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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
Before The Honorable Laurel Beeler, Magistrate Judge

RICE,)
)
Plaintiff,)
)
vs.) No. C 19-04250-LB
)
CITY AND COUNTY OF SAN)
FRANCISCO, et al.,)
)
Defendants.)
_____)

San Francisco, California
Thursday, May 25, 2023

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 11:21 - 12:42 = 1 HOUR, 21 MINUTES

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(APPEARANCES CONTINUED ON THE NEXT PAGE.)

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1 Thursday, May 25, 2023

11:21 a.m.

2 P-R-O-C-E-E-D-I-N-G-S

3 --oOo--

4 THE CLERK: Calling civil action 19-04250, Rice
5 versus City and County of San Francisco.

6 Counsel, if you could please state your appearances for
7 the record.

8 MS. JIAM: Yes. Hannah Jiam from Morrison and
9 Foerster, LLP, representing the plaintiff Allison Rice.

10 MS. LEE: And Annie Lee, also from Morrison and
11 Foerster for the plaintiff.

12 MR. FISHER: Ramsey Fisher, also for the
13 plaintiff.

14 MS. AMRAM: Good morning, your Honor. Galia Amram
15 for the plaintiff.

16 MS. ROSENBLIT: Good morning, your Honor. Renee
17 Rosenblit for the City.

18 MR. ROLLAN: Good Morning, your Honor. Raymond
19 Rollan for the City.

20 THE COURT: Okay. So let's talk trial logistics
21 first, and then we'll do the in limine motions. Normally, I
22 would have gotten out -- I've never had a case ever where
23 people haven't agreed on the joint statement for the case
24 ever, ever in my entire career, ever.

25 Is it really true that you guys can't agree on a joint

1 statement of the case? I will write it for you, and it
2 won't be what you want. If you agree on a joint statement
3 of the case, I'll let you do attorney voir dire and do a
4 mini opening during voir dire, giving all the newer lawyers
5 great experience.

6 MR. FISHER: Your Honor, I think we can agree. I
7 think if you give us maybe 15 minutes after this, we can --
8 we could probably come to agreement --

9 THE COURT: Okay.

10 MR. FISHER: -- and that will be fine.

11 THE COURT: Okay. I do let lawyers do voir dire.
12 So one of the things we're going to talk about -- I don't
13 know, why don't you just -- so we have a dialogue as opposed
14 to everybody -- I don't know who's handling the -- kind of
15 the CMCE things before we get into the in limines. So on
16 the plaintiff side -- I don't know who wants to be at that
17 podium. And if you want to sit at counsel's table, that's
18 okay. It's not ordinary, but you're welcome to.

19 I started on your pretrial order. You guys -- just for
20 some overall timing things, we'll make sure we go through
21 the scripts. You have a jury questionnaire, which is a
22 pretty easy one.

23 Elaine, will you remind me the processes that we have
24 to get it to Erin? We have to get it to Erin by e-mail. Do
25 the lawyers e-mail it to her directly or by -- in Word copy

1 so she can do a Doodle poll? You guys should have a Doodle
2 list that you're doing today. So Erin Hamilton is it -- and
3 she may want a CC because in the past, like, she wants a --
4 a line of communication with the lawyers to be able to give
5 her -- since you're not even -- you may or may not even be
6 here.

7 I told you previously at our last get-together when we
8 had to get Erin, and you submitted your questionnaire --
9 when we had to get Erin the questionnaire and when she would
10 get you the -- and I've lost track of that. But if you
11 could e-mail in Word copy -- in Word format in a joint
12 e-mail saying this is our joint proposed questionnaire,
13 Elaine will check in on the process and then let you know
14 when you get the questionnaire back, which will be in plenty
15 of time before voir dire on Friday the 16th.

16 So when we talked previously, there's no way you can
17 start earlier than Friday the 16th, right? But you don't
18 even want to open on Friday the 16th. Is that correct?

19 MS. JIAM: That's right.

20 THE COURT: And why can't you open on the 16th?

21 MS. JIAM: We were hoping to open on Tuesday for a
22 few reasons, including that it's a long weekend and we would
23 prefer to just start trial with the openings on Tuesday
24 morning, so the jury gets all of it together.

25 THE COURT: So you guys had said 10 to 12 hours.

1 I'm thinking five to seven hours per side for the nature of
2 the case. You're not getting 10 hours. So just the fact --
3 that's why I thought to give you more time. I still have to
4 work out the trial day. My trial day is 8:30 to 1:30 or
5 2:00 normally. I'm going to see about the numbers. I want
6 to give everybody the experience. But somebody -- when
7 somebody dies, they get 15 hours per side, and mostly it's
8 seven hours. And this isn't -- this is a small issue, not a
9 big one. I'll try for seven hours a side. I don't see it
10 being more than that. The case has to be to the jury on
11 Thursday. So you have -- that seven hours aside, jury
12 conference -- we should be able to get through that. We
13 should be able to get through that and closings by the close
14 of business on Thursday.

15 So that would -- if I run a 9:00 to 5:00 day, which I'm
16 -- I have it in my request to do it, that would be six-and-
17 a-half hours of trial time, 15-minute breaks for the jury,
18 45 minutes for lunch. Not -- it's not my preferred trial
19 day, but there are limits on availability, and it has to be
20 in the jury Thursday so they can deliver it on Friday. And
21 it won't be in this courtroom. It will be in courtroom B on
22 15. This is -- I'm on this courtroom because I'm doing duty
23 this month, and I didn't want to -- I was supposed to have a
24 10:30 calendar, but it went away, and my -- luckily, because
25 my -- you were always going to trail my 10:30 in-person

1 criminal calendar, but then my first technical snafu
2 reasons, my -- I went 15 minutes late on my 8:30 to 10:30
3 Zoom calendar. And then I had to pick up the cart. I had
4 to wheel everything over to my desk in the cart for my Zoom
5 calendar, unpack it, and then repack it. And that took 15
6 minutes. So that's kind of -- I know that's tight, but it's
7 -- that's -- nobody else in the courthouse would allot you
8 more time than that.

9 MS. JIAM: So, your Honor, just so I understand --
10 so you're --

11 THE COURT: I've got time constraints too. I've --
12 -- I'm booked the next week. I'm on a plane on Monday.

13 MS. JIAM: Okay. All right. That was one of my
14 questions was why we needed the jury to have it on Thursday.
15 But it's because you need to be able to take the verdict on
16 Friday?

17 THE COURT: It's not more than a week trial
18 anyway, and it's -- unfortunately -- I didn't want to get to
19 the day on Friday to deliberate.

20 MS. JIAM: Okay. And if they don't --

21 THE COURT: I think you can do it. I mean, if you
22 really don't like those time periods, we could talk about a
23 different trial date, and I would have to look at my
24 calendar, but that would be -- you guys are all ready to go.
25 And it's just not that long a trial. There's some

1 interesting -- the basic facts are undisputed. You have
2 your stipulated facts, what happened generally. You can't
3 -- oh, by the way, you have 500 exhibits.

4 MS. JIAM: I know.

5 THE COURT: I did a six-week -- five-week class
6 action antitrust case with fewer than 100 exhibits. I've
7 never seen a case where you need that many exhibits. So
8 that's another reason for trial times, you know -- the more
9 time I give you, the more exhibits you'll put in. You'll
10 never get to the jury in this case. There's one issue in
11 this case, and it's how you illustrate it that's going to --
12 where the case is going to stand or fall. So it just
13 doesn't make -- no one is going to clutter it up with a lot
14 of clutter. It's just -- it's a very narrow issue.

15 MS. JIAM: And so, your Honor, you're
16 contemplating a 9:00 to 5:00 trial day with --

17 THE COURT: If I can, right. But as -- with seven
18 hours -- I'm going to look, five to seven hours aside -- not
19 -- I'll look at it, and I'll give as much as I can. But
20 you're going to have to be very efficient if you have a
21 witness -- we run a clock. If you have time and your
22 witness is not here, you lose that time from your clock.

23 MS. JIAM: Understood.

24 THE COURT: So it's got to work that way, and
25 you've got to focus on what matters. And there's one issue

1 at stake here, and it's paying roommate. That's it. And I
2 think that you can deal with that in your openings. You can
3 deal with that with your stipulations. You have every
4 interest to slim it. I noticed that you had reached some
5 stipulations already, the basic stuff that happened.
6 Doesn't mean you can't talk about it. It doesn't mean -- I
7 also believe I -- just in case there's any -- I let people
8 show their -- as long as evidence is coming in -- there are
9 a bunch of different things we'll go over from a -- you
10 know, an optics thing, and I'm thinking we should have
11 another pretrial conference. Not a real one, but just a
12 touch base one before jury selection.

13 I'm a little worried. Because it's a modest
14 questionnaire and it'll be in an advance -- it was
15 practically a same day thing. But because we can now do --
16 ordinarily, it was such a modest questionnaire, just bring
17 in the jury that morning, have them fill it out and have you
18 have an hour to digest it. But it can be delivered to you
19 in the order of calls so you could be ready to go. So the
20 jury will be in, they'll get their jury video, and they'll
21 tell us what time we start on Friday. To waste a day, it's
22 too bad. There was -- we could have done it. I appreciate
23 the thing about the long weekend. I think all of us, sort
24 of, you know, forgot that it was a long weekend when we set
25 the trial.

1 MS. JIAM: And, in fact, I don't think it was a
2 long weekend when we set the trial, but it became one later.

3 THE COURT: It wasn't a long -- it wasn't a long
4 weekend. It wasn't -- it became a long weekend. Yeah. So
5 I wish we had that extra day, but we don't. And, I mean, I
6 could get someone to babysit it for a verdict on Monday, or
7 I could delay my flight as late in the day as I can on
8 Monday. I have a conference on Tuesday, and it's Boston, so
9 it's nonstop. So I can give myself a little wiggle room,
10 but we need to get it to the jury, preferably Thursday
11 afternoon. There's a possibility you could close on Friday
12 morning.

13 MS. JIAM: Okay. All right.

14 THE COURT: I prefer that because it's better for
15 you, get a fresh start. We do a jury conference. It's a
16 little more relaxed. So that's what I'll aim for, but it --
17 there's no guarantee.

18 MS. JIAM: Okay. And, your Honor, while you're
19 thinking about the schedule and the breaks, there's just one
20 personal issue I wanted to flag, which is that I need to
21 pump --

22 THE COURT: Exactly. We'll figure that out.

23 MS. JIAM: Okay.

24 THE COURT: Thank you for letting us know that.

25 MS. JIAM: I'm sorry.

1 THE COURT: You tell us what your needs are, and
2 we will make it work.

3 MS. JIAM: Okay. Thank you.

4 THE COURT: Yeah. I mean, we'll figure out a
5 private place, and -- it's courtroom 15, so there are lots
6 of options, including -- there are little conference rooms
7 right there. It's all fine.

8 MS. JIAM: Okay.

9 THE COURT: We'll figure out a space. You just
10 tell me what your needs are. So, normally, it's 8:30 to
11 whenever. And I think maybe -- I asked Judge Freeman what
12 her schedule -- she runs a full day, and I thought, well,
13 I'll just copy her for this. It might be 9:00 to 4:00, but
14 it might be 9:00 to 5:00. But in any event, I did the math.
15 And, normally, it's a 15-minute break every hour-and-a-half
16 for the court reporters. I assume you're not ordering
17 dailies. And if you did order dailies, it gives us more
18 flexibility because we can -- you know, the court reporters
19 need a break every hour-and-a-half for 15 minutes. And then
20 if you did order dailies, then that gives us a little bit
21 more flexibility. And then we have to give them some time
22 for lunch.

23 MS. JIAM: Okay.

24 THE COURT: But, you know, 45 minutes -- I found
25 that 30 minutes isn't enough. I might experiment with 30

1 minutes for lunch. And then that's how the day gets broken
2 up. But if your needs are different, you just tell us what
3 those needs are.

4 MS. JIAM: Okay. Would it be best for me just to
5 e-mail you?

6 THE COURT: Yeah, that's fine. Whatever is
7 easiest for you is fine with us. We'll make it work. And
8 this is to remind us along the way. I mean, nothing is -- I
9 know nothing is -- you can't just, like, nail it to a
10 timeline. So the jury is never disappointed --

11 MS. JIAM: Thank you.

12 THE COURT: -- the jury is never disappointed with
13 a break. So we can always take breaks early, and it'll be
14 fine. We can be flexible.

15 MS. JIAM: Okay. I really appreciate that.

16 THE COURT: Okay. So I just have -- and we will
17 get to the in limine motions.

18 Elaine, I know you're doing the trial test even though
19 you won't be here. I will issue a pretrial order, and,
20 hopefully, it'll be sometime over the weekend. I do have a
21 couple of things that are in -- oh, this is another question
22 for you. For the jury instructions -- I just eyeballed
23 them. So let's see. Joint statement, I'm putting that up
24 here. Joint statement -- e-mail it. One thing to think
25 about is -- so jury instructions.

1 I have your jury instructions. I'm not sure that they
2 -- the way my order -- my pretrial conference order says --
3 it says, "Disputed instruction, disputed instruction, any
4 stock instruction." Are there form -- I didn't see the form
5 instructions. There are no form instructions. But you gave
6 me the citations for the things that you relied on, but
7 there are no form instructions. Oh, yay.

8 MS. JIAM: Right. So just to be clear -- so the
9 parties agreed on the bulk of, like --

10 THE COURT: Well, the standard ones, yeah.

11 MS. JIAM: -- the standard ones, right.

12 THE COURT: Yeah. Yeah.

13 MS. JIAM: And so we just included that list. But
14 for the meat of the case -- for the substantive
15 instructions --

16 THE COURT: There are no form instructions.

17 MS. JIAM: -- there are no form instructions.

18 THE COURT: Ninth Circuit has no instructions.

19 MS. JIAM: Yeah.

20 THE COURT: Okay. Okay. Good to know. That
21 would explain why you didn't include them. I will write
22 this for fun. I'm going to run it. I know that with --
23 Yvonne Gonzalez Rogers had two failure to accommodate cases.
24 I'm waiting for the names to swim into my head. One began
25 with A. But I'll -- I will look at those instructions in

1 cases that I know where they issued instructions as part of
2 my thought process. During trial -- what I'll do is, before
3 trial for sure -- we don't have to decide any of it, but I
4 will file the -- what's most important -- I'll do -- propose
5 the preliminary jury instructions. We just have a very
6 skeletal description of the elements. It will have the
7 simple -- I'm just trying to think on my last cases because
8 I'm experimenting with processes to make it more interesting
9 for the jury.

10 One of the jury told me in federal trial that they wish
11 they had had -- oh, they wish they had had a copy of the
12 preliminary instructions when they came in. So I don't see
13 any reason not to give them the preliminary instructions
14 once they've been instructed. They said it would be helpful
15 for them to follow along.

16 I do not do voir dire myself. I do for-cause voir
17 dire. I think that lawyers do -- I mean, lawyers do it
18 better than judges do. That's what I thought as a lawyer.
19 They just never let me do voir dire. I always wanted to do
20 voir dire. So you get to do voir dire. If you want, you
21 confer on doing many openings -- very many, like, five
22 minutes -- during your opening voir dire. It may not be
23 necessary because we're going to do the neutral statement of
24 the case and since we need to move things along.

25 I don't know if you've thought about how much time you

1 think you want to do voir dire. So we'll sit eight,
2 ultimately, and I don't know what the -- the way -- I --
3 you'll get the questionnaires in order of call. I don't
4 believe in giving them to you all mixed up because it's just
5 unnecessarily stressful. I hated when that happened to me.
6 So you'll get them in order of call, so you know who'll be
7 coming in the doors first. And we'll do some general --
8 I'll do some just general questions on hardship. I usually
9 don't let people, you know, raise their hand and talk
10 unnecessarily. But sometimes we talk about it later. We
11 kind of do enough -- we -- well, yeah, this is the big thing
12 in the pandemic procedures, remember? I think I do need to
13 see you. Erin already e-mailed us when she wants the
14 for-cause challenges.

15 So what we do is we get together, we kind look at that
16 before Friday. She sent us that day, Elaine. She sent us
17 -- when we get the questionnaires -- because we'll be able
18 to get through the questionnaire now. And she sent us an
19 e-mail about when she wants the -- when she can get the
20 questionnaires to the lawyers and when she wants us to get
21 together. And what we do is, you file a joint statement
22 saying we agree. It's only if you agree on it, because we
23 can't tell if there's really for-cause if you disagree. But
24 if there -- anyone that you agree on from the people who are
25 in, it saves them coming in, it saves the jury work.

1 They're still undergoing sort of moderate pandemic
2 procedures. So we'll have a -- we could even do it by Zoom.
3 It doesn't have to be in person. Same with the final
4 pretrial -- final, final pretrial conference. It's just to
5 talk out any logistics issues that might have come up. But
6 by that time, I will have filed the preliminary jury
7 instructions. I probably would have filed the final jury
8 instructions proposed, but we won't talk about those then
9 unless there's anything glaring, because we'll have a
10 conference during trial. But we go through them, and I
11 issue a quick little order, and then they don't come in the
12 next day. Yeah.

13 So -- and so Elaine will remind us -- find that e-mail
14 and send it to me too because I need to put it in my
15 pretrial order. And she'll confirm that with Erin today.

16 Okay. So what else do we need to talk about before in
17 limine?

18 MS. JIAM: While we're talking about voir dire, so
19 we'll sit eight. Are we doing alternates or no?

20 THE COURT: Well, no. Eight is the alternate.
21 It's -- six plus two is eight. It'll be fine for a week
22 trial. That's typical.

23 MS. JIAM: Great. Yeah.

24 THE COURT: And everybody will deliberate three
25 peremptories each. Oh, yeah, voir dire, just half an hour

1 per side. I don't think you would probably need more than
2 that. I've never -- in this -- in my class action antitrust
3 case, we didn't even use an hour. Yeah. Okay. Try to stay
4 within the meat and bones. Okay.

5 So -- all right. It's a little big, you know. It's
6 trying to give you the full experience. So -- all right.
7 So 30 minutes. Oh, if there are witnesses who are joint --
8 and I haven't really looked -- I will look at your witness
9 list and see how much you -- but if you're calling the same
10 people, they go in in the plaintiff's case. But I give a
11 little -- I say to the juror because of efficiencies, "These
12 are both parties' witnesses," and I'll just explain that.
13 So that just -- I'll go through that process. I haven't
14 gone through it yet, but I'll go through that obviously
15 before the trial.

16 We've already talked about jury questions, talked about
17 joint statement of the case. Thanks for working it out. We
18 talked about the June 15th CMC. I think we'll probably do
19 it by -- at 1:00 o'clock, just so you don't have to sit
20 through the CMC calendar. But we may adjust that depending
21 upon what Elaine tells us. Actually, let's wait until --
22 did you find that e-mail about what she -- when she wants
23 the for-causes back? Did you forward it to me?

24 THE CLERK: I did. (Indiscernible).

25 THE COURT: So that's (indiscernible) today?

1 THE CLERK: (Indiscernible).

2 THE COURT: But she also told us when she wants
3 our for-cause challenges back. She said 3:00 p.m. on some
4 day.

5 THE CLERK: 3:00 p.m. (Indiscernible).

6 THE COURT: Okay. So if we do 1:00 p.m., we can
7 -- if you give me the joint status, so we'll put this in the
8 minute entry, but -- so you'll get the -- so you'll have the
9 jury questionnaires no later than June 9. No. Is that
10 right? No, no. She said she would send them about June
11 9th. You'll have them by June 12.

12 We'll have the CMC on June 15th, the final, final,
13 final pretrial conference. June 12th is a Monday. And if
14 you could even -- do get them, digest them. In my
15 experience with for-cause challenges for eight plus six -- I
16 mean, usually, you could sit a jury out of 20 -- the first
17 20. So I think at some point you could stop. But if you
18 can go through them, I don't know how many you'll get. It's
19 just sometimes you get more, sometimes you get fewer,
20 depending on the pandemic. But do try to go through them,
21 and then just do a stipulated -- a stipulation. It's
22 helpful -- you know, again, you can do the second piece of
23 it, which I think is helpful. You could say joint
24 statement, "The parties agree that these jurors should be
25 excused for-cause. Jurors" -- just reference them -- a

1 juror number. That's all you need to do. The parties --
2 there may be -- you know, the plaintiff thinks there may be
3 additional issues with these jurors. List them. Defendant
4 thinks there may be additional -- these are -- that just
5 flags it for the next day. It gets everybody on the same
6 page. If you can file that -- if you get them the 9th and
7 we're not -- then you get them the 12th -- then we're
8 meeting on the 15th. I suppose if you get them to me by the
9 14th at noon -- be filed by the 14th at noon -- and then the
10 way it would work is we do our job and that we at least -- I
11 would have looked at them. At the hearing, I will say,
12 "I've looked at them. I agree, and I find" -- and I'll make
13 the appropriate findings, and I'll issue an order. Just
14 submit a proposed order when you do that joint statement,
15 and that will be something I can just sign with the
16 requisite standards for cause. Okay.

17 MS. ROSENBLIT: And, your Honor, you had also
18 mentioned that the examination of the witnesses might be a
19 one and done situation. Does that mean that the cross is
20 not limited to the scope of the direct?

21 THE COURT: So -- well, if you're calling a
22 witness, it is their witness too, so you get extra time.
23 And so let's say -- so you're -- let's say you're calling an
24 adverse witness, and so you're using -- you're basically
25 cross examining, but you're putting the evidence in your

1 evidence-in-chief. So they don't get recalled later. And
2 so it's mostly their issue, not your issue because it goes
3 direct, cross, redirect -- well, sorry. Direct, direct
4 cross, redirect, cross -- you know, you get to go last --
5 everybody gets their turn, because they get their extra
6 redirect. Everybody gets their redirect, but they get
7 mushed together. It's like when you have motions for
8 summary judgment, where you go motion, cross motion,
9 opposition, opposition reply, reply. It works like that.
10 The person who brings the motion, who's got the witness,
11 gets the last word. But since it's both of your witnesses,
12 you both get the last word.

13 MS. ROSENBLIT: For example, if plaintiff calls
14 Maria Benjamin, who's a city employee --

15 THE COURT: Yes.

16 MS. ROSENBLIT: -- we'll do their cross
17 examination. Then we'll do our direct examination, which
18 won't be limited to the cross.

19 THE COURT: Exactly.

20 MS. ROSENBLIT: And then we'll go back and forth.

21 THE COURT: Yeah. Exactly. And so -- and that --
22 it's only an issue -- exactly. Exactly. It's only an issue
23 for you, really --

24 MS. ROSENBLIT: Right.

25 THE COURT: -- because you're -- because it's not

1 an issue for you, and -- because --

2 MS. ROSENBLIT: And then we -- it will go back and
3 forth.

4 THE COURT: Exactly. And then -- but you'll still
5 get your final whatever, so it'll work out. Remember, so
6 many of these witnesses are just percipient witnesses. And
7 all you're doing is you're inquiring into the bases for
8 their decision. So that's that.

9 MS. ROSENBLIT: Your Honor, while we're on
10 witnesses --

11 THE COURT: Yes.

12 MS. ROSENBLIT: -- I just wanted to confirm with
13 opposing counsel that all of our witnesses will be in
14 person. We don't -- we're not anticipating any Zoom.

15 THE COURT: Are you calling everybody in person?

16 MS. JIAM: We are actually not entirely sure yet.

17 THE COURT: We don't have the ability to be agile
18 on this point. I have absolutely had people testify by
19 video, and it's worked fine. We did it in Sutter, we did it
20 in employment case this fall. It all magically happens.
21 But Elaine is going on vacation on the 15th of June, so
22 somebody else will be covering me.

23 And, Elaine, how did we get Beryl vs. Navient set up?
24 It was in courtroom 15 too. That was perfect set up.

25 THE CLERK: (Indiscernible).

1 THE COURT: No, no, no. I'm just asking how did
2 it work logistically? That was the -- that was the founder
3 of the -- of Earnest, LLC.

4 THE CLERK: (Indiscernible).

5 THE COURT: And remember the New York lawyers,
6 Queenie and the other guy, remember that was after --
7 acquired by Navient. Remember that case? No, no, no. It
8 was our trial in the fall, October. But we -- so we had a
9 big -- we had the IT set up there. How did it work? You
10 can look it up and let the -- let folks know. Yeah, no, no,
11 yeah.

12 THE CLERK: (Indiscernible).

13 THE COURT: I remember it was the plaintiff's
14 verdict. It was a kind of big one. Okay. All right.
15 So --

16 MS. JIAM: Yeah, we'll figure it out from our side
17 so the Court hopefully doesn't have to deal with it.

18 THE COURT: Well, you still have to communicate --
19 like, you can't just, like, wheel this stuff in.

20 MS. JIAM: Yeah, I know. Absolutely. Yeah.

21 THE COURT: And it can't happen the day before
22 trial either.

23 MS. JIAM: Yeah. We're working on figuring out an
24 answer as to whether this witness will need to Zoom.

25 THE COURT: Is Mr. Rice going to be able to --

1 MS. JIAM: Yeah, he'll be here in person.

2 THE COURT: That's fine. If you guys -- I mean,
3 you guys ought to try to work it out. I like to be -- they
4 weren't -- I would say this. Calling a witness by video is
5 either neutral or it hurts the proponent of the testimony.
6 So you probably shouldn't care on the CCSF side of it. And
7 so -- it's often neutral. Like I said, it was totally
8 neutral. It didn't matter at all. And other times, it's
9 not.

10 So I think I -- what I'm -- I'm mostly saying this so
11 if you need to call someone by video -- it's so easy, and
12 it's so much better than video depo testimony, which is just
13 so boring. Works great.

14 You guys have got to confer about it. And then what
15 you need to do is confer -- I would say -- how long do you
16 need to figure it out?

17 MS. JIAM: Probably a week.

18 THE COURT: Okay. That's fine.

19 MS. JIAM: We're just trying to nail down --

20 THE COURT: So update -- so video witness --
21 probably just say witnesses -- video. You've got
22 (indiscernible). It may be that those guys brought in the
23 equipment themselves in Beryl vs. Navient. In Sutter, they
24 certainly did. That courtroom was so filled with technology
25 that there was no room for the lawyers. And so -- but it

1 worked great, and it worked great in that courtroom. I just
2 don't know who set it up. We might have set it up, and it
3 worked great. Very easy to see that the courtroom is well
4 set up for that stuff, so you don't need to worry. But you
5 do need to coordinate with Steph and Carl, who's the head of
6 IT.

7 Elaine, you can ask him what we did with Beryl, and
8 then -- and update me.

9 MS. JIAM: Judge, while we're talking about
10 technology, is there a time that we can coordinate with
11 Elaine where our paralegals can come in and check out
12 equipment?

13 THE COURT: Yes. And so we usually do a
14 walkthrough. We do a walkthrough the week before. Send
15 Elaine a message saying we want to -- that will be her kick
16 off. "We want to do a walkthrough for the technology,"
17 preferably the week before.

18 I cannot remember -- do jurors have individual screens
19 in courtroom D, Elaine? They don't. I don't remember what
20 we did the last time. To set it up again, Elaine will
21 contact Steph. And it worked great the last time in that
22 courtroom. Whatever technology we set up, it worked great.

23 MS. JIAM: Excellent. Okay.

24 THE COURT: And so I would just mimic that. So
25 send Elaine a joint e-mail saying we want to confer about

1 technology. Elaine will simultaneously reach out to the IT
2 guy who helps us with courtroom set up, and he'll work with
3 you to come in and do a walkthrough. You'll want to do
4 things, and he'll tell you you can't. But, hopefully, you
5 can do the -- Elaine's last day is June 14th.

6 Is that right, Elaine?

7 THE CLERK: Yes.

8 THE COURT: And so you should coordinate the
9 walkthrough with Elaine before she leaves because she can
10 make sure everything is good. And so, yeah, we'll do that
11 June 15th CMC at 1:00 o'clock. We can do it by Zoom. I
12 mean, I'm happy to do it in person, but if you don't care --
13 I'm just seeing if there's anything else I need to go
14 through.

15 And we'll just very quickly go through motions in
16 limine. It's a big day today. I have lots of motions on my
17 calendar this morning, so --

18 MS. ROSENBLIT: Your Honor, I have a couple of
19 procedural --

20 THE COURT: Yes. I just want to make sure I'm not
21 missing anything on my -- yeah. I usually do depo. My
22 procedures for depo designations are pretty clear in my
23 pretrial order. It's very easy to do. I know you gave them
24 to me. I'll move it all to the courtroom. But just -- I do
25 not -- you need to be prepared to have all the juror

1 exhibits to go into the jury electronic for the laptop, but
2 I do not care if you work in a paper landscape. The lawyers
3 seem fundamentally -- I mean, I get it too, because the day
4 before, you're -- you're, like, pulling stuff out, you're
5 pulling stuff out, you're pulling stuff out. And you're not
6 putting it all in. And so -- that's -- I'm 100-percent fine
7 with that. You show up with your little binder for the
8 witness that day because it's out of your big exhibits. You
9 give the depo designations for that day. I have no problem
10 with any of that.

11 For a while, we were saying no paper, but everybody's
12 so unhappy not being able to whittle it down. And that way
13 just doesn't work. So that's -- those are those logistics.
14 It'll work out fine. But you were going to say you had some
15 procedural things, and then I'll --

16 MS. ROSENBLIT: Yes. Timing for opening and
17 closing?

18 THE COURT: What did you tell me that you wanted?
19 Did you tell -- I don't think you told me that in the
20 pretrial. I can't imagine it's --

21 MS. ROSENBLIT: I don't think we told you.

22 THE COURT: -- more than 30 minutes for the
23 opening. And, I mean, honestly, I -- you know, if someone
24 in a five-week trial wants an hour, then I can't imagine you
25 want much time in your opening. What do you think?

1 MS. ROSENBLIT: Thirty minutes is fine for
2 plaintiff and for us too.

3 THE COURT: Yeah, and I don't think -- I mean,
4 maybe 45 minutes to an hour for closing. I don't know.
5 I'll do the math. We can always revisit it that Friday.
6 I'll do what I think the witness -- I literally come up
7 with, like, minutes. I look at what each witness is going
8 to testify about. I come up with what I think is the right
9 amount of time based on what you've told me, and then I
10 figure in time for voir dire openings and closing and come
11 up. The time I gave you, though, is time for direct and
12 cross. We run a clock.

13 MS. ROSENBLIT: Right. And then the opening and
14 closing times will be separate --

15 THE COURT: A little -- probably. Either it will
16 be built in extra to the seven hours, or -- you know, I --
17 sometimes I do -- I give you all the -- like a chunk of
18 time, and you can allot it as you want to. So I may do
19 that. So that way, if you want to say, you know, this case
20 is really about da-da-da-da-da, when he got this,
21 da-da-da-da-da-da-da-da-da, we're going to show you X. That
22 might be enough. You can over promise in an opening, right?
23 And so it's a pretty simple narrative. You tell the people
24 what the question is, and you tell them how the evidence is
25 going to answer it. And this is a one issue thing. You got

1 to show the movie version a little bit, but not a lot. You
2 don't disagree about anything. Well, you do disagree about
3 responsibility, but you don't disagree about what happened
4 and what ought to happen and what ought to have happened and
5 what happened was okay, and who's going to talk about it.
6 So it shouldn't be that bad. So I probably will lump the
7 whole time you have for trial into one big chunk, and then
8 you can divvy it up as you want.

9 MS. ROSENBLIT: Okay. And then -- your Honor,
10 just a couple -- one thing I wanted to flag with respect to
11 the jury instructions is that there are a couple, I think,
12 key issues that come out of the jury instruction dispute
13 that we will need to resolve before trial so that the
14 parties know how the -- what evidence to put on and which
15 witnesses we need to call. For example, there's a dispute
16 about whether punitive damages are available against the
17 City in this case.

18 THE COURT: I'm going to do the in limines before.

19 MS. ROSENBLIT: Okay.

20 THE COURT: I assume all those issues are in the
21 in limine instructions.

22 MS. JIAM: I think at least one is not, this idea
23 of whether or not they have to prove that it may be
24 necessary versus necessary for his disability, I don't
25 believe came up in the MILs.

1 UNIDENTIFIED SPEAKER: (Indiscernible) jury
2 instructions?

3 MS. JIAM: Yeah, that's on a MIL issue.

4 THE COURT: Let me ask you this. I -- let me just
5 look at your binder for a second. I got through most of the
6 motions on liminie yesterday and this morning. But let
7 me --

8 MS. JIAM: And I'll just say -- Judge, I don't
9 think we need to do it today, but if -- you mentioned maybe
10 having another conference.

11 THE COURT: Well, no, I just want to know what the
12 issues are so I can think about when we want to do it. I
13 don't -- did you give me a separate memo of disputed issues
14 of law regarding the jury instructions, because that's what
15 I'm used to seeing.

16 MS. JIAM: We put it in --

17 THE COURT: I know you put it in. Exactly.

18 MS. JIAM: -- with the jury instructions. And so
19 there -- I apologize if that wasn't the Court's wishes. But
20 we did do like a separate memo, but it's just all within the
21 same filing.

22 THE COURT: What you did is you did your -- this
23 is my jury instruction, and here's -- and you cited the
24 authority for it, but you didn't have legal argument.

25 MS. JIAM: There is a separate page after the

1 proposed instruction. So, let's say, plaintiff has a
2 disputed instruction, they state their authority. The
3 following page will have the Defendants' argument as to why
4 they don't think that instruction is proper. And the
5 defendant will have their own proposed instruction with
6 their authority. And then the following page will have the
7 plaintiff's argument on a separate page.

8 THE COURT: I'm going to eyeball them to know what
9 the issues are.

10 UNIDENTIFIED SPEAKER: Are your jury instructions
11 by any chance in Word format?

12 MS. JIAM: Sure. We can --

13 MS. ROSENBLIT: Yes.

14 UNIDENTIFIED SPEAKER: Can you e-mail those to the
15 proposed orders box?

16 MS. JIAM: We can. And, your Honor, if it helps
17 to -- on page five of our joint proposed pretrial order, the
18 parties set forth the disputed legal issues, two of which
19 come up in the jury instructions that I think will need
20 resolution before trial. One is this maybe necessary -- or
21 necessary standard. And the other is the standard for
22 reasonableness.

23 THE COURT: Well, I -- tell you this, I've never
24 -- I always get out jury instructions before the final,
25 final pretrial. You know, my -- what I think the

1 instructions are.

2 MS. ROSENBLIT: Yeah. And there's also some
3 arguments as to like the type of evidence that's appropriate
4 to bring up in damages. We're prepare to argue that today.
5 But, again, we can also wait until June 15th.

6 THE COURT: From your jury instructions?

7 MS. ROSENBLIT: That's correct.

8 THE COURT: I'm having a hard time finding that.

9 MS. ROSENBLIT: And those are numbers three,
10 eight, and nine of the disputed instructions that we believe
11 don't implicate MIL issues and potentially may need to be
12 resolved before the case starts.

13 THE COURT: All right. So what page by reference
14 -- oh, the other thing is -- you know, it's okay, because I
15 can print it. But when you gave me your stuff, everything
16 that was under seal was either not in there or redacted.
17 And so I didn't have the copies, so I had to print them
18 myself, which is not exactly a yay moment.

19 MS. ROSENBLIT: Apologies.

20 THE COURT: So let's just -- here's the thing
21 about under seal. This is an open court, so I have no
22 problem with medical information being sealed -- you know,
23 confidential medical information being sealed. I'm going to
24 ask you on the sealing, while we're on the topic, to submit
25 a joint document with a proposed order dealing with all of

1 the stipulated -- you know, because you're not -- basically,
2 it's medical information, and it doesn't need to be filed in
3 the public docket. There's no reason for it to be filed in
4 the public docket. And it looked pretty narrow to me. But
5 I want one stipulation that these are the -- what -- this is
6 what the -- these are the seal -- the parties agree, you
7 know, that these sealing issues are fine and attach a
8 proposed order and get through all the sealed stuff. But we
9 are not closing the courtroom for any of it -- so -- that's
10 not sealed. You don't get to come to court and complain
11 about getting -- not getting an accommodation, and then have
12 everything that you say about what happened to you and what
13 your personal circumstances are be sealed. But I have no
14 problem with it not being accessible on the public docket
15 because it's confidential medical information. So that's
16 that issue.

17 Let's talk about motions in limine first, and then
18 we'll take maybe 10 minutes to talk about instructions. But
19 I think probably -- what I do is, I do look at them and come
20 up with something -- that might even be this weekend -- and
21 then get out proposed instructions saying what I think.
22 Well, we will talk about, though in context -- I'll look
23 together with you at the instructions to see whether I think
24 what you've given me is enough for me to draft it. Usually,
25 I get, you know, a memo, but we'll look together to see if

1 it's enough. Okay.

2 So anything else procedural before we get to the
3 motions in limine? I think that was everything that I had
4 on my list of things that we needed to do. And in motions
5 in limine, a lot of times I evaluate them in context. I'm
6 just telling you that. So -- but we can talk quickly about
7 motions in limine. Let me pull out my pretrial order here.
8 I got through -- I started -- I got through the defendants'
9 and was working on the plaintiffs', but we just --

10 MS. ROSENBLIT: Okay. No, nothing procedural from
11 us. I think we're ready to proceed with MILs.

12 THE COURT: Okay. Anything from -- anything
13 procedural for you?

14 MS. JIAM: No, your Honor. We're ready.

15 THE COURT: Okay.

16 So, Elaine, on the minute order, say parties will
17 submit joint statement of case today, parties will submit
18 sealing stipulation within one week. (Indiscernible).

19 MS. ROSENBLIT: I think we'll e-mail a Word copy
20 of the questionnaire.

21 THE COURT: E-mail a Word copy of questionnaire.
22 So let's quickly go through in limines. Some of them, I'm
23 going to have to look down here. But the first one was the
24 lay testimony about medical evidence, damages
25 (indiscernible) testify only what's in their personal

1 knowledge. Everybody agrees. It's a non-issue.
2 (Indiscernible) you can't testify about stuff
3 (indiscernible) you know as any percipient witness. How do
4 you know it? What do you know? How do you know it? And
5 that's it. No one really disagrees about that. The PhD --
6 that was one -- I had to print it. I want to -- it normally
7 would have been a Daubert motion. But I can hear from the
8 CCSF's perspective exactly what its thoughts are, but I can
9 tell you my -- I -- it's medical evidence. It's not
10 unreliable. He's got the -- he's got the qualifications to
11 opine, and I think it goes to weight, not admissibility.
12 So, like, cross examine him -- I'm still going to hear from
13 you. I'm just telling you what I'm thinking. But I think
14 you can cross examine and go to the weight if you think it's
15 an ill-formed opinion. I -- you know, how can I tell? I
16 read the report. It seemed like a decent report. It was
17 not (indiscernible). You're saying it rests on Mr. Rice's
18 self-serving testimony. I would say you are entitled to
19 inquire into the bases of the conclusion of the expert's
20 opinion on cross examination. And if that's true, it's
21 often readily apparent. That's my reaction to the motion in
22 limine. You tell me what you think.

23 MR. ROLLAN: Sure. I assume we'll dispense of the
24 plaintiff's first argument regarding that this was not
25 procedurally --

1 THE COURT: I don't think we need to worry about
2 it because it -- I'm voting their way. And then if I feel
3 like I need more information, I'm going to make you give me
4 more information, which will appear in the (indiscernible).

5 MR. ROLLAN: So, your Honor, I think, for us, we
6 would still nonetheless argue that under the Court's
7 gatekeeping function under 702, Doctor Lines' specific
8 opinion about whether Mr. Rice needed a rent-paying roommate
9 is not -- should not be admissible because it's based solely
10 on Mr. Rice's self-serving testimony. And, again, as we
11 pointed out in our motion, Mr. Lines did not do due
12 diligence in terms of getting to that opinion. He didn't
13 review medical records that were provided to him by
14 plaintiff's counsel. He didn't ask the plaintiff about
15 relationships that he had with people who did pay rent. He
16 didn't talk to medical providers. He didn't talk to -- or
17 he didn't review rental history information. He did not
18 review any information at all that would have allowed --
19 that would have contradicted what Mr. Rice said about what
20 he ultimately wants in this case, right? So for that
21 reason, I think the Court should exercise its gatekeeping
22 function to exclude that specific opinion here.

23 MS. JIAM: Sure. Yeah.

24 THE COURT: Have you had an opportunity to get
25 some experience?

1 MS. JIAM: So the City takes issue with what they
2 say is Doctor Lines just relying on Mr. Rice's testimony.
3 That completely ignores a lot of what's in his report, which
4 shows the number of times that he met with Doctor Rice. He
5 met him on three different occasions, including once when he
6 administered a widely used psychological test.

7 And then in his report, he explained how he relied on
8 that test to come to his conclusions. He's not just
9 regurgitating what Mr. Rice is saying. And Doctor Lines is
10 doing exactly what the expert in US v. Finley from the Ninth
11 Circuit in 2002 did. And there the Ninth Circuit found that
12 the district court erred by striking a psychologist's expert
13 testimony where the expert took a patient (sic) history,
14 they administered widely used psychological testing, they
15 drew sound inferences from those tests. And that's exactly
16 what Doctor Lines did.

17 The City lists all sorts of things that they think that
18 Doctor Lines should have put in the report, but they don't
19 cite any cases, they don't cite any articles, they don't
20 cite anything related to the Daubert standard that actually
21 says why those things would be appropriate. And so it's the
22 City's burden to establish that Doctor Lines' opinion is
23 unreliable under the Daubert standard. And we don't think
24 they've come close to that.

25 If the Court is inclined to change its mind, which we

1 don't think it should, we do think that we should be able to
2 file supplemental briefing to talk about Doctor Lynch's
3 report, which is --

4 THE COURT: I won't exclude it without
5 supplemental briefing (indiscernible). Okay. That's fine
6 on this record.

7 MR. ROLLAN: May I respond, your Honor.

8 Actually, in regards to the Finley case, that's -- that
9 case is actually an apposite, because there the parties
10 challenge the reliability of the expert's diagnosis of the
11 plaintiff's mental disability, and that's not at issue here.
12 We're not disputing Doctor Lines' testing or assessment of
13 Mr. Rice in terms of his disability. What we're saying --

14 THE COURT: Well he's testing the predicate for
15 his --

16 MR. ROLLAN: For --

17 THE COURT: Those predicates -- because I -- let
18 me recite them, and you tell me what's wrong with them. So
19 he does administer -- he interviews him, he goes through his
20 medical history, he -- and he assesses his clinical issues
21 and his treatment scales and comes up with a diagnoses,
22 which you don't -- a major depressive disorder, which you
23 don't dispute with anxious dispute, a specifier for
24 depressive disorders. He forms an opinion about why he's
25 that way, because of his childhood. And so -- and all of

1 it, you know, works -- that he works through his pervasive
2 feelings of loneliness and renders an opinion. The precise
3 opinion that the Ninth Circuit reversed me on by saying --
4 because, you know, I went with the whole low rent -- you
5 know the low -- affordable housing policies that embodied
6 San Francisco policy. And I said, it cannot be that you can
7 just say this and get around it. But -- and the Ninth
8 Circuit disagreed. So, now, we're left with a plausible
9 claim that provides summary judgment, because there's
10 evidence to support it.

11 I would say that probably -- and I've got my summary
12 judgment order here somewhere, or maybe I didn't bring it up
13 with me. I believe we discussed the testimony without
14 evaluating it through the Daubert prism, which might have
15 been the appropriate place to do it, there rather than here,
16 because that would have given me more of an opportunity to
17 consider whether a fact error, especially in light of -- you
18 know, then we're left only with lay testimony perhaps. So
19 query why we get to have a crack at it now when there was a
20 model of doing it then. I know the CCSF thought it was
21 going to win on that motion, but there was really no way
22 that there was a competent evidence supporting the
23 (indiscernible) challenges then.

24 So one of the problems I have is, that was the
25 mechanism to do it. And so it went through then, and we

1 survived summary judgment. I know why you want it out, and
2 -- I haven't read the Finley case yet. I will. But it's
3 problematic because no one is citing me any cases like this
4 where they've excluded it.

5 So it's not really the motion in limine that bothers me
6 so much and -- except -- because we have the -- it's really
7 the motion in limine when we had the possibility to address
8 it in his testimony, as I recall. I left that other --
9 well, it might be over there. As I recall, that was the
10 basis of my summary judgment order. So I kind of feel like
11 we should have dealt with it then. And that's what I'm
12 thinking. But I will think about it a little bit more. If
13 I were to exclude it, which I doubt that I am, I'll call for
14 more briefing. Okay. Thank you, though. Helpful argument.

15 Okay. Next in limine is Lynch. I -- again -- now I'm
16 going to go get my (indiscernible). I covered the ground of
17 this. I think it is totally fair that you get to cross
18 examine Doctor Lynch on the bases of his opinions, but you
19 don't get to use the draft report. You can tell me anything
20 else, but I already rule that you can't. Okay.

21 And then the interactive process.

22 MS. JIAM: And just one quick clarification on
23 that note, because I think that is exactly our position.
24 We're not trying to introduce the draft report.

25 THE COURT: Yeah. That's what you said, yeah.

1 MS. JIAM: Okay. Right.

2 THE COURT: You can't say, "You said in the draft
3 report, X." I mean, you can't use it as a prior
4 inconsistent statement or anything like that. The draft
5 report doesn't exist as far as you're concerned.

6 MS. JIAM: That's right. We just want to -- we
7 intend to ask him questions about the opinion stated --

8 THE COURT: Was this the basis? They can inquire
9 into the bases for his conclusions. And he's an expert.
10 And he can say yes and he can say no, and he's a grownup,
11 and he knows what he can say and what he can't say.

12 MR. ROLLAN: Well, I think what plaintiff's
13 opposition points out is that they would like to question
14 CCSF's involvement in draft -- in helping draft Doctor
15 Lynch's opinions, which we disagree with. I think there --
16 this is an attempt to re-litigate the issue that was brought
17 before the Court in the discovery joint letter, which the
18 Court denied. And so -- and I don't think there's a way --

19 THE COURT: I'll look at it a little bit more
20 closely. But, of course, there's a -- I mean you're going
21 to have the same line of questioning for their expert. Not
22 the drafts, but the plaintiff's involvement in it, right?
23 Are you going to make similar -- "You worked with the
24 plaintiffs, you relied on Mr. Rice. In fact, you got that
25 testimony from the plaintiffs, didn't you, and that formed

1 the basis for your opinions. And you really didn't do any
2 independent investigation, did you?"

3 MR. ROLLAN: Well, I think, your Honor, what --
4 the specific issue here is that they may seek to argue that
5 CCSF wrote themselves the opinion that Doctor Lynch
6 ultimately provided.

7 THE COURT: But did CCSF write it?

8 MR. ROLLAN: Well, that was the subject of the
9 joint discovery letter.

10 THE COURT: Well, no, the draft doesn't exist, but
11 -- to the extent, as if the draft didn't exist -- it doesn't
12 exist. Just put it out of your mind. Whatever the ordinary
13 cross examination that attends to any expert is fair game,
14 include -- because you're going to do the same. "You relied
15 on information that the plaintiffs gave, didn't you? And
16 that formed the basis for your conclusions." I mean, that's
17 the way you should do it. You know, this -- you work with
18 the -- I mean, however you're going to do your cross
19 examination, you do it. But you don't say they wrote the
20 report, because you don't know that. You can challenge his
21 processes for arriving at his conclusion. I'll write it up
22 in an order.

23 MS. JIAM: Right. We think it's fair game to
24 point to an explicit line in this explicit --

25 THE COURT: No, no, no.

1 MS. JIAM: -- essentially the only conclusion that
2 he has in his final report.

3 THE COURT: That was not his opinion. We don't
4 know that that's his opinion. So we don't know that. The
5 only -- we have the document. That document doesn't exist.
6 You don't know about it.

7 MS. JIAM: Right. No, no. It's in his final
8 report. So in his final report --

9 THE COURT: You can talk about what's in his final
10 report -- you can talk about what's in his final report.

11 MS. JIAM: That's right.

12 MR. ROLLAN: Sure, your Honor. What our fear is
13 is that if they question whether Doctor Lynch wrote those
14 opinions, it wouldn't necessarily call for foundational
15 questions about the draft report, right, but it was
16 different than the final report.

17 THE COURT: They can't ask additional questions
18 about a draft report. I can't be any more explicit.

19 MR. ROLLAN: And just want to point for the
20 record --

21 THE COURT: If you're -- if you have to attack
22 their expert based on the CSSF's involvement in the report,
23 it's not a very compelling cross examination.

24 MS. JIAM: Yeah, so his conversations with counsel
25 are obviously privilege. We're not disputing that.

1 THE COURT: Well, I understand that --

2 MS. JIAM: We just --

3 THE COURT: I said information provided by, you
4 know.

5 MS. JIAM: Right. We're entitled -- but we're
6 entitled to ask him questions about an explicit line -- a
7 conclusion that he wrote. The conclusion is -- he states
8 that Mr. Rice is -- he doesn't believe that Mr. Rice has a
9 need for a rent-paying roommate. And we're entitled to
10 state, "Did you write this line in your report?" And he
11 admitted in his deposition that he did not. And so we think
12 we're entitled to present that. It goes to credibility. It
13 doesn't go to a draft report. It goes to whether or not --
14 in several cases such as Eva (phonetic) River --

15 THE COURT: That's at issue, so yeah.

16 MS. JIAM: Correct.

17 MR. ROLLAN: It is the subject of the draft
18 report, right? Because I think that question --

19 THE COURT: Understand -- if he admitted in his
20 deposition that he didn't write that line, then how is that
21 not something?

22 MR. ROLLAN: Well, that's the subject of their
23 argument that we had waived attorney/client privilege during
24 the deposition that led -- that regarded that line of
25 questioning, right? And I just wanted to point out to your

1 Honor that the majority of cases that plaintiff cite --

2 THE COURT: The privilege is not waived. I
3 already held that privilege is not waived. Privilege is not
4 waived.

5 MR. ROLLAN: And, your Honor, just to the point of
6 FRCP 26 --

7 THE COURT: Because if he didn't write it, then
8 the answer is that the CCSF wrote it, and that's -- then
9 that's implicating the privilege.

10 MS. JIAM: Right. But Judge Tigar specifically
11 addressed this question in Holzhauer vs. Golden Gate Bridge,
12 where he states that materials that might be privileged does
13 not protect them from disclosure when it goes towards the
14 foundation of how that report was developed. It goes
15 towards credibility.

16 THE COURT: I want another look at the case, but I
17 -- it was literally the wrong -- it -- I'll look at it. But
18 that's a different fact context, as I recall.

19 MR. ROLLAN: And may I respond, your Honor? So
20 Holzhauer actually regarded -- it's inapplicable, because it
21 actually dealt with Rule 26(a)(2)(D), which is not at issue
22 here. That section governs data and materials considered by
23 an expert and not the type of attorney/expert communications
24 at issue here. Also, the cases that plaintiffs primarily
25 rely on rely on an outdated version of the FRCP 26. There

1 was a 2010 amendment to FRCP 26 that actually expanded
2 protections for attorney/expert communications. And all of
3 the cases that plaintiff cite cite to a prior version of the
4 FRCP 26. And so for that reason, the Court should deny it.

5 THE COURT: All right. Argument is helpful.
6 Thank you.

7 Let's -- punitive damages. I'm going to just unpack
8 this one myself. I haven't had a chance to read all the
9 brief. This is not a punitive damages case. It's not. And
10 if you ask for punitive damages, you're overreaching, and
11 it's going to backfire on you. If you want to say they
12 didn't follow their rules, that's a good argument. But it
13 just is a mistake as well as, I think, an inaccurate view of
14 the law. But I haven't read all the cases that you guys
15 cited. That's where I ran out of time. But I will read all
16 the cases because I always read all of the cases. But I do
17 not think -- I've never had anybody ask for punitive damages
18 against the CCSF in the many trials I've had. You are the
19 first.

20 MS. JIAM: Well, your Honor, we understand --

21 THE COURT: It's a different kind of case. This
22 is a classic civil rights case.

23 MS. JIAM: Yeah, we understand, you know, in terms
24 of trial strategy whether or not --

25 THE COURT: Bad idea.

1 MS. JIAM: -- it's a good idea to go for punitive
2 damages --

3 THE COURT: Say they broke the rules. You don't
4 have to make them -- you know, we have -- people have lost
5 constitutional cases because they made people criminal and
6 they were narrowly intentional. It's a mistake.

7 MS. JIAM: You know --

8 THE COURT: You have right-minded people trying to
9 do their job and they didn't follow their rules and they
10 didn't do their job. And that's -- if you win, that's how
11 you win.

12 MS. JIAM: Yeah. We understand the trial strategy
13 as -- in terms of presenting that argument to the jury. But
14 as a matter of law, it just simply is not true that the
15 Supreme Court's holding in City of Newport, which applied to
16 section 1983, and the explanation as to why section 1983 did
17 not allow for punitive damages.

18 THE COURT: That -- it's a different context.

19 MS. JIAM: That analysis doesn't apply to the FHA.

20 THE COURT: I understand that that's the argument.
21 I will read the cases you've presented to me. I just
22 haven't read them yet. I'm perfectly capable of figuring
23 this one out on my own (indiscernible) but I will read the
24 cases.

25 MS. ROSENBLIT: Thank you, your Honor. And I

1 think we skipped Defendants' motion in limine number four
2 about the interactive process.

3 THE COURT: Let's look at where -- I will tell you
4 this, I -- cases stand and fall on whether someone follows
5 the interactive process. Juries don't like it if you don't
6 get processed. And it's not an element of the case, but
7 it's always part of the case. And that's when you win and
8 that's when you lose, and that's how those cases come up,
9 unless in a job context, you can't actually do the work, and
10 then you lose.

11 MS. ROSENBLIT: So what's so interesting here,
12 your Honor, is that there is no interactive process
13 obligation under the Fair Housing Act. There is under the
14 ADA and the RA, but not under the Fair Housing Act.

15 THE COURT: Well, I know that. I know that, yeah.

16 MS. ROSENBLIT: And I think there's actually a lot
17 of agreement between the parties. The parties agree that
18 there's no legal obligation for an interactive process.

19 THE COURT: They want to argue that they're --
20 they didn't follow their own rule.

21 MS. ROSENBLIT: Well, so -- and we also agree that
22 the communications between plaintiff and the City employee,
23 of course, would come in. So those e-mails and what they
24 may have talked about or not talked about on the phone would
25 come in.

1 I think where the disagreement is, and plaintiff's
2 counsel can correct me if I'm wrong -- I think they want to
3 argue and cross examine our witnesses about what we should
4 have done. So why didn't the City employee ask plaintiff
5 why he needed a rent-paying roommate? Why didn't we call
6 his doctor? Why didn't we ask for more documentation?
7 Things like that. Those types of questions -- that argument
8 and evidence goes directly to this interactive process
9 obligation that's not present in this case.

10 THE COURT: Or you just argue that they don't have
11 to?

12 MS. ROSENBLIT: We can, your Honor. But I think
13 under -- I mean, first of all, it's not relevant. It's
14 highly speculative. We don't know what plaintiff would have
15 said if the City asked this question. We don't know what
16 the doctor would have said if there was another telephone --
17 you know, if there was a phone call, for example. So
18 there's no -- it's not relevant. There's no probative value
19 from the speculative evidence. And it's also misleading and
20 confusing. I mean, if there's no legal obligation for the
21 City to have this kind of interaction with the plaintiff, to
22 introduce that evidence to the jury and argue that it is is
23 just going to confuse them about what the standard is.
24 As you've said, cases are won and lost on whether or not
25 there was process. And there just is no legal requirement

1 for that process in this case.

2 THE COURT: Unfortunately, I just have a blacked
3 out version of the second motion in limine, which is where I
4 ran out of time today, and I -- but I don't have the time to
5 print another document. So --

6 MS. ROSENBLIT: I have an extra copy, if you would
7 like --

8 THE COURT: It's not going to help. I don't want
9 it.

10 MS. ROSENBLIT: Okay.

11 THE COURT: Thank you. It's just I would have to
12 take it back and three-hole punch it and put it in a binder.
13 I would rather do it in my desk.

14 MS. ROSENBLIT: It's already three-hole punched.

15 THE COURT: That's fine. You can give it to me if
16 you have it. That's fine. This is --

17 We're talking about --

18 MS. ROSENBLIT: Oh, it was number four. Sorry
19 about that.

20 MS. JIAM: Yes. Here you go

21 THE COURT: Thank you. There's definitely no
22 requirement under the law for an interactive process. And
23 the City's predicate for its argument is that --
24 (indiscernible) argue that the City should have asked them
25 why, and that's correct. It didn't have a duty to inquire,

1 correct?

2 MS. ROSENBLIT: Correct.

3 THE COURT: And so I had viewed this -- again, it
4 struck me as more of -- as a motion in limine that is better
5 evaluated in context, because I can't really tell. But
6 they're entitled to inquire into the processes that the City
7 followed in engaging with Mr. Rice here. And so that -- so
8 I -- it seemed to me that I didn't want Mr. Rice to be
9 precluded from inquiring about what happened, because that's
10 relevant to the elements that he has to establish. And so,
11 you know, what happened? He -- you know, what did he ask
12 for? I mean, it's almost like percipient witness testimony.
13 It's not -- and you tell me if you want to do something
14 different. It's like -- It's not, "why didn't you do this?"
15 It's, "what did you do? What did Mr. Rice do? What did he
16 ask for? Did you give it to him?" All of those things are
17 fair. You can't say, you didn't ask him about this, you
18 didn't -- you know, whatever. You -- they could say, "Did
19 you give him the requested accommodation?" "No." So that's
20 relevant. So I -- that's what I meant by -- that's what I
21 -- that's the ruling. That's -- and I think -- so they're
22 not allowed to suggest that the City had an -- in any way,
23 including by testimony, that the City had an obligation to
24 do -- to inquire -- to engage in an interactive process.

25 MS. ROSENBLIT: Okay. Thank you, your Honor.

1 THE COURT: That's what I wrote down, and that's
2 what I meant. So that's fine. But -- and then -- but then
3 I'll say something like we just have to evaluate it in
4 context.

5 MS. ROSENBLIT: I agree, your Honor. I do think a
6 lot of this is going to come up question by question at
7 trial. But I appreciate the -- your Honor's ruling and
8 ground rules for opening and just in framing how we think
9 about the witnesses.

10 THE COURT: Over promise in opening, the jury
11 will, you know, not like it. So the opening really --
12 although it's important to say this is what should have
13 happened and why it's important, and these are the witnesses
14 that will talk about it -- it's got to be grounded in
15 evidence -- in evidence, generally. But for the expert
16 stuff, which we'll get through, if the percipient witnesses
17 will say what was important and why, okay, and then expert
18 stuff. Okay.

19 MS. ROSENBLIT: Your Honor, I apologize. Quickly,
20 there are two other things I want to flag here while we're
21 here.

22 THE COURT: Yes.

23 MR. ROSENBLIT: So this motion also covered -- and
24 most of their opposition was about the HUD joint statement,
25 which is an old document from 2004. And part of that talk

1 -- document discusses the interactive process. And so it's
2 my understanding from the papers and our communications that
3 they would like to introduce that document and cross examine
4 the City employees.

5 THE COURT: But just to lay the foundation for it.
6 Authenticity isn't established, but foundation has to be
7 established, or how does it even get in?

8 MR. ROSENBLIT: Your Honor, we would -- I think we
9 laid the foundation with the mayor's office's employees who
10 we believe are familiar with this document.

11 THE COURT: And how is it relevant to this time
12 period?

13 MS. ROSENBLIT: It is relevant because we believe
14 that the mayor's office was aware of the joint statement and
15 considered it in denying Mr. Rice's request.

16 THE COURT: What's your evidence based -- your
17 grounding for that in the evidence? What's the predicate
18 fact that establishes that? Is there any predicate fact?

19 MS. ROSENBLIT: So I'm -- I joined the case
20 recently, so I wasn't actually a part of the depositions.
21 But I'm told that Maria Benjamin and Cissy Yin both
22 testified that they are both very familiar with this
23 document and that it was part of their consideration when
24 they were considering Mr. Rice's request.

25 THE COURT: Well, I'll look at the issue and lay

1 out the rules. I have some concerns at the City. If
2 they're not required to do something, backdooring it by
3 getting in a document that doesn't impose any obligation --
4 if, on the other hand, there's a rule that applies to their
5 processing of applications, they didn't follow that rule,
6 then that's fair game. But if it's not a rule, then I don't
7 think you get to inquire into it. But I'll look at it a
8 little bit more closely. I just think it's problematic.
9 You've got to have some -- it's got to be part of their --
10 this is a 2019 case, and that's a -- you know, for --
11 whatever the time period was that proceeded the filing of
12 litigation. So I'll look into it a little bit more closely.
13 We'll evaluate it in context. But I think the answer is
14 probably no.

15 MS. JIAM: Your Honor, if I could -- if I could
16 just respond briefly.

17 THE COURT: I think I need to evaluate it in
18 context with the foundation being laid by the witness. But
19 I can't see how you would lay a foundation for a 2004
20 document. Relevant -- it's got to be how -- is there a
21 foundation that it was considered in the decision to deny
22 Mr. Rice a rent-paying roommate?

23 MS. JIAM: So I think your concerns about
24 foundation are fair, and we agree that those should be
25 considered live at trial. But as a matter of a motion in

1 limine before we even get to trial, we think that is
2 premature.

3 THE COURT: And if you can't -- if I don't have a
4 witness who can sponsor it with the requisite foundation,
5 all the potential relevance in the world doesn't get it in
6 at trial.

7 MS. JIAM: Understood, your Honor. I -- we are
8 happy to send that information to the Court afterwards. I'm
9 sorry. I just -- I was not part of the depositions earlier
10 in this case.

11 THE COURT: I'll look at it. I just don't think
12 it -- you just -- you got to have a witness to sponsor it.
13 And to sponsor it, a witness needs to say that they relied
14 on it. And if the witness relied on it in reaching his
15 decision here, then the witness can explain what it -- the
16 witness did or didn't do with regard to Mr. Rice. But if
17 the witness didn't rely on it, then it doesn't come in as
18 some standalone document to try to -- it just doesn't.

19 MS. JIAM: Understood.

20 THE COURT: That's what I think the answer is, and
21 CCSF agrees, yeah.

22 MS. ROSENBLIT: Yes, your Honor. And I would just
23 add, and we can look at it in context, is that even if they
24 can lay the foundation for the document, the reason they
25 want to introduce the document and question the witnesses is

1 to imply that there is a requirement that there be an
2 interactive process.

3 THE COURT: There's no requirement from what I've
4 seen based in here, but I'll look at it a little bit more
5 closely. So here's the thing. You'll see that it -- this
6 is my pretrial order back to processes. One, if you use
7 demonstratives in your openings, you have to exchange them,
8 so that -- and you can't exchange them on Friday night.
9 You've got to exchange them on Thursday night, because it's
10 not fair to give somebody demonstrative slides for an
11 opening, and then if there (indiscernible) by -- you know,
12 at -- by 5:00 p.m. the business day before the -- not by
13 5:00 p.m., because you should be able to do better than
14 that. But at the close of the trial day, we'll kind of work
15 out something else. By 2:00 p.m. on that Friday, you know,
16 you'll exchange the slides. If there's any issues, in the
17 morning, you'll confer, and then you'll raise any issues
18 about the slides with me.

19 Two, my procedures require you to do an offer of proof.
20 It's really supposed to be two days before trial. I'll work
21 out what that looks like. I have to think about the long
22 weekend. I have think about what it looks like. This is a
23 small case, not a big case. It's going to be a
24 five-to-seven-hour case of witness testimony. So you're
25 going to have to choose what witnesses and what evidence you

1 put in way of whittling down your 500 exhibit. But by the
2 close of the trial day, if I were going 8:30 to 1:30, which
3 would be my preference, but I don't think I can with the
4 amount of trial, at 2:00 o'clock, you would have to give
5 your order of proof for the next day -- when you give --
6 including the exhibits that your witness will be relying on.
7 And so that gives you an opportunity to problem solve in
8 context what the issues are. And then if there -- you can't
9 deal with everything along the way. You can't nail down
10 everything in advance, not when you have these many
11 exhibits. This is a particular one. I'll look at it. I
12 assume you gave me a copy of it attached to the motion in
13 limine. Is it in the -- yeah.

14 MS. ROSENBLIT: Yes, your Honor.

15 MS. JIAM: Yes, your Honor.

16 THE COURT: And I'll look at it. But, generally,
17 I think it's not relevant. But you'll be able to make an
18 offer of proof, you'll be able to provide it, you'll be able
19 to flag any issues, you'll be able to make an offer of proof
20 outside of the presence of the jury. And, usually, that
21 happens by raising any issues with me, let's say by 4:00 or
22 5:00, the day before. So that's how it gets done in trial.

23 MS. ROSENBLIT: And, your Honor, there's one more
24 thing I want to raise here. And it's not in this MIL's
25 papers, but I think this is just a -- as good a time as any

1 to talk about it. The parties reached a stipulation about
2 the advice of counsel defense. So during the course of --

3 THE COURT: I saw that, yeah.

4 MS. ROSENBLIT: You saw that.

5 THE COURT: Yeah.

6 MS. ROSENBLIT: So during the course of
7 litigation, we opted to not pursue an advice of counsel
8 defense. And so we did not waive the privilege, and they
9 then did not depose the City attorney, Keith Nagayama, who
10 had consulted with the City employees on this particular
11 request for accommodation.

12 And so the parties have reached that stipulation in
13 preparing for this argument and reading these cases
14 briefing. I think when we start talking about process,
15 we're getting pretty close to that stipulation. And let me
16 tell you what I mean. So I was reading back through the
17 deposition testimony, and any time plaintiff's counsel asked
18 our witnesses, "How did you" -- you know, "What was your
19 process for reviewing the requested accommodation? Who did
20 you talk to?" any of those kind of process questions --

21 THE COURT: I get it.

22 MS. ROSENBLIT: -- the truthful --

23 THE COURT: I get it.

24 MS. ROSENBLIT: Okay.

25 THE COURT: But you're going to just have to prep

1 your witnesses, and I'll just instruct the jury not to
2 answer. You're just going to have to prep them and just say
3 anything having to do with an attorney is just off bounds
4 and write in big -- "no attorney conversations" on top of
5 their, you know, witness binder or whatever. I appreciate
6 the issue. But it's -- the witness -- just say that it's
7 all about the fact. Like, what did you do? And don't --
8 the attorney stuff is -- that doesn't include that. You're
9 just going to have to prep them and just try to catch it.
10 And you really will need to -- you know, and, again, you can
11 decide, you know -- again, you guys can confer on this. But
12 one possibility is, you know, I'm going to ask you some
13 questions. I want to say that the parties have agreed to
14 advice of counsel, so it's not part of the question. So I'm
15 not asking you about any conversation with any attorney that
16 you might have had. I mean, you guys could decide if you
17 want to do something like that to remind the witnesses --
18 whether you want me to say that, so it's more neutral. But
19 just try to prep the witnesses.

20 MS. ROSENBLIT: I certainly will, your Honor. I
21 just wanted to flag it now. I think -- you know, I think
22 any question that says, like, "How did you reach this
23 result, or what guidance did you follow?" --

24 THE COURT: Yeah.

25 MS. ROSENBLIT: -- even this -- the reason I'm

1 thinking of it now --

2 THE COURT: Cross examine the witnesses, not
3 asking open-ended questions.

4 MS. JIAM: Your Honor, I -- we don't intend to
5 elicit questions about their conversations with attorneys.

6 THE COURT: (Indiscernible).

7 MS. JIAM: I think she was also looking at depo
8 transcripts that were created before the parties stipulated
9 to this. And so that may be causing some of the concerns.

10 THE COURT: We'll just deal with them separately.
11 I'm just going to look at it. Active process, we've
12 already talked about. I think we're almost at the end of
13 what I can do. I've got a claims construction and then I --
14 I got all the way through these motions in limine. My
15 inclination -- we're going to have a very quick conversation
16 about the motions in limine. What else do -- I think
17 that --

18 MS. JIAM: Your Honor, I don't think we've
19 addressed -- the plaintiff also has three motions.

20 THE COURT: That's what I'm looking at right now.
21 Yeah.

22 MS. JIAM: Okay.

23 THE COURT: Yeah. All right. What I'm going to
24 do with this one, because it -- it's an interesting thing
25 about other agency proceedings. I don't think it

1 necessarily should prejudice the plaintiff, and the value of
2 it has -- there's some interesting case law that surrounded
3 it -- that surrounds this, which I happen to know from my
4 own cases and other proceedings. I'm going to look at this
5 one a little bit more closely (indiscernible) more
6 productive conversation then.

7 Let's talk about the next one, which is property and
8 the homeowners association. Again, this is another one
9 where I have a redacted version of the document.

10 MS. JIAM: Your Honor, I have an unredacted
11 version.

12 THE COURT: All right. Thank you. You know,
13 again, I'll look at this one in context a little bit more,
14 but my preliminary, when I read it early this morning, was
15 that there -- you know, one needs to be careful about 404(b)
16 evidence. And then it's strays too much into 403 evidence.
17 I want to think about it a little bit more. I think it's
18 also contextual. I don't think you get to argue. This is
19 just a preliminary because I need to think about how the
20 evidence comes in. I'm just letting you know preliminarily
21 what my thoughts are. I don't think you get to argue that
22 the CCSF didn't do all of these things. You know, you went
23 through this whole process with the CCSF, and they get to
24 inquire into other reasons you might have for a rent-paying
25 roommate. I don't think you get to forestall that argument

1 through a motion in limine. I think it's contextual. I
2 think it's a fine line. But I still want to look at sort of
3 the -- I want to look at the fact context. And, again,
4 these are issues that can be addressed the day before. So
5 that's -- you got to be very careful here, because you can't
6 just say, "Oh, you can't inquire into any of this, but we
7 get to talk" -- you know, the "I told you I needed it. My
8 psychologist says I need it. And there's other evidence
9 that shows I might have had other reasons for wanting a
10 rent-paying" --

11 MS. JIAM: And your Honor, we're not -- in our
12 MIL, we don't argue that they can't talk about whether he
13 had other reasons, you know, at all to talk about this.
14 We're just talking about this specific dispute --

15 THE COURT: (Indiscernible) the 403 --

16 MS. JIAM: Right.

17 THE COURT: -- and too much of the 404(b). I
18 won't allow it. But I need to think about it a little bit
19 more.

20 MS. JIAM: Right.

21 THE COURT: And I'll issue something. I
22 understand the issues. I mean, I do know my Rules of
23 Evidence, and that makes it easier. And then the last one
24 is motion in limine three. I'm going to look very briefly
25 at the jury instructions just so I can -- not to talk about

1 the merit, but so I can look at the quality of the argument
2 and see if I want to ask (indiscernible). Motion in limine
3 three is the amount of rent he collected. All right. I
4 don't know. It's the same sort of issue, right? He wants a
5 rent-paying roommate. He had a rent-paying roommate for a
6 bit. Maybe he had other reasons for a rent-paying roommate.
7 I don't know that I categorically put it out of bounds. But
8 what are your thoughts, very quickly?

9 MS. JIAM: Sure. Yeah. So I think the key to
10 this is -- the question before the jury is not whether Mr.
11 Rice charged too much. The question is, when he requested
12 his accommodation, did the mayor's office make a mistake by
13 denying his request? His request was for a rent-paying
14 roommate. It wasn't to be able to charge any particular
15 amount. And the City never talked to him about what kind of
16 amounts were appropriate if he would have been able to
17 charge rent. And so we think the question is -- allowing
18 specific amounts of rent to come in would be confusing. It
19 would mislead the jury. And if the City wants to talk about
20 whether Mr. Rice had other alternative motives for why he
21 was charging rent, they can still ask him about, you know,
22 were -- "when were you traveling? Were you charging rent
23 while you were traveling?" But the specific amounts are --
24 it's going to turn this trial into a sideshow. And as you
25 said earlier, the parties are only going to have five to

1 seven hours, and we just don't think time should be spent,
2 you know, putting out these numbers without economic
3 context. There hasn't been discovery in this case about the
4 market rents at the time. And so there isn't going to be
5 evidence to give the jury context of what was normal.

6 THE COURT: Here's the answer. I mean, again,
7 I'll -- it's contextual. But I'll think about it a little
8 bit more, and I'll write something down. But it's relevant
9 to his motive. And the question is whether it's too
10 cumulative or confusing under 403. And I have a real
11 problem with Mr. Rice's advancing, you know, "I have a
12 psychological problem, it makes me feel better to have a
13 rent-paying roommate" -- and I'm not discounting it -- and
14 then not have the CCSF's ability to inquire into what his
15 motive was. When I read it first, I thought, well --
16 because it's fair. I mean, it's fair for him to be -- for
17 him to be able to establish a claim that he needed it. And
18 it's fair for the CCSF to cross examine him and try to make
19 him a guy who -- I have not -- well, I have heard Mr. Rice
20 on the -- I think he -- at least he wrote me a very nice
21 letter at one point. And so -- and I've heard him through
22 you, and I know he participated in the calls, and I've seen
23 him on the Zooms. And so I don't know how this is all going
24 to shake -- you know, how dirtying somebody up does or
25 doesn't play. Sometimes, it doesn't work. And it's hard

1 for me to evaluate it out of context. But I think,
2 generally, it's fair. But I appreciate the 403 context, and
3 I'll write a little bit of something. But it seems tough to
4 preclude the CSSF requirement for challenging his motive for
5 doing so. Okay. Let's quickly look at the jury
6 instructions.

7 MS. ROSENBLIT: Your Honor?

8 THE COURT: Yes.

9 MS. ROSENBLIT: It sounds like you're with us, but
10 can I just have one minute?

11 THE COURT: Yeah. Yeah.

12 MS. ROSENBLIT: As you said in the start of this,
13 the rent -- the charging rent is the whole issue with this
14 case. It is the question.

15 THE COURT: Oh, no, that's why I said he would be
16 required to -- it didn't seem fair to let him put forth a
17 pure psychologically need-based reason for a rent-paying
18 roommate without showing the context. And it would be --
19 have to be fair. You know, you can't beat up on a guy with
20 serious mental health issues or you're an ogre. But if
21 you're -- the ability to inquire that he's had a rent-paying
22 roommate, and, in fact, he was able to collect this amount
23 of rent and to ask him questions about his financial motives
24 are 100-percent fair game, in my opinion.

25 MS. ROSENBLIT: And, your Honor, I just also want

1 to highlight that his claim is that the reason he needs to
2 charge rent for his mental health is to create equality and
3 a relationship with his roommate. And so to be able to ask
4 him about the amount that he charged, which varied from
5 person to person, why that -- charging that amount made it
6 an equal relationship -- and all of the rest of the
7 information about that relationship, like the nature of the
8 relationship, was there a lease agreement, how is charging
9 rent related to the companionship he felt? I think all of
10 that is fair game for the City.

11 THE COURT: You'll get to inquire into it. I
12 mean, it's a delicate thing -- a delicate road to travel,
13 but --

14 MS. JIAM: Your Honor, if I may respond. We are
15 not --

16 THE COURT: You really can't do it until we get in
17 context, but yes.

18 MS. JIAM: We are not disputing that the City can
19 ask about whether he charged his roommates different amounts
20 and how that factors into whether he had an equal
21 relationship with his roommates. But the City is taking a
22 hyperliteral interpretation of equality to mean just dollar
23 for dollar, which is not what we meant. And the City can
24 inquire into the relationship he had with his roommates.
25 But we think the specific amounts are a prejudicial proxy

1 for that, and that this is just going to turn into a number
2 show where we don't have any financial experts, and we don't
3 have any context for what those numbers really mean.

4 THE COURT: I will look at it a little bit more
5 closely. But if you charge people rent and the dollar
6 amounts -- it's an expensive city and everybody knows that,
7 and it may -- it -- he may or may not have an explanation
8 about why he charged what he did, but I think the City is
9 entitled to inquire into it. So -- I mean, that's what I
10 think. I mean, it's his motive, you know. He doesn't get
11 to say, "I needed a roommate," and then just, like, exclude
12 every amount of money that he got from a roommate, then just
13 allow the City to inquire about the psychic wellbeing that
14 he achieved from having a financially paying roommate.

15 MR. JIAM: Well, I think -- on Mr. Rice's part, he
16 would also think that it's unfair for the City to stonewall
17 him and never have a conversation about how much rent was
18 appropriate. They didn't respond to a lot of his e-mails.
19 And the question here is a legal question.

20 THE COURT: That's a wonderful either redirect or
21 whatever. He tried to -- what I will say about this case,
22 that Mr. Rice did a very good job trying to do it the right
23 way. The problem with this case is he had an astronomical
24 demand that no one's going to pay, and he probably has lost
25 his affordable housing forever in San Francisco. Maybe not.

1 You know, you've got your jury thing. But Mr. Rice, the
2 clear import of all the papers is he tried very hard -- all
3 cases about, "Did you do your job?" And Mr. Rice tried very
4 hard to do a good job. That is abundantly clear. I wrote
5 it in the summary judgment order. I probably wrote it in
6 the order on the motion to dismiss. He tried to do it
7 right, from the build out, all of it. That's your case.
8 Here's the guy who wants nothing more than to do it right.
9 And he did everything right, and then the City denied it.
10 And the City says, "Sure, he did it right, but there's no
11 entitlement to an accommodation process. And we think his
12 motives were different." So that's what this case is about.
13 And so they get to ask about the motives.

14 MS. JIAM: Your Honor, we -- thank you for
15 recognizing everything that --

16 THE COURT: I know it. I said that.

17 MS. JIAM: -- about Mr. Rice --

18 THE COURT: I told Mr. Rice that in the hearing
19 through -- when you guys were arguing it. So I know he
20 tried to do a good job.

21 MS. JIAM: Thank you.

22 THE COURT: He did a good job. He did a really
23 good job.

24 MS. JIAM: Okay. Yeah -- I

25 THE COURT: Above and beyond. And he did a good

1 job on his papers when he's representing himself. He really
2 did.

3 MS. JIAM: Yeah, he spent a lot of time working on
4 this case.

5 THE COURT: Yeah, I know.

6 MS. JIAM: And we think the specific amounts of
7 rent are -- even if they're marginally relevant, they are
8 just --

9 THE COURT: I think they're very relevant.

10 MS. JIAM: -- they're going to lead to a sideshow
11 that will distract from what is actually at issue, which is
12 the legal question of whether the mayor's office made the
13 right decision when they denied him the ability to charge
14 any rent. That's the legal question before the jury.

15 THE COURT: I'll think about it. The issue might
16 be relevance to the decision-making process. But it's also
17 -- that's a fair argument. But the one that's not quite
18 fair is that it's all -- that testimony that Mr. -- that he
19 needed that accommodation stands and falls on his testimony
20 that he did and the expert testimony that agrees with it.
21 That's what the case stands and falls on. And the claim
22 that he -- that does state a viable claim. Then the jury is
23 going to decide with or without the expert testimony, but
24 probably with it, that -- whether he did or didn't have a
25 need for a rent-paying roommate. And then they're going to

1 award what they think that looks like if they vote for you.
2 But I don't think that the issue about what he charged -- if
3 your case gets destroyed by that, then that makes him a
4 mercenary or something. And I don't think that's correct
5 with Mr. Rice. I'm sure he did the best he could in the
6 situations that confronted him and maybe did different
7 things for different people. But people wouldn't pay rent
8 if the market wouldn't bear it. So there's nothing wrong
9 with that. There's nothing wrong with that.

10 MS. JIAM: Yeah, that is what we hope to present
11 and -- but we don't think that the City is going to be
12 taking the same --

13 THE COURT: Briefly, I'd like one illustrative
14 instruction so I could see -- putting the binder together.
15 I was having trouble. I was looking at the jury
16 instructions this morning. Reminder for your joint
17 stipulation that you've got a mark it as an exhibit and
18 someone has got to read it into the record in front of the
19 jury at the appropriate time.

20 MS. ROSENBLIT: Your Honor, you mean the factual
21 stipulation?

22 THE COURT: Okay. Let's just take one
23 instruction. I don't want to talk about the merits. I just
24 want to talk about the process. So you've put in -- you're
25 going to give me a statement --

1 MR. FISHER: I don't want -- may I propose we look
2 at disputed instruction number eight, your Honor. That is
3 -- it starts on page 31, ends on page 34.

4 THE COURT: So where's the argument?

5 MR. FISHER: So the arguments are in the sections
6 labeled, "Defendants' objection to plaintiff's damages
7 instruction," and then on page 34, "Plaintiff's objection to
8 Defendants' damages instruction."

9 THE COURT: Okay. Got it. Let me do this. You
10 don't have a plaintiff's response. That's the problem here.

11 MR. FISHER: Our section --

12 THE COURT: Your section has the authority, but no
13 argument.

14 MR. FISHER: That -- yeah.

15 MS. ROSENBLIT: But then they object to our
16 damages instruction. So it's --

17 THE COURT: Let me do this. I mean, I -- let me
18 take a crack at it, and I'll get something out before the
19 next hearing. And then if I need something more, I'll ask
20 you guys to submit separate memos on the jury instructions.
21 You guys can -- when you talk about a joint statement, you
22 can decide if you want to -- you can decide whether you
23 think you've advanced your arguments sufficiently. If you
24 think you have, you probably have. I'll read the cases, and
25 let me work through it. And then if we need the -- if you

1 think that you need to do something more, submit something
2 in a week, an update. But if you don't -- if you think, oh,
3 it's probably okay, I'll read through it. I'll put out a
4 proposed set of instructions. And you shouldn't really be
5 arguing law so much in your opening statement. You should
6 be arguing fact. But I understand that there's some bleed
7 over. Okay.

8 MR. FISHER: Right.

9 THE COURT: That's what I got the time for today.
10 Went a little longer. Sorry for folks in my claim
11 construction, but trying to give some newer lawyers some
12 experience in court.

13 MR. FISHER: Your Honor, just one quick thing.

14 THE COURT: Yes.

15 MR. FISHER: We cite to a set of jury instructions
16 that aren't readily available on Westlaw. So I printed out
17 the cite if you want one.

18 THE COURT: Perfect. I accept it without
19 question.

20 MR. FISHER: Okay. Yeah.

21 MS. ROSENBLIT: Oh, we do too.

22 THE COURT: Thanks. That's -- instructions that
23 aren't readily available. How perfect.

24 MR. FISHER: That's right.

25 THE COURT: Okay.

1 MR. FISHER: Thank you, your Honor.

2 THE COURT: No, thank you. Good job. Good job,
3 everybody.

4 MS. JIAM: Your Honor, we also brought an updated
5 exhibit for the Court's binders. Would you like me to --

6 THE COURT: Okay. Great.

7 Now, you guys are going to have to whittle down the
8 exhibits.

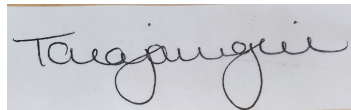
9 All right. So let's head into claim construction.

10 (Proceedings adjourned at 12:42 p.m.)
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CERTIFICATE OF TRANSCRIBER

I certify that the foregoing is a true and correct transcript, to the best of my ability, of the above pages of the official electronic sound recording provided to me by the U.S. District Court, Northern District of California, of the proceedings taken on the date and time previously stated in the above matter.

I further certify that I am neither counsel for, related to, nor employed by any of the parties to the action in which this hearing was taken; and, further, that I am not financially nor otherwise interested in the outcome of the action.

A handwritten signature in cursive script, appearing to read "Teagunee", is centered within a light gray rectangular box.

Echo Reporting, Inc., Transcriber

Thursday, March 21, 2024