But then I ask. Still don't get it.

So then we send a memo. Still don't get it. So those are all party issues; right? And it's because I guess the confusion about whether or not your defense counsel was going to authorize the signature or not. So it emanated there.

So one issue is how does a writ versus -- you can easily appeal; right? Because these are clear rulings, that the appeal doesn't get you anything that a writ would get you. If there's any issues and then gave the Supreme Court the additional, right, aspect with the second prong of their decision where they look to see, A, if there's error, right, and then if the error actually impacted the trial.

So here, prospectively, I was trying to walk through what a potential prospective order is, right. So if I were to look at the motions in limine, which once again there still isn't an order because I can't do that one until I do the first

one because that one was tied to the prior one because of the motions in limine already being before the Court, page 12 of the opposition, motion to extend discovery on defendants' brief. So it was already before the Court. So I had the issue -- I already had the court ruling, and yet those motions in limine were filed after the Court had already made its oral pronouncement from the bench, and that was part of the Court's ruling with the motions in limine.

But walk me through some of those motions in limine, right, one of them is on the ruling with regards to Vicki Center. I'll just make it generic, okay. The Court -- Vicki Center, one of the motions in limine. Okay.

First off, the fact that motions in limine got filed after there's a specific court ruling raises its own challenges; right? So I can't see how a writ can say, well, Judge, after you do an order, which on something issues that is directly before you, there can be a good-faith belief that somehow you can file motions in limine, but, okay.

Even overcoming that aspect, let's take two of the motions in limine as an example. Because I was trying to walk this through. One, and I mentioned this at the time of the hearing, so it's nothing new. The Vicki Center. This Court can't do anything, wouldn't do anything. I'm a District Court, Judge. I am going to follow the Supreme Court order. There is no order that I could give on a motion in limine that would be

different than the Supreme Court's directive. I would have -- the ultimate ruling, the motion in limine is nonessential -- a nonmotion in limine because it's asking District Court to somehow do something different than the Supreme Court told me to do, which I can't do. I won't do. And so that one is a nonexistent motion in limine because I can't give a different ruling; right?

Another one of the motions in limine was to preclude reptile theories. There is no reptiles ever been in the Court in the 12 years. We've had a lot of other things, unfortunately here in the Court that you may not want to know about, but there's been no reptiles, okay.

But reptile theory is not anything that at all couldn't have been brought up way back when. I mean, that's an interpretation of a method of asking questions that one side or the other side may or may not do, right, supposedly based on a book, right, or whatever.

But that has nothing to do with -- I mean, that's going to be follow the rule. That's straight *Lioche*.

Once again, that's a nonmotion in limine; right?

So even if the Court had allowed it, I'd have to say follow *Lioche*. Follow the rules; right? You can't say anything different. So when I'm looking at those motions in limine, and I just picked the two easiest ones as my examples, but the other ones are pretty much the same thing. There's not

anything that either, A could not have been done back beforehand; or B, that realistically is having the Court make a ruling that is going to necessarily impact the case; right? Because motions in limine are to include or exclude things, an improper motion in limine, right, can't happen. So they can't characterize a summary judgment and call it a motion in limine because then by definition I couldn't have heard it anyway.

So when I look at this, I was trying to figure out how this writ could potentially happen because I have to look at it for the merits; right? Now, you may not agree with my analysis, but that sounds all appeal to me.

Is there something in the motions in limine that you think was a critical point?

MR. EISENBERG: Well, Your Honor, I'm a little bit confused because I'm not sure if you're asking about the concept of a plain, speedy and adequate remedy or if you're asking me to argue the merits of the writ petition or maybe both.

THE COURT: I'm trying to evaluate, right, when I look at the various prongs, really taking two separate prongs that go to defendants, right. Irreparable harm for defendants, I was trying to look could there possibly be irreparable harm if there -- even if I were to disregard the per se -- disregard of a Court order, okay, even if I was to ignore that, and just look at the actual motions in limine, because that's one of the

two bases, I'm -- I can't find that there would be any irreparable harm because I have to look at the underlying matters that you're asserting weren't heard by the Court.

And are you contending that the substance of the motions in limine are essential to your clients' defense?

MR. EISENBERG: Well, first I would point out that there are two parts to the writ petition.

THE COURT: Right. And that's what I'm going to ask you on the other one. I was trying to separate them out to make it easier to be.

MR. EISENBERG: Okay. So if you're just asking about the motions in limine, we've tried to make it clear in the writ petition at least that we believe the rulings on those motions in limine should be made before the trial and not have to deal with matters that occurred at the trial. Potentially resulting in a second appeal, a second reversal and a third trial. And so what we're trying to argue to the Supreme Court and to you is that those matters need to be decided before trial.

Now, if, for example, the Center case, you're talking about, if I recall correctly, Motion in Limine Number 1. If it's so clear that they can't get in the Center evidence, then why did they move to strike that motion in limine? Why not just say, okay, we'll obey the Supreme Court's order, and we won't try to get it in again a second time.

THE COURT: But you have the procedural aspects;

right? Procedural -- they mostly argued the procedural aspects. Really we didn't get to substance, remember, we didn't. It was procedural aspects of those motions in limine not being appropriately filed. There's nothing that precludes the parties from stipulating for purposes of trial, and, in fact, they said in open court they're going to follow the Supreme Court order. So the --

MR. EISENBERG: Well, just because you think somebody is -- the court filing is procedurally improper doesn't mean you should move to strike it. If you agree with it, earlier in this case, after the remand, I was trying to get a cost award against the plaintiffs. I filed a paper trying to reduce the amount I was getting from them by $40,000.

Mr. Jones filed an objection to it. On procedural grounds when I was trying to give his clients $40,000 credit. So you don't object to something just because it might violate some procedural rule if there's no legitimate reason to object.

THE COURT: And, Counsel, you're doing a wonderful switch on -- I was trying to go to irreparable harm.

Okay. So really my other question really was kind of going to the time frame because it's self -- one of the Court's concerns is this is self-created harm, right, because the reason why I'm meaning self -- to the extent arguing harm, right, don't you have to file things timely?

MR. EISENBERG: File the motion timely?

THE COURT: Whatever, whatever motion is timely.

MR. EISENBERG: -- to the writ petition?

THE COURT: No, not the -- the writ petition (indiscernible) takes no position. That's the Supreme Court gets to decide if that's timely. That's nothing to do with me.

The underlying motions before this Court, wouldn't those have had to have been filed timely?

Or I'm hearing the irreparable harm, but if the things weren't properly before the Court, how can you be irreparably harmed? Because basically that means you can violate the rules, and then somehow you can still get the benefit of your violating the rules as far as timing and substance.

MR. EISENBERG: Well, you ruled that we -- that we violated the rules. Our writ petition challenges that.

THE COURT: Okay.

MR. EISENBERG: So that's the whole point of the writ petition. If you deny a stay, then you've eliminated the object of our writ petitions, at least on that.

In addition, there's the issue about medical discovery, which obviously has to be decided before the trial.

THE COURT: Well, okay. I appreciate it. So let me make -- let me make my ruling.

Is there anything else you want to say? I give you an opportunity before I asked my questions. I just want to

make sure.

MR. EISENBERG: No, Your Honor.

THE COURT: I appreciate it.

So everyone has had a full opportunity to be heard.

Well, you both agree what the four prongs are. That's, okay, of what the Court needs to look at. The Court does look at each of those, but the Court has to give a little bit of background here.

So can we go straight to the pleadings. I've got mine, please. So... (Indiscernible) clarity here. Just one second. You can appreciate it takes a moment to click back and forth. Okay. So here's what we have.

3/31/2022, was the actual Supreme Court order.

The certificate of judgment remanded 4/29/2022. And that's Document 181 here.

Okay. So the Supreme Court flag was removed on 4/29/2022.

Then what we have is the Court set the hearing for the parties to all come in in order to get the trial reset, and that is -- happened. I do have the parties time to get everything taken care of. That hearing took place on June 7th, and let me just confirm, if you don't mind -- yes. June 7th, 2022, at 9:00 a.m. At that hearing was the first time that anyone mentioned. So I have to take the rubric.

I have to take the rubric, and this is something I

specifically considered for purposes of the motion to reopen up discovery, right. Is defendants knew three -- okay, March, when the order first came out, they knew what the status of the case was and if there was any motions they needed to file. Even if you give the date of the remand and remittitur, April 29th, it was waited over 60 days, right, more than two months before there was even any motion before this Court to try and reopen discovery, right.

So it was a self-created issue of trying to say that there was some urgency because while that particular pleading, I believe it said it was 68 days before trial, that's because no one on defendants wanted to file anything sooner. They had all the time to file things, okay, even taking the 4/29 date, but they chose to wait another two plus months to do that, and then they filed their OST right before the July 4th holiday, when actually Justice Cherry was sitting for me. So it got signed OST and got heard right away.

But on June 7th was the very, very first time that anyone even mentioned anything about discovery. The Court told the parties, and it's in the minutes, and it's on the transcript, right, specifically well, right, it is.

The Court did specifically say even there said that they're not before the Court and needed to be filed accordingly, right, that the motions needed to be filed accordingly on June 7th. Still the parties waited almost a

month, right, more than three weeks between three weeks and a month, to even file any said motion.

So and the parties all knew when the trial date was going to be, because, as it's stated, yeah, Mr. Doyle said he had firm trial set in California and also scheduled a prepaid vacation in the middle of October through the middle of November, okay. Saying he initially had a case, but then you said you could get coverage. So it really wasn't an issue.

So therefore the Court had to set it in September, right, because of the age of the case, EDCR 1.90, you know, the case with -- it's a professional negligence case that has priority. So you got it all taken care of. The Court did exactly what it needed to do, was set the case on the quickest date. Realistically, I was going to give you all October, but then Mr. Doyle's vacation. So that was agreed by the parties. So then it had to be September. And the Court specifically asked, does that meet everybody's needs? Everyone can get everything done?

The Court set on June 7th to file motions. If nobody chooses to file motions and waits almost a month, right, and then does it on OST, right before the July 4th holiday, that's a factor that has to be taken into consideration with regards to the aspect of seeing whether or not there's any good cause, right, under all of the appropriate case law, whether to reopen anything.

It was so important, yet a part of April, you had May, you had most all of June. The Court even reminded you on June 7th, and still waited, and you had until the end of June, and then there was an OST. And even on an OST, still got heard quickly; right?

But give people an opportunity to be heard, which remember, today's date, you all said by letter, that this was an okay date because I did see somebody was saying about that didn't give people enough time. I have a specific letter by Ms. -- an e-mail by Ms. Foley that says today's date -- in fact, you guys wanted all four matters on today's date. So careful about complaining about things which you very much have sent an e-mail saying that's exactly the date you want, and we give it to you, but that's a different issue. That has nothing to do with my ruling here today.

But with regards to then that motion, that motion wasn't just discovery. It was reopening up motions in limine, page 12, right, dispositive motions. It was reopening up everything.

The Court had to take in all of the factors that the Court looked at. And the transcript is clear what the Court ruled on. The Court had to evaluate all of the different factors that are under the applicable law, and taking into account how long, if defendants really wanted this, why they waited, okay, more than 60 days -- or I should say

approximately 60 days, depending on what time exactly the order came in. So I'll say approximately 60 days, past when the remand is. If it was so important to get discovery or these were issues, then file something right away. It happens all the time. In other cases people want things done. They file it right away. So the Court looked at all of that.

So now I have to go to the various factors. The reason why the Court mentioned some of that history is because the history is very important, and you have a scheduling order, and the scheduling order said everything was closed. And under the rules, the prior scheduling order is in full force and effect unless there is some motion practice or something that changes. Because it's an order of the Court.

So you had the last scheduling order back from pre2019, but you also have the other scheduling order, and you also had specific rulings of the Court. And yet thereafter, there were motions before this Court that, A, had previously already been ruled on. So we can't say that there's any prejudice because that could have easily been taken care of.

Now, remember the Supreme Court order does have a footnote about the discovery aspect; right? Justice Cadish, it's on the -- is a footnote that does mention a prior ruling on the discovery aspect.

So although the conclusion is what you said about the other arguments raised but.

So then you look at how these -- all these factors apply.

So does it defeat the purpose of the writ? The Court's not really clear that it really would defeat the purpose of the writ because, realistically, you don't have orders yet because of the parties' conduct. So I don't even see how you even have a writ because you don't have any order and notice of entry thereof.

The Court is not taking a position. That's the Supreme Court decision. That's not my decision.

But I'm looking at the parties haven't even really cared about getting me orders on time when we've asked for them, okay. So that doesn't seem like realistically that is of concern to the parties.

Then you look at the factor of, okay, let's go to the actual essence of it. Will it defeat the purpose of the writ? Well, there is nothing that would be -- that is stated new, and here I have to take the words of counsel at the actual hearing on the motion to extend.

Was there any evidence whatsoever to support the need for the medical, right, discovery? I asked that question, and I was told, no, there wasn't anything. There was assumptions and speculation, okay. There was nothing actually provided to this Court. So to argue now that somehow the purpose of the writ is that there's this huge need for medical, once again,

there's been nothing to, quote, support that.

Now, I appreciate that subsequent to that it was filed in an opposition, but guess what, there was not candor to the Court, that really there was some ongoing *sub rosa* that potentially may do some result, but they decided not to notify the Court even though it was going on at the time, okay. That's the *sub rosa* with regards to the issue with the fourth and fifth disclosures.

But that doesn't mean that that would defeat the writ because if you tell the Court one thing, then you can't file a writ and say, guess what, we really need the medical stuff when there's statements by counsel in open court that there's nothing to support. There's no evidence to support that she had any change in condition other than the pure concept of the idea it's just an aspect of time would mean that people have changed. That in and of itself is not evidence. There was no evidence.

So anyway, when I look at the purpose of the writ, I mean, if I look at it from what really are the underlying substantive facts and information, it doesn't do it. It doesn't defeat the purpose of the writ.

When I look at how you've characterized the writ, okay, and I appreciate good lawyering, and how you characterized the writ, when I look at how the writ has been characterized, that it would not allow certain medical

information, but remember the only thing we have so far is an officer of the court saying that they didn't have any evidence that there was any change in her medical condition. I got that in the transcript, right.

So hard to say how that would be this huge irreparable harm or how it's necessary, but taking it that that's the way the writ was characterized and the way it's characterized, the need for medical, then if you take it that way, then it would defeat it. But I don't see substantively how it can in light of the statements in court during the actual hearings, but once again, taking it the way it's phrased, then it would.

So then I look at the second one. Would it defeat the second argument with regards to some evidentiary rulings? Remember, motions in limine, are as if you can do them. They can easily be deferred to the time of trial, and each of you as experienced practitioners know many, many times Courts defer those rulings to the time of trial because they need the trial.

There was nothing in that underlying motions, and I read each and every one of those motions, of course, before I made my ruling, right, that can't be addressed to the extent that it needed to be addressed, that couldn't have been addressed, realistically if it's a proper motion in limine. There's some, right, in other words, there was a couple bundled, specifically contrary to the scheduling order that

were bundled together. So they were in Omnibus, so even though the Court's scheduling order has always said and does say you must not -- cannot do that. So that pure violation, I can't take the fact that, oh, just disregard the Court's scheduling order, whichever one you want to take, that specifically says no Omnibus. And you still filed in Omnibus, okay, even separate and apart from filing all the other motions after the Court's ruling denying the extension and the request to extend the motion in limine deadline that was the prior ruling.

So, but if I look at the way you phrased it, that's why I was asking my subsequent questions on the motions in limine. Because substantively, this Court doesn't see how it defeats it because things like reptile theory, if somebody does something impermissible, in *Lioche* you object at the time of trial, and the Court addresses it. And if it gets too much, right, there's guidelines and specific case law. It's a follow the law.

With regards to the Vicki Center, it's follow the Supreme Court order, okay. While I appreciate your argument well, they maybe they shouldn't object in the first place, but realistically, I have to look at does it defeat anything. Saying I'm going to follow the Supreme Court order, of course, I'm going to follow the Supreme Court order. Are all the parties going to file follow the Supreme Court order? Of course, they have to. I mean, it's not necessary. So there's

nothing really that's, quote, being defeated.

I'm not going to all the rest of the other four because they weren't really brought up, anything specifically in your pleading papers. So I'm not going to go to them. But those were just two of the examples.

So if I look at the concept of motions in limine, I do have to look to see realistically is anything can't be dealt with at the time of trial.

Really these are appealable issues, right? If somebody feels that somebody violated *Lioche* and used some theory that's impermissible, that's appeal -- that's not a writ. That's not a predetermination in any way. It's follow the law, and if they don't, then you have the appropriate sanctions and a determination of whether or not the appropriate sanctions was complete enough, you know what I mean, or rectified any potential error. If that were to happen, that's five steps down the chessboard.

Looking at the other ones, to the extent of trying to change out experts or trying to do some changes of things, those once again, don't have it.

I can't say anything about the video, the surveillance video, because, guess what, it's acknowledged last week it was never given to plaintiffs' counsel. So that can't be an issue of any harm. So you can't have anything brought in at the time of trial with regards to any, quote, *sub rosa*,

because, guess what, at least as of last Thursday -- I'm sorry. I've been so busy in trial. I believe it was last Thursday. It was last week -- that video had not even been provided to plaintiffs' counsel.

So no one can argue any harm, irreparable or otherwise or any claim that there needs to be any medical information because of the -- the alleged *sub rosa*, which I've never seen because it was never given to the Court either, but it wasn't provided with the motions, wasn't provided any time, and plaintiffs' counsel, by acknowledgment was never given it. So I don't see how it affects directly the writ.

Now, the way it's characterized in the writ that it does, if I look at the way you've characterized it, and there's nothing negative when I'm saying characterize. I have to look at substance, right. I can't just say the way you phrased it. The way it's characterized that it will impact because these need to be pretrial rulings, well, you have to look at reality. If you never had a video, you can't make a pretrial ruling or allowing things in when it's never even been provided to the other side.

So -- but the way it's characterized, I still don't see with the motion in limine concept how it defeats anything with regards to those. Because either A, there was Supreme Court rules that have to be followed anyway;

B, there's case law that needs to be followed anyway;

Or C, there's things that there was absolute -- there wasn't any support for. So follow the law is follow the law, and that can be easily done at trial. So I don't see how it defeats it.

So now let's go to defendants' irreparable harm.

The defendants' irreparable harm, realistically, the Court doesn't see it because I got counsel telling me there's no evidence to support that there's any change in any medical condition other than the passage of time, okay. It was phrased more eloquently than that, but the Court asked, is there anything at all you have, okay, at the hearing, and there wasn't anything provided, any type of evidence.

And remember, this is the time that the *sub rosa* -- the alleged *sub rosa*, which I didn't know about at the time, wasn't even brought to the Court's attention. It wasn't brought to the Court's attention until last week, okay, at those motions, and that never went to opposing counsel anyway. So it wouldn't be able to be brought in, and it wasn't given to opposing -- it wasn't given to plaintiffs. That's all on defendants, right. So I looked for the irreparable harm.

You can't create your own irreparable harm by not getting a video over and then saying somehow that video can support the idea that there needs to be additional medical discovery. There was nothing, and then you can't say when the Court specifically asked the question, what do you have from

any evidentiary standpoint to support the need for medical discovery other than just the concept of passage of time, right, was there anyone that was supporting that, and I get nothing, that somehow that response, those response in the actual factual standpoint somehow that's self-created irreparable harm. So the Court doesn't see really that there's irreparable harm.

So now is look at the variety of the other things. Is if there's no basis to do any of the medical discovery other than the concept of wanting to do some medical discovery, the fact that if defendants really wanted to do it, from a temporal component, they waited till more than 60 days after the remittitur, and they waited till there was such a short time for trial, and you have to look at that motion as well.

Remember, the Court not only looked at the time period of how long it took to do the motion, but you have to look at the substance of that motion. Look at the dates in the motion, right. There were things that they wanted, the defendant said that had to be done by July 8th, and they didn't even bother to file, and with July 4th holiday, with everyone's closed, right, and couldn't even be heard and those things done.

There couldn't have been the possibility under EDCR 7.21 for the motion to be heard, for there to be an active order and a notice of entry of order because of the 14 days,

and those were all self-created by defendants, okay. If they filed things earlier, they would have had plenty of time under EDCR. So there's no way.

And if you look at those dates that are in that motion, right, which the Court considered at the time and had to take into account, it was July 8th date or right after the July 4th holiday, not even the day that you could hear the motion. So it would be impossible to have those very dates that were being requested extended, right, and I have to look at that, and I did look at that.

So when I look at the irreparable harm, I really see it's defendants' delay and defendants' decisions and defendants' inaction in providing things that has created the very situation that defendant finds itself in, okay.

So I can't see that there's irreparable harm to defendants when it's their own created harm, and they chose when they wanted to file things. They chose to give the answers they wanted to give. They chose whether or not they wanted to be fully forthright to the Court. They chose whether or not they wanted to provide a video that they potentially wanted to use, and they chose not to do anything when they needed to do it. So I can't see irreparable harm.

Now, I look at plaintiff. Plaintiff, the Court is not taking into account the experts because it wasn't in the pleadings. The Court's taking into account, and, yes, I'm

looking at *Pan*, yes, I'm looking at France (phonetic). I'm looking at all of the applicable rules.

Plaintiffs is a timing standpoint. Now, here I don't have medical information from plaintiff either. So that was not brought as an aspect. It was the aspect of, well, when can this trial take place, and all those harms, the justice delayed is the justice denied.

The Court's evaluating each of that. When I look at that, and I have to be realistic here, and I told the parties this on June 7th, is that this Court does have the opioid trial. I also have the Department of Taxation case. Those are set to be during the week of January 3rd for the Department of Taxation under its current schedule, and the opioid case is supposed to -- and that's supposed to take about three weeks to a month, depending. The case could resolve.

And then in April I'm supposed to start the opioid case, which is anywhere -- you can guess how long we think that's going to take, okay, somewhere between six months and maybe a year. Maybe it gets resolved. I don't know. But those were all factors that the Court gave the parties on whether or not they wanted to wait that long for all clients' sake when you were here on June 7th. Because I knew those dates in pretty broad spectrum.

And I look at when this case could actually be tried if it doesn't happen this year, I look at the fact that I was

accommodating defendants' schedule. Realistically, I do see there is substantial prejudice to plaintiff. I don't think it's irreparable. I think it is substantial. I think there's substantial harm because you have somebody who -- while there was speculation on defendants' standpoint that she may or may not have a worsening condition, and the Court can't take that into account because the Court didn't take it into account.

The best I have is speculation that three years that she's had other issues, okay, and that she's now using a walker, et cetera. But the Court's not taking those specifics into account because I didn't take them into account because those were only argument. There was no evidence before the Court.

I'm really just looking at, realistically, the time period and what would happen, all the issues and the factors, and I do have to take that into account under *Pan* versus -- and France (phonetic), and so I do see that there's substantial harm on behalf of plaintiff.

So now likelihood of success on the merits. Realistically, I'm going to include everything. I'm going to reincorporate everything that I just said as far as I don't think that there's likelihood of success on the merits. Because I have to break down here as I previously evaluated the history of what actually happened in this case.

When I take the time frame and how defendants chose

when they wanted to that file that motion and how they wanted it on order shortening time, right, so they picked their own shortened schedule aspect. They decided to do it right before the July 4th holiday. They're the ones that picked the dates that they wanted to reopen that only gave them to, like, July 8th, okay, to do many things.

They were asking for an IME that had never been requested beforehand. It didn't have any basis, et cetera, but on super short deadlines. They're asking plaintiffs to do all these things come up, but defendants wasn't going to have to do anything, okay.

I look at all of that. I look at the actual request being made. I look at the fact that there's clear scheduling orders, okay. I look at the fact that the timing of those scheduling orders, if anybody had any issues way back, they could have brought it.

The fact that when the Court reminded the parties it needed to be done by motion practice, still waited over three weeks, right. Like I said, three weeks, almost a month. I look at that factor.

I look at -- and so when you take all of those into account, I see that the issue of the denial for the discovery, based on speculation and all the timing issues, et cetera, I don't see how there's a likelihood of success on the merits. If you actually look at the actual chronology, look at the

actual arguments that were presented to this Court, you look at the actual statements presented to this Court, if you look at the actual fact that the purported video was never even presented, okay, and these are all independent, but I'm also taking them in combination, trying to give the benefit to everybody, is I look at those as all defendants' conduct.

They could choose whether they wanted to hand-deliver, FedEx something with receipts. They (indiscernible) correct addresses, okay, giving it to local counsel. They can decide if they want to be forthright in court and say whether or not that there's being some activities being done.

I look at all of that, and I don't see how there's a likelihood of success on the merits with regards -- and I also look at the fact that -- well, if somebody cared, they'd be getting me an order on those things, right, in a matter, and people would have reviewed the order. It says, you know, did not authorize e-mail signature. Someone could have easily gotten that fixed and taken care of it before the Court had to remind the parties and then have to send them a memo.

So realistically people didn't seem to care, but we don't even have orders, and that's due to the parties' conduct, okay. That's not due to anything else. I look at that. So I don't see a likelihood of success on the merit there because you don't even have notice of entry of any orders because of

that.

Then what I look at is look at those actual motions in limine, and this circles back to what I said with regards to some of the substance on some of those. I can't see that the Supreme Court is going to say, well, I should have granted a motion in limine, allowed a motion in limine to be heard to give the very statement, and I said this at the time of the hearing, follow the Supreme Court order, okay.

It really -- or, one, the reptile one, which I brought up before as well, that somehow let's follow *Lioche* and applicable case law on proper conduct in the courtroom. So I don't see that there's anything from a substantive standpoint, as I mentioned, as far as irreparable harm.

And then also for likelihood of success on the merits, I've factored in every single thing. I've gone through the entirety of the record. So the Court can't find that there is any basis to vacate the current trial date. I can't find any basis under the applicable case law to grant the stay. And realistically, the Court did also look, and let me give you a quick evaluation with regards to the assertion that somehow that this was a new issue.

There is a plethora of case law with regards to parties have to follow Court orders, right, and deadlines are deadlines. And EDCR, even recently has been asserted by the Supreme Court to affirm following the EDCR.

So when I look at all of that, I don't see that there's anything new here. It's basically follow the deadlines. Follow the law, and if you're going to raise an issue before the Court, make sure you're fully forthright with the Court and provide the Court the evidence that would be appropriate to support your position.

None of those are new issues here. The issue of a scheduling order is not new. They've been around for ages. The case law that was cited therein, you've got a Supreme Court order that is very clear on its face on what needs to be done. There wasn't any pretrial issues, okay. So I don't see it.

Now, let me be clear also on the -- I think the *Dechambeau* issue from the Court of Appeals, my citation to Justice Silver, wasn't saying it was precedential. It was the only thing -- it was a piece of information from the case that set forth the very plain standard. You don't have to normally say follow the rules, follow the law because it's required. Everyone took an oath to do so.

But there, in her concurrence, she even refocused on the fact about the scheduling order. That doesn't make it new. That's reciting what everything is. It's just the fact that scheduling orders are scheduling orders until they get changed.

Here, really even distinguishable because you all did a motion, but you're timing of your motion was all up to defendants and their delay in doing so really created their own

issue.

So the Court can't find that it's anything new or novel either. So I wouldn't see a stay on that basis either.

So the Court has given a long explanation. Hopefully you all find it helpful whether you agree or disagree with it, and that's your decision.

But it is so ordered. The Court denies. It doesn't meet the balancing all the factors that the Court is taking into account, applying all the applicable case law, and the Court does not find that the stay would be appropriate. The Court therefore denies the motion to vacate the trial date and denies the motion to stay therein.

And I appreciate everyone's time. Sorry this took a little bit longer than originally anticipated. But I wanted to make sure you all had enough time to get everything taken care of.

It is so ordered.

Thank you so very much. And hopefully I will have that order on the extension of discovery and consistency on whether or not it's agreed to or not or any competing orders.

Thank you so very much, folks. Have a good one.

Okay. We need to quickly call before my team, page 17, Case 840 --

I wish everyone --

I've made a ruling. So thank you so very much. It

is so ordered. Have a great rest of your day and week.

MR. LEAVITT: Your Honor, we have the sanction hearing.

THE COURT: The sanction hearing. The sanction hearing. I'm sorry. I didn't go through that.

The sanction hearing. I need to defer. Realistically, that is more appropriately deferred because a lot of what is set forth in the sanction hearing, the Court is going to have to take into account.

You're asking this Court in part to go back to certain conduct that happened previously in the case. This Court is going to find it's more appropriate that I evaluate the totality of the conduct until the conclusion of the trial. And so either at an appropriate point during the trial or at the conclusion of the trial, the Court is going to find it more appropriate to address the sanctions.

I really don't see any prejudice for anyone at this juncture because realistically a lot of what is in that motion for sanctions is evaluative, and I have to see how the parties are acting.

I've got some different counsel. I've got different things going on. So realistically, the Court is going to find that is more appropriate to address that even at the time of trial if it needs to be brought up if there's an issue that comes up or at the conclusion of trial before there's a verdict

or after there's a verdict because I don't really see any prejudice to do it at any other time. You all have waited a couple of years.

Also with your OST, I would say the same thing I said to defendants. If you really thought it was such a big issue, you could have brought it to the Court's attention April, May, June, right.

So while I'm hearing this on OST because each of you filed in OST pretty much the same day, so I gave you the same amount of time to respond and the same amount of time and the same hearing date so you can get everyone taken care of, I really don't see that there's an urgency at this juncture.

So realistically, my ruling with regards to the motion to sanctions would be continued to the time of trial, or when it needs to be rebrought up by plaintiffs' counsel. It is so ordered.

MR. LEAVITT: And that includes the sanctions from last Friday?

THE COURT: Sanctions from last Friday, remember, I already told you I was going to defer that because I wanted to look at the totality issue, and I wanted to give everyone a full opportunity.

I think it's more appropriate to allow the parties to really prepare for their trial than to be preparing for a *Johnny Ribeiro* sanction hearing, evidentiary hearing. I think

people's resources are more appropriately done to get this case where you get to get it so all the clients are able to have their closure and we're able to have everything done in a fair and consistent manner and then hold this off until the end.

I really think that's the best in looking at the totality of everything that's been presented, taking into account the motion, opposition and reply.

Is anyone asserting that there is any reason that I need to rule today?

Counsels for plaintiff.

MR. LEAVITT: No, Your Honor.

THE COURT: Counsel for defendants.

MR. EISENBERG: No, Your Honor.

THE COURT: Okay. I appreciate it. Thank you so much.

MS. DAEHNKE: Thank you, Your Honor.

THE COURT: And now I'll wish you a good rest of your day. Sorry. I thought I was saying that at the beginning. So a long day. I do appreciate it.

Everyone have a great rest of your day, rest of your week. Thank you so very much for your time.

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THE COURT: Once again apologize for the wait, but just like your case, gave you a long time, gave everybody else to make sure it gets fully heard.

(Proceedings concluded at 11:50 a.m.)

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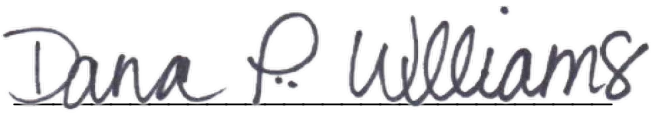
ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Dana L. Williams
Transcriber