IN THE SUPREME COURT OF THE STATE OF NEVADA

IN RE: D.O.T. LITIGATION

GREEN LEAF FARM HOLDINGS, LLC; GREEN THERAPEUTICS LLC, NEVCANN, LLC; RED EARTH, LLC AND THC NEVADA, LLC,

Appellants,

vs.

THE STATE OF NEVADA, ON RELATION OF ITS DEPARTMENT OF TAXATION; CANNABIS COMPLIANCE BOARD; LONE MOUNTAIN PARTNERS, LLC; DEEP ROOTS MEDICAL, LLC; NEVADA ORGANIC REMEDIES, LLC,

Respondents.

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APPELLANTS'APPENDIX
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THE COURT: Okay. Is that Kahn -- I think it's Mr. Kahn. Sorry. These really --

THE COURT RECORDER: Yeah. It's when they get so many of them. It gets smaller.

THE COURT: Go ahead. Mr. Kahn, go ahead, please.

MR. KAHN: Good morning, Your Honor. Jared Kahn on behalf of Helping Hands Wellness Center.

THE COURT: Thank you.

Mr. Shevorski, AG, go ahead, or --

MR. SHEVORSKI: I think it's Mr. Koch, Your Honor, but I'm happy to appear. Steve Shevorski of the Attorney General's Office on behalf of the Cannabis Compliance Board and the Department of Taxation.

THE COURT: Thanks. So I show Mr. Koch is in my next row. So --

MR. SHEVORSKI: Oh, okay. I apologize, Your Honor.

THE COURT: No worries.

MR. KOCH: David Koch for Nevada Organic Remedies. I think, Your Honor, that the -- you don't see yourself on the row the way BlueJeans works. So nobody knows where they are on the row, and that's the problem.

THE COURT: No worries. I was trying to make it a quicker way because well, best laid plans.

Okay. Dzarnoski, please.

MR. DZARNOWSKI: This is Mark Dzarnoski behalf of the

TGIG plaintiffs. They are TGIG, LLC; Nevada Holistic Medicine, LLC; GBS Nevada Partners; Fidelis Holdings, LLC; Gravitas Nevada; Nevada Pure, LLC; MediFarm, LLC; and MediFarm IV, LLC. And my bar number is 3398. Good morning to the Court and counsel.

THE COURT: Appreciate it.

Okay. Mr. Parker.

MR. PARKER: Good morning, Your Honor. Theodore Parker on behalf of (video interference).

THE COURT: You cut out, Mr. Parker. We heard on behalf of, and then it cut out.

MR. PARKER: I'm sorry, Your Honor. Again, Theodore Parker on behalf of Nevada Wellness Center.

THE COURT: Appreciate it. Thank you.

There's a phone number, which I'm not sure it's --

THE COURT RECORDER: It's Ms. Chattah.

THE COURT: Okay. Sorry. There was a phone number. Who is the phone number?

THE COURT RECORDER: It's Ms. Chattah, but I --

THE COURT: Sorry. Do we have somebody who was on the phone number, please?

MS. CHATTAH: Bar Number 8264, on behalf of (video interference).

THE COURT: Okay. Counsel.

MS. CHATTAH: Yes, Your Honor.

THE COURT: Would you mind repeating that because I think you had yourself on mute at the beginning of it. So we started to hear the beginning of your client, but not your full name, please. Would you mind starting over.

MS. CHATTAH: Sigal Chattah, Bar Number 8264, on behalf of Herbal Choice.

THE COURT: Appreciate it. Thank you.

Okay. Mr. Wolpert.

MR. WOLPERT: Yes. Good morning, Your Honor. Leo Wolpert, Number 12658, on behalf of GreenMart of Nevada NLV, LLC.

THE COURT: Mr. Gordon, please.

MR. GORDON: Thank you, Your Honor. Benjamin Gordon, Bar Number 15552, on behalf of defendant Circle S Farms, LLC.

THE COURT: Okay. The next one is partly not being able to see it. Daniel something. I'm sorry. It's coming across so small the letters are merging together.

MR. TETREAULT: Good morning, Your Honor. Dan Tetreault. Daniel Tetreault, Bar Number 11473, on behalf of Jorge Pupo.

THE COURT: Thank you.

Williamson, please.

MR. WILLIAMSON: Good morning, Your Honor. Richard Williamson on behalf of defendant Deep Roots Harvest, Inc.

THE COURT: Okay. Have we now taken care of

everybody? Did anyone else come in, either -- I don't see it in court but anyone remotely? Anybody else need to make an appearance?

Of course, it's a public courtroom. People are more than welcome to observe, but I want to make sure we've got all of your appearance is taken care of.

Okay. So you can probably appreciate the Court's first question is going to be -- well, I've got two questions, right. It's either A, in what order; or B, is there any of these, based on things that have happened between the filing and today that the Court is not going to be addressing today? Because we did see that there was some potential practice aspects. So if that impacts a particular motion just for it not being heard today.

If it's an argument base, we'll wait till we get to your motion. We'll deal with it from an argument base.

But if it's a it's no longer on for today, anybody?

Counsel, I think you were about to speak. Go ahead, please.

MR. RULIS: Yeah. Your Honor, Nate Rulis on behalf of MM and LivFree.

I think the only -- I think what you're referring to potentially is there were two notices of appeal that were filed in the intervening time when the motions to retax costs got filed, and then today. I don't believe that anybody has agreed

that any of the motions are not going forward. There may be a question. Personally, you know, on behalf of my clients, we have a question about possibly Wellness Connection's motion going forward because they are one of the two that filed a notice of appeal, but that has not been addressed between counsel.

THE COURT: Okay. I was -- thank you. I appreciate it.

So if there's not an agreement, then I'm just going to do it in order, but if we had agreements, I was really going to make your lives quicker and get you taken care of first. Okay.

So then the second way I'll phrase this is, is there any agreement among the parties as to --

Pardon?

(Courtroom interference.)

THE COURT: Well, it happens at least once a day; right?

Okay. So is there any agreement among the parties as to which one should go first?

MR. BICE: We haven't -- apologies, Your Honor.

THE COURT: You haven't -- okay.

MR. BICE: We haven't discussed that.

THE COURT: Okay. Well, then here's the way I'm going to do it.

MR. BICE: Okay.

THE COURT: I'm going to do it the way the clerk's office has done the motions, okay. Because at least that gives some clarity. That way my wonderful clerk and court recorder know which order we're going in. Okay.

So that means, based on the clerk's, the way they've done these, that means I have High Sierra Holistics, LLC's motion to retax and settle costs coming up first.

And just so that we're clear what -- we are going to have to limit people, like, five minutes each, otherwise, I will be seeing you over the weekend, and I can't see you over the weekend because they don't allow me to keep courtrooms open and everything over the weekend, and you might have plans, right.

Okay. So that means five minutes each if you need it. And then we can get through as much as we can on these. And if there's any joinder on your particular motion, what I'm going to just ask is I'm going to ask the parties to make their appearance and then a joinder party after I have -- you know, just set forth your joinder, I think is going to be the cleanest, clearest way to do this.

Go ahead.

MR. RULIS: Your Honor, if I might, could we have maybe just one or two minutes to talk. That way we might be able to agree. We just haven't talked about it. We might be

able to agree on a way to handle these that I think hopefully could short-circuit rather than having to go through each and every motion to retax --

THE COURT: Sure. Would you like --

MR. RULIS: -- I think we can maybe handle it on the cost.

THE COURT: Okay. Well, let me ask it this way. Does anyone disagree with counsel, Mr. Rulis's suggestion that we go off the record for a few moments to see if the parties want to get to a resolution? Does anybody want me to stay on the record and just start going forward on cases? If so, speak now.

MR. ROSE: No opposition to discussing it, Your Honor, but we can come back and see how we would proceed.

THE COURT: And that's Mr. Rose. Okay.

MR. BICE: It'll literally take us one minute.

THE COURT RECORDER: Just one second. (Indiscernible) attorneys.

MR. BICE: It'll just take us one minute.

THE COURT: Before I get a whole bunch of people starting to talk, I'm not hearing -- does anyone object to it? That's what I need right now. Anybody who objects, speak, please.

Okay. Nobody is saying that they object. I gave people a moment to unmute themselves in case that was a

situation.

We're going to go off the record. Tell us when you want to come back on. But remember, the people remotely can't hear what you're saying here in court. So go ahead.

(Proceedings recessed at 9:25 a.m., until 9:26 a.m.)

THE COURT: All right. Go ahead, Counsel.

MR. RULIS: Your Honor, we've -- Nate Rulis on behalf of MM and LivFree.

We've had a discussion here in court. And what we would propose doing on how to handle these is take them essentially by the party that filed the memo of costs. That way I think we can narrow it down to we essentially have seven or eight then specific topics.

So, for example, I believe Essence was the first. The Integral Associates, slash, Essence entities was the first entity to file their memo of costs. We could handle the motions related to Essence's costs first, then go to the next entity, which I believe was Clear River, and do it on an entity basis.

We'd do defendants' memo of costs first. And then at the end we could have Plaintiffs' memo of costs, which I think is only the TGIG parties that filed their memo of costs. And that's our proposal.

THE COURT: Okay. Anyone objecting to that proposal?

(No audible response.)

THE COURT: No. Okay.

So then what we need to do so we end up having clarity, here's the way I guess we're going to need to do it since it's a little different than kind of the way I've organized things; is parties that are going to do theirs, state your name, state the motion, right, the party the motion is on behalf of, just so that -- we're just trying to get you a nice clear record, you know what I mean, so you just don't get a jumble of who's talking on what. Okay.

So that means counsel and defendant movant on the memo of costs, who's going first? Please state your -- because these are done by motions rather than retax (indiscernible).

MR. BICE: Correct. So, Your Honor, I'll start, and I'll see if I can provide us some context in how we want to go about addressing this because it is a bit complicated in terms of just the overall number of parties.

So again, for the record --

THE COURT: And my court recorder -- thank you. I think you forgot to say your name. Go ahead.

MR. BICE: For the record, Todd Bice on behalf Integral Associates and Essence Henderson and Essence Tropicana.

So we filed our first memorandum of costs. Then the TGIG plaintiffs filed a motion to retax that. And then there were a series of joinders to the TGIG motion to retax. Then

TGIG, the Essence parties filed, I believe, the opening opposition to the plaintiff's motion to retax costs. And so I think the easiest way to sort of address this up front as opposed to getting into each individual sort of cost memorandum, the overall dispute, I believe, on all of these is the central issue of who was the prevailing party on this.

And on that issue, Your Honor, so we have, I would ask the Court to look at it from this perspective as do you really kind of have three buckets of litigants. You have the plaintiffs who did not settle with anybody, the defendants that did not settle with anybody, and then the settling parties.

So in this particular case, Your Honor, there really -- I would submit that what's going on here in part by the plaintiffs is you have inherited this case. We are actually about, it's almost to the day, two years after the trial in this matter. And so unfortunately, that's a little unfair to you, Her Honor, because you've inherited a case that you didn't actually try.

And so unfortunately, there's an effort here to kind of rewrite what the trial was about, and there's an effort to kind of rewrite what the claims were and then tell the Court that, oh, this was much ado about nothing. This was a month long trial that was an effort by the plaintiffs to upend the entire regulatory structure and an entire licensing process and to strip my clients and all the other defendants of their

licenses. That was made clear at the trial. That was what the trial was about. That's why we had a month long trial in the convention center of all places; it was in the middle of COVID. So that's what happened in this case.

Now, during the trial, some of the plaintiffs settled with some of the defendants, including the State. And they made an agreement, a private agreement amongst themselves, and I think -- I'll leave that mostly to Mr. Rulis to address because I think his team kind of led that effort.

So, but there were certain plaintiffs who didn't settle with anybody, and that would be the TGIG parties principally.

Then there were a group of defendants that didn't settle with anybody, and that would include the Essence entities, Clear River, and I apologize, I won't remember who they all are. So I don't want to speak for them.

So with respect to -- let me deal with my group, Your Honor.

On my group, which is the group that settled with no one --

THE COURT: And just so that we have clarity, you filed your memorandum of costs on 8/5/2022, at 5:27 p.m.

MR. BICE: Yes, Your Honor.

THE COURT: Okay.

MR. BICE: That's right.

THE COURT: Okay. Just so -- and I'm just going to give you a doc number so that we can assist everyone who's going to have to look back at these. And just bear with me. So, okay. Document 2863. There we go. Thank you.

MR. BICE: Yes.

THE COURT: Go ahead.

MR. BICE: So with respect to the defendants that did not settle, Your Honor, to suggest that those defendants who did not settle are not the prevailing parties in this I think is -- I mean, it just doesn't even pass, you know, the seriousness test.

They sued to invalidate our licenses, to take our licenses away from us and to try and reorient them to themselves. I mean, they brought in experts to talk about market share. That was the entire plaintiffs' theory of the case was the process should be blown up and redone, and all the licenses that had been issued, including the licenses to my client, which had actually received the highest number of licenses should be stripped away from them and either given to the plaintiffs or redone, the entire process.

We prevailed on every issue. We did not lose a license. We did not lose any claims against our clients, and we didn't settle and give up our rights. So that's with respect to the Essence entities, and I know the other parties will talk about that because several of them are in the same

boat as my clients are and the Essence parties.

So under any definition of prevailing party, Your Honor, the Essence parties prevailed against all the plaintiffs, and that includes the settling plaintiffs because the settling plaintiffs didn't settle with my client. They settled with some defendants, and they -- amongst that group, they made an agreement amongst themselves that they would each pay their own fees and costs, which they were obviously entitled to do, and that's very reasonable for them to do that amongst themselves.

THE COURT: And there was no motions for good faith settlement that this Court could find in the 3,000 plus entries in this case. Did I miss one?

MR. BICE: I don't believe so, but I'll let Mr. Rulis handle that.

THE COURT: Okay. And with relationship to your client. I'm just saying with regards to your clients. So there's nothing that -- okay. Okay.

MR. BICE: No. No. There was nothing relating to my client. My client proceeded all the way through trial, and I'll let others speak to the fact, but the Essence parties were very active and next to the Thrive parties might have been one of the more active, and I shouldn't say just the Thrive parties. I mean, Mr.-- the Clear River parties were also very active in the defense, but the point being, Your Honor, is we

expended tremendous amount of resources defending our licenses, preserving our licenses, and we did preserve them, and all of our licenses are intact and operating today.

So it can't be seriously argued that the Essence parties, with respect to all the plaintiffs are not the prevailing party because they are -- they prevail on every issue.

And you can't also -- some of the plaintiffs have tried to argue that, well, you know, the Essence parties were brought into this action at essentially their request. Well, that's also not really accurate.

What was happening was Judge Gonzalez ordered them to join all the successful applicants because you were trying to strip our licenses away from us. You can't litigate the validity of our licenses without us being parties to the case. So they were ordered to join us as necessary and indispensable parties because the relief they were seeking was to strip away our licenses.

And so that's why we remained in this action. And we prevailed in this action.

And then the last point I would like to make just on this issue, Your Honor, is I know Mr. Parker's client, Nevada Wellness, and he raised in this in his replies, he claimed that Judge Gonzalez already ruled that we weren't prevailing parties and he -- and he bases that on a minute order that he's

mischaracterizing. And, in fact, we have the order.

Can I have my order back.

And we didn't -- we weren't able to include this in our -- because this was raised for the first time in the reply brief by Nevada Wellness. They make the claim that Judge Gonzalez said that the Wellness connection --

THE COURT: Can you give me the date of the minute order just so we're all clear on which one you're referencing. Thank you.

MR. RULIS: Oh, yes, Your Honor. The dates of --

THE COURT: It should be on the minutes, right. It should be on the top if you're reading from the minute order.

MR. BICE: The date of that minute order --

No. She's talking about the minute order that Mr. Parker is relying on.

(Pause in the proceedings.)

MR. RULIS: Todd, if I can try and help you?

MR. BICE: Yes.

MR. RULIS: I believe it's November 20th of 2020, Your Honor.

UNIDENTIFIED SPEAKER: That's right.

MR. BICE: Yes. And I had it here, and I have somehow lost it.

THE COURT: No worries.

MR. BICE: But that minute order, Your Honor, is

actually about a motion for attorneys' fees that Wellness Connection brought. That Judge Gonzalez ruled then that that -- because the claim wasn't frivolous or was -- Nevada Wellness had argued that the claim was brought without a reasonable basis. And so it sought attorneys' fees in the statute.

And Judge Gonzalez said it wasn't -- denied that request saying it wasn't frivolous, and therefore you're not a prevailing party under the statutes for recovery of attorneys' fees.

But interestingly, Nevada well -- or Wellness Connections also brought a cost memorandum. They brought these way early, when Judge Gonzalez was still handling the case. And Judge Gonzalez denied that motion without prejudice because it was premature, and that order was entered by Judge Gonzalez on August 30, 2021, at 9:40 a.m., if I could approach, Your Honor, I'd hand you a copy of the order.

THE COURT: Okay. And this is part of the record?

And, Marshal --

MR. BICE: Oh, apologies.

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

MR. BICE: So the point being, it has been suggested in their reply briefs that Judge Gonzalez already ruled that none of the defendants were prevailing parties for purposes of recovering their costs, and that's just not true. In fact,

Wellness Connection brought that -- their cost memorandum, and she ruled it was premature because the case wasn't over with. And that's why we are all bringing these -- the costs now because, as the Court will recall, you entered a 54(b) certification so as to clean up the jurisdictional mess that is up at the Supreme Court right now.

And so once Your Honor did that, the deadline to file cost memorandums were triggered, which is why we've all filed them now. So they are one, timely. And two, Judge Gonzalez did not rule that we were not the prevailing parties. In fact, she specifically ruled that Wellness Connection's motion or effort to tax costs was premature.

So with that, Your Honor, it's pretty simple with respect to the Essence parties.

THE COURT: I'm going to keep it for a second, but --

MR. BICE: It prevailed on all claims brought in the case. That's the end of the analysis. It didn't settle. So it's entitled to all of its costs against all of the plaintiffs. And Judge Gonzalez said that all of the plaintiffs, even those that settled, were still bound by the end judgment as to the parties that didn't settle, which includes my clients.

And then so under that -- under Nevada law, Essence is the prevailing party. It's entitled under Wright to recover its costs.

And while there has been a few little arguments they've made against our costs, for the most part, these are all depo transcripts that we incurred in the case, and, yes, we all videoed these depositions because many of the witnesses, particularly, the irony here, TGIG arguing that videos shouldn't -- somehow the cost of videos shouldn't be recoverable on our behalf. That's odd because one of the reasons that we took these videos is a lot of these litigants refused to show up at trial.

And I know Your Honor wasn't there, but we spent a lot of time kind of making a little fun of the TGIG parties over their client, their principal client's failure to show up at trial. After making all this noise and attacking all of his competitors, he refused to show up at trial. So we were forced to use videos, and we were forced to do that with respect to a number of the parties. So those were reasonably incurred, Your Honor.

And with that, I'll leave it to, I believe --

THE COURT: Okay. I am going to have a -- I'm going to have one question.

MR. BICE: Yes, Your Honor.

THE COURT: Raised in the op, a distinction between you're seeking costs pursuant to what they refer to as the declaratory relief versus they are calling it a PJR and so saying not fall within the category of where you can get costs

under the statute.

MR. BICE: Yes. So, Your Honor, with respect to the declaratory relief, that's where these costs -- I mean, that again was all the deposition transcripts. That was the month-long trial. That's the -- that is where the parties reached their settlement, was in the middle of that trial.

You know, we refused that. We kept our licenses. So we prevailed on that, and that was the effort to strip all of the licenses out. We quoted Your Honor in our opposition that the extensive argument that TGIG made at the close of trial accusing specifically my client of corrupting the process, and meaning that the entire process needed to be invalidated and undone, that was what their effort was.

This issue about this 5 percent rule, I'll wait -- unless you want me to address it now, I'll address it in response to Mr. Dzarnoski's position, but that is the most pyrrhic of victories. It actually is a rule that they took advantage of and benefited them until they wanted to try and blow the process up.

THE COURT: Okay. Okay. So are we doing it so that I'm hearing each party's, and then a response by the TGIG plaintiffs and their joinders? Is that the way you all want it versus it being --

MR. RULIS: Your Honor, so if I might, Nate Rulis for MM and LivFree.

THE COURT: Sure.

MR. RULIS: Just to clarify, yes, I think we want to handle it by party. So the thought was we'll handle Essence first.

THE COURT: Okay. I just saw you walking up to the podium.

MR. RULIS: Yeah.

THE COURT: That's why I was wondering.

MR. RULIS: Yeah.

MR. BICE: Okay. That's fine.

MR. RULIS: Yeah, and that's -- I want to clarify. Let me get to the podium.

THE COURT: Okay.

MR. RULIS: So, Your Honor, Nate Rulis again on behalf of MM and LivFree.

I also will note that we did file, and when I say "we," I'm going to refer, as Mr. Bice did, to the parties as the settling parties, which MM and LivFree are part of. That includes Natural Medicine, Qualcan and Nevada Wellness Center, and we together filed a -- and excuse me. I believe as part of the reply was the ETW plaintiffs.

We filed our own separate motion to retax on all of these. So I know Mr. Bice had first said that it was just TGIG that filed the motion to retax. That's not quite correct. We have a separate one. So I just want to clarify that.

THE COURT: Okay.

MR. RULIS: And so --

THE COURT: And your date of filing your motion to retax?

MR. RULIS: Yeah.

THE COURT: I'm just trying to keep these all so you all have a clear record --

MR. RULIS: I can tell you exactly. We filed our motion to retax on August 8th at 5:15 p.m. Your Honor.

THE COURT: You're one of the whole slew of August 8ths.

MR. RULIS: Yes.

THE COURT: Okay. Go ahead, please.

MR. RULIS: So I'm going to address this, as Mr. Bice alluded to, on behalf of the settling plaintiffs, and that's -- I do believe that that is -- there's an important distinction there, and that is because when we talk about prevailing party, we talk about did the parties obtain the relief they were seeking as part of their claims, and that's cited to in Essence's opposition to our motion -- well, the omnibus opposition that they filed.

But the reality is were the settling plaintiffs able to obtain the relief they were seeking. And I know Mr. Bice said that the overall goal was to blow up the process. I think he was generally talking more about the TGIG nonsettling

plaintiffs.

We came to and filed these claims in an attempt to obtain licenses that our clients believed they should have gotten. And so when we talk about what was the end result, when we're talking about the settling plaintiffs, we're talking about parties that through their settlement did, in fact, obtain licenses through this litigation.

THE COURT: And that's where I'm going to need --

MR. RULIS: Sure.

THE COURT: -- not having the benefit of some of the history, I am going to need ask a question here.

With regards to obtaining licenses, a distinction between new, slash, additional licenses versus that were already issued versus taking away someone's license or transferring it or however you'd like to phrase it, somebody who had an existing license and giving it to somebody else. Can you just make that distinction in your argument.

MR. RULIS: Absolutely.

THE COURT: Thank you.

MR. RULIS: So let me give you a little bit of background, just context for how the licenses got moved. So this whole litigation arose out of the application process. The application process was submit your applications, and the State was handing out, and I'm sure I'll get corrected from --

THE COURT: I'm familiar.

MR. RULIS: -- approximately 80 licenses across the State. There was that -- and that was a fixed number. So those got handed out. This litigation ensued because people didn't believe that the process was correct, or they believed that they had scoring problems. There were scoring issues, that if they had been done correctly, would have entitled them to licenses, for example, the arguments my clients MM did. So that's the context.

We went through this litigation as part of the settlement. There were parties that obtained licenses in the application process that agreed to transfer some of those licenses to the settling plaintiffs. Those are the licenses that we obtained. So it was essentially we're going to transfer to you a number of some of the licenses that the settling defendants had obtained in the application process.

THE COURT: That doesn't apply to the Essence entities; correct?

MR. RULIS: Correct.

THE COURT: They're not that grouping.

MR. RULIS: They did not transfer licenses. That's correct.

THE COURT: Okay. Go ahead.

MR. RULIS: But when Mr. Bice -- so let me address that one because Mr. Bice stood up here and said that they prevailed on every single subject that they litigated in this

case, and that is not correct.

And I want to point Your Honor to there were -- he alluded to the 5 percent. There was a motion for summary judgment that was filed, I believe initially by Nevada Wellness Center; that would be Mr. Parker's client, one of the settling plaintiffs. That was granted. That's a summary judgment motion that was granted then incorporated into the Judge's final findings of fact and conclusions of law at the end of trial.

Now, there was also a separate summary judgment that my clients filed, that we filed on behalf of MM and LivFree, and it was specific to the claims that we had asserted in this action, which was that my clients, MM and LivFree, there were scoring errors and that we had been denied an appeal before the department of -- excuse me, the Department of Taxation, which at the time was the overseeing.

I mean, that motion was also granted, and that was Judge Gonzalez -- and by the way, that was over an opposition that was filed by the Essence entities, by the other entities, the nonsettling defendants that are here asking for fees and costs. It's not just Essence.

And I can point Your Honor to the findings of fact and conclusions of law granting in part our motion for summary judgment was entered in this case on July 11th, 2020, at 3:29 a.m., and the Essence entities' opposition --

Now, I'm going to get a little complicated here, Your Honor, because our motion for summary judgment was initially filed in the prior case before it got consolidated. So we had filed a separate action that was A-18-785818-W. The Essence entities opposed, specifically opposed our motion for summary judgment on September 27th, 2019, at 2:20 p.m. And then, because of the various procedural hoops that we went through and consolidations, that didn't get heard until much later.

But needless to say, we did obtain summary judgment on our request to have our appeal heard by the Department of Taxation. And but for the settlement that we then later entered into, that didn't go forward because we didn't need it anymore because we obtained licenses.

And so that's the other thing, is the nonsettling defendants want to say that this essentially that they prevailed on everything; this happened in a vacuum. But the reality is they certainly benefited from and attained a benefit from the fact that we settled. And we didn't have to go forward with a appeal before the Department of Taxation and whatever that might have evolved. Because we had specifically alleged scoring errors and whether or not those would have -- I mean, that's -- so when we go back to, and what I want to get back to is for the settling plaintiffs, when we're talking about, did they obtain relief that they were seeking as part of this litigation; they certainly did by obtaining licenses that

they were trying to get.

And so when you're doing a prevailing party analysis, it was never -- the settling plaintiffs' specific claims were not take away Essence's licenses. It was, we believe that we were entitled to licenses.

THE COURT: But was it reallocating -- that's where I was trying to get to. Was it reallocating licenses or expanding the number of licenses or a combination of both depending on which party and which part of the litigation?

MR. RULIS: It was --

THE COURT: Is your assertion. I'm just, you know, going to get the parties' assertions.

MR. RULIS: It was that the scoring had been done incorrectly and needed to be redone, which would result in a -- summary allocation of the licenses. It wasn't as if we said Essence is going to end up with three, and there were no specific claims on who was going to have what licenses but rather that the process had been done incorrectly, and had it been done correctly, there would have been a different outcome as far as who obtained licenses.

So as far as that goes, you know, we talk about what was the outcome. It was, for the settling plaintiffs, we had obtained a preliminary injunction. We had obtained at least partial summary judgment on two separate issues. And then as a result of our settlement, our clients obtained licenses, which

was the point of the litigation. And so as far as the settling plaintiffs go, they certainly prevailed on the issues that they were litigating in this case.

THE COURT: So the Court is going to have one more question for a point of clarification.

MR. RULIS: Yes.

THE COURT: Understanding you're asserting that you prevailed with regards to your clients for the relief that you got because you ultimately receive licenses.

MR. RULIS: Yes.

THE COURT: But your opposition to Essence's is that basically as a settling plaintiff party, since you got the relief you wanted, they should -- they are not a prevailing party because vis-a-vis you?

MR. RULIS: Not -- not -- and so right. That's the -- I appreciate Mr. Bice trying to separate the parties into buckets.

THE COURT: Right.

MR. RULIS: By again, they are not a prevailing party against the settling plaintiffs. And that's, again, I get back to they have -- whether they want to acknowledge it or not, they certainly received a benefit of the settlement of the plaintiffs, and that's where I go back to summary judgment was ordered in our favor, which no longer was necessary --

THE COURT: In part.

MR. RULIS: In part, but was no longer necessary because we had obtained licenses.

THE COURT: Okay. I appreciate it. So who's going next on this one?

MR. PARKER: Your Honor, this is Teddy Parker. I don't know if you can hear me very well.

THE COURT: I can hear you, Mr. Parker. Go ahead, please.

MR. PARKER: Again, just good morning, Your Honor.

I wanted to add. We've joined in MM's motion, but I wanted to add to a few comments made by Mr. Rulis. I would ask the Court to start the consideration of our moving to retax based on the point raised by Judge Gonzalez, and this is more -- I believe this touches upon what Mr. Bice said earlier, but the Court indicated that we were simply added these defendants as a part of the motion practice and that Essence nor any of the other nonsettling defendants, they had no obligation to participate in the process.

We never asked them to participate. We named them only because the rule required it. They didn't have to participate in the process.

We brought our claim originally against the Department of Taxation, and then eventually we named all of the defendants as a matter of course. In fact, Clear River indicated that if we had not joined all of the defendants

that -- procedurally they did not go forward.

So I wanted the Court to consider that.

And I also wanted the Court to consider that none of the defendants fit within the categories under 18.020. And I didn't hear Mr. Bice or, from my review of any of the (indiscernible) defendants' briefs to indicate where they fall in in one of the categories under NRS 18.020.

Now, Nevada Wellness Center was a settling plaintiff. So we settled with MM and LivFree and ETW plaintiffs along with Qualcan as well, Your Honor.

And also, as Mr.-- as Mr. Rulis pointed out, we filed the motion indicating that a 5 percent rule had been violated -- was a violation, I'm sorry, of the statutes and of the parameters for handing out licenses. And we won that motion for summary judgment. Several of the other plaintiffs joined in it, but we filed the motion, and we won the motion, and it was opposed by all of the defendants.

And at the preliminary injunction hearing, we had findings of fact and conclusions of law that confirmed that the 5 percent rule was a deviation from the law.

And following the Phase 1 trial -- or Phase 2 trial, I'm sorry, the Court's final determination was that the 5 percent rule was a violation of law. So we prevailed on that issue, and I understand and appreciate that it was a motion for partial summary judgment, but it was ultimately a finding,

which Mr. Bice and the other defendants has asked the Court to take 54(b) recognition of. So that is a final decision of the Court at this point.

Your Honor, one thing that I would say that I don't think Mr. Bice or any other defendants would object to is that my client, Mr. Hawkins, unlike perhaps some others, was at every court appearance for the most part. I think probably 90 percent of them. He was there at every trial. He was there at the depositions. He didn't have -- he was there and did not have to appear by video because he was in -- because he was there in person. He was there, in fact, at the preliminary injunction hearing. So he took a great amount of time of his personal time to be there and to participate in this process.

I don't -- I believe our papers address why the defendants are not a prevailing party. They certainly didn't win anything. I'm not saying they lost anything, but they didn't win anything. So they walked away with the same licenses they came with. Nor did we ask to take specifically their license.

THE COURT: Okay.

MR. PARKER: So, Your Honor, I don't believe they fit under the parameters of 18.020.

Based upon Sun Realty versus the Eighth Judicial District Court, 91 Nevada 774, which is a 1975 case, in Nevada costs of suits are only recoverable if they're authorized by

statute or court rules.

So I don't believe they're entitled to an award of costs, Your Honor.

THE COURT: Okay.

MR. PARKER: And the only other thing I point out, Your Honor, is that we have a trial coming forward on Phase 3 on January 3rd. I'm sure the Court recalls that date.

THE COURT: I do recall that.

MR. PARKER: So the only other concern I would raise is whether or not there is -- any of these motions are premature based upon the Phase 3 trials still being outstanding. And that's the only other concern that no one's addressed before today, Your Honor.

THE COURT: Okay.

MR. PARKER: Thank you very much.

THE COURT: Thank you.

Anybody else remotely need to be heard before I circle back to people here in court?

UNIDENTIFIED SPEAKER: Yes, Your Honor.

MR. DZARNOWSKI: This is Mark Dzarnoski.

THE COURT: Okay. So, Mr. Dzarnoski, go ahead. You're the TGIG plaintiffs.

MR. DZARNOWSKI: Yes. I am TGIG. I represent TGIG.

THE COURT: Okay.

MR. DZARNOWSKI: I'd like to pick up just slightly

where Mr. Parker left off where he made the comment that the Essence entities did not win anything. And I think when you're sitting in the position you are, Your Honor, to decide who won and lost something, you need to look into the allegations that formed the basis of the action.

The Second Amended Complaint that we filed is what governs this action, and at least as to the TGIG plaintiffs. We never claimed that any particular license that was issued to Essence or any other entities ought to be, as Mr. Bice has indicated, stripped.

I defy Mr. Bice or anyone else to find in the Second Amended Complaint any allegations where the TGIG plaintiffs have made an allegation that the Essence entities did something wrong.

Our challenge to the case, our challenge was to the process. So when we filed our first complaint, it was entirely naming the Department of Taxation as the defendant, and the (video interference) --

THE COURT: You cut out. You cut out.

MR. DZARNOWSKI: -- the rights were violated by the way the State proceeded with the -- the way the State proceeded in awarding the licenses. We didn't claim Essence did anything wrong in that allegation. We claimed the State did.

And as other people have indicated to you, Essence then decided they were going to intervene because the

necessary -- what we asked for as a necessary outcome or what we wanted the outcome to be is based upon the constitutional infirmities that we were alleging that the entire process would then be mooted and that there would essentially be a redo, but that wasn't -- that is a product of the violations of the State of Nevada that we had alleged.

Now, it was specifically because there would be, if we obtained the relief that we ultimately wanted, to start the process anew, Mr. Bice's clients would be affected, as would other applicants who won, and so Judge Gonzalez asked that they be included as defendants.

But we then, when we added them as defendants, it was to allow them to argue and to participate in the action to defend the actions of the State of Nevada and the Department of Taxation.

So Mr. Bice can say we didn't lose anything. Well, he wasn't fighting a specific allegation that he's the one or his clients did something in violation of the Constitution. The State was the one.

So if you then go to the Second Amended Complaint, (video interference) on who wins -- who has won anything and who has lost anything, the Second Amended Complaint specifically raises the declaratory relief, asks for declaratory relief based upon the constitutional violations of the Nevada Constitution. It raises a claim for relief for

equal protection under the United States Constitution, and it asks for an injunction. Those are the first -- those are three of the seven prayers for relief that were included in our case.

And so if you then look at the ultimate decision of the Court, the ultimate decision of the Court on Phase 2, which was the trial phase, was that we were -- that, yes, the process was flawed. Yes, there were constitutional infirmities that existed as to the process. And, yes, the appropriate relief to be granted in this case was the issuance of both a preliminary and a permanent injunction. That's what we asked for.

To say that we did not prevail on the Second Amended Complaint when we got the declaratory relief, we got the decision by the Court that the process violated the Constitution, and we got the injunction, to say that Essence somehow prevailed is -- is simply ridiculous.

Our challenge was the process. And so when you take it in in conjunction with what our challenge was and what our requests, then, in fact, we are the -- we have prevailed at least substantially in terms of our claims. We didn't get everything we wanted and, you know, I'm the first one to acknowledge to Your Honor that we think the relief that was granted, the injunction should have been broader. That's why we are pursuing a case in the Nevada Supreme Court, is to see if we can extend and get the relief expanded from what we already received.

But Essence is not a prevailing party any more than the Department of Taxation can claim it's a prevailing party when it was found that their process was constitutionally infirm, and they had an injunction issued against them.

The second thing that I wish to bring up, and it will help for the other motions as well, is there apparently -- is an effort also to seek some costs by some parties for the Judicial Review Phase 1 of the trial. And as we have noted, judicial review is simply not one of the cases for which costs can be awarded. It is not a special proceeding, and it's not listed, and therefore, any costs that are being sought for Phase 1 judicial review should simply be ignored because they're not entitled to any costs.

So, I mean, our basic position is we are the prevailing party in Phase 2. Essence certainly is not, although we did challenge their conduct and think that they engaged in some very poor conduct.

The evidence that we had put in respecting Essence in some of these other entity is -- was probably Department of Taxation did not consider certain things that were done by these entities when they made a decision to determine that the applications were complete and then went into a scoring process.

So, yes, we did significantly attack Essence and its conduct, but not within the scope and framework of what

Mr. Bice is suggesting. It's within the scope and framework of our complaint, which is attacking the process utilized by the D.O.T.

THE COURT: Okay.

MR. DZARNOWSKI: So the fact that the Bice -- I'm sorry, the Essence entities --

THE COURT: Counsel. Counsel. I'm going to have to finish you up, in fairness.

MR. DZARNOWSKI: -- intervene --

THE COURT: I said five minutes for each people -- to each person.

MR. DZARNOWSKI: Thank you. I am done.

THE COURT: Okay. I do appreciate it.

MR. DZARNOWSKI: I'm done, Your Honor.

THE COURT: We're on the very first one, folks, and I'm not even through that one.

So, okay. Who has not had an opportunity to be heard on this case, on this one yet?

MR. PUZEY: Your Honor, Jim Puzey on behalf of High Sierra Holistics.

THE COURT: Okay. And you filed a joinder?

MR. PUZEY: Yes, I filed a joinder and a supplement. And I'd just like to address the supplement.

THE COURT: And on what basis -- how were you able to file a supplement without Court approval? Was it a stipulation

among the parties? I didn't see it.

MR. PUZEY: We filed it at the same time as our joinder and just added in separate -- our arguments that were unique. That's kind of been the way, if you will, that the procedure that has been filed throughout this case involving multiple parties, and this was just another, I think in the long line of people filing joinders, and occasionally if something was unique to their party, a supplement.

THE COURT: I'm going to hear your argument, and then I'll see if somebody objects. Go ahead, please.

MR. PUZEY: Thank you.

Again, I join the arguments you've heard. There's a couple of things that are unique to High Sierra Holistics.

Judge Gonzalez took over presiding this after Judge Bell consolidated the cases on December 6th of 2019. Prior to that, Essence had never intervened in the High Sierra Holistics matter. And based -- after the consolidation, that doesn't mean that Essence is now -- automatically becomes a party or pleading in the High Sierra Holistics matter.

The *Mikulich versus Carner* case at 68 Nevada 161, it says that consolidation does not merge two suits into a single cause or change the rights of the parties or make one party a party into a separate suit. Even after consolidation, parties maintain their separate identities, and the parties and pleadings in one action don't automatically become parties and

pleadings to the other action.

And what Judge Gonzalez then said to do, and for the Court's edification, High Sierra Holistics filed identical actions in Clark County, Nevada; followed an identical action in Lyon County, Nevada; an identical action in Washoe County, Nevada, against the Department of Taxation.

And once the matters in Las Vegas were consolidated, Judge Gonzalez invited -- she had invited people to file amended complaints to name additional defendants. Because no one ever intervened in Lyon County and Washoe County, not a single party ever intervened in those particular matters or attempted to, it became a unique situation for High Sierra Holistics where it didn't need to file an amended complaint. It was going to monitor what happened in this particular action. And so there was never an amended complaint to which Essence or any of the others that you'll hear later could answer.

And the Essence finally did file an answer, but it was to the original complaint that had been outstanding for over a year. They filed an answer on July 8th of 2020, which was literally nine days prior to the commencement of Phase 2, the first part of trial.

So if some party wanted to move against High Sierra Holistics to say that they hadn't named indispensable parties, then we could've addressed that at that particular time, but no

one ever did. They just went ahead and answered a complaint that didn't include them, 90 days before the trial started.

So for that reason and since no one had ever joined in either the Lyon County or Washoe County actions, which the State of Nevada removed to federal court and then were consolidated in federal court, when we settled as a future settling party, we settled all of our litigations. So we didn't abandon any claims against Essence as they went forward in this particular matter.

We never had any against Essence in this matter. We never had any contact with Essence. We didn't attend depositions. We didn't have communications. There were no phone calls, no correspondence, no one ever called any of our clients, and so based upon the fact they finally, at best, made an appearance in the High Sierra Holistics matter eight days before the commencement of trial, (video interference) believe the costs are improper.

Thank you, Your Honor.

THE COURT: Okay. I think I have one more.

(No audible response.)

THE COURT: No? Okay.

MR. RULIS: There was just one --

THE COURT: Mr. Rulis.

MR. RULIS: Thank you, Your Honor, Nate Rulis again on behalf of MM and LivFree.

Your Honor had asked Mr. Bice a question, and I just wanted -- about the good faith settlement that I failed to address before.

THE COURT: Yes.

MR. RULIS: So, no, there was not a motion for good faith settlement. What there was, was at the time we announced the settlement there were objections and motions to strike our settlement which Judge Gonzalez heard and denied and allowed the settlement to proceed. So I just wanted to clarify for --

THE COURT: No, I appreciate that.

MR. BICE: Yes, Your Honor. And so Mr. Rulis had asked to make that statement on the record, which I was fine with, obviously, but we didn't oppose their settlement. I mean, that wasn't something we could block.

THE COURT: Yeah. Okay.

MR. BICE: So, Your Honor, it is really --

THE COURT: Can you jump into 18.020 just so I can get that one taken care of --

MR. BICE: Yes. Right.

THE COURT: And then --

MR. BICE: So, Your Honor, the statute -- the statute provides, you know, that costs must be allowed, and, of course, a prevailing party against any adverse -- against whom judgment is rendered in the following cases, and actually for the recovery of real property or possession and every right

thereto, an action for the recovery or possession of personal property where the value of the property amounts to more than $2500, in an action recovered for money or damages where the plaintiff seeks more than $2500, which they did, and in a special proceeding, except a special proceeding conducted by 306.040.

So, Your Honor, the dec -- a dec relief action qualified as a special proceeding, and they also sought to take away our licenses, which were property worth more than $2500. And then --

THE COURT: And that's where I need to stop you. I'm sorry.

MR. BICE: Got it.

THE COURT: Is -- and I appreciate good lawyering and how your phrasing, each person is phrasing the argument. But the arguments from some of the counsel who have spoken you've heard is that the issue is not against Essence. It was against the process.

Now, a net result potentially could have impacted your client, but your client wasn't truly a defendant in the sense that they weren't seeking to take away Essence's licenses directly. It just could be a potential net result.

Do you want to -- do you want to therefore argue --

MR. BICE: Well, sure.

THE COURT: -- quote, a party for being -- and what

did you prevail on, because --

MR. BICE: Well, Your Honor, let me -- let me -- there's multiple ways I want to address that, because I wanted to start to say is, is that I, to say that these factual characterizations of what they argued and what happened, again, you didn't try the case.

THE COURT: That's why I phrased it as I appreciate good lawyering.

MR. BICE: So when I heard some of these assertions, I was turning around and looking at my colleague because we were sitting there, and I'll let some of them address it, in utter disbelief at some of the assertions that were just made to the Court.

THE COURT: I prefer to phrase it as you all have lawyering skills.

MR. BICE: Right. They -- let me quote to you the closing argument of Mr. Gentile, Mr. Dzarnoski's partner, who is lead counsel in the case. This is his closing argument:

> The Constitution of black letter law and the regulations were thrown to the wind, and that relationship between Amanda Connor -- who was my client's lawyer -- Jorge Pupo -- who was the head of the process -- and then later Armen Yemenidjian, so that the --

Because the Court doesn't understand this, Armen

Yemenidjian -- that's my client. That's Essence, is Mr. Yemenidjian.

-- corrupted this process in addition to throwing it to the wind would make a bet that nobody had more or even as many sales to minors as Essence did, and they got the most licenses. So I submit the case.

This entire attack -- and don't take it from me, Your Honor, I'm passionate for my client. But ask any of the defendants, my client Essence, Randy Black and others were endlessly attacked in this case by TGIG and the other parties trying to say that our licenses should be taken away from us, endlessly. The entire trial was focused on that, including the Thrive defendants, as Mr. Gutierrez will represent, because Thrive was also represented in the application process by Amanda Connor, the lawyer who they accused of corrupting it.

Now, of course, at the end of the day, what did Judge Gonzalez point out in her findings of fact? It's a little bit ironic that TGIG was attacking Amanda Connor, claiming she corrupted it because she was also their lawyer. That was the richness of this -- of these assertions. Mr. Dzarnoski's own client was represented by the same lawyer that they claimed had corrupted the process.

THE COURT: Someone's phone is going off and vibrate very loudly. Can we make sure that gets turned off because

I -- if I can hear it here, that means it's near a speaker. We do appreciate it. Thank you. I'm not going to call the person out.

MR. BICE: Thank you, Your Honor.

THE COURT: Just please get it taken care of. Thank you.

MR. BICE: So that's why when I heard these arguments, Your Honor, that somehow they never sought to take Essence's licenses away from them; that was -- they spent the entire month long trial trying to take Essence's licenses away from them and to try and blow up the whole process. They claimed that Essence wasn't eligible because there had been a prior sale to minors. They claimed that Essence wasn't eligible to have won these licenses because we somehow didn't get our ownership structure in place at the right time because we had a public sale transaction after the license applications had been submitted.

They spent weeks of this trial attacking my clients, claiming that they shouldn't have won licenses. That's what this entire lawsuit -- and you know why, Your Honor? Because we were their principal competitor.

Mr. Dzarnoski's client is Essence's principal competitor, and he was mad. So he used the litigation to go about bashing his competitors and trying to get their licenses taken away from them. He even had an expert witness on the

stand talking about market share.

All of this was about stripping his competitors of licenses. That's what this was about. And that was -- and that is true for all of the defendants. And if the Court looks at the trial transcript, that's what they were -- they spent their entire time doing.

And what -- and, you know, my friend Mr. Rulis largely kind of acknowledges that because when they -- at the end of the day, they settled. They settled with some of the defendants, getting them to give them some licenses. That's what this was all about.

So let me talk then just briefly now about what Mr. Rulis is arguing. He says, well, we didn't prevail on every issue because he cited a motion that was never actually resolved -- I'm sorry.

He cited a motion that we opposed. Yes, we opposed it, Your Honor, because it was claims splitting, but the motion concerned a scoring dispute that they had with the State, and we didn't believe that, one, that they could do that, and two that the Court had jurisdiction to order that. But we were defending the process there.

They got no relief against us. Even if they had prevailed on that, it wouldn't have impacted Essence because we were either first or second I think in every jurisdiction that we had applied for a license. We were never going to lose a

license due to a scoring error of their -- of their applications. It just it was impossible.

If they were right and had they prevailed on that, it would've been the lowest scoring party that had prevailed in that particular jurisdiction, which wasn't my clients. So they absolutely obtained no relief relative to the Essence parties.

And they -- Mr. Dzarnoski made the statement about, well, Essence can't be the prevailing party. They got nothing better than what they had at the time that the lawsuit was filed. That's the definition of a prevailing party if you're a defendant. If you -- if you retained everything you had at the time you were pulled into this litigation, you are the prevailing party, and that's exactly what happened. The only thing we were out are all the costs and attorneys' fees that we were forced to incur because they pulled us into this litigation.

And you can't claim that, well, Judge Gonzalez forced us to bring them in, forced us to bring in all these defendants.

Well, of course, she did. You were trying to take their licenses. These plaintiffs were trying to litigate licenses that belonged to other people without them being participants in the case. Well, of course, they would love to do that. They would love to litigate their competitors' licenses without the defendants defending their rights to those

licenses. And that was what they actually attempted to do, which is why Judge Gonzalez said you aren't allowed to do that. You must name them all pursuant to Rule 19.

So we are necessary parties, and that was her ruling. And with respect to my -- again, to Mr. Rulis's arguments, you can prevail against some -- he says, well, we did prevail. We got licenses. That's true, you did, and you entered into a settlement to get those license, and you can prevail against some defendants and not all, but that doesn't mean that because you prevailed by settling with certain defendants that you then prevailed against all the defendants.

The Nevada Supreme Court has addressed that, Your Honor, and said that's not the case. In our -- the Essence party's case, as well as several of the other defendants, like Clear River, we gave up nothing. We prevailed. We kept our licenses. We are the prevailing party.

So with respect to now Mr. Parker, I just want to deal briefly with a couple of his.

First of all, Mr. Parker's clients, and I apologize, Your Honor, these -- there are so many litigants, I always forget all of their names. I think it was Nevada Wellness Center is Mr. Parker's client. And if I got that wrong, I apologize to Mr. Parker.

But in actuality his motion to retax is untimely. Under the statute, you only get five days to file a motion to

retax. What he filed is a joinder to other people's motions claiming the benefit of the rule, that you can file a joinder seven days after a motion, but the statute says that if you're going to challenge a cost memorandum, you must do so in five days. Well, Nevada Wellness didn't do that.

Instead they filed a joinder raising this, he admits, new arguments on behalf of his client. And by the way, Mr. Puzey did the exact same thing. He calls it a supplement. Well, you can't have a joinder that constitutes new arguments, Your Honor. And that's -- they're trying to get around the statutory deadline by claiming that, well, we'll file them as joinders to other people's motions who were timely, and now we want to claim the benefits of the timeliness of other -- of other parties. But the statute doesn't work that way.

That would be like saying, well, if one party files a summary judgment motion within the Court's scheduling order, I can file a joinder thereafter and raise on behalf of myself on an entirely different party. That's not what the statute authorizes. You can't get around the five days that the statute says you must file the costs -- or the motion to retax by simply filing the joinder in somebody else's timely motion.

And then just briefly, Your Honor, because again this is just such revisionist history. Mr. Parker talks about how his client attended every hearing. Actually, I'll give him credit on that; he did, but you know what he wouldn't attend,

he wouldn't attend trial. And everybody in this courtroom knows it because we tried to serve him with a subpoena, and he wouldn't show. And the irony for everybody in the courtroom was is that his client Mr. Hawkins, who had attended every court hearing, managed to be unavailable for the entire month that we had trial. So I don't know why he was bragging about his client appearing at other court hearings when those substantive one where we tried to get him to show he wouldn't show.

And then finally, Mr. Parker says, well, nobody is raising the issue about, and is this premature. Your Honor, that was the whole point of the 54(b) issue was to make sure that there was finality so that the appeal could be straightened out and then the cost memorandum would be due, which is what -- this is why everybody filed them when we did.

Now, let me just deal with briefly, Your Honor, with this injunction that they are claiming Mr. Dzarnoski says they prevailed because they got this narrow injunction.

This narrow injunction that actually provided them no benefit. They got no licenses. They didn't get the process redone. And, in fact, Mr. Dzarnoski doesn't tell the Court how many of his own clients would have actually been harmed by the injunction that they got because they didn't care about the outcome. They just wanted some way to try and blow up the process, which was unsuccessful.

And that 5 percent rule didn't apply to my clients. So you can't claim that you prevailed as did Essence or Clear River or any of the other parties that they sued in this case trying to strip our licenses away from us.

But to come to the Court and say that they didn't come after Essence's licenses, this wasn't about trying to strip Essence of its license, Your Honor, that's not a serious argument. And if Judge Gonzalez were here, I think she would laugh out loud at that argument because we spent weeks in trial over Mr. Dzarnoski's clients trying to do just that. That's what this entire case was about.

Thank you, Your Honor.

THE COURT: Okay. So you're getting up again because?

MR. RULIS: It's our motion, Your Honor. I would believe that we get the --

THE COURT: You get the final words, yes, you do.

MR. RULIS: Thank you, Your Honor. So Nate Rulis for MM and LivFree. And again we filed the motion to retax on behalf of the settling parties.

So a couple things to address that Mr. Bice said. He said that they had to be brought into this, but I want to make sure Your Honor understands. They weren't brought in late. Essence intervened voluntarily over -- by the way, in Planet 13, in MM and LivFree's case, over our objection.

THE COURT: Uh-huh.

MR. RULIS: So it's not as if they were later to the case. They came into the case. I just want to make sure that that's clear.

Now, Mr. Bice started talking again about the summary judgment motion that I brought up, and I want to be clear, Your Honor. He said it had to do with claim splitting. I think Mr. Bice is thinking of a different motion for summary judgment. He did have the motion for summary judgment on claim splitting. That's not the one we're talking about. They specifically opposed our motion to have our scoring errors addressed on appeal.

And I have -- excuse me, Your Honor. I have their opposition again that was filed in A-18-785818-W on September 27th, 2019, and they don't say claim splitting. What they say is there needs to be -- all the parties need to be involved, and we haven't named everybody, okay. That's one of their arguments.

And then they say, not only is it an opposition, but it's a countermotion for summary judgment because they say we're not entitled to have an appeal for -- by the Department of Taxation.

And Judge Gonzalez heard that, denied their countermotion and granted our motion. So again we're talking about whether or not we prevailed on issues that we were

fighting over. Clearly we did prevail.

THE COURT: What I'm trying to get is you prevailed because it's subject to the 54(b). So it's already up, and so you don't have the stage three issue that some of the parties have; is that part of your argument?

MR. RULIS: Correct.

THE COURT: Okay. So then your second part of your argument, you prevailed vis-à-vis Essence in what direct -- you got certain things that you wanted; right?

MR. RULIS: Yes.

THE COURT: Because that would be versus the Department of Taxation, now the Cannabis Compliance Board, but, okay.

What did you get vis-à-vis Essence?

MR. RULIS: What we were -- so, yeah, let me address that, and let me go back to --

THE COURT: And the reason why I'm doing that --

MR. RULIS: Sure.

THE COURT: -- is realistic, the closest thing I can kind of come up with is, just so everyone understands here's what the Court is at least thinking, the closest I can get to this is *Golightly versus Vannah* in an interpleader case, realistically, you know, is the most -- because there's not direct plaintiff defendants, right, because I don't have any Rule 68 issues or anything like that. Then I don't have a

straight prevailing on a monetary damages; right?

MR. RULIS: Right.

THE COURT: So the closest ruling you can get is Golightly versus Vannah says you could potentially have gotten it, right. So there you didn't have to have pure money. You had -- that was a priority lien case, right, okay. And that was a distinction from Leventhal (phonetic), but it was a priority lien case, and they could have gotten it and they didn't award it in that because for the reasons stated in the decision, but there, at least the priority lien concept was vis-à-vis Renown, if I recall correctly, that's the medical center. I'm doing this off the top of my head. So if I'm off one, let me know, but I believe it was Renown. It was a medical center, right, and they didn't end up getting -- the Judge disagreed lower court, and lower court got affirmed, but at least there was vis-à-vis who gets priority, you know, so who gets the -- that piece of the pie or the biggest or the first bite of the piece of pie or however you want to phrase it; right?

Here, the challenge the Court's having is I'm not seeing how anybody prevailed against Essence. And I appreciate it's their memo of costs, and yours is a retaxing, and the issue really is did Essence prevail, but part of your arguments and response is you really prevailed, not Essence.

MR. RULIS: Right. And if you're doing a weighing of

who was the prevailing party, right, I agree with you because they're saying --

THE COURT: And a prevailing party has to prevail on at least one of its claims.

MR. RULIS: Right. So they're saying they're the prevailing party, and I would agree, I think, based on everything, they're not, but if you're looking at weighing of who prevailed on what --

THE COURT: Why are they not though, and that's a --

MR. RULIS: Why are they -- so, yeah. I mean, let me --

THE COURT: And I have heard everyone. You have to know this, I've heard everyone's arguments, but where I'm kind of going to the Essence is somebody had to prevail; right?

MR. RULIS: Or it's mutually assured destruction, but...

THE COURT: In the absence of total settlement, there genuinely is someone who has prevailed or kept their rights. Okay. And I'm going to go back to Golightly versus Vannah, right. The medical center, like I said, which I think is Renown -- if I'm saying the wrong medical center, excuse me, but, you know, pretty close.

MR. RULIS: Mr. Graf would probably know.

THE COURT: I'm sure.

MR. GRAF: And we cited it, Your Honor. So...

THE COURT: Yeah. Right. But if you look at that, right, Renown got the priority on the interpleader action, okay. And they were viewed as a prevailing party. Golightly Vannah firm wasn't because it didn't get -- so if I put Essence in the role of Renown, didn't they -- because Renown got to keep what it was asserting was its portion of the interpled funds --

MR. RULIS: So I think there's --

THE COURT: -- isn't Essence falling into that same - isn't it substituting then the shoes here? And the most analogous thing --

MR. RULIS: Sure.

THE COURT: -- I mean, realistically, you all (indiscernible) I am trying to --

MR. RULIS: I guess I'd say there's a distinction that has a significant difference, which was those parties were asserting claims to the same thing.

THE COURT: But aren't you asserting claims to the same --

MR. RULIS: Not --

THE COURT: -- part licenses? That's why the Court's question right at the beginning is I was trying to make sure, okay, and understand the claims that really it was a reallocation or add to the initial number.

MR. RULIS: So it's a couple things, and that's

what -- and let me go back and give Your Honor a little again, the background context.

This was originally filed against just the Department of Taxation on the basis that, among other things they had messed up, but specifically, and I'll, you know --

THE COURT: I appreciate it. I know the scoring. I know the different issues, how they allocated, how they do different things. There's a whole bunch of different --

MR. RULIS: Right. And I think it's important, at least I can talk about MM and LivFree because those are my clients. I know. There were scoring issues that were specifically addressed related to MM and LivFree. Again, that's what the motion for summary judgment was about, and the next part of it was that the relief requested was that they hear the appeal that was filed with the Department of Taxation.

THE COURT: Because you had no -- you had no remedies to try and get to be heard.

MR. RULIS: Right.

THE COURT: And basically you wanted to be heard to see if you could get relief, but is your relief reallocation or additional licenses? And that's where I --

MR. RULIS: It's reallocation. It admittedly is reallocation because there's a limited number of licenses.

THE COURT: Okay.

MR. RULIS: You don't -- I mean, if the Department is

willing to add licenses and hand those out --

THE COURT: I didn't see that as any issue in the case, that somebody was asking for --

MR. RULIS: -- I think any of them would have accepted it.

THE COURT: -- I saw it as the pie was the pie, it was just who was getting the slices of the pie.

MR. RULIS: Right. So that was the claims. Then I believe -- and I don't remember the exact order, but Mr. Koch's clients, Nevada Organic Remedies; Mr. Gutierrez's clients, Thrive, Essence, Clear River, they had moved to intervene.

THE COURT: Okay.

MR. RULIS: So that's how they came into the case. It wasn't that there was later on an amendment that brought them in unwillingly.

THE COURT: Correct.

MR. RULIS: And again, so for settling plaintiffs, they all had petitions for judicial review. Mr. Graf repeatedly argued, and Mr. Bice and Essence repeatedly argued that when you have a petition for judicial review, you have to name every single -- essentially I believe Mr. Graf's argument was it had to name everybody that submitted an application.

THE COURT: Okay, because their slice of pie, whether it be a sliver or a nice big quarter piece of pie was potentially impacted; right?

MR. RULIS: Right.

THE COURT: Okay.

MR. RULIS: So they have that. So when it comes to a appeal on scoring issues, they're named. That's what our motion for summary judgment is filed on.

THE COURT: Right.

MR. RULIS: They oppose, countermove and say, we can't -- we're not allowed to -- the State doesn't do -- there's no appellate remedy.

THE COURT: You won that, but, okay. Yes.

MR. RULIS: Yes.

THE COURT: Yeah.

MR. RULIS: And so the only reason that that appeal then did not go forward is as a result of our settlement because it essentially eliminated the need for an appeal to go forward.

THE COURT: Is your argument that because you settled you can't be subject to a costs award, or because they did not prevail they're not entitled to a cost award, or those are alternative arguments?

MR. RULIS: I think it could be either one. I think they're alternative, but I think at the end of the day, as a result of the settlement, if you're doing a weighing of who prevailed in this action, again, their defense in this case was that we are not entitled to and should not be given any

licenses.

THE COURT: But don't they disagree that their defense is that versus their ultimate goal was we want to keep our licenses? We don't -- we went to keep our slices of pie. We just don't -- we don't think anybody has a right to what we've already been given?

MR. RULIS: Well, I think that's good lawyering, but in reality, what they argued -- I mean, if we want to talk about what was argued in motions or at trial --

THE COURT: No. I need to keep you all here. Where I'm trying to go is, realistically is to, when you're looking at prevailing, right, you all have a very broad difference of opinion on what is, quote, the claims at issue; right?

MR. RULIS: Right.

THE COURT: And because you have a multitude of parties you have a multitude of complaints that then get consolidated. You have a multitude of issues that kind of get reformatted depending on if you're talking Phase 1 versus Phase 2. I appreciate all of that.

So I'm trying to boil it to its Essence in order to get prevailing, right. The statute goes about claims. Case law says it has to prevail on at least one of their claims, right.

MR. RULIS: Yes.

THE COURT: And it can be a defendant in a claim by

keeping what they have, you know, and can look at a whole bunch of, you know, pick your favorite tort claims, med mal. Well, it doesn't really matter, right. Okay. By keeping what you have and getting a defense verdict, you can get costs in the absence. Are you saying you can't get costs in the absence of a Rule 68?

MR. RULIS: Well, I don't think they got a defense verdict.

THE COURT: No, I'm sorry. I'm trying to parallel this.

So in a nontraditional plaintiff, defendant third-party claim or whatever, okay, you have to look at I think -- interpleader is the closest thing. There's a whole bunch of applicants trying to get something or trying to keep what they have.

MR. RULIS: I know --

THE COURT: What analogy would you use? I mean, what case has addressed something similar to this --

MR. RULIS: Well, I think the issue is --

THE COURT: -- where there's been an issue before any appellate court on --

MR. RULIS: Because there's petitions for judicial review and declaratory relief, it comes down to a weight of who asked for what and who -- and I think Your Honor is already going there.

But the issue is, and that's where I want to get to what's their defense? They say their defense was we want to just keep our licenses, but that's not -- that's not totally true. Their defense was they're not entitled to any rescoring, any redo of the application process. It is what it is and should stay the same.

THE COURT: But do they really care if they get to keep their licenses? The reason why I'm trying to boil it down, right, is if they get to keep their licenses do they really care -- I'm not saying you don't care in an intrinsic manner. I'm just talking for purposes of litigation. Does Essence really care if the processes viewed to be constitutional, unconstitutional, fair, unfair, whatever labels, right, as long as they get to keep their licenses and they're not impacted?

MR. RULIS: I can't say what they care about. All I can say is what they've litigated. And what they've litigated was that the process should not -- there's nothing that should change with the process. There's no reallocation of licenses. There shouldn't be any appeals. That's what was litigated. So when we talk about what was litigated and who prevailed on that, it wasn't just we're Essence. We're keeping our licenses. It's that was a part of it, but it was also the process is fine. There's nothing that needs to be redone, changed, figured out with the process. So it's -- I get it.

They're trying -- and a very great lawyering.

THE COURT: It's lawyering. It's lawyering.

MR. RULIS: They're trying to be very narrow on what they litigated, but that's not the reality.

THE COURT: Well, because you prevailed on the process concept. You would have had a right to have something, and so it has an impact.

MR. RULIS: Right.

THE COURT: Okay. Let me let you finish, and then I've got to make a ruling. Go ahead.

MR. RULIS: So I guess I just wanted to go back to again, when we're talking about they said everybody needed to be involved because this whole litigation wasn't just about Essence's licenses, wasn't just about Clear River's licenses; it was about the process, and they said nothing needed to change with the process. It was fine. The Court shouldn't do anything. That's -- the Court shouldn't order any or allow any appeals because the process is fine. It is what it is, and it shouldn't change. And they didn't win on that.

They didn't win against the settling plaintiffs because they said the settling plaintiffs aren't entitled, shouldn't be given any licenses. And so when we talk about what was litigated and what the -- again, I'm talking about the settling plaintiffs, what the settling plaintiffs attained if we're doing a weighing of who prevailed on what. The fact that

they came in and said we shouldn't get anything, this should be -- the process is what it is and should stay the same, we got licenses.

THE COURT: Okay.

MR. RULIS: We prevailed on summary judgment. And under that they're not be a prevailing party that is entitled to costs against the settling plaintiffs.

THE COURT: Okay. Other than Mr. Parker on behalf of his client, which I appreciate that there's an objection that it's untimely, are you adopting the concept about whether or not there is or is not a final judgment because certain aspects are going to trial? And by the way, it's the week of January 3rd. It may not start on January 3rd. It's the week of January 3rd.

MR. RULIS: That is a -- that's an argument --

THE COURT: That's unique for them.

MR. RULIS: -- that I think is unique to his client.

THE COURT: Okay. And the reason why the Court was asking that question is because obviously there was not 54(b) at the time of Judge Gonzalez's order of 8/30/2021.

MR. RULIS: Right.

THE COURT: And that's why I was making sure that nobody was saying that that was --

And I understand, Mr. Parker on behalf of his clients got that issue, but I didn't hear anybody else saying somehow

that's law of the case because their clients are impacted. Since your clients are settled out, I was going to ask you how they would be impacted by these three, but...

MR. RULIS: I think the issue is she did make a -- she did make a statement at least that she was intending for there to be one final judgment at the end, but, Your Honor -- I certainly -- we -- I don't believe we opposed the 54(b) so I would rather --

THE COURT: Okay. No worries.

MR. RULIS: -- get this over with.

THE COURT: Yeah. Okay.

Okay. Everyone has had a chance to be heard for the last long time period. Okay.

MR. ROSE: And, Your Honor, just to correct --

THE COURT: Mr. Rose, go ahead, please.

MR. ROSE: Your Honor, Chris Rose. I'm sorry.

This is the Court's ruling on the Essence motion; correct?

THE COURT: Correct. And joinders -- well, Essence motion, opposition, timely joiners, which it's going to be part of my ruling.

So, Counsel, because you've got a different -- some of the similar arguments but a different defendant client base, I thought you wanted to be heard separately. Is that correct? Or are you concerned that you need to set your opinion now

because you think my ruling might impact your clients? So you get your choice one way or the other. Which one are you picking?

MR. ROSE: Well, that was the note. If the Court was going to make a ruling now, before the other arguments were heard that possibly could impact --

THE COURT: I understood it was the parties requesting the Court to do this client by client, which means that I would need to do one. If you're asking me to wait to hear everybody's arguments, and I do settling defendants in a grouping, I can do that, but I was, realistically just doing what you all had asked me to do.

MR. ROSE: Understood.

THE COURT: So just be clear which one you're asking me to do. If there's a difference of maybe people weren't contemplating that it might have an impact on people coming later.

MR. BICE: Well, I would ask --

THE COURT: And that's Mr. Bice speaking on behalf of Essence clients. Go ahead.

MR. BICE: Yes. Apologies. Apologies.

I would ask that the Court -- yeah, I thought you were going to address these, since it was our cost memorandum, you know, the motion to retax, I thought you were going to address it client my client, and I'm going to admit that I'm

being selfish. I would ask that you address that on behalf of my client now if possible because if I could leave to go to another matter, I wouldn't be opposed to that, but I'm not going to insult the Court if the Court would like to proceed and hear all of them, then I'll stick it out.

THE COURT: Okay. Realistically, I was doing what I thought you all had asked me.

MR. BICE: I thought so too.

THE COURT: If I misunderstood what you had asked me, then somebody needs to let me know.

MR. RULIS: That was my intention with what -- what Your Honor was about to do I think as far as issuing a ruling on the parties was at least what I thought we had agreed to. But if we want to do it otherwise, I'm open to that.

MR. ROSE: And, Your Honor, yeah, I think that's fine. We thought maybe there would be some arguments, and then a ruling toward the end, but I understand the Court is ready to rule now, and we're fine with the Court proceeding.

THE COURT: I'm ready to rule because I thought that's what you all asked me to do.

MR. BICE: Yes. Thank you, Your Honor.

MR. ROSE: Thank you, Your Honor.

THE COURT: So --

MR. BECKSTROM: Your Honor, can I just note, on the ETW, I think there's a confusion on the untimely joinder and

what party filed untimely. I don't know what Mr. Parker is going to say, but my clients, ETW, were alleged to be one of the untimely joinders to those. We briefed it for the Court. We'll rest on the pleadings, but I just want to make sure it's clear we provided to you that it's not jurisdictional.

We followed the local rule, prior counsel did, but also they don't -- I just want to make sure on it's clear on who was untimely and who was not in joining these --

THE COURT: What do you mean by you saying you followed the local rule?

MR. BECKSTROM: The local rule for joinder was filed, okay. There's been no authority saying that you can't join a motion to retax, okay. Prior counsel for my client did that. The Eberly (phonetic) case cited for the Court says that the motion to retax deadline and the memoranda of cost deadline is not jurisdictional. So we put that before the Court to the extent you're going to rule on the untimeliness issue like you just noted.

THE COURT: Okay. That means, since I let somebody else speak, do I now need to let Essence, since you get one minute if you want to respond to their comments on the timeliness aspect so it's -- since you would have gotten last word on that.

MR. BICE: Yeah. Sure. Their argument is that it's not, quote, jurisdictional, but that doesn't mean that it

wasn't untimely, and they never sought leave of the Court to file a motion to retax after the deadline. So thank you.

THE COURT: So I can hear it, but basically the Court can make a ruling one way or the other is where you all are going; right?

MR. BICE: Correct.

THE COURT: It doesn't preclude me from hearing it; it just means I have to rule on it. Okay.

So, okay. With regards to document --

Understand why the Court appreciates when sometimes I get courtesy copies so I don't have to click through 3,000 of these, but the rule is alive and well, folks.

(Pause in the proceedings.)

THE COURT: Okay. The Essence entities' memorandum of costs and disbursements, documents 2863 filed on 8/5/2022, the motion to retax filed on 8/8/2022, 2869 -- one second. It takes a while for these to open with over 3,000 entries. So give me a second to make sure I've got the correct one. That's one of the motions to retax that I just stated.

And then we also have the other motion to retax, also filed on 8/8. That was the TGIG was the one I just referenced, 2869. Thank you. You probably need me to clarify.

2870, Document 2870 also filed on 8/8, that was the one Mr. Rulis mentioned at 5:15 p.m., and that was by MM Development, and then we have joinders thereto.

Okay. And --

MR. RULIS: And, Your Honor, just Nate Rulis for the record.

The motion to retax that we filed, I just want to be clear, is on behalf of MM, LivFree, Qualcan and Natural Medicine.

THE COURT: Thank you. Yes. On behalf of all those parties that are all of document 2870 filed on 8/8 at 5:15 p.m.

Okay. And then all of the various joinders thereto.

The Court is going to find in the most analogous circumstance, realistically looking at Vannah versus Golightly [as said], okay, and looking at Nevada Revised Statute, that the Essence parties are a prevailing party. The Essence parties received and prevailed on their claim to retain their licenses. They did not lose any of their licenses, and by the best kind of analogy, realistically, it would be similar to someone who already has a, what I called a share of the pie in an interpleader action and doesn't lose part of that share of the pie by somebody else filing for priority, i.e., *Vannah* -- the *Vannah* case or in a situation in a prevailing defendant, where they get a defense verdict.

I'm just using those as analogies to try and give the concept of why this is a prevailing party because both of those concepts the entity, regardless of how they're titled, and it really doesn't matter if I call them a counterdefendant, a

defendant or if I call them the party subject to an interpleader. In each of those situations, the party has retained what they had when they started with the litigation. Here, Essence has retained, which is what they're -- makes them prevailing. They retained what they had, and so they did not lose any of their licenses.

Now, the Court is fully taking into account that there was intervening summary judgments, et cetera, that licenses could have been reviewed, but since the Court doesn't have anything that they actually were and there was any direct impact to Essence, and I appreciate because there was resolution, okay, but we have to look at did Essence prevail.

Essence did prevail. So it should be awarded costs.

It is one of the categories under NRS 18.020, the valued license that you all -- if it was not more than 2500, I wouldn't have this wonderful grouping of attorneys here both in the Court and remotely. So and declaratory relief action also would trigger it. Okay.

The Court doesn't find because there was a PJR that that PJR really is the final determination. You have to look at the totality of what happened for the prevailing as we sit here today. Since there is a 54(b) for all parties, and then I'll deal with Nevada Wellness in just one second, the parties under Nevada Wellness is 54(b) it's all final. So you don't have that issue.

The Court also notes the 8/30/2021, order granting motion to retax -- oh, it says granted motion to retax, but in any event, I'm just saying what the title says, even though I'm just going to call it the order of 8/30/2021, because the title doesn't seem to be correct, but --

So when I looked, it says it's granted in full, but, okay. So when I look at the briefing, here it says the award of costs is premature. Final judgment will be issued at the completion of Phase 3, jury trial June 20 at 2021, that second sentence no longer applies to most everyone other than Nevada Wellness, because of the intervening 54(b), and it says the decision is without prejudice to seek recovery of costs at the time of final judgment.

There you have a time of final judgment with regards to anyone other than people going on January of 2023, okay, potentially, and I'm about to carve that out about whether that's final judgment or not.

Nevada Wellness, you're giving me a look. Is that -- Nevada Wellness is going to trial?

MR. BICE: Yeah, but it's going to trial on -- against a different party on different claims. So the 54(b) -- in order to be 54(b), it has to resolve all the claims as between all the parties to those claims, which include Nevada Wellness.

THE COURT: I was going to get to them, but it's just

the whole idea of a stage two versus a stage three, they're the only one that had a stage three.

MR. BICE: Sorry.

THE COURT: No worries. I was going to deal with that towards the end and say the analysis is the same even though they're a stage three. That doesn't have an impact, but I was just trying to carve them out to the extent --

MR. BICE: Understood.

THE COURT: -- they were -- because the rest of you all have a stage two concept. Okay.

So I've jumped ahead, but it's going to be the same net result for Nevada Wellness. So I guess you already heard me say that.

So now let's circle back to who should the cost be against, okay, because that is the second prong. And since the prevailing party is entitled to costs, so who has to pay said costs, and then does it *meet Cadle versus Woods & Erickson*, *In re Dish Network*, *Bobby Berosini*? Okay. So prong two is who was it against?

It would be, well, we have the non-- it would be against the nonsettling plaintiffs because the nonsettling plaintiffs have not recovered anything against the Essence.

So then you go to does it also apply to the settling plaintiffs because the settling plaintiffs' arguments is a little bit different is it that they settled out. So they had

a right to potentially impact Essence, but they didn't pursue that right because they resolved, and there's lots of other arguments, but that was, focusing on your summary judgment argument for (indiscernible) be a prevailing.

So does that mean because you prevailed on a summary judgment which would have given the right to seek an appeal but doesn't give the ultimate right to the determination as what that appeal may result in, does that take it out of the situation where the settling plaintiffs would or would not be liable for Essence's costs.

The Court really sees that the settling plaintiffs would also be liable for Essence's costs because what looking at is what was the stage we have the net aspect? There's going to be a carve out though with the settling plaintiffs, which I don't see really is in your briefing, but a potential carve out.

And where I'm going is, is a cost allocation carve out. If there's costs that are asserted after the settling plaintiffs had settled their particular case, if that exists. I didn't see it in the briefing, but I'm going to have to give you two minutes to see if that exists. Because then that would be like a *Capanna versus Orth*, kind of by analogy concept even though that's a attorneys' fees case, but just by analysis to see if you need to do some kind of allocation.

So can we just clarify that is there costs that are

being asserted after the -- after settlement in your memorandum of costs?

MR. BICE: So that's actually a little hard for me to answer off the top of my head. I don't think so because the settlement really happened sort of after the -- I don't know what the state of -- the status of the trial. I'll actually let my friend Mr. Rulis address that because I can't remember exactly when you got that finalized with the commission.

MR. RULIS: Yeah. Well, so and I guess Mr. Bice just said with the commission. So there were certainly costs that were included in the memo that occurred, that were part of trial that occurred after Judge Gonzalez had approved the settlement. I understand that you're saying after the commission because there was the issue of the --

THE COURT: It's conditioned on the --

MR. RULIS: D.O.T. and CCB approving it, but we had approval from Judge Gonzalez at least --

THE COURT: Are you asserting that you raised that argument in your pleadings for the Court to do that parse out?

MR. RULIS: I think that's part of the Court's ability to parse that. When we're talking about what the costs were and whether they were excessive or not, I believe that you can make that cost allocation I think.

MR. BICE: Your Honor, I -- one, they did not raise that.

But more fundamentally, they didn't settle with us. So we proceeded to trial and, in fact, in front of Judge Gonzalez they actually argued -- they argued that the final judgment shouldn't apply against them because they had settled, and she ruled that's not correct, that the final judgment in favor of the defendants would apply as to all of the plaintiffs, whether they settled or not because they didn't settle with all defendants.

So as to my client, there is no basis for them to argue that the costs -- they proceeded to trial against us.

THE COURT: Right. But here's really where the Court's going. If they're no longer a party to the underlying -- that's the reason why the Court was asking the question.

MR. BICE: Yes.

THE COURT: If they're no longer a party, they wouldn't be responsible for things that occurred after they're no longer a party.

MR. BICE: Right.

THE COURT: Absent some unique circumstances that you all haven't raised in this case.

MR. BICE: But they were a party. They never were not a party. Even though -- because the settlement was only partial. They were still a party as to us. They were still a party as to Clear River. They were still a party as to all of

the defendants with whom they did not settle. They only settled with certain of the defendants in order to -- because they made a deal with them to reallocate their slice of the pie amongst that group, but they -- as Judge Gonzalez ruled, they proceeded to trial against us, and we prevailed.

THE COURT: I'm going to give Mr. Rulis a moment to respond to that if he wishes to because --

MR. GRAF: And, Your Honor, if we could be heard just on that issue just briefly, Clear River, Rusty Graff.

THE COURT: Then Mr. Rulis gets last word, but two minutes.

MR. GRAF: I'll go up to the mic, Your Honor.

We put this in our opposition and the motion to retax on various issues, and that's an important issue that Her Honor is talking about.

THE COURT: But I saw that only as to your client, and I'm focusing currently on Essence. That's the reason why it makes a difference what I'm ruling on; right?

MR. GRAF: So part of our argument included the claim under NRCP 41 that they never dismissed themselves. They were never dismissed out of the case, period, either voluntarily or by order of the Court. So --

THE COURT: But Essence didn't join your opposition, did it, and adopt your arguments? Because I'm now ruling solely on Essence. I'm not --

MR. GRAF: I joined in theirs, Your Honor.

THE COURT: Did Essence join in --

MR. BICE: Your Honor, I think so. I know we did some joinders, but I'm not going to represent we did because I can't remember off the top of my head, and I'm going to look at --

THE COURT: I can't hold this, you know what I mean. I've got to --

MR. GRAF: I just wanted to raise the issue though, Your Honor, in terms of --

THE COURT: I appreciate that's why it made a difference on which way I was going on this; right?

MR. GRAF: And I know that it's going to come up in our argument. So I just wanted to lay the groundwork now, Your Honor.

THE COURT: Okay. But can I consider it for Essence is really where I was going.

MR. GRAF: Well, Your Honor, you can consider the fact that as it exists, LivFree, MM, all of the settling defendants are still a party to this case. There's been no dismissal. There was no -- and one of the things that we were going to raise during ours is, Your Honor should go back, and unfortunately, look at all of the stipulations in this case. And any of those stipulations that involve the settlements, they only involved those settling parties. They didn't involve

the other parties.

THE COURT: So they're still live, ripe parties --

MR. GRAF: A hundred percent.

THE COURT: I'm seeing -- I'm seeing you all in January is your argument?

MR. GRAF: No. No, Your Honor. We think that the cause of action, it's a 1983 action between NWC and one other settling party, Mr. Campbell's client against the State. So it doesn't involve any of our claims. They can't get a 1983 claim against my client.

THE COURT: But if I have a -- let's go back to the 54(b), right.

MR. GRAF: Yes.

THE COURT: If it's 54(b), it's all done, done and done. So doesn't the 54(b) argument go against your 41 argument because you all -- by stipulation; right? The 54(b) is where it is?

MR. GRAF: It means it's a final judgment, Your Honor. It doesn't mean that they were dismissed out of the case for purposes of allocating or apportioning those costs at some joint period of time.

They were still there, Your Honor. The settling defendants showed up to closing arguments. The settling defendants -- or settling plaintiffs showed up and up until the day before closing arguments we didn't know if MM was going to

make a closing argument against Clear River.

THE COURT: Okay.

MR. GRAF: We didn't know if they were going to make it clear. So I don't think that that timing issue, whenever it existed, the settlement, it applies procedurally or factually.

THE COURT: Well, here's what I'm going to do. I'm going to leave that five pages each side for Essence and (indiscernible), that if you or any of the settling plaintiffs, if you think that it was raised and it's an issue, I'll give you five pages each if you fall into that category, and I'll give you simultaneous briefing, what, a week out?

What do you need? A week? Two weeks? What do you need out time frame?

You understand where I'm going. I'm not going to require any briefing, but I'm going to give you a carve out if you all want to --

MR. BICE: Yeah, I'll --

THE COURT: Because the other choice is you're going through 3,000 plus entries because no one seems to be able to do this off their head right now, and I'm holding everybody else up; right?

MR. BICE: Your Honor, let's -- that's fine. Mr. Rulis and I will do that. I think it's eminently fair for the Court to just ask us, and five pages is more than enough, and what I think we might want 10 days because we've got --

THE COURT: That's fine. That's fine.

MR. BICE: If 10 days would work for the Court, we're happy to address that, and I think that's --

THE COURT: Let me see a if --

MR. BICE: And the issue you're asking us to brief is one. So he and I will get together, and we'll agree what the date of the settlement, and then we'll brief whether or not that should matter, and if it does matter, then we'll -- we'll determine what the added costs were.

Is that fair?

THE COURT: Or reduction. Okay.

MR. RULIS: Yeah.

THE COURT: And let me put it clearly. If somebody is asking me to rule today, I have the briefs that I have, and I will rule on what I have.

If anybody is requesting that they have this opportunity to do the supplemental briefing, then if you all agree that you want supplemental briefing, then -- and I say all, meaning settle the plaintiffs and Essence, right, because that's where I am currently, then I will give you the supplemental briefing, and I'm fine with two weeks. I'm fine with 10 days. I'm fine five pages-ish. It's just I'm trying not to have this be hundreds of pages and hundreds of pages of exhibits, but --

MR. RULIS: I -- your --

MR. PARKER: Your Honor. Your Honor -- I'm sorry, Mr. Rulis.

THE COURT: Let me deal with the people first, if you don't mind, in court, and then I'll go remotely, okay. So let me hear.

MR. PARKER: Thank you.

THE COURT: Essence, what's your position?

MR. PARKER: Thank you.

THE COURT: Do you wish me -- actually, let me ask (indiscernible) -- well, I've got two motions to retax. That's the reason why I'm going to go to the memo of costs first because it's quicker.

MR. RULIS: That's fine, Your Honor.

MR. BICE: So, Your Honor, no, I do not want rebriefing on all this. We've spent a lot of money on this. The only issue on this last issue that you're asking about with the settling plaintiffs and the date of the settlement and the cost thereafter, that small portion, that's fine. I think it's fair to -- for the settling plaintiffs and the settling -- and the Essence parties to submit no more than five pages and let you decide that narrow question.

But on the overall --

THE COURT: Oh, I'm not -- I wasn't asking -- okay. I'm sorry. Just so we're clear where the scope of what the Court's question was, okay. There's two movants that I have

today, right, for motions to retax vis-à-vis Essence, and then I have joinder parties, but joinder parties don't get the same (indiscernible) the movant.

With regards to those movants, they really have a right if they want the Court to rule today. The Court also has a right that if I want supplemental briefing on an issue that I can ask you all to do it; however, really this Court's position is if nobody wants that opportunity, you want me to rule today, I will rule today.

If somebody wants the opportunity to do supplemental briefing, no one is required to spend a penny more. I'm not requiring anyone to do it. I'm just doing an opportunity, then I'll give you supplemental briefing, five-ish -- five pages and two weeks or tell me what you need.

MR. RULIS: Five pages and two days to supplement on that.

THE COURT: Two weeks? You said two days.

MR. RULIS: Excuse me. Five pages and 10 days. Excuse me, Your Honor. Ten days to supplement on that issue would be -- yes, we're requesting that.

THE COURT: Okay. They're requesting it as movant.

MR. BICE: Yes. I said that narrow issue is fine, but I would ask the Court to rule on the rest of it today so that we just have that issue, we know what we're addressing. Thank you.

THE COURT: Okay. TGIG, you also had a motion to retax that was subject too. So do you oppose this idea of nonrequired supplemental briefing, five pages within 10 days on the narrow issue of the impact as to the settling defendants date and if that reduces or reallocates the costs that would be awarded to Essence? And don't ask me yet about I would then have to do a second prong, I realize that, after the supplemental briefing, really going to the *Cadle versus Woods*, *Bobby Barosini* and the *In re Dish Network*, right, because what actually would be the, quote, total cost awarded and then do an allocation thereof, but so, yes, you want it, no, you want me to rule today?

Counsel, go ahead, please.

MR. DZARNOWSKI: This is Mark Dzarnoski on behalf of TGIG plaintiffs. Your Honor, we're not a settling party. So we do not oppose giving the settling parties the opportunity to have 10 days and five pages to brief the issue. We will not, since we are not a settling party.

THE COURT: No worries. I just -- that's why I was treating you as movants, right. Okay. So now let's go to the rest of it.

With regards to the nonsettling plaintiffs, yes, costs, reasonable costs would be awarded against them. There's still live parties. Essence prevailed. It was a prevailing party. It would get costs against them.

Now, let's go to Nevada Wellness. Nevada Wellness, I think you fall -- Nevada Wellness, you are a --

MR. PARKER: Settling plaintiff, Your Honor.

THE COURT: Settled, but yet outstanding issue. I see you -- I was putting you in the same box with the rest of the settling. So if you want your five pages, you get your five pages within 10 days.

Does that work for you, Counsel?

MR. PARKER: Yes, it does work for me.

I had one issue, and I'm not sure we'll find it in the transcripts, Your Honor, but prior to the actual settlement being approved by the Cannabis Compliance Board, which took over for the Department of Taxation, we had an agreement. I don't know if you want to call it a gentlemen's agreement, but we stopped taking -- or examining witnesses at a certain point in the case prior to that approval being achieved.

THE COURT: Mr. Parker, the reason why I am stopping you, and I'm not trying to be rude by interrupting you, is because --

MR. PARKER: Of course.

THE COURT: -- you're going into what your five pages can potentially entail; right?

MR. PARKER: Yeah, that's fine. I just wanted to make sure.

THE COURT: So in fairness -- yeah, no worries. If

because I let you, then I have to let everybody else, and that would not be fair to the people who are waiting to have their motions being heard.

Okay. So we're taking care of everyone with regards to Essence, I believe.

Essence, have I missed anybody with regards to yours? I was not going to do the actual dollars today because the dollars may be impacted based on the concept of the costs; right? Because you wouldn't really --

MR. BICE: Your Honor, I guess my -- with respect to the settling -- the nonsettling plaintiffs, right, I would ask that the Court, that we fix the amount today since we're all here, and then when you address the issue -- because that way it will allow me to back out if --

THE COURT: Gotcha. Okay.

MR. BICE: You know, if you're -- once Mr. Rulis and I agree on what the date ought to be, then he and I will know which numbers to back out from that number, that end number.

THE COURT: Okay. So then I'm going to have to go back to the TGIG motion as well as the joinders thereto. So from TGIG, point the Court to reductions that you say would be appropriate under *Cadle versus Woods* and Erickson, *Bobby Barosini*, *In re Dish Network* or generally, NRS 18.020. Please point to me where in your motion those would be addressed.

You understand why the Court is asking the question?

MR. DZARNOWSKI: This is --

THE COURT: Because I only --

MR. DZARNOWSKI: This is Mark Dzarnoski --

THE COURT: Go ahead, Counsel. My apologies.

MR. DZARNOWSKI: This is Mark Dzarnoski on behalf of TGIG, Your Honor. I think your question was posed to me.

THE COURT: Uh-huh.

MR. DZARNOWSKI: And just so I understand the question clear -- oh, it was in the -- you're asking in the motion to retax.

THE COURT: Correct. Document 2869 filed on 8/8/2022, right, this Court only saw a seven page document. I did not see in that seven page document a discussion of a reduction of the costs. But once again, I was reading a lot of things for preparation today. So I'm just making sure that if there is -- so I see you have in your second-to-last paragraph, right, it says, review of Essence (indiscernible) cost reveals that other than the initial filing fee, it is submitted that the claimed cause cannot be deemed to relate to petition for judicial review since such claims limited to the records (indiscernible)Taxation.

So I see those general statements, but I didn't see any articulation under the case law as to what cost, either from a specific category of costs, right, or anything else, and if I'm looking at the wrong spot, please let me know. Feel

free.

MR. DZARNOWSKI: (Indiscernible) based on the prevailing party -- I'm sorry?

THE COURT: I'm sorry. I said if I was looking at the wrong place, I was looking at Document 2869, which was filed on 8/8, which is your motion to retax costs. I see the second to last paragraph right above the conclusion, there's a generalized statement, and I didn't see anything more specific --

MR. DZARNOWSKI: Yes.

THE COURT: -- as to what actually was to be retaxed, reduced for one of the various noncompliance aspects are not being covered or something to that extent.

MR. DZARNOWSKI: (video interference), Your Honor, the motion to retax, rested on the arguments about prevailing party. Also, if that any costs associated with judicial review are not awardable and collectible, but there was no specific itemization that occurred to determine whether or not any of the costs came from judicial review, and we didn't challenge any specific categories that was provided in the memorandum of costs submitted by Essence.

THE COURT: Okay. So, Essence, did you articulate petition for judicial review versus the other findings of fact and conclusions of law, or -- I'm just trying to see if you're taking a position that nothing should be reduced, or I have to

wait until Mr. Rulis because in their motion they did address things, but --

MR. BICE: Yeah, they addressed a few things. So if the Court would like, I'll let Mr. Rulis address those, and then I can address all of those if the Court would like. I'll leave it to Your Honor.

MR. DZARNOWSKI: We did -- this is Mark Dzarnoski again.

I believe, Your Honor, and again, we joined so many things. We did not prepare a separate itemization; however, I do believe we joined in other pleadings where individuals did challenge the individual (video interference) by Essence. So I have nothing more to add regarding that.

THE COURT: Then I'll circle to Mr. Rulis. Go ahead.

MR. RULIS: Thank you, Your Honor.

So, yes, we did challenge some of these claims costs.

THE COURT: Correct.

MR. RULIS: That's, you know, I think principally, when you look at the memo of costs, obviously the largest amount --

THE COURT: We're going to page 7 of your motion?

MR. RULIS: Yes. Correct, Your Honor. Thank you. Lines -- specifically lines 8 through 17.

But when you look at the vast majority of the costs are for related to depositions, but we have duplicative entries

for both transcripts and videotaping and I don't believe that we should be required to pay doubly for those.

There's, additionally, I think it says 16 -- over 16,000 in process server fees for, you know, brushes or stakeout -- you know, I've -- it's -- without much additional description, and I think that's the other thing is there are several entries when it comes to -- I know Westlaw, a research. I don't think there's any sort of breakout of what that was for. It's over $9,000, and then there are just an entry of $8,000 or a little over $8,000 in, quote, discovery-related expenses. I don't believe that, quote, discovery-related expenses are a recoverable cost under the statutory (indiscernible) allowed.

But, I think, I mean, other than what we put in there, I believe that some of these are excessive for the reasons that we stated, Your Honor.

THE COURT: Okay. Does anyone on any of the joinder parties assert that you set forth categories that needed to be addressed for a reduction in costs?

MR. PUZEY: Your Honor, this is Jim Puzey with High Sierra Holistics.

We have nothing to add to what Mr. Rulis has stated.

THE COURT: Okay. Thank you.

Anybody else need to be heard? I'm looking in court. I'm trying to look at the screens too.

Okay.

MR. SLATER: Your Honor, this is Craig Slater.

THE COURT: Sure. Go ahead, please.

MR. SLATER: May I be heard? Just one point of clarification, Your Honor. I understand how you're headed in the direction, but one point of clarification I would request is whether or not these costs that you presumably are going to award are for Phase 1 or Phase 2.

As I indicated in my joinder, my clients were only part of Phase 1, the judicial review process. So I think it's necessary that you indicate whether or not you're awarding costs for both phases. I won't repeat the arguments that Mr. Parker made as to why we don't believe costs are awarded under the judicial review claims, but for purposes of my client, and I believe there's one or two others in the same position, I believe it's necessary to make that distinction.

THE COURT: Okay. And since you filed a joinder rather than your own motion and your joinder applied to your client with an argument that was not asserted by either of the movants, how can the Court address that under the EDCR as a proper joinder?

MR. SLATER: Well, I'll address almost the identical way Mr. Puzey did, that during the course of this case it has become commonplace to file joinders, and my joinder was titled as a supplement, and I added one brief paragraph that is

clearly delineated as the supplement, and that is just that my clients were only -- they only asserted judicial review claims. So they only participated in Phase 1, which was not the trial. So the vast majority of these costs that are being sought to recover -- or sought to recover by the prevailing parties were not incurred as any of the claims that my client's asserted. So in that respect, to answer your question, I take the exact same position Mr. Puzey did, that this is the way we've been doing it throughout the course of this case. It basically has become the law of this case, and I followed that.

THE COURT: Do the parties agree? Because you can appreciate that concept of it is not anything that's happened since September of 2021. Now, granted I've had limited involvement since I took over the case, but I didn't see anything that there was any prior objections, agreements. I mean, this one is a quandary for being the newish Judge on the case. I mean, I've had it now a year, but I guess I'm newish on this concept.

So do all parties agree that there was a custom and practice that that had been done and that nobody objected, and so it was done, or do I have to go through 3,000 plus entries and see how many times it was done and if anyone raised it in any of their subbriefings? So.

MR. BICE: Well, Your Honor, I would agree --

THE COURT: Mr. Bice on behalf of --

MR. BICE: On behalf of the Essence parties. Again, apologies, Your Honor.

I would agree that it was common practice in big cases generally, not just this one that there will be joinders. What I don't agree with is that there was an agreement to waive deadlines, statutory deadlines and then allow new arguments to be raised in joinders that are not the arguments that were raised originally(inaudible).

THE COURT: Yeah. I mean, you do realize I'm one of the CD Judges. I mean joinders are, you know.

MR. BICE: Joinders are common, but not joinders to try and get around statutory deadline to file a motion to retax and then raise entirely new arguments that are particular to their client.

MR. ROSE: And, Your Honor, Christopher Rose for Wellness Connection. We agree with that statement from Mr. Bice.

MR. SCHWARZ: Your Honor, Joel Schwarz on behalf of Lone Mountain Partners.

We agree that there has been commonplace practice in joinders. We've done it ourselves. We've limited ourselves to identifying what we were joining, not making additional arguments and agree with the position articulated by Mr. Bice.

THE COURT: And see that's where --

Okay. Anybody else want to comment on the joinder

concept?

MR. RULIS: I guess, Your Honor, I would. Nate Rulis on behalf of MM and LivFree.

Certainly joinders have been very commonplace in this.

THE COURT: Yeah.

MR. RULIS: I would say though that throughout the course of this litigation there certainly have been substantive joinders that have been filed both by plaintiffs and defendants throughout.

THE COURT: That have addressed an issue --

MR. RULIS: Additional.

THE COURT: -- additional arguments that were not part of the original motion or opposition because that's the distinction.

MR. RULIS: Yes, Your Honor. There were -- I can tell you when we were dealing with summary judgment motions, there were several defendants that filed substantive joinders that included new arguments that had not been included in the summary judgment or opposition that was filed.

But it --

THE COURT: Timely? Are you saying that they can be done after deadlines for joinders in the first place or are you --

MR. RULIS: I'm not here saying it should be. It

should be or is. I'm just saying it has been done in this case.

THE COURT: Where I'm trying to go is two different concepts, right. One is the joinders have their own deadline, okay, and I appreciate the distinction between joinder specifically under the EDCR, to motions versus whether you can do them to oppositions and replies, and we've had that battle for years, but anyway.

Here, the joinder issues is to the motions. So I don't even have to get to the opposition and reply concept. That's one thing adding substantive or not, and the argument on a joinder can go forward if it has substantive points and authorities that are not in the initial with the underlying motion that goes forward, but it usually is to those same arguments under the EDCR.

So I'm understanding there's a mixed view on whether that's been custom and practice in this case from the substantive component. Is that correct? Mixed view, easiest way to phrase that.

MR. RULIS: Nate Rulis for the record.

Yes, I think that's fair, Your Honor.

THE COURT: Mr. Bice, would you say there's a mixed view? I'm hearing some people saying yes and some people saying no; I take that as mixed view.

MR. BICE: I don't recall -- I really don't recall

there being, you know, deadlines that were -- that imposed deadlines were somehow extended.

THE COURT: I'm getting to that second prong. First time going scope of topic, right, substantive. My next question is going to be is are parties asserting that said, whether they were called supplements or whether they were substantive joinders, that those deadlines were also not met by agreement of the parties so you could pretty much file your supplement whenever you wanted to, or was it just the scope of the topics or are you saying also the deadlines? I see those as two different things. That's --

MR. BICE: I am sure -- I am sure Mr. Rulis is right, and the problem is it's been more than two years.

THE COURT: And that's fair.

MR. BICE: That there have been supplements filed by some people that were more expansive than the underlying documents. I don't recall any off the top of my head, but I'm not going to sit here and quarrel with them that that never happened, but I don't think -- I don't think we ever had an agreement that we would waive statutory deadlines or rules by people doing that.

THE COURT: Okay. So let me circle back to Mr. Rulis and then go back to Mr. Slater.

Mr. Rulis.

MR. RULIS: Yeah. Your Honor, Nate Rulis on behalf

of MM and LivFree.

I don't know that the timeliness or deadline of joinders and whether they were substantive or not has actually come up. Frankly I don't know that we addressed that previously.

THE COURT: Okay.

Mr. Slater, two prong question to you. You're asserting that your document that includes your Phase 1 argument, I'll phrase it that way, was timely done with response to the filing of the memo of costs from a time deadline as --

MR. SLATER: Yes, Your Honor. Craig Slater for the Inyo Fine Cannabis and NuVeda entities.

It was filed on August 9th. So I do believe it was timely.

And more importantly, I just, I think perhaps maybe I should have clarified this. I don't believe we asserted any new arguments other than me pointing out that the arguments raised by other people, that there was a distinction between the judicial review claims and the claims that went on to the six-week trial. All's I did is merely pointed out that that particularly affects or impacts my clients because they only asserted judicial review claims.

Those were arguments that were made in several of the motions to retax. I believe both by the TIG defendants as well

as Mr. Parker's motion. So I don't necessarily believe I raised anything new other than just pointing out that that particular argument strongly applied to my clients.

THE COURT: Okay. Eight, nine, joinder --

You don't happen to have a document number, do you?

MR. SLATER: To be honest with you, Your Honor, I have no idea of determining what the document number is. I can tell you it was filed at 12:57 p.m., and that's -- I'm looking at the document, and the stamp at the top does not identify a document number.

THE COURT: No worries. Okay. The thing is there was about 50 documents filed on 8/9. That's why I was -- and so many have been just a joinder.

MR. SLATER: I'm well aware that, Your Honor.

THE COURT: Yeah. Some of them just say joinders. So it doesn't say whose joinder. So that's why I was trying to find a quick way of getting to this.

Okay. Just one second, please.

(Pause in the proceedings.)

THE COURT: Back to your joinder. Did your joinder address which costs you were asserting were for the petition for judicial review phase versus the other phase? I found -- I found yours. 8, 9, 1257. I'm on it. So.

MR. BICE: Yeah. So, Your Honor, on that, we actually -- we did not -- so the petition for judicial review,

of course, was just a hearing. I believe it was on September 8th --

THE COURT: Right.

MR. BICE: -- of 2020. So that was the day -- that was the judicial review hearing date or hearing that we had. Everything else -- you know, we keep calling it Phase 1 and Phase 2, but, of course, Phase 2 occurred before Phase 1.

THE COURT: Correct.

MR. BICE: So if you look at our memo of costs where we break it out, the only thing that we would've had is we have certain limited Odyssey filings because there would've been, you know, court filings that relate to the judicial review and not the second phase, which was the overall trial.

And so if the Court's instruction is I need to back those out, I can break that out. I'd have to just do a quick calculation, but if you look at everything else, it's all, especially the deposition transcripts, the process server fees, those all relate to before the judicial review.

There would be probably one set of copies, and that was I think essentially if it that pertains just to the judicial review proceeding. Everything else is well before the date of judicial review.

THE COURT: Do you agree with Mr. Slater's position on behalf that his client did not participate in anything other than the judicial review phase, and so therefore we would not

be subject to any of the costs because judicial review really doesn't -- I would agree judicial -- a pure petition for judicial review comes up through the administrative processes. That does not have an 18.020 concept.

MR. BICE: But, of course, a traditional judicial review we don't have discovery; it's just the record and briefs and things like that, right, so that's why you typically wouldn't have costs in a case like that.

So this trial -- this thing became a bit of a hybrid because since the trial occurred first, everything basically bled on over into this petition for judicial review. So I would say that, number one.

Number two, I don't, and again, Your Honor, too much time has passed for me. I'm getting, you know, as my hair shows, I'm getting up there in age. I thought Mr. Slater was at the trial. Maybe I'm wrong. Maybe.

MR. J. SMITH: Judicial review.

MR. BICE: What's that?

MR. J. SMITH: Judicial review.

MR. BICE: No. Even at the trial. Maybe I'm wrong on that, maybe I -- there were a lot of us there. It was a huge room with a lot of lawyers.

THE COURT: So the challenge for the Court, realistically -- well, there's a lot of challenges on this one thing, but this particular challenge is I do not see, and this

is why I asked the TGIG movants, okay, which was different than Mr. Rulis's clients. I'll just phrase it you've got a lot of them. I'm not going to say it all the names, okay, because I did not see other breakdowns of categories or dollars, okay.

I saw in some of the motions there was a distinction between petition for judicial review versus some people called it Phase 1, Phase 2. Some people called it the summary judgment. Some -- versus the petition for judicial review phrased differently.

So I saw concepts, but the only breakdown of reduction of costs was I saw in Mr. Rulis's, and if somebody else thinks you did it with regards to Essence, let me know. I'm still on Essence. I realize I'm not going to get anywhere else today. I'm going to -- unless we're going to make it really short because --

MR. BICE: Understood, Your Honor. And --

THE COURT: So the challenge is, is if somebody is addressing substantive argument that they should not be responsible for some of the memorandums of costs, that's what the retax is. Even taking the generous view on a joinder, if it's not addressed to break it down, the Court can't create a breakdown, and nobody has established by any case law that it would have been on the memorandum of costs burden to have carved them out.

So, Mr. Slater, on behalf of your clients, you can

understand why the Court was asking these questions about dollars; right?

MR. SLATER: Absolutely, Your Honor.

THE COURT: So is there somewhere in your joinder that you say that you have dollars -- well, let me take it another way. Sometimes you get in standard cases, right, or other cases people say, look, we got out of the case by summary judgment at X time. So we're not responsible for any costs after X date. So anything that's dated after X date, we're done; we're not in this case, okay. Subject to certain other things. I'm just saying. Plaintiff -- okay.

Because you all are still in the case, still listed in the case, but anyway, completely out with a stip to dismiss (indiscernible) person, right. So they're no longer in the case, no matter what. It's clearly defined with the notice of entry of order, right, because sometimes there's an argument on the stip to dismiss versus the NEO date but looked up, not going there.

Here, I'm hearing the concept, but I didn't see it focused in on what would be the impact, and I'll, just since you asked the question, I would say what would be the impact for your client by not parsing that out for the Court to be able to make a ruling that X costs should be allocated to -- you call it Phase 1 and Phase 2 so I'll use that language. So how can the Court do that when it wasn't in the actual pleading

before the Court?

MR. SLATER: So in my joinder, I kind of addressed this issue. I just point out that there was no distinction made in any of the memorandum of costs.

Now, the reality is, a judicial review claim consists of reviewing the judicial records.

So Mr. Shevorski and his client obtained the record and submitted that to Judge Gonzalez. So in that essence and for her purposes on the judicial review claim, she only reviewed the record before her. So there would have been no reason to take depositions or conduct discovery.

So in that sense, I don't think any of the costs, whether they're broken out or not would ever relate to the judicial review claims. The judicial review claims are limited to a review of the record that was before Her Honor, former Judge Gonzalez.

THE COURT: And the ROA came from where? Record on appeal, ROA, for PJR, or petition for judicial review?

MR. SLATER: I believe that was produced by the Department Taxation and the Attorney General's office, Mr. Shevorski's office. They're the ones who prepared and submitted the record to the Court.

THE COURT: So that means so realistically, it kind of goes back really though to the Court's question.

Since it was not broken out as to what could be,

right -- let me go back to your joinder 2893.

You all want me to stop and see if you can (indiscernible) agreement between years. I mean -- the amount of dollars for every minute I'm here.

(Pause in the proceedings.)

MR. BICE: So, Your Honor, I --

THE COURT: (Indiscernible) I was looking at the wrong one. Hold on a second.

Go ahead, Counsel.

MR. BICE: Yeah, I would ask that we try and get this resolved because I'm afraid that if we just punted it will -- we'll be right back here with a whole bunch of new arguments, and I would just like to get this resolved.

If counsel's argument is, is that he's -- he was only involved up to the petition for judicial review, which again, I'm just not sure about that, but, okay, then I will be happy to break it out at the Court's direction as of September 8th going forward because the trial had ended.

THE COURT: I'm hearing what you're saying, and I'm appreciative that somebody else might be jumping up in just a moment, jumping being a euphemistic term, but somebody else may stand up, request to be heard that that may impact their allocation, and if the Court is --

MR. BICE: I see.

THE COURT: And if the Court is addressing an

argument that is not clearly before it in the pleadings, should I or should I not be doing that, which is why I was double checking the actual pleadings of Mr. Slater's clients, and that's why I'm --

MR. BICE: Yeah. So my point, Your Honor, on that is, is that's why the time frame for filing these motions to retax is quite short by statute is it's, it is if you've got an objection, provide that objection. They didn't break out any amounts that they claim that, you know, need to be subtracted, or I shouldn't -- some of them didn't. Mr. Rulis did, and I'm happy to address those. But I think it's unfair to then just come into court and say, well, let me flip the burden around on I didn't do that or they say they didn't do that, but let me try and flip the burden around and say now the Court should do it or the Court should order Essence to do it.

THE COURT: That's why the Court's going back to Mr. Slater's client's actual document. I am taking into account the, quote, supplemental argument based on if there's a mixture of viewpoints of what was the custom and practice in this case before this Court takes it, I think the better course of action is I take into account supplementals because at least some people thought that was the custom and practice.

So I'm looking at the section supplemental arguments to motion to retax, and I am seeing if there is any breakdown. Give me one second, please.

MR. WILLIAMSON: Your Honor, this is Richard Williamson. May I just be heard on one quick --

THE COURT: Well, wait. Wait. I'm not moving to a different person until I get this one clean, taken care of, right.

MR. WILLIAMSON: I know. I know that, Your Honor. I'm actually trying to help. I'm not even speaking about my client.

THE COURT: Do you need to go? Is that what you needed to say?

MR. WILLIAMSON: No. I was actually just going to jump in on what Mr. Bice said, just trying to help the Court and help the record. Mr. Bice said he wasn't -- he couldn't remember. He, you know, may be forgetting. I'm just looking at the Court's transcript from August 18th when Mr. Slater did make an appearance. I don't know what he said, I don't know what he did, but the point is that was before the PJR.

So I just wanted to, since Mr. Bice was unclear on the record, I wanted to provide that information, that the trial transcript from August 18th, that was day 20 of the bench trial. It does show at least that Mr. Slater made an appearance there, if that helps with this question of whether or not he was there during Phase 2.

THE COURT: I appreciate it.

So here's really where the Court's going to go. I'm

looking at the joinder. The joinder had the full opportunity to set forth what they wished to do to the joinder. The reason why -- and the Court said it was taking into account supplemental because I have some people saying custom and practice that you took into account supplemental. I'm looking at the whole two pages of that joinder. While it just has a general statement about which costs were incurred, in that respect the memorandums are fatally flawed as it relates to NuVeda and (indiscernible) because they did not participate in Phase 2 and only participated in Phase 1, that would not meet the appropriate standards under a motion to retax or a joinder for substantively for the Court to be able to reduce any of the costs between the two phases with regards to your clients, Mr. Slater, because it's not articulated, and it would be your obligation in either a motion to retax, or even giving the more generous view on a joinder with a supplement, to have that, not just a broad statement.

And since you would have had the time components, because you already knew the time components of when the PJR was versus the trial, the Court finds that that is the appropriate remedy. So that addresses Mr. Slater.

Mr. Rulis is standing up, but I have to -- you know, Mr. Rose and Mr. Graff are thinking they would have loved me to have done these altogether, but, okay. Go ahead.

MR. RULIS: Yes. Yes, Your Honor. Nate Rulis on

behalf of MM and LivFree, for the record.

I do want to address this issue because I believe we did raise it in our motion to retax on page 7, lines 3 through 7 of the motion to retax as to the settling plaintiffs. So it may be -- maybe that's what Your Honor was alluding to when you said somebody might be jumping up is that this might be something that we need to address as part of our previously agreed to supplementation.

THE COURT: Okay. The only carve out as to dollars for any time date carve out is in --

Mr. Rulis, this is your client's motion, that this Court saw. The other joinders have some general sentences, but yours is the only one I see that really articulates the arguments is how I see before for the Court, realistically. That's why I've -- I'm making sure if somebody thinks that there's some other supplement of a supplement that may not be called a supplement, which is somewhere in these 3,000 plus things that I'm trying to give you all a chance.

So let's circle back.

Other than Mr. Slater, does anybody else -- because I already addressed your concern, does anybody else -- see the easier things when you're here in court, you stand up, and I can see you. When you're remote, I don't know if -- plus many of you aren't even audiovisually even though you know you were only allowed to be audiovisually, but it's -- right, under the

remote appearance request that was made.

But in any event, anybody else need to be heard?

MR. DZARNOWSKI: Yes, Your Honor. This is Mark Dzarnoski.

Very briefly on behalf of TGIG, I would like to address the one issue or you made a comment that, you know, there's nothing to say who should be responsible for itemizing the different costs between the judicial review and the Phase 2 proceedings and, you know, I just looked again at, for instance, the memorandum of costs that was submitted by the Essence entities, and I just, for the life of me, I don't see how the information that is supplied in the memorandum of costs as to the expenses at all a person who looks at the memorandum of costs, like our firm could challenge anything based upon what the photocopies were made for, for instance, what the service fees were for, what the --

THE COURT: Okay. Counsel, Counsel, counsel. Counsel. Counsel.

MR. DZARNOWSKI: -- Westlaw fees were for. There's no way for us to challenge an entry and say this should be reduced because it's --

THE COURT: Counsel, the reason why I'm going to stop you is because --

MR. DZARNOWSKI: -- this is why. It was not for sufficient to determine that.

THE COURT: Right. That's the reason why I read all seven pages. That's why I was asking. Remember I asked you first whether or not there was any breakdown or any argument in your pleading. There was not an argument that this Court saw, and that's why I double checked with anybody who wanted to be heard either A, that they couldn't determine the costs because they were so vaguely done, and so therefore they should be denied, right, or B, that they were excessive.

The issue with Mr. Rulis's client, he's contesting the number of copies, and he's got the total amount, okay. So the Court was looking at that total amount. The Court's not saying per copy meaning X dollars versus Y dollars. He has parsed out the difference between the expedited fees with regards to, like, some of the messengers and some of the depos, and he's parsed out between having a video deposition and a single copy of a deposition.

So I appreciate you're all excellent attorneys. If anybody else had wanted to make such breakdown, they had the same time period that he did. And even under your more generalized view, by taking supplements to joinders, some other people even had whatever they did with those supplements to joinders.

So the Court is taking the broadest breadth here, and the only one I saw -- I'm giving everyone an opportunity if they think there wasn't something else who filed a motion just

point it to me. Mr. Slater's was two pages. Yours was seven pages. So, okay. I looked at it. It's not there. You can't bring anything up for the first time in oral argument because this is not a new issue. This is an issue that was fully presented to people at the time the memorandum of costs were filed, and anyone could have raised whatever arguments they wish with regards to the memorandum of costs when they filed either A, their motions; or B, their joinders, particularly since the Court is also taking into account the supplements to joinders.

That being said, the Court's ruling is, and you're going to have it -- it looks like Mr. Bice and Mr. Rulis are going to be talking about potentially a second topic, right, because he has raised -- I cannot give you -- I can say that the number -- the only person who's contested your numbers is Mr. Rulis's client.

So you get your costs as to everybody else, subject to two things; one, you previously agreed upon whether there's, you know, the five-page in the 10 days, okay. That's already been talked about.

Two, to the extent Mr. Rulis or somebody has specifically joined because nobody has told me specifically that they join Mr. Rulis's motion with regards to the argument of the dollars, that dollars is open as to Mr. Rulis's clients. And if somebody else can show that they actually did a joinder,

timely joinder, right, that specifically addressed that they were doing that as well, that argument as well, then it would be to them as well.

But right now nobody is being able to point it to me, but I'm giving you all the benefit of the doubt that within 3,000 plus entries, if somebody says that they did it and nobody can tell me that they didn't do it, I think that is a fair carve out. So the ruling is --

MR. PUZEY: Your Honor, before you make the ruling, I'm sorry to interrupt. This is Jim Puzey with High Sierra Holistics.

THE COURT: I really was in the middle of my ruling. I did go around multiple times and ask if anybody else wished to be heard.

MR. PUZEY: I don't know if you asked if there was a joinder. We most certainly filed a joinder, and we spoke about it earlier. That was my argument during the Essence portion of this. And it was based upon my joinder. So I do join in Mr. Rulis's arguments concerning dollars.

THE COURT: Well, we need to be clear. Date of the joinder, and that's two Rulis's -- to the motion to retax and to the arguments in that motion to retax. So please give me the date you filed your specific joinder to his motion to retax and then address that argument, please.

MR. PUZEY: Yes. It was on -- the joinder was filed

on August 9th.

THE COURT: I need some part of the day so that I have a concept of what part of the day we're talking about since, like I said, there's a whole number of --

MR. PUZEY: Your Honor, my apologies. I don't have it. I have the substantive pleading. I don't have the time stamp.

THE COURT: The pleading should be in the upper right-hand corner. The stamp should be in the upper right-hand corner.

MR. PUZEY: It's not on this particular document, Your Honor, my apologies.

THE COURT: Folks, it's -- High Sierra Holistics. Is that what you said, Counsel?

MR. PUZEY: Yes, it is, Your Honor.

THE COURT: Okay. So you, for purposes of the dollars argument, High Sierra as set forth, lines, on the first page of your motion, which isn't numbered, the first page 1 isn't numbered, but I assume it's page 1, this is page 2.

Okay. So they -- you get that carve out for them as well for the dollars because they had joined that to address the dollars in the same concept as it is with regards to Mr. Rulis's clients. Nothing added there because there's no additional argument as to that.

Their additional argument, which I had gotten to my

ruling yet on their carve out for the other argument, okay, is their assertion, it's the consolidation argument, okay.

Consolidation argument the Court does not find that because of the way that this trial was done that the initial case numbering would preclude Essence from being a prevailing party vis-à-vis High Sierra Holistics because High Sierra Holistics, while they join in the argument of, I'm just going o say Mr. Rulis's clients, they do not articulate a specific additional argument on how those memorandum of costs should be further broken down because of when the intervention date was granted.

They note that there was an intervention date, but they do not argue that somehow that would further reduce the actual costs being awarded. So they get the benefit of one but not the other. So costs would still be awarded for all the analysis the Court said previously with regards to prevailing party with regards to High Sierra Holistics, really taking into account that joinder on 8/9, 3:24, including the supplement.

Okay. So --

MR. PARKER: Your Honor, this is Teddy Parker -- or I'm sorry, Your Honor. I didn't mean to interrupt.

THE COURT: Okay. Yes, Mr. Parker.

MR. PARKER: Your Honor, my document, our joinder was filed two days after MM filed its motion, and it was Document Number 2911.

I appreciate what Mr. Bice has said as well as what Mr. Rulis has said in terms of our joinders and substantive joinders. I agree with what Mr. Rulis said, and we, of course, questioned as well the figures presented in Mr. Bice's cost memorandum. So that's the only thing I wanted to point out, but I didn't know if we needed to resay that in the five pages that we were given to prepare in the next 10 days, Your Honor. So I just wanted to make a (video interference), Your Honor.

MR. BECKSTROM: And, Your Honor, that's the same for the ETW plaintiffs. So there was joint replies, first so it's easier for the Court, that Mr. Parker, ETW plaintiffs and Mr. Rulis's plaintiffs were altogether on the joint replies. I want to make sure our records are clear.

THE COURT: I have to look though at your, quote, joint reply from a timeliness standpoint.

MR. BECKSTROM: And it's on 8/15 was our joinder. So if the Court is going to find it untimely, I want to make sure it's --

THE COURT: That's where I -- that's why I have to look at dates. That's why I'm doing one by one and the different subarguments.

Okay. So 8/15 would be untimely. There has been no request by -- to this Court to extend the time to raise anything with regards to that. There has been no good cause presented or anything. So while it may not be jurisdictional,

based on Essence's prior arguments, they were objecting to anything that was filed untimely.

Is that correct?

MR. BICE: Yes, Judge.

THE COURT: Since you brought it up initially to the Court today.

MR. BICE: Yes, Your Honor.

THE COURT: Okay. So since I have an objection, and there was no request, and this could have easily been done through a request for relief if there was any good cause to file something at a different date -- I'm not saying what the Court would have ruled one way or another, but there just wasn't any motion or anything, okay, or any stipulation. The Court wouldn't find that there's, in looking at the actual documentation, it doesn't set forth any good cause for the additional time being needed, okay. I don't have any -- well, there's not any statement on good cause. So that's the easy part of it.

So therefore, things in the 8/15 document, the Court cannot take into consideration over the objection of Essence in the absence that there wasn't any request to this Court.

That answers part of your question, but not the full part of your question. I understand that.

So let's get to the second part. Let me finish with Mr. Parker first before I go to ETW so that we're being clear

on what we're saying for each subsection. I appreciate there's lots of you and there's one of me. So let's go back.

Mr. Parker, other than the 8/15 argument, you wanted me to look at your 8/10 document, which is your 8/10 document that was filed at 10:54 that you referenced a few moments ago. And that document, page 1, has the same thing it says, joins the arguments in the law set forth by plaintiffs MM Development, et al, i.e., (Indiscernible.) been calling Mr. Rulis's clients. So yes, you get the same (indiscernible). That's what I was saying you have a specific joinder.

The second part, the second part is you have no substantive argument that there is any further reduction of costs other than your resolution argument and the prevailing party argument. And, of course you say it was strict construction of 18.005 and was actually incurred and necessary.

I do see you have the law cited for Barosini, Cadle, et cetera, but what I did not see other than runner services -- oh, wait. I'm sorry. I'm wrong. Runner services and legal research, yes. So you do have those substantively as well as the global joinder as Mr. Rulis's, so you have those same arguments for potential reduction. Now --

MR. BICE: I just want to be clear on something, for the record --

MS. DELCARMEN: And, Your Honor, if I may, Jennifer (video interference).

THE COURT: Hold on a second. Hold on a second. I've got multiple people talking.

MR. BICE: An 8/10 joinder is also untimely.

THE COURT: What was the date of your memo of costs again?

MR. BICE: A memo of costs would have been due on the 9th believe -- or 8/5, sorry.

THE COURT: The motion to test --

MR. RULIS: So, Mr. Bice -- Essence filed their memo of costs. I think it was the evening of 8/5, which was a Friday.

THE COURT: It was after -- it was Friday though, right?

MR. RULIS: Yes.

THE COURT: With the first court date being Monday.

MR. RULIS: So then the motion to retax was filed on Monday.

THE COURT: Right, which is fine.

MR. RULIS: Right. Which is the 8th?

MR. BICE: What you did.

MR. RULIS: Yes.

MR. BICE: On that note, Mr. Rulis's and Mr. Dzarnoski's were the timely motions to retax. If I was suggesting otherwise, I --

THE COURT: No. No. No. I didn't see it. No, I

heard you only addressing Mr. Parker, saying Mr. Parker's joinder to Mr. Rulis's motion was untimely because it was filed on the 10th is what I thought you were saying.

MR. BICE: Yes.

THE COURT: Okay.

MR. PARKER: We are in disagreement, of course, Your Honor, because under 22 -- under EDCR 2.20, we're simply joining in the arguments made by the other settling plaintiff, which is MM and LivFree as well, Your Honor.

MR. BECKSTROM: And that's ETW's position. No substantive additions were there. We just filed the joinder. We accepted everything Mr. Rulis set forth his motion to retax.

THE COURT: Okay. My wonderful court recorder is going to give me a look in just a moment, and she'll be well-deserved to give me said look to remind you all to please state your names each time you speak.

THE COURT RECORDER: And, Mr. Beckstrom, I don't believe that microphone is -- it's, yeah.

MR. BECKSTROM: Sorry. I turned it off.

THE COURT RECORDER: You turned off, yeah.

THE COURT: You turned it off. Okay.

So did you get Mr. Parker's viewpoint.

THE COURT RECORDER: Yes.

THE COURT: And then you got Mr. Beckstrom's?

THE COURT RECORDER: Yeah.

THE COURT: Okay. So just, please, friendly reminder so that, unless you all just want to be a jumbled jumble.

Okay. So let's go back to Mr. Parker's question or statement on the 8/10 joinder --

MR. BICE: Yes.

THE COURT: -- whether it is or is not timely. Mr. Parker, your reliance on 8/10 being timely, let's circle back to a joinder on a motion, right.

MR. PARKER: Yes, Your Honor.

(Pause in the proceedings.)

THE COURT: Okay. So --

MR. PARKER: We filed it within two days, Your Honor. I'm sorry. For the record, this is Teddy Parker again on behalf of Nevada Wellness Center, Your Honor.

And we filed it within two days of the motion by MM and LivFree.

THE COURT: Okay. So then you have the -- do you go to the five days after a memo of costs, or do you go to a joinder to a memo of costs, and you get the extra benefit of the EDCR 2.20(d)?

MR. PARKER: And the way we're looking at it, Your Honor, we may be even within the five. I'm trying to pull it up and see.

MR. J. SMITH: And, Your Honor, Jordan Smith.

Just so we're clear, the deadline to file the motion

to retax is three days, not five days, by statute.

THE COURT: I'm sorry. I -- you are correct. It is three days by statute. The Court did inadvertently say five days or --

MR. J. SMITH: Mr. Bice led you astray. He said five days.

MR. BICE: I did that --

MR. J. SMITH: That was not your fault, Your Honor.

MR. BICE: It was my mistake.

THE COURT: It's a long morning. It's a long morning. It doesn't really matter. I should have said the right one anyway, no matter what other people say.

MR. PARKER: All right, Your Honor. This is again Teddy Parker. It's a long morning for everyone, Your Honor.

Yeah. We filed it within two days of the MM filing in accordance with EDCR 2.20.

THE COURT: But not within the statutory time frame to respond to a memo of costs. So what Mr. Bice had asserted --

MR. PARKER: If we were adding new argument, I would probably agree with Mr. Bice to the extent there are new arguments not included in the original motion, but in terms of the same arguments, I would disagree with Mr. Bice because we have joined in the same arguments relative to the costs.

MR. BICE: Your Honor, this is Todd Bice for the

record.

The only thing I would note on that is Mr. Rulis's motion to retax is eight pages long, and Mr. Parker's joinder, untimely joinder is also eight pages long with a bunch of exhibits. So this isn't somebody who just, you know, I'm filing a one page joinder as I join in Mr. Rulis's arguments. This is everybody is using that joinder rule to start making new and additional arguments, and that's what I object to.

THE COURT: Right. That's why this Court --

MR. PARKER: And, Your Honor --

THE COURT: Okay. Wait. Wait. Wait.

MR. PARKER: I'm sorry.

THE COURT: Folks, folks, folks. The Court really was trying to do a ruling, I don't know 25 minutes ago. I'm glad to provide entertainment.

So, okay. Let's go --

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

THE COURT: Let's go clear, okay.

MR. BICE: Okay.

THE COURT: The global concept of doing a joinder that does not add additional reductions in costs can be taken into consideration, EDCR 2.20(d), and the Supreme Court has recently said with regards to another Eighth Judicial District Court rule, right, to the extent it's being more generous, and since this is not a jurisdictional aspect, to the extent,

Mr. Parker, your pleading on 8/10 adds some category that was not in Mr. Rulis's, that cannot be considered for reduction. To the extent it just emphasizes, restates or your global paragraph on page 1, it is.

MR. PARKER: Thank you, Your Honor.

THE COURT: So the world of monetary reductions is Mr. Rulis's motion to retax, okay.

So ETW, to the extent you -- 8/15 is not going to meet either of those dates. 8/15 is not going to meet either the additional join -- the 15th meets the joinder date --

MR. BECKSTROM: James Beckstrom on --

THE COURT: But it's within -- hold on.

MR. BECKSTROM: The Court's ruling is clear. We agree with that. We added additional. We were timely under the EDCR joinder rule. We had a one page joinder. So that's all we have to say on that issue, Your Honor.

THE COURT: Mr. Rulis, you're carrying a lot of people on your motion.

Okay. So I heard one other voice --

MR. DZARNOWSKI: Your Honor, this is Mark Dzarnowski.

THE COURT: Wait. Wait. We're not -- the Court has already gone there. I have already -- it's very clear.

If you had a timely joinder to MTs [sic] -- Mr. Rulis's clients, right, within the EDCR, you get the scope only of Mr. Rulis's clients' motion to retax to --

MR. DZARNOWSKI: We (indiscernible) this is Mark Dzarnowski --

THE COURT: -- if you did not -- hold on a second. I really -- it's really difficult for both of us to talk to get you a clear record, okay.

If you did not file a joinder to said motion within the EDCR time frame, then you don't get the benefit of any part of it.

If you filed a joinder within the EDCR time frame and you've expanded on anything that was not in the motion to retax by MMT [sic], Mr. Rulis's clients, however you like to say it, those entities, right, then you do not get the benefit of it because then you would go to the de facto motion to retax.

With regards to TGIG, we already went through that TGIG on its own did not have any financial reductions. It had conceptual aspects.

So now the Court should have covered you all both globally. I have addressed you all specifically. I have focused on where the reductions is.

The granting of the motion is in its entirety with two carve outs, which is where we were to trying to start about 45 minutes ago. Okay.

Carve out one, I already said is to the extent with the settling plaintiffs with regards to the brief and the timing of said brief because that was raised in a motion to

retax, and that would be appropriately to be addressed.

The second portion of that is -- and I really think you all can reach an agreement on the actual dollars, right. The second is the dollars that are set forth in Mr. Rulis's clients, the MMT timely motion to retax and any joinders that meted only to the scope of what was in that original motion to retax within the EDCR time frame 2.20(d) can have an argument on the reduction of those amounts.

I realistically think that, Mr. Bice, you're probably going to speak with those parties to see if you can possibly come to an agreement on what that reduction is. If you can't, then that part the Court can't rule on today because --

MR. BICE: We haven't talked.

THE COURT: -- you haven't yet talked to see if it's also impacted by the date qualifier that may or may not exist. So you have a ruling as much as the Court can rule with those two carve outs.

That takes care of Essence, I hope.

MR. BICE: Yes.

THE COURT: It being the noon hour, my team who's gone nonstop for three hours for you all. I really appreciate them. Sorry. I lost track of time.

Realistically, you're not going to do another motion today, but I realistically think that with a couple of those others motions to retax that relates to some of the other

defendant parties who may have similar arguments, you might see if, A, you can reach an agreement with everybody else. If not, B, I'm going to set you for a different hearing date, and I will have to be more conscious of the time frame, to sticking to time frames because it's wonderful to see you all, but I think we need to ensure we get in timing.

Mr. Graf, I'm not going to go substantively with your motion today was the short version.

MR. GRAF: Understood, Your Honor. The only request that I would have in terms of --

THE COURT RECORDER: Mr. Graf, can you --

THE COURT: Can you go to someone's microphone so we can hear you. Thank you so much.

MR. GRAF: Yes. Rusty Graf, Clear River, LLC. The request I would make, Your Honor, is that you put our motion for costs on with our motion for fees. We should have a motion for fees that's hanging out there someplace, and I think it got set a couple of weeks out.

THE CLERK: The 27th.

MR. GRAF: Yep.

MR. RULIS: Your Honor, Nate Rulis for the record.

That's -- I had proposed that to Mr. Graf.

MR. GRAF: He did.

MR. RULIS: I have no opposition to moving that to the same day.

THE COURT: Mr. Rose, does the 27th meet your needs?

MR. ROSE: Your Honor, that would be fine as well.

MR. SCHWARZ: For the record, Your Honor, Joel Schwarz on behalf of Lone Mountain. That's fine as well.

THE COURT: Okay. And those are the other couple of pending ones?

UNIDENTIFIED SPEAKER: Yes.

MR. SHEVORSKI: Your Honor, Steve Shevorski for the --

THE COURT: Plaintiffs TGIG --

Yeah, I'm sorry. Go ahead.

MR. SHEVORSKI: Steve Shevorski for the State. We have a motion to retax as well. And I think there may -- I think he raised also a possibility of a jurisdictional issue. We have no objection to moving it.

In fact, I've got to get on a call with the East Coast on an important matter very quickly. I wonder if I might be able to drop off?

THE COURT: Okay. The 27th for whatever has not been resolved today, but here's -- somebody needs to send us a letter, just articulate which motions and which joinders, folks, so we don't have to keep on scrambling back through all of these to see who asserted they did their joinders, okay.

So whoever is going to take the weathering or, if you're going to do it jointly, the 27th, we're going to have to

give you -- I'm going to give you a time temporarily now because we've got a busy day that day, and I think that's what people are about to tell me on my wonderful team, that that is a busy day.

But, oh, first off, the 27th, is there any religious accommodations that the Court needs to take into account on the 27th? Because I won't schedule something if that impacts somebody for religious accommodation standpoint, i.e., it's the second day of Rosh Hashanah. So if that impacts anyone, we're going to find you a new date. And I moved things because I'm not impacting anyone.

So basically, all I'm going to tell you is by Tuesday at noon I get a letter, A, the 27th works for everyone, nobody needs an accommodation; or, B, somebody needs an accommodation and you don't need to tell me who, and we're going to have to pick a new date, then you're going to propose three new dates;

Two, you're going to tell me how much time you need.

Three, you're going to tell me the motions and the joinders; and in one nice little piece of paper so that we cannot have to go back and forth because the way these are titled it was really, really challenging for today. So I think that would make everyone's life a little quicker and easier.

MR. GRAF: Your Honor, Rusty Graf for Clear River --

THE COURT: And your fees motion can be on either the 27th or the new day if the 27th doesn't work for

accommodations. Does that get you taken care of?

MR. GRAF: Yes, Your Honor. And I'll send the letter on Tuesday if everybody wants to direct an e-mail to my attention or Brigid's attention, and we'll handle that.

THE COURT: Beautiful. Sounds wonderful. Have a great rest of your day. Have a great weekend.

MR. WILLIAMSON: Your Honor. Your Honor. Your Honor.

THE COURT: Wait. Wait. I've got too many Your Honors coming my way.

MR. WILLIAMSON: Sorry. Richard Williamson for Deep Roots Harvest, Your Honor.

THE COURT: Yes.

MR. WILLIAMSON: Just one quick question as it might impact what's happening on the 27th. The five page brief that Mr. Rulis is going to file in 10 days, I assume that is only as to the Essence motion, and it wouldn't have any dispositive, since that kind of allocation argument has been made with respect to other memoranda of costs, such as my clients.

THE COURT: Counsel, we're not getting into the arguments, but as everyone realizes, I only addressed one motion today. I cannot and I do not --

MR. WILLIAMSON: And so we don't need to weigh in on that.

THE COURT: -- give advisory rulings on anything that

I have not specifically addressed. Okay?

MR. WILLIAMSON: Okay. Thank you.

MR. RULIS: Your Honor, sorry. Before Todd goes, Nate Rulis for the record.

Maybe I can have that discussion with Mr. Williamson and Mr. Rose or anybody else and sort that out, and we can include that as part of our letter on the 27th.

THE COURT: When a beautiful stipulation comes my way, life is good. Okay. So --

MR. BICE: Yes. Just because I want the record to be clear, because --

THE COURT: Mr. Bice speaking. Go ahead.

MR. BICE: Oh, Todd Bice on behalf of the Essence parties.

I need the record -- I just want to make sure the record is clear because the Court had said something was denied. I think their motions to retax were denied. So costs are awarded subject to the conditions that you have imposed limitations and the caveats, and the motions to retax are denied based upon those same --

THE COURT: With respect to Essence, consistent with the carve outs --

MR. BICE: Correct.

THE COURT: -- yes.

MR. BICE: Thank you.

THE COURT: Which is the only motion the Court dealt with today.

MR. BICE: Thank you.

THE COURT: It's wonderful to see you all. Have a good rest of your day. Have a great weekend. Thank you so very much.

(Proceedings concluded at 12:07 p.m.)

-oOo-

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

Electronically Filed
10/27/2022 2:30 PM
Steven D. Grierson
CLERK OF THE COURT

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE: D.O.T. LITIGATION	CASE NO. A-19-787004-B DEPT NO. XXXI
	TRANSCRIPT OF PROCEEDINGS

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

FRIDAY, OCTOBER 21, 2022

TRANSCRIPT OF HEARING RE:

SEE PAGES 4 THROUGH 8 FOR MATTERS

SEE PAGES 2 THROUGH 3 FOR APPEARANCES

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

A P P E A R A N C E S

FOR MM DEVELOPMENT AND LIVFREE WELLNESS:	NATHANAEL R. RULIS, ESQ.
FOR THE ETW PLAINTIFFS:	JAMES A. BECKSTROM, ESQ.
TGIG PLAINTIFFS:	MARK S. DZARNOSKI, ESQ.
FOR QUALCAN:	PETER S. CHRISTIANSEN, ESQ.
FOR HIGH SIERRA HOLISTICS:	JAMES W. PUZEY, ESQ.
FOR GREEN THERAPEUTICS, GREEN LEAF FARMS HOLDINGS, NevCANN, AND RED EARTH:	NICOLAS R. DONATH, ESQ.
FOR THC NEVADA:	AMY L. SUGDEN, ESQ.
FOR INYO FINE CANNABIS AND THE NUVEDA ENTITIES:	CRAIG D. SLATER, ESQ.
FOR DEPARTMENT OF TAXATION AND CCB:	CRAIG A. NEWBY, ESQ. Deputy Soliciter General
FOR INTEGRAL ASSOCIATES AND THE ESSENCE ENTITIES:	TODD L. BICE, ESQ. JORDAN T. SMITH, ESQ.
FOR CLEAR RIVER:	J. RUSTY GRAF, ESQ. BRIGID M. HIGGINS, ESQ.
FOR WELLNESS CONNECTION OF NEVADA:	CHRISTOPHER L. ROSE, ESQ.
FOR LONE MOUNTAIN PARTNERS:	JOEL Z. SCHWARZ, ESQ. ERIC D. HONE, ESQ.

FOR CPCM HOLDINGS, CHEYENNE MEDICAL, AND COMMERCE PARK MEDICAL:	JOSEPH A. GUTIERREZ, ESQ.
FOR NATURAL MEDICINE:	STEPHANIE J. SMITH, ESQ.
FOR NEVADA WELLNESS CENTER:	THEODORE PARKER, III, ESQ.
FOR DEEP ROOTS HARVEST:	RICHARD D. WILLIAMSON, ESQ.
FOR HELPING HANDS WELLNESS CENTER:	JARED B. KAHN, ESQ.
FOR NEVADA ORGANIC REMEDIES:	STEVEN B. SCOW, ESQ.
FOR GREENMART OF NEVADA NLV:	LEO WOLPERT, ESQ.
FOR JORGE PUPO:	JONATHAN A. RICH, ESQ.
FOR RURAL REMEDIES:	CLARENCE E. GAMBLE, ESQ.

M A T T E R S

Defendant/Intervenor Clear River, LLC's Motion for Attorney's Fees and Costs

Motion to Retax and Settle Costs (Deep Roots Harvest)

Motion to Retax and Settle Costs (Thrive)

Motion to Retax and Settle Costs (Clear River, LLC)

Motion to Retax and Settle Costs - Deep Roots

Clark Natural Medicinal Solutions, LLC, Nye Natural Medicinal Solutions, LLC, Clark NMSD, LLC and Inyo Fine Cannabis Dispensary, LLC's Joinder and Supplement to Motions to Retax

Clear River, LLC's Motion to Retax and Settle Costs (TGIG Plaintiffs)

Lone Mountain Partners, LLC's Motion to Retax TGIG Plaintiffs' Memorandum of Costs and Disbursements

Joint Limited Motion to Retax and Settle Costs Regarding TGIG, LLC, Nevada Holistic Medicine, LLC, GBS Nevada Partners, Fidelis Holdings, LLC, Gravitas Nevada, Nevada Pure, LLC, Medifarm, LLC, and Medifarm LV, LLC

Plaintiffs' Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC

High Sierra Holistics, LLC's Motion to Retax and Settle Costs

Nevada Wellness Center, LLC's Joinder and Supplement to Motion to Retax and Settle Costs

Motion to Retax and Settle Costs (Wellness Connection)

Motion to Retax And Settle Costs Regarding Deep Roots Harvest, Inc.'s Memorandum of Costs

Motion to Retax and Settle Costs (Lone Mountain)

Motion to Retax and Settle Costs (Nevada Organic Remedies)

TGIG's Joinder to Motion to Retax and Settle Costs - MM, LivFree, Qualcan, and Natural Medicine Regarding The Essence Entities' Memorandum of Costs filed August 5, 2022

Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC

Motion To Retax And Settle Costs Regarding CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC

Motion to Retax and Settle Costs Regarding Wellness Collection of Nevada, LLC

Plaintiff's Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCANN, LLC and Red Earth, LLC's Joinder to Motions to Retax and Settle Costs

Rural Remedies, LLC's Joinder to Motions to Retax and Settle Costs

Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

Motion to Retax and Settle Costs Regarding Clear River, LLC's Memorandum of Costs

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motion to Retax and Settle Costs

Motion to Retax and Deny Costs to Plaintiffs

The Essence Entitiies' Motion to Retax TGIG Plaintiffs' Memorandum of Costs and Disbursements

Wellness Connection of Nevada, LLC's Joinder to Deep Roots Harvest, Inc.'s Reply in Support of Motion to Retax and Deny Costs to Plaintiff

Plaintiffs' Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

High Sierra Holistics, LLC's Joinder to Motion to Retax and Settle Costs

Defendants in Intervention CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC's Motion to Retax Plaintiff TGIG's Memorandum of Costs and Disbursements

Clark Natural Medicinal Solutions, LLC, Nye Natural Medicinal Solutions, LLC, Clark NMSD, LLC And Inyo Fine Cannabis Dispensary, LLC's Omnibus Joinder and Supplement to Motions to Retax

Joinder to the Essence Entities' and CPCM Holdings, LLC's Motion to Retax TGIG Plaintiffs' Memorandum of Costs and Disbursements

Natural Medicine, LLC's Joinder to High Sierra Holistics, LLC Motions to Retax and Settle Costs Re: Clear River, LLC, Deep Roots Harvest, Inc., and Thrive Entities Filed On August 11, 2022

Clear River, LLC's Joinder to Motions to Retax and Settle Costs Filed by (1) Essence Entities; (2) Thrive Entities (RE: TGIG Plaintiffs)

Rural Remedies, LLC's Joinder In Intervening Defendants CPCM Holdings, LLC D/B/A Thrive Cannabis Marketplace, Cheyenne

Medical, LLC and Commerce Park Medical, LLC's Motion to Retax Plaintiff TGIG's Memorandum of Costs and Disbursements

Lone Mountain Partners, LLC's Joinder to Motions to Retax and Settle Costs

Helping Hands Wellness Center, Inc's Joinder to Motions to Retax Filed by Intervening Parties: 1. CPCM Holdings, LLC, dba Thrive Cannabis Marketplace, Cheyenne Medical, LLC, and Commerce Park Medical, LLC's 2. Essence Parties 3. Clear River, LLC 4. Deep Roots

Wellness Connection of Nevada, LLC's Joinder To Motion To Retax and Deny Costs To Plaintiff

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding CPCM Holdings, LLC d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and Commerce Park Medical, LLC

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

Defendant Jorge Pupo's Joinder to Department of Taxations Motion to Retax and Settle Costs

Greenmart of Nevada NLV, LLC's Joinder to Motions to Retax and Settle Costs

Circle S Farms, LLC's Joinder to Motion to Retax and Settle Costs

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motions to Retax and Settle Costs

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCann, LLC, and Red Earth, LLC's Joinder to Motions to Retax and Settle Costs

ETW Management Group, LLC's Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs regarding Nevada Organic Remedies, LLC

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Clear River, LLC's Memorandum of Costs

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Deep Roots Harvest, Inc.'s Memorandum of Costs

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Wellness Connection of Nevada, LLC

LAS VEGAS, CLARK COUNTY, NEVADA, OCTOBER 21, 2022, 9:05 A.M.

*** * * * ***

THE COURT: So, Counsel in D.O.T., what we're going to do, if you don't mind, what we're going to do is we're going to ask you to come one by one to the podium to make your appearances. For those of you who used to do CD or other cases, this shouldn't be a new process. That way we can hear your appearances clearly, and then we can argue the motions.

And as you know, we're going to do, if you all agreed upon the order of the motions, then we'll do your order. If not, the Court's going to pick an order. So if you don't mind, since people are...

So would you all like to begin with doing your appearances, please. But let me call the case number first if you don't mind. Thank you so very much.

In Re: D.O.T. --

Counsel, I need to start to have them make appearances. So if you don't mind, please no chatting right now. Thank you so very much. So we can get you taken care of. Do appreciate it.

In Re: D.O.T. Litigation, Case 787004, pages 3 through 30.

Counsel, if you don't mind just doing your appearances, appreciate it.

MR. SCHWARZ: Good morning, Your Honor. Joel Schwarz

and Eric Hone on behalf of defendant Lone Mountain Partners.

MR. ROSE: Good morning. Christopher Rose, 7500, for Wellness Connection of Nevada.

MR. WOLPERT: Good morning, Your Honor. Leo Wolpert, Bar Number 12658, on behalf of GreenMart of Nevada NLV, LLC.

MR. GUTIERREZ: Good morning, Your Honor. Joseph Gutierrez on behalf of CPCM Holdings, LLC, Cheyenne Medical, LLC, and Commerce Park Medical, LLC.

THE COURT: Counsel. Counsel. I've got to ask you again, please they're making appearances, and then you're talking and laughing. You can appreciate we can't hear the appearances. Second time. Please. Thank you.

Would you mind --

THE COURT RECORDER: I got it. Mr. Gutierrez.

THE COURT: You heard it. Okay.

MR. GUTIERREZ: You got it. Thank you.

THE COURT RECORDER: Thank you.

THE COURT: Go ahead, please.

MS. SMITH: Good morning, Your Honor. Stephanie Smith on behalf of Natural Medicine.

MR. RULIS: Good morning, Your Honor. Nate Rulis on behalf of plaintiffs MM Development Company and LivFree Wellness.

THE CLERK: And, sir, what is your bar number?

MR. RULIS: 11259.

THE CLERK: He's on here. Okay. Thank you.

THE COURT: Thank you. We have a wonderful clerk helping us out today. So bar numbers are also helpful just in case if you don't mind.

MR. PARKER: No worries, Your Honor. Teddy Parker on behalf of Nevada Wellness Center.

THE CLERK: We have you. Thank you.

MR. PARKER: Perfect. Thank you.

MR. CHRISTIANSEN: Good morning, Your Honor. Pete Christiansen on behalf of Qualcan. You have my Bar Number 5254.

THE COURT: Yeah. If they don't have it, they just may need to ask you all. Thank you so much. Go ahead, please.

MR. BECKSTROM: Good morning, Your Honor. James Beckstrom, 14032 on behalf of ETW Management, Global Harmony, Just Quality, Libra River (as said) Center, Rombough Real Estate and Zion Gardens.

THE COURT: Thank you. Go ahead, please.

MR. GRAF: Good morning, Your Honor. Rusty Graf on behalf of Clear River. 6322.

MS. HIGGINS: Good morning, Your Honor. Brigid Higgins, also on behalf of Clear River, LLC, Bar Number 5910.

THE CLERK: 59- ?

MS. HIGGINS: One zero.

THE COURT: Thank you. Okay. So remotely.

Madam Court Recorder, can you go to the top of the chat. What I'm going to do is I'm just going to say their name and ask them to make their appearances on behalf of their name and their parties, okay, straight from the chat.

THE COURT RECORDER: Yep.

THE COURT: That way we've got it in the same order. That should be helpful. Okay.

So Mr. Dzarnoski, I'm just doing it in the order that you checked in the chat. So if you all put your chats on on your end, right, and remember, everyone's got to be audiovisual. This Court only approved for audiovisual. Please feel free to read the order. If you're not audiovisual, you don't exist unless you're a member of the public, and then you're more than welcome.

MR. DZARNOSKI: Yes. Good morning, Your Honor. Mark Dzarnoski, Bar Number 3398 on behalf of the TGIG plaintiffs.

THE COURT: Thank you.

Mr. Rich.

MR. RICH: Good morning, Your Honor. Jonathan Rich, Bar Number 15312 on behalf of defendant Jorge Pupo.

THE COURT: Thank you.

Williamson.

MR. WILLIAMSON: Good morning, Your Honor. Richard Williamson on behalf of defendant Deep Roots Harvest, Inc., Bar Number 9932.

THE COURT: Appreciate it.

Madam Court Recorder, can you move up the chat a little bit so I can see the next series of names. Thank you so much.

Hold on a second.

(Pause in the proceedings.)

THE COURT: Mr. Newby.

MR. NEWBY: Good morning, Your Honor. Craig Newby on behalf of the Department of Taxation and its Cannabis Compliance Board. 8591 is my bar number.

THE COURT: Thank you.

And then we get to Mr. Slater.

MR. SLATER: Good morning. Craig Slater, Bar Number 8667, on behalf of Clark Natural Medicinal Solutions, Nye Natural Medicinal Solutions, Clark NMSD and Inyo Fine Cannabis Dispensary.

THE COURT: Thank you.

(Pause in the proceedings.)

THE COURT: Ms. Sugden and then Mr. --

Go ahead.

MS. SUGDEN: Good morning, Your Honor. Amy Sugden, Bar Number 9983, on behalf of THC Nevada, LLC.

THE COURT: Thank you.

Mr. Donath, please.

(No audible response.)

THE COURT: Mr. Donath, I see your name in the chat, but I do not hear anybody --

THE COURT RECORDER: He's up there in the far left. He's muted.

THE COURT: Maybe did you meet yourself, Counsel?

MR. KAHN: I'm sorry. Was that Mr. Khan?

THE COURT: We're going to go to Mr. Kahn, and then we'll go back to Mr. Donath.

Mr. Kahn, please.

MR. KAHN: Thank you. Jared Kahn on behalf of Helping Hands Wellness Center, 12603.

THE COURT: Okay. Mr. Gamble.

MR. GAMBLE: Yes, Your Honor. Clarence Gamble on behalf of Rural Remedies, Bar Number 4268.

THE COURT: Mr. Puzey.

MR. PUZEY: This is Jim Puzey on behalf of High Sierra Holistics, LLC, State Bar 5745.

Mr. Scow.

MR. SCOW: Good morning, Your Honor. Steven Scow, 9906 for Nevada Organic Remedies.

THE COURT: Okay. Mr. Donath, were you able to get that fixed? Can we do you, or should I keep going?

(No audible response.)

THE COURT: It looks like he needs another minute. So then we can keep going down.

THE COURT RECORDER: That's the end of it.

THE COURT: That's the end of it.

Okay. Mr. Donath, do want to put your appearance -- are you having --

THE COURT RECORDER: He is in the chat.

THE COURT: You're in the chat. Well, if you're planning on speaking today, you need to get your audio fixed, but --

MR. DONATH: Your Honor, can you hear me?

THE COURT: There we go. Would you like to make your appearance?

MR. DONATH: Your Honor, this is Nick Donath. Can you hear me?

THE COURT: We can now. Thank you.

MR. DONATH: I'm so sorry. My unmute button froze.

Nick Donath, 13106, on behalf of Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCANN, LLC, and Red Earth, LLC. Thank you very much.

THE COURT: Thank you.

Mr. Bice, you just popped up in the chat. Go ahead, please.

MR. BICE: Yes, Your Honor. I apologize for not being in the chat. Todd Bice on behalf of the Essence parties, and also on is Jordan Smith on behalf of the Essence parties.

MR. J. SMITH: Good morning, Your Honor.

THE COURT: Thank you.

Has everyone else had an opportunity? We went through everyone in the chat. So anybody else who did not put their name in the chat?

(No audible response.)

THE COURT: Okay. So we're moving on.

So I do appreciate, like I said, sorry we would have liked to have gotten you started. I should've started you around 8:40. Calendar calls usually take about 10 minutes to get the docs and move on.

Friendly reminder, if anyone might have upcoming trials this is supposed to be easy things. Please read the trial orders in 2.673 and 2.69. It's actually easy.

In any event, that being said, do you all have a request on who's going next? Because I know we got started, but we did not obviously get to everyone. Remember I asked you that last time; if you all had a particular order, we would do it.

MR. ROSE: Your Honor, Chris Rose, for the record. I haven't spoken to anyone. As the Court knows from the first hearing, it ruled on the motion to retax as to the Essence parties.

THE COURT: Correct.

MR. ROSE: It seems to make sense to me, since Essence is a nonsettling defendant --

THE COURT: Right.

MR. ROSE: -- it would seem to make sense --

THE COURT: Do you want to go next?

MR. ROSE: Yeah. I think it makes sense to proceed with the nonsettling defendants and those costs.

THE COURT: Okay. I mean, that seems to make the most practical sense to the Court as well, because you all have some similarity potentially of arguments and responses.

Any reason not to, Mr. Rulis?

MR. RULIS: Hang on.

THE COURT: Oh, sorry.

MR. RULIS: Your Honor, Nate Rulis for the record.

I generally agree with what Mr. Rose proposed. I would go a step further and actually say, as far as parties go, I would propose we go Wellness Connection, Deep Roots --

THE COURT: Okay. Hold on a second. Remember I can write so fast, but go ahead. Wellness Connection, Deep Roots, and then what?

MR. RULIS: Clear River.

THE COURT: Okay. Anyone dis -- let me just do a --

MR. RULIS: And then there are other ones after that, but I then don't have an interest in. I think it's Lone Mountain, Thrive --

THE COURT: Well, let's get through the first three, and then we'll --

Anyone disagree with that order? Silence is acquiescence.

(No audible response.)

THE COURT: Okay. Mr. Rose, you're up. And remember, particularly since we have this very large number of people -- welcome, of course -- please do restate your name and your parties right before you argue.

MR. RULIS: And, Your Honor, sorry, before Mr. Rose starts, I just want to make sure -- it is our motion to retax. So I want to make sure we get the last word.

THE COURT: Well, that's what -- but the way you had wanted it before --

MR. RULIS: Understood.

THE COURT: I'm sorry. But good point. The Court was basing it on at the hearing in which the arguments went on for Essence that you kind of wanted them to go first and then be able to respond. If you want it in the standard motion to retax format so that you would go first, then they would go, and then you would go last in light of you already have the benefit of hearing some of the arguments, and the Court is fine with that as well, because I want to make sure you get your proper format.

If you wish Mr. Rose to go first, he's standing at the podium. It's really up to you all. What do you want?

MR. RULIS: We can shortcut. And that's -- we can

continue with the same pattern. I just wanted to make sure we were on the same page, that as the moving party we got the last word.

THE COURT: You do. And you can have the first and last word if you want it because you're the moving party. Do want to first and last? Do you want Mr. Rose to go first?

MR. PARKER: Your Honor, we're fine with him going first, and we'll take -- we'll bat clean up.

THE COURT: Sounds good. Just don't be the Dodgers this year. Go ahead. That would be postseason, not (indiscernible) regular season.

But go ahead, Counsel.

MR. ROSE: Thank you, Your Honor.

THE COURT: Oh, and thank you. Since we have a wonderful clerk helping us out today, in fairness to her, can you also state the name of your motion when you speak so we just get it clearly for your record.

MR. ROSE: Yes.

THE COURT: It's not your motion. It's technically your motion -- you know what, Luisa just raised a very good point. You know what, sorry, Mr. Rose. I have to have Mr. Rulis first because we have to have the, quote, the motion first in order for your record, in order to get these clarified because of the number.

MR. ROSE: Your Honor, I'm fine with however the

Court would prefer to proceed.

THE COURT: You can stay a podium. Mr. Rulis is staying near counsel table. Or if he wants to bump you from the podium...

MR. RULIS: That works.

MR. ROSE: I'll take a seat.

MR. RULIS: Thank you.

MR. ROSE: You can stand were you are.

MR. RULIS: I'm hemmed in a little bit anyway.

THE COURT: Okay. You can sit down, stand up, whatever makes you comfortable. Because remember people remotely are sitting down. So feel free to sit down, stand up, whatever makes you comfortable.

Go ahead, Counsel.

MR. RULIS: Appreciate that, Your Honor. Nate Rulis on behalf of MM and LivFree, and it is the nonsettling -- or excuse me, the settling plaintiff's motion to retax and settle costs regarding Wellness Connection of Nevada, LLC, that was filed on August 12th at 8:14 p.m.

THE COURT: Thank you so much for all of that. Appreciate it. Go ahead.

MR. RULIS: And I think -- so Wellness Connection has a specific issue that I think needs to be addressed.

THE COURT: He would have no idea what document numbers are.

UNIDENTIFIED SPEAKER: Oh, okay.

MR. RULIS: Sorry. I had them at one point. I don't have that specifically in front of me, and I apologize.

But there is one specific issue that we do need to address with Wellness Connection I think before we get into the meat of the costs that are being requested, and that is Wellness Connection has also separately filed a notice of appeal in the interim after filing their memo of costs. And the reason that I think that becomes an issue is because in their notice of appeal, which was filed on September 2nd at 1:56 p.m., they specifically appeal the prior orders of the Court relating to motions for fees, but also the order granting motions to retax, including prior motions to retax as it relates to Wellness's costs. And so we had --

THE COURT: So that appeal, contrary to the general rule of fees and costs, separate appealable order that still can be done by a District Court, even pending appeal, you're saying interrelates here because of the overlap with other fees and costs? Is that what --

MR. RULIS: I believe that is an issue, Your Honor, yes, because they have specifically appealed motions to retax, and that's what we're here to deal with, and I believe that they had -- and Mr. Rose can correct me if I'm wrong. I believe they filed, or at least they've conveyed to the settlement Judge at the Supreme Court that they'd like to get

this resolved first, but there is an issue, and it may be that --

THE COURT: Which this? Which this? I'm sorry, which this is this?

MR. RULIS: Fair, Your Honor. The Wellness Connection costs is that Wellness Connection would like to proceed with a decision on their costs here before moving forward on anything on their specific appeal. I think just as far as jurisdictional issues, if Your Honor is going to move forward on a decision on Wellness Connection's costs, then it may be that we are also required to go through the *Huneycutt* procedure, which wasn't previously addressed in part because the notice of appeal wasn't filed until after the motion was filed.

THE COURT: All right. *Huneycutt* and its progeny were what the Court has -- Nevada Supreme Court has modified and given some clarification with regards to *Huneycutt*, and then you've got the -- okay.

So let me at least give you a minute or two to discuss that so we don't get side railed with everybody else on what you are requesting the Court to rule on today and how that -- if you think that does or does not impact your pending appeal, but the shorter version versus the substantive if you don't mind. Thanks.

MR. ROSE: Yes, Your Honor. Chris Rose, 7500 for

Wellness Connection.

Clearly, what the Court has before it today, clearly does not affect our appeal. I understand why Mr. Rulis is mentioning these issues; none of them have been briefed. But here's the issue, and Mr. Bice in the original argument really cleaned this issue up.

After the trial two years ago, we were -- there might have been another party, I'm not sure, but I think we were one of if not the only party in 2020 to file a memorandum of costs. We also filed a motion for attorneys' fees.

What we are appealing is the denial -- or actually the grant of those motions to retax. And, as Mr. Bice already explained to the Court, Mr. Bice presented you a copy of the order. I've got another copy if the Court would like it.

Here's what the Court did back in 2020. It said the award of costs is premature because there's not a final judgment. I'm paraphrasing. Final judgment will be issued. This decision -- and so it granted the motion to retax, and we were not allowed to recover costs in 2020. And I quote, "This decision is without prejudice to seek recovery of costs at the time of the final judgment." I just read from the order filed August 30th, 2021 at 9:39 a.m.

So, Your Honor, we appealed that order because we didn't want to lose our rights to appeal it, but because there have been new memorandums of costs filed and new motions to

retax, the Court's free to proceed and rule on these issues to grant us our costs, to deny the motions to retax, and it would render this moot.

And, as Judge Gonzalez ordered, we are allowed to do exactly what we did, which was to file -- to refile our memorandum of costs after the final judgment was issued.

There's no *Huneycutt* issue here, Your Honor. So I believe the Court -- I understand Mr. Rulis raised the issue. There's no issue for us as far as what we're asking for. We think we're entitled to our costs. Judge Gonzalez in her 2020 order ordered that we could seek costs at a later date, which we did. They are now trying to retax, and that's the issue before the Court. There's nothing, including our appeal, there's nothing that prevents the Court from going forward.

And, as the Court knows, when a final judgment has been entered, it can make rulings about costs and attorneys' fees, and that's what's before the Court. So if they don't --

THE COURT: Unless it's otherwise already before the appellate court, but, yeah. Unless it's already before the appellate court.

MR. ROSE: Well, what's before the appellate court is the appeal of the prior order, not any appeal regarding any of the issues relating to our memorandum of costs just filed recently. So completely separate issues.

THE COURT: Then from a pure chronological

standpoint, the Court's going to have a real quick question. Is chronology -- you don't disagree; right? August 12th was the motion to retax against your client, and then the appeal is September. Is that correct or incorrect?

MR. ROSE: I would have to double check the date that we filed the appeal, but if Mr. Rulis is representing those dates, I don't have any dispute.

THE COURT: And you said September 2nd; did you not?

MR. RULIS: Your Honor, Nate Rulis for the record. Yeah, September 2nd, at 1:56 p.m.

THE COURT: Okay.

MR. ROSE: So it would have been a timely appeal based on when the final judgment was entered.

THE COURT: I'm not -- my question was more from a chronological standpoint. Here, if costs are raised in your appeal, and they postdate the date of the motion to retax costs, and the intervening order from Judge Gonzalez, which was August 30th, that still would predate your appeal. So if you're the master of your appeal, are you saying the appeal does not address costs at all? I mean, the chronology I understood, right, is August 12th motion -- well, memorandum of costs. You did one in 2020. You did another one in 2022; correct?

MR. ROSE: Correct.

THE COURT: That's what I show.

MR. ROSE: Correct.

THE COURT: And then I show August 12th is the motion to retax. The motion to retax pretty much addressing the most recent -- but then you have, in the interim time period, you have the pending motion before Judge Gonzalez that she ruled on August 30th that -- wait. August 30th of 2021, what's the date of that order, 2021 or '19?

MR. ROSE: August 30th of 2021.

THE COURT: 2021.

MR. ROSE: That the rulings were made, I believe in 2020, and the plaintiffs entered the orders later on in 2021, but the rulings, Your Honor, on appeal pertain to the memorandum of costs filed in 2020.

THE COURT: Before you had the -- but you had it after you had already the order saying that it was without prejudice; correct?

Okay. I'm sorry. What's the year of the appeal? Was it 2021 or 2020?

MR. ROSE: No. Your Honor, let me give the Court the chronology.

THE COURT: Yeah. Because your dates aren't making sense as I'm -- okay. Go ahead.

MR. ROSE: Here's the chronology, and I won't give specific month or dates, but in 2020, we filed our memorandum

of costs.

THE COURT: Right.

MR. ROSE: In 2020, certain plaintiffs also filed motions to retax those costs.

THE COURT: Correct. That's the order for August 30, 2021; correct?

MR. ROSE: The order granting the motion to recosts, (as said) was filed August 30th, 2021, saying that we could refile our costs, memorandum of costs at a letter date.

THE COURT: Right.

MR. ROSE: After the final judgment was entered in this case, just a few months ago, we filed our memorandum of costs. That was filed August 9th, 2022, completely different memorandum of costs. It's not the memorandum of costs that was at issue in the prior ruling and the prior motions.

And then the plaintiffs filed their motion to retax.

THE COURT: August 12th.

MR. ROSE: Correct.

THE COURT: And then September 2nd, you filed your appeal 2022.

MR. ROSE: Yeah. And again, I don't have the specific date, but we filed our appeal within 30 days, but that appeal is at the denial of costs and attorneys' fees that we sought in 2020. They're unrelated to what's pending before the Court.

THE COURT: The denial, slash, it wasn't yet ripe ruling?

MR. ROSE: That's exactly right.

THE COURT: So it's not to any substantive costs. It was just to the fact that it wasn't ripe? That's the structure -- that's what I'm trying to get, because the bottom line is I can appreciate your costs may be different, but there's going to be an overlap because you don't have new dollars, trial -- I'll say new discovery dollars. Make my life easy; right? You don't have new discovery dollars that all of a sudden pop up between August 30th, 2021, and today; right? Or August 12th, 2022, in the motion to retax. So those aren't new discovery dollars. So there's no overlap.

But you're saying your appeal is to the decision that it was not ripe and it has nothing to do with the underlying dollars and the costs that would overlap with what's before the Court today. That's really -- that's where I'm seeing a distinction between what you may be arguing, Mr. Rulis is arguing because if it's an overlap of the dollars, right, if your appeal is not only that Judge Gonzalez said that her denial was by saying it's not ripe also denied you somehow the dollars, discovery dollars, make my life easy, right, discovery dollars substantively, then there's a *Huneycutt* analysis.

If your appeal doesn't, it always disagrees with the decision that it is not yet ripe, and there, quote, therefore

was no -- nothing on the merits and doesn't impact discovery dollars. Again, once again, that's my easy example, then there isn't likely a *Huneycutt* analysis.

So that's where I'm trying to get the framework correct on what you each are asserting.

MR. ROSE: Understood. And I can tell you the appeal is only of the Court's order that our memorandum of costs was premature. It's a procedural issue. It never took --

THE COURT: Procedure, no substance. Okay.

MR. ROSE: Yeah, the Court never reached whether we were entitled to costs, what the costs were, whether they were reasonable. All the Court did was say this should not have been filed at this point. You can refile later. So it's purely a procedural issue, and for that reason doesn't affect anything the Court --

THE COURT: Mr. Rulis, do you agree that the -- the master of the appeal says that their appeal only covers that procedural determination. Basically it's a not ripe yet decision, or it's a denied without prejudice because there's no final judgment. It's procedural; it's not substance. So if there's not an overlap with what's before the Court today, so therefore there's no *Huneycutt* analysis, or do you have a different opinion?

MR. RULIS: Well, Your Honor -- Nate Rulis for the record.

I guess I appreciate Mr. Rose is saying that. From what I've seen of the appellate documents, I can't make that determination. I just -- what I have is the notice of appeal that specifically says they're appealing the order granting motions to retax that includes the granting of TGIG plaintiff's motion to retax Wellness's memorandum of costs, and ETW plaintiff's motion to retax Wellness's memorandum of costs entered on August 30, 2021, which is attached.

THE COURT: Okay. Circle back to that order. Does that grant the motion to retax, or does that just say procedurally it grants it because procedurally it's not ripe before it? Okay?

MR. RULIS: Yes.

THE COURT: Okay. Well, here's what the Court is going to do. The Court is going to do -- I've got a representation --

MR. DZARNOSKI: Your Honor --

THE COURT: Sorry. Who wants to speak that's trying to speak? Go ahead.

MR. DZARNOSKI: Yes. This is Mark Dzarnoski, Your Honor. We also filed a motion to retax Wellness Connection, and I would like to be addressed on this one issue.

THE COURT: Sure. Go ahead, please.

MR. DZARNOSKI: Thank you, Your Honor.

Unfortunately or the counsel is only referring or so

far have only referred to one of the orders that is subject to the notice of appeal. The notice of appeal specifically references several orders, one of which was in connection with a Wellness Connection of Nevada filing a motion for attorney fees wherein they are -- and this was on October 13th of 2020, and therein they argue that they were entitled to their attorney fees in part because they were a prevailing party. And so the issue of prevailing party was presented not only in the motion to retax that they are discussing now, but it was also presented in the motion for attorney fees and costs.

The Judge Gonzalez, by order dated August 27th of 2021, issued an order denying the motion for attorney fees. And in that order there was a substantive determination.

And I will read directly from the order of 8/27/2021:

Quote, Plaintiff's claims were brought with reasonable basis. Other applicants like Wellness Connection of Nevada, LLC, were joined as a result of motion practice brought related to joinder issues on the petition for judicial review claim. Wellness Connection of Nevada, LLC, does not satisfy the analysis for a prevailing party under these circumstances.

The notice of appeal filed on September 2nd appeals directly that order which substantively has entered a ruling not only that is applicable to Wellness Connection, but it's also by implication and by the words used by Judge Gonzalez applicable to the other applicants who would join solely for

purposes of the judicial review claim.

So what we've got is a situation where as of September 2nd, after we filed our motion to retax, the appeal occurred, which in our opinion, divested the Court of jurisdiction to consider matters that were related to the issues that are presented in the current motion, that the rule as set forth in *Bongiovi vs. Bongiovi*, 94 NEV 321 (1978), is that unless the issue before the District Court is entirely collateral to and independent from that part of the case taken up by appeal, then subject matter jurisdiction no longer lies.

And I would suggest to the Court that not only does the issue of prevailing party, as ruled upon by Judge Gonzalez and is now on appeal, not only does it bar or take away jurisdiction for Wellness Connection's claims here until the appeal is resolved, but it also does as to all others similarly situated applicants, and so there is a substantive order, and I think you need to look at the notice of appeal as to the orders for both the motion for attorney fees and the motion for retaxing.

And if you look at them both together, I believe that you do have a *Huneycutt* issue.

Thank you.

MR. ROSE: Your Honor, may I address this?

THE COURT: Okay. You get two minutes because I've got everyone else that's got to get taken care of; right?

MR. ROSE: Well, you can see why the plaintiffs don't want to get the issue -- to the issue of costs. This has already been addressed. As Mr. Bice pointed out last time, they raised this argument about Judge Gonzalez's order. They don't want to talk about the cost. They want to talk about our request for attorneys' fees, which is completely unrelated to what we're here to talk about.

THE COURT: I'm going to tell you where the Court's going. The short answer is that order on 8/27, Document 2750, is attorneys' fees. It doesn't say cost by its nature. The motion before the Court for that order was attorneys' fees only. The analysis was on a PJR for attorneys' fees only. This is not a situation where you have an overlap with a 68 or an old seventeen, one, one, five, et cetera, whatever; however, you'd like to go.

The Court is not going to take a determination solely on an attorneys' fees motion based on that attorneys' fee motion being the sole issue before the Court, which is now this Court -- because first it was 11. Just add 20. Now it's 31, okay. That it applies to the cost, because as you all know, there's different sources for costs versus attorneys' fees. There' are different case law: *Cadle vs. Woods and Erickson, In Re Dish Network, Bobby Berosini*, hypothetically on costs, *Brunzell* on attorneys' fees. I'm not saying that those are exhaustive.

But this -- are separate case law. So the statutory basis on costs versus on attorneys' fees, this is not an issue that's been presented to this Court that is one of those overlap situations. The order on its face is clear. Motion for attorneys' fees and that that ruling was on regards to the motion for attorneys' fees.

Interestingly enough, a couple days later, there's a motion on costs. If they were interrelated, it would have been a crossover, cross-reference or wouldn't -- it said one has a substantive ruling on a prevailing party. The cost, however, is just opposite. The cost says it's not yet ripe. It doesn't say because you're not a prevailing party, see the 8/30 -- (indiscernible) sake of my court reporters and everyone, I'm going to delve into the 8/30 order granting motion to retax is 2752. Different document, different notice of entries of order. Different orders under *Division of Family Services*. Of course, the orders, as memorialized, right, are the official orders of the Court, *Rust versus Clark County* as well. So no *Huneycutt*.

Let's move to substance, folks.

MR. ROSE: Thank you, Your Honor. I'll sit down and let Mr. Rulis proceed.

THE COURT: And Mr. Dzarnoski, to the extent that he's on this part of it as well.

Go ahead.

MR. RULIS: Thank you. Your Honor, Nate Rulis for the record. Thank you for it least addressing that first and foremost so we could go forward.

THE COURT: At least -- I gave you case law.

Go ahead.

MR. RULIS: No, you certainly did, and that's --

THE COURT: I give you citation. I'm kidding you. I'm kidding.

MR. RULIS: -- I just wanted to make sure --

THE COURT: Sorry. You can tell it's already been a long morning. Do you want to provide me a foot of stuff too to --

Go ahead.

MR. RULIS: I'm just trying to make sure we have a clear record moving forward.

THE COURT: Clear record. I've dealt with saying there's not a *Huneycutt* issue. Now, you're going to go to the substance of your actual motion to retax. Go ahead, please.

MR. RULIS: So, Your Honor, and I don't want to belabor the same issues that we have previously argued. I will simply state that obviously from our briefs we believe that as far as the settling plaintiffs go we are considered a prevailing party. I know we had that discussion last time, but, you know, one of the issues is, and one of the examples that I wanted to come back to that I touched on last time, but

I don't know that we got into is take, for example, Planet 13.

They were asking for, as part of this litigation, a license at a location that they had specifically disclosed in their application. That's what the appeal that got, you know, a writ of mandamus allowing our appeal to go forward in front of the D.O.T. was about was that we had a location of where the application had required a location, and we were scored less because we had an actual location versus those that had a hypothetical, mythical plan that never actually got put in place.

We got a license, we being Planet 13, got a license out of this litigation and opened that very store that we were asking to get a license to open. So as far as the -- I know that when we're talking about a prevailing party analysis, it's what did we -- did we get what we tried to out of this litigation, and it is, as I'm using Planet 13 as an example, they got the location they were trying to get.

So, you know, it wasn't like -- and this is the same thing that we were talking about before, but it's we weren't asking to take somebody's specific license. We were asking for a license that we could open up that store, which they got, and they did, and that's why, as far as a prevailing party analysis goes, we believe that we should be considered a prevailing party, and costs should not be awarded against us.

Now, you know, that's one of the examples that I just

wanted to clarify because we were talking about last time, but --

THE COURT: So that's a bit of a different framing than Mr. Bice's framing, right, the last time, on licenses. You're talking about licenses and specific location versus licenses overall; right?

MR. RULIS: Yeah. And that's why I guess, and I apologize if I wasn't clear enough on that, but that's what the -- when I was talking about last time, we had the motion for summary judgment that was granted in my client's favor, allowing their appeals to go forward in front of the Department of Taxation. It was related to the scoring issues, and for Planet 13 it was specific. It was location specific, and it was we have a location that we have presented that we're asking for a license for, and we got scored lower than we believe we should have because we should've gotten a license for that location. That's what they've got then as part of the settlement, is a license that they went and opened that very location.

THE COURT: Okay.

MR. RULIS: Now, LivFree had the same sort of thing where they had a scoring issue. We got a writ of mandamus allowing them to go forward with their appeal. Their appeal was then rendered moot because they got a license that they were able then to go open their store. That's, you know -- and

the other thing that came up is I know -- I don't think that Wellness Connection is necessarily one that intervened, but some of the, you know, Essence was one. I know Clear River is one of the parties. It wasn't that they were brought in after subsequent motion practice. It was they intervened. As a matter of fact, Essence did it over our opposition.

THE COURT: We're not -- the Court's (indiscernible) --

MR. RULIS: I know. I'm not --

THE COURT: I appreciate it, but I think we have enough other parties that want to be heard today. Let's not go back to the other time period. Thank you so much.

MR. RULIS: So as far as Wellness Connection, they were brought in when it related to it, you know, via the long I think motion practice in front of Judge Gonzalez that said for purposes of a petition of judicial review, you have to include the applicants.

So they were then brought in as it relates to the petition for judicial review, which by the way I think is an important point to remember when we're talking about the costs that were incurred. They were brought in because they were supposed to be named as a party to the petition for judicial review, which is, by the way, that's the argument that Clear River, which we'll get to, was making in front of Judge Gonzalez.

I know. I know, but that's just some context for how this came up and how Wellness Connection ended up getting in here is because their codefendant said they need to be included as part of this litigation. And Judge Gonzalez said for petitions for judicial review, which Your Honor has said was essentially one day, it's limited to the record, that's what they were brought in for.

So, you know, again, when it comes to the costs that are being requested for what they were brought in for, not only do we think that they shouldn't be allowed any of them because they're not a prevailing party, but they're unreasonable and excessive, and I think specifically to Wellness Connection, the motion and the reply address specific issues that again, I think all of them probably are not allowable as the party to the judicial review, but specifically you have legal research, runner services, photocopies, trial services and outside copies, which do not have sufficient supporting documentation under Nevada law, that's *Berosini*, *Fairway Chevy*, Villa Builders (phonetic), that says Your Honor can award those costs to them, and so those costs, at a minimum, again, you know, we believe that they shouldn't be awarded any costs against settling plaintiffs, but at a minimum, those costs that I've enumerated should not be allowed.

THE COURT: Okay. Thank you.

UNIDENTIFIED SPEAKER: Your Honor --

THE COURT: Let me --

MR. ROSE: Yeah. You're going to have --

THE COURT: Mr. Dzarnoski, are you in this? Do you need to be heard on this portion or not? I didn't --

MR. PARKER: Yes. I mean, I'm one of the settling plaintiffs, Your Honor.

THE COURT: No. No, Mr. Dzarnoski had asked --

MR. PARKER: Oh, he's jumping in.

THE COURT: I wasn't sure.

MR. PARKER: Oh, that's fine, Your Honor. Whatever order you want to take it in.

THE COURT: You get to jump in in two seconds, but go ahead. Just --

MR. PARKER: Go right ahead. Let Mr. Dzarnoski jump in.

MR. DZARNOSKI: This is Mark Dzarnoski, and basically the only thing I'd add, I concur with what Mr. Rulis said, but the thing I would add is and emphasize is that the sole reason other applicants are involved in terms of you getting and making an analysis as to who is a prevailing party is because they needed to be brought in pursuant to the District Court's order to deal with the judicial review.

So to the extent that they prevailed in judicial review, okay, look at their costs. However, costs aren't recoverable in a judicial review proceeding. So I agree with

what Mr. Rulis said, and I'll leave it at that.

THE COURT: Okay. Thank you.

Mr. Parker, would you like to --

MR. PUZEY: Your Honor. This is Jim --

THE COURT: Wait just a second. I'm letting Mr. Parker next. Wait a second. You don't get to just please talk. Mr. Parker, I said he would be next. So he gets to be next. We'll get you in just a second, Counsel.

MR. PARKER: Thank you. Thank you, Your Honor, and I guess I'm going to use the podium.

THE COURT: Sure. Go ahead, please.

MR. PARKER: Your Honor, getting to the substance, and I'll start there in terms of costs, and then I'll work back to some of my concerns regarding whether or not costs are reliable in these types of cases and whether or not your review of *Golightly*, the *Golightly Vannah* case and then your case, Your Honor, the *Torres* case that came a few years later in 2018 applied to this, and hopefully the Court remembers your decision you made in the *Torres* case.

THE COURT: In a very different situation in which Judge Gonzalez set a separate petition for judicial review. I had a different case. There was rulings in there. Yeah, I'm a little familiar with it. Go ahead.

MR. PARKER: Good enough. Good enough.

THE COURT: Top of the head recollection. Go ahead,

please.

MR. PARKER: I like it. I like it, Your Honor.

So looking -- starting at the actual memorandum, Your Honor, if you look at this document, it includes costs quite often without dates. Some, the more expensive ones, the video deposition, transcript fees, you don't see dates there. And, of course, you would need dates to be able to make a decision on these costs.

Now, what Mr. Rulis said earlier regarding the circumstances that brought Wellness Connection into this case, he's repeating or paraphrasing from paragraph 4 of our Second Amended Complaint. The Second Amended Complaint in the petition for judicial review or writ of mandamus filed on behalf of Nevada Wellness Center is dated March 26, 2020, and paragraph 4 reads verbatim,

> The following defendants are applied -- are all applied for recreational marijuana licenses and are being named in accordance with Nevada Administrative Procedure Act.

That's exactly the reason why they were brought in. We didn't identify them originally as defendants, and it was over a year before they were named as defendants in our complaint, similar to the majority of the settling plaintiffs.

So the reason I bring this up, is if you look at all of the costs prior to March 26, 2020, they weren't a defendant

in our case. Fees should not be awarded to them.

So and I believe that's similar to all of the settling plaintiffs. So I wanted to make sure from looking at the cost, because Mr.-- and I think this is where Mr. Rulis left off. We are running away from the costs themselves. Well, we're not. I want to address that upfront so that there's no confusion that we're not afraid to address the costs.

But the Court has to be aware of the timing of the incurrence of these costs.

So in terms of his memorandum, everything prior to March 26, 2020, shouldn't be considered, and everything after we settled, July 29th, 2020 should not be considered.

THE COURT: Okay. Repeat those dates again, please.

MR. PARKER: Sure. March 26, 2020, and I brought a copy of the complaint for the Court's ease of reference if you want it, Your Honor, just so you could have paragraph 4 in front of you.

THE COURT: Sure. So you're telling me I don't have to go keep looking back and forth on it.

MR. PARKER: You don't have to. I brought it for you.

THE COURT: I appreciate it. Thank you.

MR. PARKER: Of course. Any time.

THE COURT: Please continue. Go ahead.

MR. PARKER: Yes, Your Honor.

THE COURT: You said March 26, 2020.

MR. PARKER: Yes, it's right on the front page.

THE COURT: Or before, and then afterwards.

MR. PARKER: After we settled, I believe July 29th, 2020, Your Honor. So anything before and anything after shouldn't be considered as to the settling plaintiffs. They may have a different argument with the nonsettling plaintiffs, but certainly in terms of the settling plaintiffs.

Now, Your Honor, I thoroughly, probably more often than I wanted to, read through the *Golightly & Vannah PLLC versus TJ Allen* case. You've probably read it more than you wanted to, and it's referenced in the Supreme Court's affirmance of your second ruling in this case, and in this case, they found that through the interpleader action, and *Golightly* was an interpleader action, the *Torres* case was a -- started out as a PI case seeking benefits under an insurance policy and then later turned into a declaratory relief action. That it was brought under 483, and eventually they got it.

THE COURT: Two different departments, two different rulings, two different aspects depending on participation. Two different aspects under the minimal insurance statute provision.

MR. PARKER: That's correct.

THE COURT: If my recollection is correct.

MR. PARKER: That's correct. And in that case, eventually the plaintiff received a judgment below 20,000 and then fees and costs afterwards.

Looking at this case, Your Honor, I'm not sure that Wellness Connection ever answered our complaint. And the reason I bring that to the Court's attention is in *Golightly*, in the *Golightly* case, there were several, several people, medical providers that had an interest in the case, and that's a perfection of an attorney lien case, but only two of the potential creditors answered the complaint. There were no fees or costs given to those who didn't answer the complaint.

And in this case, we named a lot of defendants, but not all of them answered, and as a result, not all of them are here before you asking for fees or costs.

Now, I can also tell you that certainly, if they did answer, they would be entitled to costs or fees until after that point. So when you look at March 26, 2020, that's the earliest date. If they didn't answer at all, I would say they're not entitled to any fees and costs against any of the settling plaintiffs. Because if you simply apply *Golightly*, that's what happens.

Now, one other thing I want to point out, Your Honor, and this is not -- this is something that we're going to support in our competing orders when it comes to Essence, but it's applicable here. We're going to provide the Court the

dates of when we filed the complaint, which the Court knows, the dates where their costs may have actually been incurred after they answered and then when those costs should be cut off based upon our settlement.

And by way of example, Essence didn't answer our complaint. So I'll give them credit for answering it, but they didn't answer it until July 8th, 2020. So when the Court sees the competing orders for the cost, you'll have an understanding because we're going to do the same thing when it comes to Wellness Connection, and they may not have answered because there were several that did nothing.

In fact, we have no answer, you'll find this out, and I'll wait. I don't want to go beyond what I'm -- right now.

THE COURT: Yeah, please, because, realistically, I've got two hours and 10 minutes. We're going to have to take a 10-minute break at some point for my team, to get you all taken care of, and, you know what I mean, so --

MR. PARKER: Of course. Of course, Your Honor. I'm putting this in front of Your Honor because when you strictly review these cases, Wellness Connection is not a prevailing party. Nevada Wellness received a Clark County license. When we filed our motion for settlement, the same way all the other plaintiffs did, settling plaintiffs did, there was no opposition from any of these defendants, and they received the benefit of our settlement because we didn't continue

cross-examining the witnesses. We didn't bring any further witnesses. We didn't do a closing argument.

Now, if you look at the *Torres* case and the *Golightly* case, at the end of these cases, the Supreme Court says that -- and they determine whether the prevailing -- who the prevailing party is based upon the recovery. And if you want to really boil it down to the essential holding, it says, we conclude that *Torres* succeeded on a significant issue at trial.

Now, my client filed a motion for summary judgment as to a portion of this case, and we succeeded on that summary judgment in that the original process violated the statute, and we won on that issue. We also received, like I said, our Clark County license, which is worth millions given what we've been told by the defendants in their oral arguments because they said that they are maintaining their licenses 'cause they're worth millions. So certainly gaining licenses worth millions is also significant.

Reading the *Golightly* case and the *Torres* case.

Additionally, the Court granted our preliminary injunction and a permanent injunction. My first -- the first cause of action in the complaint we had is for declaratory relief. We also have a cause of action for permanent injunction. Granted.

There's no way in this world this Court can say that in terms of Wellness Connection the settling plaintiffs did not

prevail, or not the prevailing parties because we all received licenses. In fact, I believe Qualcan received two licenses. So we all received licenses. We all had motions granted in our favor. We all got the benefit of a temporary and permanent injunction, Your Honor, and the Court found numerous irregularities in the process.

So to say we didn't win using these cases, Your Honor, I believe is simply inviting error into a determination that Wellness Connection could be the prevailing party.

THE COURT: Okay. Thank you so very much.

MR. PARKER: Thank you, Your Honor.

THE COURT: Appreciate it.

Now, is counsel remotely, I don't know exactly who that was because there's so many boxes, but if you wish to speak, go ahead next, please. Please just identify yourself first, please.

MR. PUZEY: Thank you, Your Honor. This is Jim Puzey on behalf of High Sierra Holistics, and as it pertains to Wellness Connection, I would just like to draw the Court's attention when it ultimately made its decision to the Wellness Connection of Nevada, LLC's, Omnibus opposition to moving parties motion to retax and settle costs and all joinders, and they identify the High Sierra Holistics motion to retax and settle costs in that. And on page 2 of 14 of footnote 3, it says to the extent that HSH moving parties did not allege

claims against Wellness or name Wellness as a defendant, then Wellness is not seeking to recover its costs against HSH moving parties. I just want to make sure I bring that to the Court's attention.

Wellness Connection obviously saw what High Sierra was doing. They've agreed not to bring costs there, and I think that Wellness's logic applies to the balance of the people who have moved for costs, including Essence and Clear River and the balance of everyone, but specifically Wellness has said they're not recovering costs from High Sierra, and I just wanted to make sure the Court was aware of that.

THE COURT: Okay.

MR. PARKER: Your Honor did he give you the document number? I apologize.

THE COURT: I was about to ask for that.

MR. PARKER: Thank you.

THE COURT: Counsel, doc number? Date at least if you don't have a document number.

MR. PUZEY: Absolutely.

THE COURT: And, Counsel, just to let you know, it's --

MR. PUZEY: Your Honor, I don't have document numbers, but the opposition was filed on August 25th at -- 2022 at 10:16 a.m.

THE COURT: Okay. Can you repeat that date, please.

MR. RULIS: Your Honor, this -- sorry, Nate Rulis for the record. I have a copy if you would like me to --

MR. PUZEY: August --

THE COURT: Oh, just a second. Mr. Rulis says he has a copy he can hand me.

So did Mr. Parker need to see that? Because you were the one that asked. Who is --

MR. PARKER: I just needed the document number, Your Honor, but it doesn't have it on here.

THE COURT: Okay. Well, I can find it by date, folks. I still was looking for --

Marshal, I do appreciate it. Thank you so much.

MR. ROSE: And, Your Honor, he's referencing page 2, Footnote 3 of our brief.

THE COURT: Right. Right. I'm just trying real quickly.

Remember, there's 3,000 entries here. It means I have to click through all of them, but you have to understand, if I click too many times, it then phases out, and so it's not responding. So I have to wait.

(Pause in the proceedings.)

THE COURT: Well, Counsel, I can't find the document. Realistically, I'm still in 2020.

MR. PARKER: No worries, Your Honor.

THE COURT: And it would take me way too much time

to --

MR. PARKER: No worries.

THE COURT: -- to try and find that. So page 2, Footnote.

MR. PARKER: 3.

THE COURT: 3.

(Court reading out loud.)

MR. ROSE: Or named Wellness as a defendant.

THE COURT: Okay. So, Counsel, Mr. Rose, did you answer the complaint of Mr. Parker's clients?

MR. ROSE: Yes, Your Honor, I believe we did. Absolutely.

THE COURT: Can you give me a date?

MR. ROSE: We answered a number of complaints from the various plaintiffs. I believe we answered all of the complaints by all of the plaintiffs. I don't have the date, Your Honor, because this is an argument that he's raising now that was not raised in any of the briefing --

THE COURT: But wouldn't it have been your obligation when you were seeking your costs to set forth who you were seeking the costs against and to have had a basis to seek the cost -- I appreciate your Footnote 3, but --

MR. ROSE: No, Your Honor, the statute says you file your memorandum of costs. When you have multiple plaintiffs, the statute doesn't say you have to pick and choose or specify

the dates. You're hearing a lot of arguments that were not raise in any of the briefing.

THE COURT: Well, I'm hearing a lot of arguments that weren't raised in a variety of different things, appreciating that I've got lots of entries on these.

Okay. So.

MR. ROSE: Understood, Your Honor.

THE COURT: Okay. So, well, Mr. Last word, go ahead.

MR. ROSE: Are we going to have --

THE COURT: I have a couple more.

MR. ROSE: Oh, whoever is next. I know Mr. Dzarnoski also is going to go.

THE COURT: Well, Mr. Dzarnoski just got to go, but I haven't heard Mr. Christiansen. I think you want to speak and you haven't had a chance. Go ahead, please.

MR. CHRISTIANSEN: Super brief, Your Honor. I join in all the other arguments. I'd point out that my client Qualcan -- again, Pete Christiansen for the record on behalf of Qualcan -- started -- was not part of the initial preliminary injunction. Motion work was not part -- was not even -- didn't even have a complaint for any of that. So costs, as I point out, as Mr. Parker did, associated with that, my client wasn't even in the case.

So with that being said, Qualcan came out, started with zero licenses, came out with two licenses worth multiple

millions of dollars each. So they're a prevailing party, not the moving parties.

And secondly, I'd point out, just as a particular matter, they're seeking costs, like, by way of example, Judge, for video and depo transcripts for all depositions. I mean, isn't that double dipping by definition?

THE COURT: Just to let you know, there are significant issues with the costs under *Cadle versus Woods & Erickson*, *In Re Dish Network* and *Bobby Berosini*, okay. Realistically, where the Court, I have to focus on the first step --

MR. CHRISTIANSEN: Understood.

THE COURT: -- in light of each of you all's unique arguments on, A, are you in this? I'll use the term rubric; right, are in this multifamily dwelling, okay, of various parties? And if you are, how long have you lived in the dwelling; right? Or how -- when did you come in and out of the rubric.

MR. CHRISTIANSEN: Correct. And I want to give the Court that information for my client. Qualcan's complaint following the administrative order directing Qualcan to name all the applicants was filed February 11th, 2020. I do not believe it was answered by this moving party, nor Clear River, and the settlement is the same day that everybody else settled in July.

Thank you, Judge.

THE COURT: Okay. Anybody else need to be heard? If not come I'm going to ask Mr. Rose a question.

(Multiple parties talking, indiscernible speech.)

THE COURT: Okay. Anybody else is probably not my best choice of words.

The challenge with remote aspect is we have to do this in some type of order. So before people speak, let's turn on your little green lights, and let's see who's about to speak, and then we'll call one at a time.

We know one counsel is not speaking because they're on the phone with another case it looks like or maybe somebody else.

Okay. Who else -- and remember, folks, when the Court's ruling specifically says that you have to be audiovisually, that really does mean that, particularly if you want to be heard; right?

Well, that eliminates a lot of people. Don't get to be heard, right, because they don't care to be audiovisually. It sounds like I've just shortened this.

So anybody who is on audiovisually still need to be heard who has not had a chance to be heard?

MR. SLATER: Your Honor, Craig Slater. I would like to be heard on one point just very briefly.

THE COURT: Sure. And you're on audiovisually so you

can be because anybody who chooses not to comply with a Court order, I'm not seeing how you can speak, unless -- because no one has given us any good cause or any request differently.

Go ahead, Counsel.

MR. SLATER: Your Honor, my clients filed a joinder in this action to a point that was raised by several of the moving parties who filed motions to retax. That point is -- the argument that's been made repeatedly with the judicial review action, costs are not awarded to the prevailing party. That is relevant to my clients because they only filed the judicial review claim. We did not participate in the trial. I know Mr. Williamson last hearing cited to the transcript where I was present at the trial, but being present and observing is not participating.

THE COURT: But did you make an appearance, Counsel?

MR. SLATER: I would just ask that this Court make a declaration on that issue as to whether she's awarding costs pursuant to all of the causes of action or only the nonjudicial review causes of action because it impacts my client specifically. Thank you, Your Honor.

THE COURT: Okay. Well, here's the question, Counsel. Remember, it was represented to this Court, and it was not -- nobody brought anything forward on the opposite side that you actually made an appearance, that it was on the record that you made an appearance versus observation; right?

Appearance is participating and being there as part of a case. Observation is, you know, observation. Any member of the public can observe whatever they'd like to observe.

So are you stating that you did not make an appearance on the record, that the representation to the Court that you made an appearance on the record was not a correct representation?

MR. SLATER: That is correct, Your Honor. I never made an appearance at the trial. I never once spoke.

THE COURT: Well, I'm not talking about speaking.

MR. SLATER: I believe what happened --

THE COURT: I'm talking about, like, for today, when you all make an appearance, remember, the distinction between making an appearance, right, as an attorney on behalf of a party, you may choose not to speak. You do lots of CD cases. You know in CD cases, sometimes I have a courtroom of 40 people, and only two people speak. Sometimes only one. Usually it's two or three.

So speaking is not the issue; right? It's whether or not actually making an appearance on behalf of parties. So that's why the Court was asking that question. I thought someone quoted me from a transcript that it was an appearance.

Now, granted that's been a little bit of time. I have a few matters that I've taken care of in the intervening time. So are you saying you never made an appearance?

MR. SLATER: Well, Your Honor, we appeared in this case because all of these cases were consolidated together, but at the time of trial, I never formally made an appearance. I was there every day. I observed -- or pretty much every day. I observed, and I know you weren't there, but --

THE COURT: I wasn't.

MR. SLATER: If you recall, the set up, I was in the very back row with all of the other clients, the client representatives for the very reason that I was not participating. I was back there with a couple of other attorneys, and we were placed there because we were not participating. There was a seating -- this trial occurred during the height of COVID. So there was a seating chart that we had to strictly adhere to, and the people who were not participating were put in the very back, and that included myself.

THE COURT: As you stated, I wasn't there, and as you heard me say earlier this morning, I neither have a crystal ball, nor am I a fly on the wall. I'm only where I'm at where you can, you know, see me. I wasn't at that. I had other things going on during that time in my own docket. So -- which was my own docket at the time. Different than my docket now.

So I've heard what you said.

Anybody else remotely need to be heard who's on audiovisually?

MR. GAMBLE: Clarence Gamble.

THE COURT: And that means audiovisually the whole time, folks. That doesn't mean that you can flip it on and off; right? I mean, folks, we need to know who's participating in this hearing, which is why this order was clear. Please feel free to read the Supreme Court order. Feel free to read the administrative order, and please feel free to let me address this case instead of have to keep on reminding people about appearances, please. You guys have limited time.

MR. GAMBLE: Yes, Your Honor. I did file a notice of appearance consistent with the Court's order, consistent with the statute, well in advance of this hearing, certainly well in advance of the five days that is required.

Again, my name is Clarence Gamble. I represent Rural Remedies, and my bar number is 4268.

THE COURT: Okay.

MR. GAMBLE: And I do want to --

THE COURT: And what was the date you filed your joinder or your motion, Counsel, with relationship to the current motion at issue?

MR. GAMBLE: Your Honor, I don't have that in front of me, but as the motions were filed for retaxation, I joined in them within a day of them being filed or the same day, but I don't have those in front of me right now. I can certainly get those for the Court.

I just want to bring a couple of points to the Court's consideration because while we did settle our case with the Department of Taxation and with Jorge Pupo, our posture is a bit different than those who actually proceeded to trial on Phases 2 and 3.

On June 30th, 2021, Judge Gonzalez granted Rural Remedies' motion to sever them from that trial; it's pages 2 and 3.

I had a situation in which I couldn't participate in the trial. Certainly the Court was going to move the trial, under the circumstances. So the Court granted a motion to sever Rural Remedies' actions against D.O.T. and Jorge Pupo.

On July 20th, 2022, before this Court certified as a final judgment the Phase 2 and Phase 3 of the trial and before Rural Remedies ever had an opportunity to go to trial against D.O.T. and Jorge Pupo, Rural Remedies went into a settlement agreement with Department of Taxation, Jorge Pupo, and also Lone Mountain Partners, to resolve Rural Remedies' claims.

And on July 21st, 2022, Rural Remedies and the Department of Taxation, Jorge Pupo, entered a stipulation and order which was signed by this Court and entered on July 21st to dismiss with prejudice Rural Remedies' operative complaint in this consolidated action with each party bearing their own attorneys' fees and costs.

And why I emphasize the language of Rural Remedies' operative complaint is because Rural Remedies' operative complaint is not before the Court because it's dismissed before a final award was entered certifying Phases 2 and 3 of the trial, before a final -- excuse me, before a certification of any manner has been entered.

So there's no -- at the time that Rural Remedies' operative complaint was dismissed, there was no final judgment and no applications for costs had been filed or sought by any party.

So as far as I'm concerned, Rural Remedies is out of this action. Rural Remedies is out of this action with a stipulation and order was entered, and this Court entered its order dismissing the operative complaint with each party bearing their attorneys' fees and costs. And by extension, the actions against the defendants, applicants, both successful applicants and unsuccessful applicants, they're -- they were dismissed out of this action as well as it relates to Rural Remedies' operative complaint because Rural Remedies --

THE COURT: Counsel. Counsel. I need you to point me to where in your joinder, the date of your joinder was filed and where this is presented to the Court versus new information provided at the time of the hearing. Because remember, Counsel, the Court realistically didn't need to have a hearing, EDCR, right, 2.23. It can do things on the papers, but you

have to have it in your joinder.

Nonsubstantive joinder does not give me an opportunity at the time of the hearing for the first time to raise arguments not in your pleadings. That's why I was asking each party, as you notice, they've either handed me in court if they're here in court, a reference document, or they're citing the day of their joinder.

So, please, just so I can go back because I'm hearing you, and I'm stopping you because I don't recall -- now, granted, I read a lot, but all of these arguments were in your joinder -- in your pleadings. So, please. You got to tell me the date you filed it so I can take a look to see if these are new arguments or not, Counsel, please.

MR. GAMBLE: Your Honor, you know, I, certainly with candor to the Court, these arguments are somewhat new because I, quite frankly did not know whether or not I was the subject of these motions or these bills and costs or not because my complaint was dismissed before they were filed.

THE COURT: Right. But, Counsel, you can appreciate you can't bring up something for the first time in oral argument. So that's why I let you go on for a bit, but --

MR. GAMBLE: All right.

THE COURT: -- that's why I need you to tell me the date of your joinder. If you don't have the document number, at least the date.

MR. GAMBLE: Your Honor, I will -- I won't hold up the matter. I'm going to look through all of my dates, and then I will come back to the Court if you just give me a minute while (indiscernible).

THE COURT: We're going to move on, because remember there's over 3,063 entries in this case.

While I appreciate this is limited to about 50 some odd ones and 60, which are cross-referencing other ones, so realistically, folks, we're going to need to, before you argue, tell me which one so we can keep it to where the actual issues are.

So at this juncture, I have had the movant. I've had the movements. I think I've taken care of the joinder parties.

Is there any joinder party that filed a substantive joinder other than just saying they joined in arguments that has something they wish to say?

No. Okay.

Mr. Rose, you had an opportunity to speak, have you not, and addressed all your issues; correct?

MR. ROSE: No, I have not, Your Honor. These are -- we have not been able to. I think the plaintiffs have now gone. And we have not had a chance to respond.

THE COURT: On this topic, on the substance, yes. So go ahead.

MR. ROSE: Thank you.

THE COURT: You get five minutes, because realistically this is --

MR. ROSE: Well, I'll try my best, Your Honor.

THE COURT: You guys had to preempt two other Judges. You could and preempt me on this case? Really? I'm just -- you understand I'm kidding. I'm more than glad to do this. It's just --

MR. ROSE: I do understand, Your Honor.

Chris Rose, 7500 for Wellness Connection.

90 percent of what you just heard in oral argument was not in any of the motions.

THE COURT: That's why I keep asking.

MR. ROSE: And we didn't have a chance to respond to it, and so I'm very surprised, and it's challenging for us and we think it's highly improper for these arguments to be raised.

The prevailing party issue, that ship has sailed. This Court ruled on that. There's a piece of the pie as far as the number of licenses. We owned a piece of the pie. As a result of the litigation, none of the plaintiffs got any licenses. They did not get any licenses as a result of the trial or the Court's rulings.

You've heard several plaintiffs say, but we ended up with a license. We ended up with two licenses. That was outside the litigation due to a private settlement. So that argument, Your Honor, is a completely -- a red herring. They

did not get anything from us based on this Court's reasoning before.

THE COURT: Would you like me to shorten to where the questions are from the Court realistically? It's the PJR question, okay. PJR, it's the dates of the litigation with regards to each of the respective parties, and then we've got challenges under *Cadle versus Woods & Erickson*, *In Re Dish Network*, *Bobby Berosini*, and there's a fourth case whose name is escaping me at this particular moment. The Chevy case.

Counsel, Mr. Rulis.

MR. RULIS: *Fairway Chevrolet* and Villa Builders.

THE COURT: *Fairway Chevrolet*, (indiscernible) Chevrolet cases, okay, because you don't have documentation. You don't have things like that.

So realistically, where the Court's going, I mean, I'm going to be consistent with my ruling last time --

MR. ROSE: Yep, Your Honor, I appreciate --

THE COURT: -- okay, but there is some nuances here. And if parties were not in the case, right, if you didn't answer to them, then you can't prevail against somebody that you're not a party to if that's accurate, but once again, I don't have the information there to make that determination. If the parties were only in a case for a particular short period of time, then their pieces of pie that they're going to have to pay is going to have to be smaller. The PJR versus the

litigation is it, you know, potentially different piece of the pie, and then get to the substance of where the dollars are.

Realistically, that's where the Court's inclined to go. Of course, I want to fully hear everything you say, but I got that from the pleadings.

Go ahead.

MR. ROSE: Well, a number of issues they just raised as far as not answering and different dates, that was not in the pleadings.

THE COURT: In some of the pleadings with regards -- in some of the pleadings with regards, I have it in some, yes. I may not have it with everyone who decided to chime in today. That's correct.

But the issues were enough there, and since you're the one seeking costs, you have to show, right, as you're initial burden to get the costs, who you get it against. So that's why the Court can take that part into consideration.

MR. ROSE: Sure.

THE COURT: But go ahead, Counsel, please.

MR. ROSE: Well, and I appreciate the Court's clarification. Let me start with the PJR issues.

THE COURT: Okay.

MR. ROSE: If you look at our memorandum of costs, you'll see that none of the costs we are seeking have anything to do with the PJR. So it was interesting that the main

argument that the plaintiffs raise in their motions and the replies is that you can't recover costs for PJR. Not a single cost pertains to the PJR.

You know what the PJR was? It was a two-hour hearing with arguments, and we didn't even participate in it. We listened to it, but we didn't incur any costs for that. We didn't file a brief in the PJR matter. There was no, as the Court knows, there's no discovery or depositions. We didn't sit through a month-long trial related to the PJR. matter. That's completely separate.

THE COURT: I've done a few.

MR. ROSE: Exactly. So, Your Honor, there was zero costs related to the PJR. We don't think their argument's properly founded anyway, but it's irrelevant. That's not what we're seeking costs for.

Number two, the dates, there's an order, and I don't have it with me, but I believe the order was filed December 31st.

First of all, I want to mention we were not parties at the time of the injunction proceedings either in 2019. It was later after that that the plaintiff said, you know, we think we want to name everyone. D.H. Flamingo was the first party to name us as a defendant.

And then there was an order coincidentally by Nevada Wellness, Mr. Parker's client, who had filed a motion for

summary judgment. This order is December 31st, 2019, I believe, and the Court held a hearing, and even though it was a summary judgment motion, all the plaintiff said, we want to name all of the other parties who received a license as well. That was December 31st, 2019. We had already been in the case at that point, but that's when they got permission and leave to file and bring us in.

So as far as the dates, Your Honor, I haven't seen, because this is a new argument that wasn't presented, I haven't seen any authority that says I'm only responsible for costs on the day we filed the answer. We answered the complaints that were filed against us, Your Honor. And because of the extensive pleadings, as the Court knows, and because this issue was just raised right now, I haven't been able to provide the dates of all the answers, but they're in the record.

But there's no authority that says if I filed the complaint and they answered on January 31st, 2020, they can only get costs against me from that day forward. I'm not aware of the case law that provides for that. That's not what the statute provides.

These plaintiffs all decided that they wanted to name everyone under the sun, and now they want to try and pick and choose and dice the costs up based on these arguments that don't have any support under the case law. There's no legal authority. That's certainly not in the statute, and the

statute is what we have to follow.

The Nevada Legislature, if they wanted to say you only get costs from the date you're named, and you answer, then they would put that in the statute. There's no case law; there's no statute that supports that.

So that's as to their arguments about when they filed their complaint and when they got an answer, and some of them are saying they didn't get an answer who did file our answers.

Let me move to the closing date, because they're saying, well, and then we settled in the end of July of 2020. No one settled with us. No one settled with the Essence parties, and this is exactly the same as the Essence parties.

THE COURT: You're saying you had to go through the trial.

MR. ROSE: We sat through dozens of depositions. We had to sit through a month-long trial, and, Your Honor, I want to point out, I don't think this really is a determining factor whether a defendant intervened in the case or whether they were just involuntarily named.

But I will point out we did not choose to be here. We were involuntarily brought into this case. We did not intervene, and so to say you can't recover any costs against me because I've settled with other parties who have nothing to do with you, again, there's no case law for that. You named us as a party. You named -- brought claims against us, and you did

not settle with us, and the Court entered a judgment and ruling that is binding on you as to the claims that you alleged against everyone, including us. There's no cutoff date based on their settlement with other parties, which is completely irrelevant to us, no case law that supports that. They haven't presented you with anything.

So, Your Honor, we've been named as a party. I think I've addressed the periods.

Have I addressed all of the Court's questions except for the --

THE COURT: The substance of the dollars, yeah.

MR. ROSE: Okay.

THE COURT: Yes.

MR. ROSE: Your Honor, you're going to see, in our memorandum of costs, I do things a little bit differently. I not only put the memorandum of costs, I present an extensive declaration that supports why the costs were incurred and why they were necessary, and that complies with the case law. Remember, the case law says you can't just state that a cost was incurred and necessary. You have to explain why. And we do that in our memorandum.

THE COURT: But you also have to have the receipts. Remember with *Cadle versus Woods & Erickson*, I think it was less than $50 worth of copies. I think it was less than 20, but I'll just say 50 to make it easy. Remember the fact that

they just had an attorney declaration saying that those copies were necessary it wasn't sufficient. You actually had to show that you had some kind of, like, tracking system; right? Or you had a system where you have to type in maybe a case number, and then you get -- sorry, typing with my fingers; right? Okay. So those type of issues.

So there are for different ones, right, and if you want a video dep in addition to a hard copy transcript, you have to show the reason why you wanted a video depo, it was necessary, if you wanted expedited, you have to show why it's expedited. So it blends. I don't see that you have all of that.

MR. ROSE: So, Your Honor, we didn't notice these. We didn't choose to do a video deposition. We put video deposition not because we chose to have a video deposition, but because someone else noticed it and did a video deposition.

THE COURT: But did you have to buy both? Did you have to buy the video deposition and the transcript?

MR. ROSE: I don't think we're -- we're not seeking costs for videos. We're not -- we didn't include any video -- video costs here.

And, Your Honor, again, this is the disadvantage I'm at. If you look at their motion --

THE COURT: That's a disadvantage I'm at. I don't have a courtesy copy of your actual --

MR. ROSE: Of our --

THE COURT: So remember, each time anyone of you all are speaking, right, I have to go and click with one exception that doesn't apply here because I do have Mr. Bice's binders. Remember, I have to keep going back to the document electronically other than the couple that were handed to me here in court.

MR. ROSE: Yes, Your Honor.

THE COURT: I don't have courtesy copies. Please see the EDCR. So while you're referencing different things, I then have to go back and try and find each page you're talking about other than my memory or my notes.

MR. ROSE: Yes. Yes. So our memorandum of costs was filed August 9th.

THE COURT: Right, which is why you got the August 12th on the other one.

MR. ROSE: Yes. At 2:44 p.m.

But we did not seek costs for the -- it's called a video deposition because someone else noticed it for a video and took a video.

And when we get an invoice, that's the invoice we get, but that's not what we asked for. And all the invoices that we -- all the costs that we're seeking are supported by the invoices.

And, Your Honor, if you look at their motions, and

we -- I've got the notice of this, if you look at page 7 of MM, Qualcan, Natural Medicine, Nevada Wellness motions, page 7 of their opposition filed August 12th, 2022, 8:14 p.m., that's the only point where they talk about our costs, and they don't challenge a specific item at all. They don't. They don't point out what costs should not be granted because of the lack of documentation. All they say is --

THE COURT: Mr. Rulis's clients, he does in his; right?

MR. ROSE: No. His -- that's part of his brief. He's a part of that brief.

THE COURT: Hold on.

MR. ROSE: So if you go to that brief, all they say is, well, the costs are not reasonable and you didn't provide documentation. They don't explain how or why, and so if you look at our memorandum of costs, Your Honor, we've attached the supporting document as exhibits. We have seven exhibits that includes all of the support --

THE COURT: That you say comply with EDCR 2.27.

MR. ROSE: Am I claiming it complies?

THE COURT: Yeah.

MR. ROSE: I -- yes, I believe it does.

THE COURT: Hold on a second. We're talking about Document 2900 filed on 8/9/2022.

Remember, the challenge also that your transcript is

going to have, right, with multiple parties having the word Wellness in the middle of their name. If you call yourselves just Wellness and don't distinguish which Wellness entity you are, you're going to have fun reading the transcript. I'm just saying, I've got Wellness Center. I've got Wellness, you know what I mean, on opposite sides.

MR. ROSE: Too many Wellnesses, Your Honor.

THE COURT: So there's Wellness and Wellness.

MR. ROSE: I understand.

THE COURT: No. I'm not taking anything negative on the names. I'm just saying, please, you all might want to be clear on --

MR. ROSE: I understand.

THE COURT: -- stating your parties' names.

MR. ROSE: Thank you, Your Honor.

THE COURT: We are looking --

MR. ROSE: We've got supporting documentation for each category of costs that we're seeking.

THE COURT: And the answer is it doesn't comply with EDCR 2.27, but that's --

MR. ROSE: I believe it does.

THE COURT: Your 64-page document complies with EDCR 2.27? It has numbering in the lower right-hand corner of each of your exhibits? It does?

MR. ROSE: I thought that was over 100 pages.

THE COURT: Over 100 pages there has to be an appendices; right? That's a separate sentence of EDCR 2.27. It has to be a separate appendices filed on a different day with a table of contents; right?

MR. ROSE: Okay.

THE COURT: Feel free to chuckle. I see the chuckles. Nicely turning your head down.

MR. PARKER: You can see me through Mr. Rulis, or is that someone else?

THE COURT: I'm not saying who I'm referring to.

MR. PARKER: Okay.

THE COURT: I'm just saying I have a decent line of vision and decent hearing.

But, Counsel, I'm still taking it into consideration. I mean, honestly, you all have had to come back more than one time, okay, and nobody raised that in their briefs, but, no, it doesn't comply.

MR. ROSE: Okay.

THE COURT: With that being said, where do you show -- okay. I'm in your 64-page document. You have a couple of (indiscernible), and I appreciate you put the documentation -- you put your stamp on some of those aspects, but you're telling me the copies are articulated in here?

MR. ROSE: Copies would be supported by -- there's $312 worth of copies that they're raising, and if we referred

to Exhibit 3, Your Honor, I believe that is --

THE COURT: And where would I find that in the 64 pages?

MR. ROSE: I don't have the PDF page, Your Honor, specifically.

THE COURT: Yeah. (Indiscernible.)

You understand it's blocked out with all of the billed and paid and stuff like that; right? It's redacted without any agreement or order by the Court on sealing and redacting under Supreme Court Rule 3. Sorry I have to keep naming these, but --

MR. ROSE: Some of the invoices, if it was privileged information, we would have redacted it.

THE COURT: The discounts and billed amount and paid amount is privileged information with relationship to electronic prints?

MR. ROSE: Well, if it's for costs that we're seeking, it would not have been redacted.

(Pause in the proceedings.)

MR. RULIS: Chris, I brought it. You can look at mine if you want, but it is redacted. The Court is correct.

THE COURT: Amazing that the Court is correct; right? I'm looking at something, and --

MR. PARKER: No, I just wanted (indiscernible) from the copy that we brought.

THE COURT: Yeah. Do you see it? You see the whole big box?

MR. ROSE: Oh, correct.

THE COURT: Right? But then you've got a total of $312, which you just referenced. That's the reason why the Court went to the redaction. I listened to what you said and the amount that you were saying, and then I looked and saw there was the redactions, and we don't know what was actually billed to the client.

MR. ROSE: Well, Your Honor, I can represent what would've been billed would've been the 312, but I understand the Court's questions about the $312, Your Honor.

THE COURT: *Cadle versus Woods & Erickson* is a lot less than that on copies, folks. I mean, it's not that I'm going into the weeds, it's that the Supreme Court does it; right?

MR. ROSE: Understood. And out of our costs, I think that's -- well, there is a smaller item for the witness fee.

I understand the question -- the questions the Court has on that. $312 (indiscernible).

THE COURT: Do you understand also are contesting --

MR. ROSE: And, Your Honor, can I just add, if they were --

THE COURT: -- to the extent it's not just copies thereto; right? You got copies also under your Exhibit 2 on

what's called a recap of cost detail; right? Whereas timekeepers and codes and things like that. There's $986.92 on 7/9, 9/11/2020. Well, I'm not sure, size of binders.

And there's -- and they did mention the online research; right? The online research isn't broken down to whether or not that online research is particularly for this case, whether that's a monthly bill charged for online research, and if you potentially allocate a certain portion to a particular client or a particular case or whether or not that online research could also be done free and whether or not --

MR. ROSE: Well --

THE COURT: It's those challenges. It was raised in the box. It didn't say the specific amount and say it should be X instead of the Y that was charged, but the global concepts were presented in the motions to retax.

MR. ROSE: Your Honor, I don't -- I don't believe they were. Otherwise, we could have addressed it. If you look, we put in our declaration you have a -- this is not just a memorandum of costs that has a number out there that's out in oblivion. It's supported by my declaration that addresses the Westlaw research showing that that was performed for this case and that it was necessary.

So between the documents that show the cost that was incurred and my declaration, that specifically addresses that.

THE COURT: Okay. I'm just -- go ahead. Finish. Go

ahead, please.

MR. ROSE: We think we've complied with that, and again, if these are issues that they would have specified in their brief, we could have addressed it, but they weren't. They weren't brought up, and I think the documentation we provided is similar to -- or more detailed than documentation in other memorandums as well.

THE COURT: Well, that doesn't -- okay. Anything else? Go ahead, Counsel. I didn't mean to stop you. Go ahead, please.

MR. ROSE: And, Your Honor, did I address the Court's questions that it had raised so far?

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

Okay. And I'm just --

MR. GAMBLE: Your Honor, this is Clarence Gamble again. I apologize for interrupting the Court, and I know the Court wanted to know when I filed these joiners. I --

THE COURT: The joinder with Wellness Connection, yeah. Wellness Connection is the only one we're on. So the joinder regarding against Wellness Connection was filed on what date, please, Counsel?

MR. GAMBLE: My first substantive points and authorities regarding costs was filed on -- Court's indulgence.

THE COURT: Sure. And remember, we're only

addressing Wellness Connection, if you don't mind, Counsel, because that's the only --

MR. GAMBLE: I understand, but this -- my substantive points and authorities addressed all efforts to tax costs against Rural Remedies, and that was filed on or about --

THE COURT: They have a stamp on the upper right-hand corner.

MR. GAMBLE: Yes, Judge. It was filed on or about September 23rd, 2020. Why it was filed in 2020, because, as was previously mentioned by Mr. Dzarnoski and others, there was an effort to seek tax -- to tax costs after the Court had entered its order on Phase 1 and 2.

THE COURT: Right, but did --

MR. GAMBLE: Just one moment, Your Honor.

And in that particular substantive points and authorities, I raised to the Court at that time that Rural Remedies' action had been severed and --

THE COURT: Counsel, the reason why I'm stopping you is that's already subject to a ruling back in 2021 by Judge Gonzalez. The --

MR. GAMBLE: Right, Your Honor.

THE COURT: The motion to retax under the rules has to be filed after a memorandum of costs. If you already had a motion to retax that was granted, right, and says that it's without prejudice for them to file a new memorandum of costs,

then the operative memorandum of costs was the one filed in August of 2022, and I'm dealing only with Wellness Connection. I'm really trying to get to the rest of your cases, but --

MR. GAMBLE: Right, Your Honor.

THE COURT: But realize --

MR. GAMBLE: And I joined on --

THE COURT: -- so that's why the Court was asking with regards to Wellness Connection, please give the Court the date of your joinder to Wellness Connection after it filed its memorandum of costs on August 9th, 2022, which would then trigger any motions to retax before the Court.

MR. GAMBLE: Well, we filed joinders and motions to retax filed by TGIG, High Sierra, Holistics and Deep Roots, and Clear River. We filed those motions on August 11th, 2022.

We also filed motions -- joinders and motions to retax on August 9th, 2022.

THE COURT: Okay.

MR. GAMBLE: And also, Your Honor, on August 17th, 2022, I filed a motion -- I filed a notice with the Court because I wasn't present, I was out of the country on the hearing on September 16th, 2022. I filed a motion with the Court or actually the points and authorities with the Court indicating that I was submitting my matter on the record and for the Court to consider all my joinders for retax and also those separate points and authorities previously filed on the

issue of the bill of costs which was filed on September 23rd, 2020. So your original --

THE COURT: But you can't do that, Counsel.

MR. GAMBLE: -- comment to me was where did you substantially raise the issue of the fact that your case had been severed and the fact that you didn't go to trial when everybody else went to trial, and your case got settled before you went to trial. That was raised in my points and authorities --

THE COURT: Okay. Mr. Gamble -- Mr. Gamble. We need to move on. The Court can only consider what it can consider under the rules on timely filed memorandum of costs, timely filed motions to retax costs, timely filed joinders to motions to retax costs.

The Court can't have parties say, go back in the 3,000 plus pleadings, and I'm incorporating things in those 3,000 plus pleadings; right? Remember, the Court has to rule on what the Court can take into consideration under the applicable statutes, case law, et cetera. So that's the only thing the Court can look at. That's the only thing the Court does look at because this is not a situation where there's an independent stipulation of the parties where they've agreed to something different as far as the scope of what the Court can look at in the pending motions.

So thank you so very much, Mr. Gamble. Thanks for

pointing out those document numbers. I do appreciate it.

Mr. Rose, have you had an opportunity to finish your argument? If so, I need to move to the people --

MR. ROSE: Yes, Your Honor. I'll just say that whether someone severed their case, whether they settled with other parties, they did not do that with us, and we're entitled to the costs that we're seeking.

THE COURT: I do appreciate it. Thank you so very much for your argument.

MR. ROSE: Thank you.

THE COURT: Okay.

MR. RULIS: Thank you, Your Honor. Nate Rulis, for the record, Your Honor. A couple of quick points that I want to address.

First, I'm going to go to, Mr. Rose said that things were not mentioned in the pleadings. I want to direct and be clear, especially when we're talking about spending time talking about Westlaw research. It's the -- and Mr. Rose actually cited to the exact page of our motion where it talks about it, which is the motion to retax and settle costs regarding Wellness Connection and Nevada filed by Qualcan on August 12th, at 8:14 p.m., and I apologize. I don't have the docket number, Your Honor.

THE COURT: It's okay.

MR. RULIS: But on page 7 of that document, at lines,

let's see here, 12 through 16, one of the things that is very specifically addressed is the fact that their legal research does not have supporting -- the necessary and supporting documentation for them to be entitled to that.

Additionally, I think in the reply that was then filed on September 9th at 5:47 p.m., on page 11, there are additional -- the categories that I previously mentioned that are talked about, which are that Mr. Rose's memorandum of costs and the supporting documentation do not meet the requirements for them to be awarded those costs. And that's in accordance with the case law that Your Honor has already cited that's simply stating that this is online research, and an attorney declaration saying it was done for the case is not sufficient.

They have to show was that the research actually was done, what it was done for, why, and I don't believe that what they've provided meets the necessary requirements. I think as Your Honor had already alluded to, photocopies, we have no idea what those photocopies were. They're completely redacted, but that also goes to, as I mentioned before, the runner services, the trial services, the outside copies, and I will say that in looking back at the memo of costs as it relates to deposition and transcript fees, while I believe many of them are for transcripts, they do include in at least one occasion, video and the transcript of deponents. So they are, in fact, asking to essentially double dip on some of these costs.

And, you know, the problem with being able to say they should only be allowed X costs is when you can't tell what the costs were incurred for. All I can do is say we don't have the information to challenge specific cost, and therefore the whole category should not be allowed.

So that's on substantive costs.

I do want to address the PJR, and I think Mr. Rose seems to have a fundamental misunderstanding of what's being -- of what was addressed in the pleadings and what's being argued, and that's -- you heard him say that none of their costs were incurred in relation to the PJR claims, and that's fascinating, and I think that's important because the only reason Wellness Connection was named is because, as Mr. Parker was reading in his amended complaint, is in relation to the PJR claims. And so what they've said to you here today is --

THE COURT: And Mr. Parker on behalf of Nevada Wellness Center.

MR. RULIS: Correct.

MR. PARKER: Correct, Your Honor.

THE COURT: Go ahead.

MR. RULIS: Is that the only -- that all of the costs that they incurred and are asking for were incurred in relation to claims that they were not a party to and not part of this litigation for. They were brought into the litigation as parties to the PJR claim. Under the Nevada Administrative Act,

and I apologize, Mr. Parker can address that more fully, but that's what they were brought in for, and they said that they don't -- they're not asking to recover any costs related to the reason they rebutted the lawsuit.

THE COURT: Wait. But if you look at the dates in their memorandum of costs, right, the dates, they say that they -- by the way, they did say they filed a business court answer in this case on 2/12/2020.

MR. PARKER: Yes, Your Honor.

THE COURT: Just to let you know in their memorandum of costs, right. So the Court was going to have a question about how there was filings predating filing an answer that they're seeking costs for, but since this was not a -- I had to double check it wasn't a motion to dismiss, but once again, so if you look at their dates, other than the two motion -- other than $7, okay, looking at page 1 of 8, the very first page; right?

MR. RULIS: Yep.

THE COURT: The rest of their costs start, that's what I was -- part of the reason I was trying to get their chronology here, folks, right, because chronologies matter -- starts in February of 2020 and then goes on from there. I shouldn't say that. There was a couple of hearings in 2019, that there's some parking charges for.

MR. RULIS: Right.

THE COURT: But it's --

MR. RULIS: And, Your Honor --

THE COURT: So I'm trying to reconcile what you're saying with these dates.

MR. RULIS: Well, so let me answer on the answer.

I believe Wellness Connection filed an answer to D.H. Flamingo's complaint.

THE COURT: Oh.

MR. RULIS: But they're not here, not to my complaint, not to MM and LivFree's complaint. Not to Nevada Wellness Centers complaint. They filed an answer to D.H. Flamingo, who then, I believe dismissed their claims, and that's, you know, that's, if you go back to the notice of appeal, I believe D.H. Flamingo's voluntary dismissal of their claims is one of the things that Wellness Connection is appealing, but that's the answer that they filed is to the D.H. Flamingo complaint.

THE COURT: Wait a second.

What I'm looking at is I'm trying to reconcile what you're saying with regards to the receipt for $1,483 with a Case Number of 787004-B, which is the case number here; right? Which is -- and then it's not one of the -- are you saying that yours is one of the consolidated cases?

MR. RULIS: Yes. My --

THE COURT: And so that your case wasn't yet existing

at the time of the complaint? I mean, do you mind just clarifying what you mean.

MR. RULIS: No, no. My case was certainly existing. The MM case was the first one filed. Our case is I think 18.

THE COURT: You're one of the 18s.

MR. RULIS: Yes. We are one of the 18s.

And I guess I haven't -- admittedly, I haven't gone back and looked at that exact answer, but as I recall, that is the answer to D.H. Flamingo's complaint.

THE COURT: Now, granted, the answer is not until July 28th, 2020, interestingly enough, which is a question I was going to see if somebody brought up to the Court.

MR. RULIS: And that also brings up the date of settlement, which, you know, I don't want to rehash, but we did address that in the supplemental briefing that we filed related to Essence's motion, and so I have that brief. I don't have that document number, and I apologize, but the date of settlement for the settling parties was, we believe was July 29th, at which time it was announced to the Court, and the Court excused the settling parties from any further participation in the trial.

THE COURT: Okay. Do you want to address Mr. Rulis's statement with regards to didn't necessarily need to be a party in order to get some of the costs that he's seeking, and answering party? I'm just asking if you want to address it.

MR. RULIS: Sure. I mean --

THE COURT: If you don't, that's fine, but it was brought up, that question came up today. I had an opportunity for one side. So I'm going to give the opportunity to the other side if you want to.

If not, I'm moving on. I've got more than enough other parties that want to get taken care of.

MR. RULIS: I would -- I'll leave that to Mr. Parker, and I would simply join and agree with what he said previously, which is under the cases, *Golightly*, if you don't answer, you're not a party, and you're not entitled to costs and fees.

THE COURT: Okay. Let's walk the circle through with everybody else on the motions to retax with regards to the current pending. I'm going to give you two minutes most, each side.

I gave Mr. Rulis actually -- you got two minutes and eight seconds.

So, Mr. Parker, you can have your two minutes and eight seconds as final words, and go circle around with other people just so I can get everyone taken care of, folks.

MR. PARKER: Your Honor, I wanted to add -- to actually address something that Mr. Rose said regarding the dates being brought up and how important those dates are to the Court's consideration of costs.

In the -- in Mr. Rose's opposition, the Omnibus

opposition to the motion to retax, he indicates in a footnote, the dates of the Second Amended Complaint.

My point is it's not -- it shouldn't be new or unexpected that these dates would play an important part in the Court's consideration of what costs are awardable against certain plaintiffs.

Your Honor, I gave you a copy of our complaint so you wouldn't have to take my word for it, and that paragraph specifically says that they're being brought in because of the PJR, and that's why they were brought in. We were forced to. We didn't want to. My initial complaint did not identify anyone other than the D.O.T.

Mr. Rulis's complaint only identified the D.O.T.

The Judge said we had to name them, and that we had to name them and get them served. We didn't want to do any of it.

THE COURT: But, Counsel, and the reason I'm going to interrupt you, because in addition to the whole analysis I did on *Golightly*, right --

MR. PARKER: Sure.

THE COURT: Think about it in the intervening time as, well.

MR. PARKER: Yes.

THE COURT: Let's think about, right, there is other cases where you mandatorily, right, have to include parties to

a case; right, or if the law requires it. So I'm hearing the argument, but the wanting to include people if there's a requirement in order to get the relief you're potentially requesting you have to include certain people, right, just like you've got to sue the AG's office right, if you want to test contest constitutionality; right, to give them a chance -- the opportunity to respond; right?

MR. PARKER: Certainly.

THE COURT: There's compulsory counterclaims. There are certain parties that use as few or as necessary parties. If you don't include them, then you can't move forward with your cases. There's a whole slew of things I could cite, which I really don't want to take the time doing.

MR. PARKER: Absolutely.

THE COURT: So how is this different that you're saying? I appreciate you didn't want to, but isn't that the case in a lot of things?

MR. PARKER: Absolutely, Your Honor, and that's why I, again, read *Golightly* more than I wanted to. And the way you differentiate the position that Mr. Rose finds himself in today versus in that case, the interpleader action requires you to identify everyone who may have a stake in that claim. That's what eventually Mr. Vannah did, and unfortunately he submitted his --

THE COURT: Didn't do it the way he needed to, yeah.

MR. PARKER: -- his lien too late.

THE COURT: Yeah.

MR. PARKER: And that's what happened with him, and as a result, he had to take a pro rata share of that $15,000 --

THE COURT: Didn't get his prayer.

MR. PARKER: Didn't get his -- exactly.

The difference here, Your Honor, is that Mr. Rose didn't have to answer the complaint if he chose not to. He could've stayed on the sidelines the entire time because the --

THE COURT: Didn't you all -- just -- the reason I'm going to stop you.

MR. PARKER: Go right ahead.

THE COURT: There's a whole bunch of three day notices, intent to take default, and since there are prechanges of 2019, changes to the NRCP, they would get three days, not seven days, but there's a whole bunch of those; right? If they didn't, wouldn't they be defaulted, and couldn't they have lost --

MR. PARKER: They wouldn't have lost their licenses. How would they have lost their licenses?

THE COURT: Well, that's why I stopped at lost. I didn't say what they could have lost. I said lost.

MR. PARKER: Okay. Good enough.

THE COURT: I said lost.

MR. PARKER: Good point. No different than -- no

different than an interpleader action. If you choose not to be a part of it --

THE COURT: Right. You don't get a piece of the pie.

MR. PARKER: Right. And in this case, they already had their piece of the pie, and the point was, and this was raised in one of the briefs, the reason why they joined is because they felt that the D.O.T. may have been -- may not have adequately represented their positions. That's what they say, and I believe that will come up in one of the briefs that was submitted, Your Honor, and they chose to come in and get involved in this case.

So my complaint is very clear as to why we brought them in, and if that's the case, then certainly the comments made by Mr. Rulis should resonate with the Court, because he is now saying that he didn't -- he being Mr. Rose from Wellness Connection, did not incur any costs related to the PJR. The only reason they're in this case.

When you look at their memorandum of costs, Your Honor, the largest single item is the deposition transcripts and fees for $31,000, and I'm sure you see that in front of you, Your Honor.

THE COURT: Starting what dates though?

MR. PARKER: This is page 2 of 8.

THE COURT: No, I'm sorry.

MR. PARKER: It doesn't say. It doesn't say what

phase. It says deposition and transcript fees, 31,885.17.

THE COURT: You all are -- you had highlighted over and over again why it's so necessary to have courtesy copies in something like this.

MR. PARKER: I can bring you a copy of it, Your Honor.

THE COURT: No. No. You gave me -- I'm just --

MR. PARKER: Right.

THE COURT: I mean, I'm clicking back and forth. You noted your -- I was circling back because remember, I have to click thing by thing by thing.

Going back, there is at least 15 more, three-day notices of intent to take defaults against a variety of different entities, okay. At least one of them has a Wellness in it. I didn't click on it to see which Wellness entity it was, okay.

So if they didn't participate --

MR. PARKER: They didn't -- if they didn't participate.

THE COURT: You're saying there's no risk for a default standpoint?

MR. PARKER: Unless they felt that the D.O.T. didn't adequately represent their interests, but the D.O.T. was representing the interests of the Department of Taxation and its process. This was a process issue.

My complaint, Mr. Rulis's complaint, Mr. Christiansen's complaint, none of them said I want Essence's license. I want Wellness Connection's license, and I want Clear River's license. We said the process was flawed. That's what we said, and in part, the Court upheld --

THE COURT: By the way, you filed several of those three-day notices of intent to default.

MR. PARKER: I had to. I appreciate you whispering it, Your Honor. No one else heard.

But, yes.

THE COURT: That's why I brought up previously.

MR. RULIS: No, where it -- we had -- Your Honor, we were instructed on what we had to do. You will notice for the first year our complaint didn't have them as defendants. That's not what we wanted to do, but we did it because of the PBR (sic) requirement, and that's exactly why Mr. Rose's client was made a defendant, and so for him to say that his client didn't incur these costs as a part of the PBR seems disingenuous, Your Honor.

And when I look at the deposition of transcript fees, again, the largest -- the bulk of his costs, there's not a single date for which the Court can analyze whether or not he's entitled to that. And it is his burden. He would turn this process on his head by saying it's our burden to say -- or to save him from himself, to indicate which transcripts are from

what date and what part or what cause of action it applied to. This Court is left to the -- is left to the exhibits and this memorandum.

The Court's only conclusion could be that his client Wellness Connection and several of the other defendants were brought in as a result of the PBR, and based upon Rule 30, they're not entitled under Rule 233 B. They're not entitled to any costs, period. And then the Court's analysis stops there. But Mr. Rulis is correct. He does mention that in terms of the deposition of Robert Porter (phonetic), he asked for the video and the transcript. It doesn't matter if someone asked for the video deposition. You can just simply just get the transcript, Your Honor. You know you don't have to request the video. Certainly that exercise before you, starting this morning at 8:30 demonstrates the problems of trying to use a video versus a transcript.

So, Your Honor, and then if you look at the parking, all of these parking dates are ahead of my Second Amended Complaint. I'm just giving the Court examples of why this memorandum does not comply with the rules. It doesn't comply with *Brunzell*, and I don't know how you've been offered sufficient information and backup material to clarify what goes with what cause of action, and so I would suggest that it's all related to the PPR, Your Honor.

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

much.

MR. PARKER: Thank you.

THE COURT: Before I go on to anybody else, I do need to ask Mr. Rose, I do need to ask you a question.

MR. RULIS: Your Honor, if I could make one clarification.

THE COURT: No. I'm going to ask Mr. Rose a question. Like I said I was going to. And then I will give you the same.

MR. RULIS: Apologies. I just want to make one clarification before we go too far.

THE COURT: The receipt for the answer, the $1,483 that's attached, okay, says 7/28/2020. Is that the day you answered one of the underlying consolidated cases, or is there an earlier one?

MR. ROSE: There's definitely earlier answers, Your Honor. I just don't have the dates with me. I would have to go back.

THE COURT: Maybe Mr. Rulis, that's the point maybe that he wants to make. Let's hear it.

MR. ROSE: Yeah, and I'd have to go back and check. That's my belief, Your Honor.

THE COURT: Okay. Someone was on their phone. Go ahead. Did you get an answer?

MR. RULIS: It is, Your Honor, that's a -- I don't

want it to be a misrepresentation to this Court. I had my office look. I will admit that Mr. Rose's clients did, in fact, file an answer to the MM and LivFree Wellness Second Amended Complaint, and that was -- the answer was filed on June 29th of 2020. So I would say they it could request costs between June 29th, 2020, and July 29th, 2022, to the extent that they complied with the rules, are determined to be a prevailing party and have provided Your Honor sufficient documentation.

MR. CHRISTIANSEN: Same clarification for Qualcan. Mr. Rose answered on the 30th of June, 2020, Your Honor, and I had somebody send it to me.

THE COURT: Somehow I thought with all these wonderful attorneys in here somehow that clarification would magically appear.

Okay. Mr. Rose, do you have a different viewpoint than other than what's been stated that in the late June time period the answers occurred with regards to some of the parties that had filed the motions to retax?

MR. ROSE: No. For those, I don't. I'd have to go back and check. I do believe there were some earlier answers, but I just, because this was an issue that wasn't raised in the briefing, I'm just not prepared to talk about that today.

THE COURT: I was trying to cross-reference your memorandum of costs, right, and what I saw in your memorandum

of costs was only the 7/28/2020 for a filing fee; correct?

MR. ROSE: Correct. Correct.

THE COURT: I didn't see multiple filing fee receipts. I only saw that one, and so, correct me if I'm wrong, but that was your Exhibit 1.

MR. ROSE: Correct, Your Honor. And I'm not sure exactly why. Obviously we filed multiple answers. I'm not sure why in our system only that one cost was shown. So I don't have an answer for that.

THE COURT: Were you in this case in 2019?

MR. ROSE: We were named as a defendant in 2019. The first plaintiff to name us was D.H. Flamingo. I don't believe we had answered, but we did start attending hearings, Your Honor. In fact, I believe we were at the hearing in December of 2019 when all the plaintiffs asked for leave, and they were not ordered. It was not mandatory for them to bring us in. It was leave. They were given leave so...

THE COURT: Okay. Appreciate it. Thank you so very much. Thank you for answering that question. Thank you for the points of clarification.

MR. PARKER: I got a date.

THE COURT: Mr. Parker.

MR. PARKER: I got a date for you, Your Honor. That's the only reason I stood up. I didn't want to take much more of --