

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

IN THE MATTER OF: D.O.T.
LITIGATION

CLARK NATURAL MEDICINAL
SOLUTIONS LLC; NYE NATURAL
MEDICINAL SOLUTIONS LLC;
CLARK NMSD, LLC; INYO FINE
CANNABIS DISPENSARY LLC; AND
RURAL REMEDIES, LLC,

Appellants/Cross-Respondents,

v.

NEVADA ORGANIC REMEDIES LLC;
WELLNESS CONNECTION OF
NEVADA, LLC; THE STATE OF
NEVADA DEPARTMENT OF
TAXATION; AND CANNABIS
COMPLIANCE BOARD,

Respondents,

and

DEEP ROOTS MEDICAL, LLC
Respondent/Cross-Appellant

Supreme Court Case No. 86151

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Clerk of Supreme Court

District Court Case No. A787004

APPELLANTS' APPENDIX: VOLUME 3

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CLERK OF THE COURT
Alvin P. Hanson

TRAN

DISTRICT COURT
CLARK COUNTY, NEVADA
* * * * *

IN RE D.O.T. LITIGATION

CASE NO. A-19-787004-B
DEPT NO. XI

**TRANSCRIPT OF
PROCEEDINGS**

BEFORE THE HONORABLE JOANNA S. KISHNER, DISTRICT COURT JUDGE

FRIDAY, SEPTEMBER 16, 2022

TRANSCRIPT OF HEARING RE:

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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:

WHITNEY J. BARRETT, 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 HERBAL CHOICE:

SIGAL CHATTAH, ESQ.

FOR DEPARTMENT OF TAXATION
AND CCB:

STEVEN G. SHEVORSKI, ESQ.
Chief Litigation Counsel

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 CPCMC 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.
JENNIFER A. DELCARMEN, ESQ.

FOR DEEP ROOTS HARVEST:

RICHARD D. WILLIAMSON, ESQ.
JONATHAN J. TEW, ESQ.

FOR HELPING HANDS
WELLNESS CENTER:

JARED B. KAHN, ESQ.

FOR NEVADA ORGANIC REMEDIES:

DAVID R. KOCH, ESQ.

FOR GREENMART OF NEVADA NLV:

LEO WOLPERT, ESQ.

FOR CIRCLE S FARMS, LLC:

BENJAMIN B. GORDAN, ESQ.

FOR JORGE PUPO:

DANIEL C. TETREAULT, ESQ.

M A T T E R S

High Sierra Holistics, LLC's Motion to Retax and Settle Costs

Motion to Retax and Settle Costs (Clear River, LLC)

Motion to Retax and Settle Costs (Thrive)

Motion to Retax and Settle Costs (Deep Roots Harvest)

Motion to Retax and Settle Costs (Lone Mountain)

Motion to Retax and Settle Costs (Nevada Organic Remedies)

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 Regarding Clear River, LLC's
Memorandum of Costs

Motion To Retax And Settle Costs Regarding CPCM Holdings, LLC
d/b/a Thrive Cannabis Marketplace, Cheyenne Medical, LLC and
Commerce Park Medical, LLC

Plaintiffs 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

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motion to Retax and Settle Costs

Motion to Retax and Deny Costs to Plaintiffs

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

Motion to Retax and Settle Costs Regarding Nevada Organic Remedies, LLC

Motion to Retax and Settle Costs Regarding Lone Mountain Partners, LLC

Motion to Retax and Settle Cost Regarding Wellness Connection of Nevada, LLC

Joinder to the Essence Entities' and CPCM Holdings, LLC's
Motion to Retax TGIG Plaintiffs' Memorandum of Costs and
Disbursements

Lone Mountain Partners, LLC's Motion to Retax TGIG Plaintiffs
Memorandum of Costs and Disbursements

The Essence Entities' Motion to Retax TGIG Plaintiffs'
Memorandum of Costs and Disbursements

Clear River, LLC's Motion to Retax and Settle Costs (TGIG
Plaintiffs)

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

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)

Department of Taxation's Motion to Retax and Settle Costs

Motion to Retax and Settle Costs - Deep Roots

Motion to Retax and Settle Costs Regarding Nevada Organic
Remedies, LLC

Plaintiffs' Motion to Retax and Settle Costs Regarding Lone
Mountain Partners, LLC

Plaintiffs' Motion to Retax and Settle Costs Regarding Nevada
Organic Remedies, LLC

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

TGIG Plaintiff's in Case A786962 Motion to Retax and Settle
Costs

MM Development Company, Inc. and LivFree Wellness, LLC Motion to Retax and Settle Costs

Joinder to TGIG Plaintiffs' Motion to Retax and Settle Costs and Joinder to MM Development Company, Inc., dba Planet 13 ("MM") and LivFree Wellness, LLC dba the Dispensary ("LivFree")'s Motion to Retax and Settle Costs

Rural Remedies, LLC's Joinder in TGIG Plaintiffs' Motion to Retax and Settle Costs

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics, LLC, NevCANN, LLC and Red Earth, LLC's Joinder to TGIG Plaintiffs' Motion to Retax and Settle Costs (Re: The Essence Entities' Memorandum of Costs Filed August 5, 2022) and MM Development Company, Inc. dba the Dispensary's ("LivFree") Motion to Retax and Settle Costs

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

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

Rural Remedies, LLC's Joinder in MM and LivFree Plaintiffs' Motion to Retax and Settle Costs

High Sierra Holistics, LLC's Joinder in TGIG Plaintiffs' Motion to Retax and Settle Costs

High Sierra Holistics, LLC's Joinder and Supplement to MM Development Company, Inc. dba Planet 13 ("MM") and LivFree Wellness, LLC dba the Dispensary ("LivFree"), Qualcan, LLC ("Qualcan") and Natural Medicine, LLC ("Natural Medicine")'s Motion to Retax and Settle Costs

Natural Medicine, LLC's Joinder To TGIG Plaintiffs' Motion To Retax and Settle Costs Re: Essence Entities

Nevada Wellness Center, LLC's Joinder and Supplement to Motion to Retax and Settle Costs

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

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

Lone Mountain Partners, LLC's Joinder to Motions to Retax and Settle Costs

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

Deep Roots Harvest, Inc.'s Joinder to Motions to Retax TGIG Plaintiffs' Memorandum of Costs and Disbursements

Joinder to Settling Plaintiffs' Motion to Retax and Settle Costs Regarding Wellness Connection of

Nevada, LLC

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 Clear River, LLC's Memorandum of Costs

ETW Management Group, LLC's Joinder to Settling Plaintiffs'
Motion to Retax and Settle Costs regarding Nevada Organic
Remedies, LLC

Plaintiffs Green Leaf Farms Holdings, LLC, Green Therapeutics,
LLC, NevCANN, LLC, and Red Earth, LLC's Joinder to Motions to
Retax and Settle Costs

THC Nevada, LLC and Herbal Choice, Inc.'s Joinder to Motions to
Retax and Settle Costs

Deep Roots Harvest, Inc.'s Joinder to Essence Entities Omnibus
Opposition to TGIG's Motion to Retax and Settle Cost, MM Motion
to Retax, and All Related Joinders and Supplements Thereto

Defendant Jorge Pupo's Joinder to Department of Taxation's
Motion to Retax and Settle Costs

JD Reporting, Inc.

Greenmart of Nevada NLV, LLC s Joinder to Motions to Retax and Settle Costs

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

Circle S Farms, LLC's Joinder to Motion to Retax and Settle Costs

1 **LAS VEGAS, CLARK COUNTY, NEVADA, SEPTEMBER 16, 2022, 9:11 A.M.**

2 * * * * *

3 THE COURT: Okay. We're on Case 787004, In Re:
4 D.O.T. Litigation, and it's, well, lots and lots of pages, 1
5 through 28 for today.

6 So what I ask is counsel, counsel both remotely and
7 we have counsel here in court, so I'm just going to ask
8 starting with the left gallery, could we just do one by one
9 just do your appearances on behalf of your clients. We'll do
10 in court first, and then we will do the order the parties
11 checked in remotely.

12 So go ahead. Who's starting first here in court?
13 Whoever, but we do need you near a microphone so we can make
14 sure we get you a nice clear record. We do appreciate it.
15 Thank you.

16 MS. HIGGINS: Good morning, Your Honor. Brigid
17 Higgins on behalf of Clear River, LLC.

18 THE COURT: Okay. And there's someone on remote who
19 is typing who haven't muted themselves. Please make sure you
20 mute yourself because we've got -- that goes right into my poor
21 court recorder's ears.

22 Go ahead, Counsel, please.

23 MR. RULIS: Good morning, Your Honor. Nate Rulis on
24 behalf of plaintiffs MM Development and LivFree Wellness.

25 THE COURT: Okay. Next, please.

1 MR. BECKSTROM: Good morning, Your Honor. James
2 Beckstrom on behalf of ETW Management Group, Global Harmony,
3 Libra River Center (as said), Rombough Real Estate and Zion
4 Gardens. They're collectively referred to ETW plaintiffs.

5 THE COURT: Okay. Let's go to the other side. Thank
6 you so much.

7 MR. J. SMITH: Good morning, Your Honor. Jordan
8 Smith on behalf of Integral Associates and the Essence
9 entities.

10 MR. BICE: Good morning, Your Honor. Todd Bice on
11 behalf of Integral Associates and the two Essence entities.
12 Thank you.

13 MR. GRAF: Good morning, Your Honor. Rusty Graf,
14 also on behalf of Clear River, LLC.

15 MR. ROSE: Good morning, Your Honor. Christopher
16 Rose, 7500, for Wellness Connection of Nevada.

17 THE COURT: Thank you.

18 MR. SCHWARZ: Good morning, Your Honor. Joel Schwarz
19 on behalf of defendant Lone Mountain Partners.

20 MR. HONE: Your Honor, Eric Hone, also on behalf of
21 defendant Lone Mountain Partners.

22 MR. GUTIERREZ: Good morning, Your Honor. Joseph
23 Gutierrez on behalf of defendant CPCM Holdings, LLC, which is
24 Thrive Cannabis Marketplace; Cheyenne Medical, LLC; and
25 Commerce Park Medical, LLC.

1 THE COURT: Okay. Have we taken care of everyone
2 here in court?

3 (No audible response.)

4 THE COURT: Okay. So we've got now our boxes. I'm
5 going to start -- you all have the same order of boxes that I
6 do. So we're just going to start with the top row and just go
7 across, and then we'll go to the second row, then the third
8 row, then the fourth row. Seems to me it makes the most sense.
9 So assuming you all have the same boxes, let's try this out and
10 see if that works.

11 Go ahead, Counsel. Ms. Smith, that would make you
12 first; right? Because you have the left-hand box.

13 MS. S. SMITH: Apologies, Your Honor. I couldn't
14 tell exactly where I was in line. Stephanie Smith on behalf of
15 Natural Medicine.

16 THE COURT: Oh, you know what, you all may not have
17 this in the same order that I do, right.

18 Well, then, Ms. DelCarmen, go ahead. Let's try it
19 this way.

20 MS. DelCARMEN: Jennifer DelCarmen, Bar Number 1277
21 on behalf of Nevada Wellness Center.

22 THE COURT: Okay. The reason why you see me squint
23 is I'm trying to --

24 THE COURT RECORDER: Sorry. Just one second.

25 Mr. Bice, you guys are right over our mic. If you

1 could just push that last one.

2 MR. BICE: Oh, I apologize, Your Honor.

3 THE COURT RECORDER: It's okay.

4 THE COURT: Pardon?

5 MR. BICE: I did not mean --

6 THE COURT RECORDER: They were over a mic. So I
7 couldn't hear.

8 THE COURT: It's okay. No worries. Sorry. You see
9 now I'm focusing on this, and so I didn't see that.

10 Sorry. Ms. DelCarmen, it seems like we need your
11 name again, please.

12 MS. DelCARMEN: Jennifer DelCarmen, Bar Number 12727
13 on behalf of Nevada Wellness Center.

14 THE COURT: Okay. Mr. Tew. It looks like you're
15 next. Is it T-e-w? It's hard to read.

16 MR. TEW: Oh, yes, Your Honor. This is Jonathan Tew
17 on behalf of Deep Roots Harvest. And I also have Richard
18 Williamson, who's primary counsel on the case. He's a little
19 bit lower down on the boxes.

20 THE COURT: Okay. Do you all have it the same way,
21 boxes? So you've got five on the top, five on the second row,
22 four and four, if we don't, okay. Then I'm just -- so.

23 UNIDENTIFIED SPEAKER: No, Your Honor.

24 THE COURT: No. Okay. It depends on how you've done
25 your screens. Okay. So let's go next to it says --

1 UNIDENTIFIED SPEAKER: Whitney Barrett.

2 THE COURT: Whitney Barrett. Sorry. It's just
3 really, really hard to read these.

4 Go ahead, please.

5 MS. BARRETT: Good morning, Your Honor. Whitney
6 Barrett, Bar Number 13662, on behalf of Qualcan.

7 THE COURT: Thank you. Next it says Holley Driggs,
8 the face at the end of the conference table. So, Counsel.

9 MR. PUZEY: Yes, Your Honor. Jim Puzey, Bar Number
10 5745, representing High Sierra Holistics.

11 THE COURT: Thank you.

12 It looks like it's Mr. Donath's next.

13 MR. DONATH: Good morning, Your Honor. Nick Donath,
14 13106 for Green Leaf Farms Holdings, Green Therapeutics,
15 NevCANN, and Red Earth, all LLCs. Thank you.

16 THE COURT: Thank you.

17 And, Mr. Slater.

18 MR. SLATER: Good morning, Your Honor --

19 MS. SUGDEN: Good morning, Your Honor. Amy Sugden on
20 behalf of THC Nevada.

21 THE COURT: Thank you.

22 Now Mr. Slater.

23 MR. SLATER: I thought I misheard you. Good morning,
24 Your Honor. Craig Slater for Inyo Fine Cannabis and the NuVeda
25 entities. Thank you.

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

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

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

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

8 THE COURT: Thank you.

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

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

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

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

17 THE COURT: No worries.

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

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

24 Okay. Dzarnoski, please.

25 MR. DZARNOWSKI: This is Mark Dzarnoski behalf of the

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

6 THE COURT: Appreciate it.

7 Okay. Mr. Parker.

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

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

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

14 THE COURT: Appreciate it. Thank you.

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

16 THE COURT RECORDER: It's Ms. Chattah.

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

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

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

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

24 THE COURT: Okay. Counsel.

25 MS. CHATTAH: Yes, Your Honor.

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

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

7 THE COURT: Appreciate it. Thank you.

8 Okay. Mr. Wolpert.

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

12 THE COURT: Mr. Gordon, please.

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

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

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

21 THE COURT: Thank you.

22 Williamson, please.

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

25 THE COURT: Okay. Have we now taken care of

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

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

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

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

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

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

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

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

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

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

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

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

15 Pardon?

16 (Courtroom interference.)

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

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

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

22 THE COURT: You haven't -- okay.

23 MR. BICE: We haven't discussed that.

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

1 MR. BICE: Okay.

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

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

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

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

22 Go ahead.

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

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

4 THE COURT: Sure. Would you like --

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

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

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

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

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

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

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

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

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

1 situation.

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

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

6 THE COURT: All right. Go ahead, Counsel.

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

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

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

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

24 THE COURT: Okay. Anyone objecting to that proposal?

25 (No audible response.)

1 THE COURT: No. Okay.

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

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

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

17 So again, for the record --

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 MR. BICE: Yes, Your Honor.

24 THE COURT: Okay.

25 MR. BICE: That's right.

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

5 MR. BICE: Yes.

6 THE COURT: Go ahead.

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

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

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

1 boat as my clients are and the Essence parties.

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

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

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

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

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

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

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

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

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

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

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

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

2 Can I have my order back.

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

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

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

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

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

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

16 (Pause in the proceedings.)

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

18 MR. BICE: Yes.

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

21 UNIDENTIFIED SPEAKER: That's right.

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

24 THE COURT: No worries.

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

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

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

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

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

19 And, Marshal --

20 MR. BICE: Oh, apologies.

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

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

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

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

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

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

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

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

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

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

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

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

21 MR. BICE: Yes, Your Honor.

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

1 under the statute.

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

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

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

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

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

1 THE COURT: Sure.

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

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

7 MR. RULIS: Yeah.

8 THE COURT: That's why I was wondering.

9 MR. RULIS: Yeah.

10 MR. BICE: Okay. That's fine.

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

13 THE COURT: Okay.

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

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

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

1 THE COURT: Okay.

2 MR. RULIS: And so --

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

5 MR. RULIS: Yeah.

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

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

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

12 MR. RULIS: Yes.

13 THE COURT: Okay. Go ahead, please.

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

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

1 plaintiffs.

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

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

9 MR. RULIS: Sure.

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

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

18 MR. RULIS: Absolutely.

19 THE COURT: Thank you.

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

25 THE COURT: I'm familiar.

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

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

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

18 MR. RULIS: Correct.

19 THE COURT: They're not that grouping.

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

22 THE COURT: Okay. Go ahead.

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

1 case, and that is not correct.

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

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

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

22 And I can point Your Honor to the findings of fact
23 and conclusions of law granting in part our motion for summary
24 judgment was entered in this case on July 11th, 2020, at
25 3:29 a.m., and the Essence entities' opposition --

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

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

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

1 they were trying to get.

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

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

10 MR. RULIS: It was --

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

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

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

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

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

6 MR. RULIS: Yes.

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

10 MR. RULIS: Yes.

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

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

18 THE COURT: Right.

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

25 THE COURT: In part.

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

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

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

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

9 MR. PARKER: Again, just good morning, Your Honor.
10 I wanted to add. We've joined in MM's motion, but I
11 wanted to add to a few comments made by Mr. Rulis. I would ask
12 the Court to start the consideration of our moving to retax
13 based on the point raised by Judge Gonzalez, and this is
14 more -- I believe this touches upon what Mr. Bice said earlier,
15 but the Court indicated that we were simply added these
16 defendants as a part of the motion practice and that Essence
17 nor any of the other nonsettling defendants, they had no
18 obligation to participate in the process.

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

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

1 that -- procedurally they did not go forward.

2 So I wanted the Court to consider that.

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

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

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

18 And at the preliminary injunction hearing, we had
19 findings of fact and conclusions of law that confirmed that the
20 5 percent rule was a deviation from the law.

21 And following the Phase 1 trial -- or Phase 2 trial,
22 I'm sorry, the Court's final determination was that the
23 5 percent rule was a violation of law. So we prevailed on that
24 issue, and I understand and appreciate that it was a motion for
25 partial summary judgment, but it was ultimately a finding,

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

4 Your Honor, one thing that I would say that I don't
5 think Mr. Bice or any other defendants would object to is that
6 my client, Mr. Hawkins, unlike perhaps some others, was at
7 every court appearance for the most part. I think probably
8 90 percent of them. He was there at every trial. He was there
9 at the depositions. He didn't have -- he was there and did not
10 have to appear by video because he was in -- because he was
11 there in person. He was there, in fact, at the preliminary
12 injunction hearing. So he took a great amount of time of his
13 personal time to be there and to participate in this process.

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

20 THE COURT: Okay.

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

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

1 statute or court rules.

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

4 THE COURT: Okay.

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

8 THE COURT: I do recall that.

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

14 THE COURT: Okay.

15 MR. PARKER: Thank you very much.

16 THE COURT: Thank you.

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

19 UNIDENTIFIED SPEAKER: Yes, Your Honor.

20 MR. DZARNOWSKI: This is Mark Dzarnoski.

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

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

24 THE COURT: Okay.

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

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

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

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

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

19 THE COURT: You cut out. You cut out.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 THE COURT: Okay.

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

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

9 MR. DZARNOWSKI: -- intervene --

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

12 MR. DZARNOWSKI: Thank you. I am done.

13 THE COURT: Okay. I do appreciate it.

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

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

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

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

21 THE COURT: Okay. And you filed a joinder?

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

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

1 among the parties? I didn't see it.

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

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

11 MR. PUZEY: Thank you.

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

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

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

1 pleadings to the other action.

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

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

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

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

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

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

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

18 Thank you, Your Honor.

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

20 (No audible response.)

21 THE COURT: No? Okay.

22 MR. RULIS: There was just one --

23 THE COURT: Mr. Rulis.

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

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

4 THE COURT: Yes.

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

10 THE COURT: No, I appreciate that.

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

15 THE COURT: Yeah. Okay.

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

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

19 MR. BICE: Yes. Right.

20 THE COURT: And then --

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

1 thereto, an action for the recovery or possession of personal
2 property where the value of the property amounts to more than
3 \$2500, in an action recovered for money or damages where the
4 plaintiff seeks more than \$2500, which they did, and in a
5 special proceeding, except a special proceeding conducted by
6 306.040.

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

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

13 MR. BICE: Got it.

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

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

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

24 MR. BICE: Well, sure.

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

1 did you prevail on, because --

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

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

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

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

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

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

25 Because the Court doesn't understand this, Armen

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

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

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

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

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

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

4 MR. BICE: Thank you, Your Honor.

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

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

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

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

1 stand talking about market share.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

12 Thank you, Your Honor.

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

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

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

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

21 So a couple things to address that Mr. Bice said. He
22 said that they had to be brought into this, but I want to make
23 sure Your Honor understands. They weren't brought in late.
24 Essence intervened voluntarily over -- by the way, in Planet
25 13, in MM and LivFree's case, over our objection.

1 THE COURT: Uh-huh.

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

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

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

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

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

1 fighting over. Clearly we did prevail.

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

6 MR. RULIS: Correct.

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

10 MR. RULIS: Yes.

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

14 What did you get vis-à-vis Essence?

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

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

18 MR. RULIS: Sure.

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

1 straight prevailing on a monetary damages; right?

2 MR. RULIS: Right.

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

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

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

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

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

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

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

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

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

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

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

23 MR. RULIS: Mr. Graf would probably know.

24 THE COURT: I'm sure.

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

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

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

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

12 MR. RULIS: Sure.

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

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

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

20 MR. RULIS: Not --

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

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

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

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

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

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

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

18 MR. RULIS: Right.

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

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

24 THE COURT: Okay.

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

1 willing to add licenses and hand those out --

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

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

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

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

12 THE COURT: Okay.

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

16 THE COURT: Correct.

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

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

1 MR. RULIS: Right.

2 THE COURT: Okay.

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

6 THE COURT: Right.

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

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

11 MR. RULIS: Yes.

12 THE COURT: Yeah.

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

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

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

1 licenses.

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

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

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

14 MR. RULIS: Right.

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

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

24 MR. RULIS: Yes.

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

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

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

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

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

16 MR. RULIS: I know --

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

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

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

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

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

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

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

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

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

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

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

8 MR. RULIS: Right.

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

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

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

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

4 THE COURT: Okay.

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

8 THE COURT: Okay. Other than Mr. Parker on behalf of
9 his client, which I appreciate that there's an objection that
10 it's untimely, are you adopting the concept about whether or
11 not there is or is not a final judgment because certain aspects
12 are going to trial? And by the way, it's the week of January
13 3rd. It may not start on January 3rd. It's the week of
14 January 3rd.

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

16 THE COURT: That's unique for them.

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

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

21 MR. RULIS: Right.

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

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

1 that's law of the case because their clients are impacted.

2 Since your clients are settled out, I was going to ask you how
3 they would be impacted by these three, but...

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

9 THE COURT: Okay. No worries.

10 MR. RULIS: -- get this over with.

11 THE COURT: Yeah. Okay.

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

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

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

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

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

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

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

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

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

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

13 MR. ROSE: Understood.

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

18 MR. BICE: Well, I would ask --

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

21 MR. BICE: Yes. Apologies. Apologies.

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

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

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

8 MR. BICE: I thought so too.

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

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

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

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

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

22 MR. ROSE: Thank you, Your Honor.

23 THE COURT: So --

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

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

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

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

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

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

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

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

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

6 MR. BICE: Correct.

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

9 So, okay. With regards to document --

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

13 (Pause in the proceedings.)

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

20 And then we also have the other motion to retax, also
21 filed on 8/8. That was the TGIG was the one I just referenced,
22 2869. Thank you. You probably need me to clarify.

23 2870, Document 2870 also filed on 8/8, that was the
24 one Mr. Rulis mentioned at 5:15 p.m., and that was by MM
25 Development, and then we have joinders thereto.

1 Okay. And --

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

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

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

9 Okay. And then all of the various joinders thereto.

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

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

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

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

13 Essence did prevail. So it should be awarded costs.

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

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

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

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

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

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

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

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

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

3 MR. BICE: Sorry.

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

8 MR. BICE: Understood.

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

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

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

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

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

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

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

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

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

25 So can we just clarify that is there costs that are

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

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

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

15 THE COURT: It's conditioned on the --

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

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

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

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

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

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

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

15 MR. BICE: Yes.

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

19 MR. BICE: Right.

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

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

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

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

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

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

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

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

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

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

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

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

2 THE COURT: Did Essence join in --

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

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

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

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

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

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

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

1 the other parties.

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

3 MR. GRAF: A hundred percent.

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

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

11 THE COURT: But if I have a -- let's go back to the
12 54(b), right.

13 MR. GRAF: Yes.

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

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

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

1 make a closing argument against Clear River.

2 THE COURT: Okay.

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

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

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

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

17 MR. BICE: Yeah, I'll --

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

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

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

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

4 THE COURT: Let me see a if --

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

10 Is that fair?

11 THE COURT: Or reduction. Okay.

12 MR. RULIS: Yeah.

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

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

25 MR. RULIS: I -- your --

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

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

6 MR. PARKER: Thank you.

7 THE COURT: Essence, what's your position?

8 MR. PARKER: Thank you.

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

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

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

22 But on the overall --

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

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

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

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

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

17 THE COURT: Two weeks? You said two days.

18 MR. RULIS: Excuse me. Five pages and 10 days.

19 Excuse me, Your Honor. Ten days to supplement on that issue
20 would be -- yes, we're requesting that.

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

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

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

13 Counsel, go ahead, please.

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

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

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

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

3 MR. PARKER: Settling plaintiff, Your Honor.

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

8 Does that work for you, Counsel?

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

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

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

20 MR. PARKER: Of course.

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

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

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

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

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

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

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

15 THE COURT: Gotcha. Okay.

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

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

25 You understand why the Court is asking the question?

1 MR. DZARNOWSKI: This is --

2 THE COURT: Because I only --

3 MR. DZARNOWSKI: This is Mark Dzarnoski --

4 THE COURT: Go ahead, Counsel. My apologies.

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

7 THE COURT: Uh-huh.

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

11 THE COURT: Correct. Document 2869 filed on
12 8/8/2022, right, this Court only saw a seven page document. I
13 did not see in that seven page document a discussion of a
14 reduction of the costs. But once again, I was reading a lot of
15 things for preparation today. So I'm just making sure that if
16 there is -- so I see you have in your second-to-last paragraph,
17 right, it says, review of Essence (indiscernible) cost reveals
18 that other than the initial filing fee, it is submitted that
19 the claimed cause cannot be deemed to relate to petition for
20 judicial review since such claims limited to the records
21 (indiscernible)Taxation.

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

1 free.

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

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

10 MR. DZARNOWSKI: Yes.

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

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

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

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

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

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

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

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

15 MR. RULIS: Thank you, Your Honor.

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

17 THE COURT: Correct.

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

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

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

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

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

3 There's, additionally, I think it says 16 -- over
4 16,000 in process server fees for, you know, brushes or
5 stakeout -- you know, I've -- it's -- without much additional
6 description, and I think that's the other thing is there are
7 several entries when it comes to -- I know Westlaw, a research.
8 I don't think there's any sort of breakout of what that was
9 for. It's over \$9,000, and then there are just an entry of
10 \$8,000 or a little over \$8,000 in, quote, discovery-related
11 expenses. I don't believe that, quote, discovery-related
12 expenses are a recoverable cost under the statutory
13 (indiscernible) allowed.

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

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

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

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

23 THE COURT: Okay. Thank you.

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

1 Okay.

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

3 THE COURT: Sure. Go ahead, please.

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

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

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

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

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

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

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

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

25 THE COURT: Mr. Bice on behalf of --

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

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

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

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

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

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

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

24 THE COURT: And see that's where --

25 Okay. Anybody else want to comment on the joinder

1 concept?

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

4 Certainly joinders have been very commonplace in
5 this.

6 THE COURT: Yeah.

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

11 THE COURT: That have addressed an issue --

12 MR. RULIS: Additional.

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

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

21 But it --

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

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

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

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

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

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

20 MR. RULIS: Nate Rulis for the record.

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

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

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

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

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

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

14 THE COURT: And that's fair.

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

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

24 Mr. Rulis.

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

1 of MM and LivFree.

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

6 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

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

18 Okay. Just one second, please.

19 (Pause in the proceedings.)

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

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

1 of course, was just a hearing. I believe it was on September
2 8th --

3 THE COURT: Right.

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

8 THE COURT: Correct.

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

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

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

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

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

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

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

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

17 MR. J. SMITH: Judicial review.

18 MR. BICE: What's that?

19 MR. J. SMITH: Judicial review.

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

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

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

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

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

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

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

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

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

3 MR. SLATER: Absolutely, Your Honor.

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

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

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

1 before the Court?

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

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

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

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

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

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

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

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

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

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

5 (Pause in the proceedings.)

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

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

9 Go ahead, Counsel.

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

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

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

24 MR. BICE: I see.

25 THE COURT: And if the Court is addressing an

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

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

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

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

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

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

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

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

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

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

24 THE COURT: I appreciate it.

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

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

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

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

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

1 behalf of MM and LivFree, for the record.

2 I do want to address this issue because I believe we
3 did raise it in our motion to retax on page 7, lines 3 through
4 7 of the motion to retax as to the settling plaintiffs. So it
5 may be -- maybe that's what Your Honor was alluding to when you
6 said somebody might be jumping up is that this might be
7 something that we need to address as part of our previously
8 agreed to supplementation.

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

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

19 So let's circle back.

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

1 remote appearance request that was made.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

4 But right now nobody is being able to point it to me,
5 but I'm giving you all the benefit of the doubt that within
6 3,000 plus entries, if somebody says that they did it and
7 nobody can tell me that they didn't do it, I think that is a
8 fair carve out. So the ruling is --

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

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

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

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

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

1 on August 9th.

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

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

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

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

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

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

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

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

25 Their additional argument, which I had gotten to my

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

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

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

19 Okay. So --

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

22 THE COURT: Okay. Yes, Mr. Parker.

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

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

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

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

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

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

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

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

3 Is that correct?

4 MR. BICE: Yes, Judge.

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

7 MR. BICE: Yes, Your Honor.

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

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

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

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

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

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

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

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

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

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

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

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

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

6 MR. BICE: A memo of costs would have been due on the
7 9th believe -- or 8/5, sorry.

8 THE COURT: The motion to test --

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

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

14 MR. RULIS: Yes.

15 THE COURT: With the first court date being Monday.

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

18 THE COURT: Right, which is fine.

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

20 MR. BICE: What you did.

21 MR. RULIS: Yes.

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

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

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

4 MR. BICE: Yes.

5 THE COURT: Okay.

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

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

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

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

19 MR. BECKSTROM: Sorry. I turned it off.

20 THE COURT RECORDER: You turned off, yeah.

21 THE COURT: You turned it off. Okay.

22 So did you get Mr. Parker's viewpoint.

23 THE COURT RECORDER: Yes.

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

25 THE COURT RECORDER: Yeah.

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

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

5 MR. BICE: Yes.

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

9 MR. PARKER: Yes, Your Honor.

10 (Pause in the proceedings.)

11 THE COURT: Okay. So --

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

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

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

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

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

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

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

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

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

7 MR. BICE: I did that --

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

9 MR. BICE: It was my mistake.

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

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

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

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

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

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

1 record.

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

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

10 MR. PARKER: And, Your Honor --

11 THE COURT: Okay. Wait. Wait. Wait.

12 MR. PARKER: I'm sorry.

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

16 So, okay. Let's go --

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

18 THE COURT: Let's go clear, okay.

19 MR. BICE: Okay.

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

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

5 MR. PARKER: Thank you, Your Honor.

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

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

11 MR. BECKSTROM: James Beckstrom on --

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

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

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

19 Okay. So I heard one other voice --

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

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

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

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

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

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

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

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

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

20 The granting of the motion is in its entirety with
21 two carve outs, which is where we were to trying to start about
22 45 minutes ago. Okay.

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

1 retax, and that would be appropriately to be addressed.

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

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

13 MR. BICE: We haven't talked.

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

18 That takes care of Essence, I hope.

19 MR. BICE: Yes.

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

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

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

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

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

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

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

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

19 THE CLERK: The 27th.

20 MR. GRAF: Yep.

21 MR. RULIS: Your Honor, Nate Rulis for the record.
22 That's -- I had proposed that to Mr. Graf.

23 MR. GRAF: He did.

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

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

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

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

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

7 UNIDENTIFIED SPEAKER: Yes.

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

10 THE COURT: Plaintiffs TGIG --

11 Yeah, I'm sorry. Go ahead.

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

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

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

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

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

5 But, oh, first off, the 27th, is there any religious
6 accommodations that the Court needs to take into account on the
7 27th? Because I won't schedule something if that impacts
8 somebody for religious accommodation standpoint, i.e., it's the
9 second day of Rosh Hashanah. So if that impacts anyone, we're
10 going to find you a new date. And I moved things because I'm
11 not impacting anyone.

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

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

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

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

24 THE COURT: And your fees motion can be on either the
25 27th or the new day if the 27th doesn't work for

1 accommodations. Does that get you taken care of?

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

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

7 MR. WILLIAMSON: Your Honor. Your Honor. Your
8 Honor.

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

11 MR. WILLIAMSON: Sorry. Richard Williamson for Deep
12 Roots Harvest, Your Honor.

13 THE COURT: Yes.

14 MR. WILLIAMSON: Just one quick question as it might
15 impact what's happening on the 27th. The five page brief that
16 Mr. Rulis is going to file in 10 days, I assume that is only as
17 to the Essence motion, and it wouldn't have any dispositive,
18 since that kind of allocation argument has been made with
19 respect to other memoranda of costs, such as my clients.

20 THE COURT: Counsel, we're not getting into the
21 arguments, but as everyone realizes, I only addressed one
22 motion today. I cannot and I do not --

23 MR. WILLIAMSON: And so we don't need to weigh in on
24 that.

25 THE COURT: -- give advisory rulings on anything that

1 I have not specifically addressed. Okay?

2 MR. WILLIAMSON: Okay. Thank you.

3 MR. RULIS: Your Honor, sorry. Before Todd goes,
4 Nate Rulis for the record.

5 Maybe I can have that discussion with Mr. Williamson
6 and Mr. Rose or anybody else and sort that out, and we can
7 include that as part of our letter on the 27th.

8 THE COURT: When a beautiful stipulation comes my
9 way, life is good. Okay. So --

10 MR. BICE: Yes. Just because I want the record to be
11 clear, because --

12 THE COURT: Mr. Bice speaking. Go ahead.

13 MR. BICE: Oh, Todd Bice on behalf of the Essence
14 parties.

15 I need the record -- I just want to make sure the
16 record is clear because the Court had said something was
17 denied. I think their motions to retax were denied. So costs
18 are awarded subject to the conditions that you have imposed
19 limitations and the caveats, and the motions to retax are
20 denied based upon those same --

21 THE COURT: With respect to Essence, consistent with
22 the carve outs --

23 MR. BICE: Correct.

24 THE COURT: -- yes.

25 MR. BICE: Thank you.

1 THE COURT: Which is the only motion the Court dealt
2 with today.

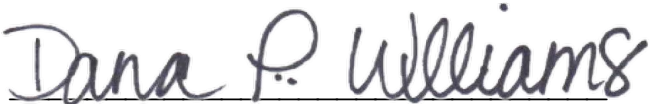
3 MR. BICE: Thank you.

4 THE COURT: It's wonderful to see you all. Have a
5 good rest of your day. Have a great weekend. Thank you so
6 very much.

7 (Proceedings concluded at 12:07 p.m.)

8 -oOo-

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

12 
13

14 Dana L. Williams
15 Transcriber
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