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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, June 15, 2023

TRANSCRIPT OF PROCEEDINGS OF THE OFFICIAL ELECTRONIC SOUND
RECORDING 1:50 - 3:38 = 1 HOUR, 48 MINUTES

APPEARANCES:

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1 Thursday, June 15, 2023

1:50 p.m.

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

3 --oOo--

4 THE CLERK: Calling Civil Action 19-4250, Rice
5 versus City and County of San Francisco.

6 Counsel, please approach the podium and state your
7 appearances for the record, beginning with counsel for
8 Plaintiff. Please speak directly into the microphone, and
9 state your appearance each time before you speak. Thank
10 you.

11 MS. JIAM: Good afternoon. My name is Hannah Jim
12 from Morrison and Foerster, representing the Plaintiff, Mr.
13 Allison Rice.

14 THE COURT: Okay. Maybe you could say the name of
15 your colleagues who are here with you in court.

16 MS. JIAM: I also have with me my colleagues
17 Ramsey Fisher and Annie Lee, both also with Morrison and
18 Foerster.

19 THE COURT: Okay. And that must be Mr. Rice.

20 MS. JIAM: And I also have my client, Mr. Allison
21 Rice.

22 THE COURT: Okay.

23 MS. ROSENBLIT: Good afternoon, your Honor. Renee
24 Rosenblit, on behalf of the City and County of San
25 Francisco. I am joined by my colleague, Raymond Rollan,

1 also with the City Attorney's Office.

2 THE COURT: All right. Thanks for sort of going
3 back and forth with Elaine. Elaine's on vacation, a really
4 good long extended vacation, her first one since the
5 Pandemic. So, we're going to have a series of people
6 helping us. Angie's helping today. We have a court
7 reporter shortage, just so you know. So, where I -- I've
8 agreed that for pretrial, any conferences before the court
9 day, anything after the court day, we're just going to run
10 the sound system and put it on the sound system so we can --
11 we have a reporter. So, it will all be fine.

12 You know from the back and forth that I've had that
13 then we're going to extend some of the break times up to 30
14 minutes. I'm still messing with that a little bit to see,
15 to make sure you have enough time. We have space for you
16 here private. It's all going to be fine. Rose will talk to
17 you about it tomorrow. So, that will take care of that
18 issue, but we will have to take slightly different breaks.
19 And I'm messing with the -- I have to sort of figure it out
20 to maximize the trial time that we can get in on the first
21 two days, next Tuesday and Wednesday, which are our big
22 days, because of my schedule, because it has to go in. It
23 will be fine. I'm still kind of messing with the formula,
24 and I need to talk with Bell and email her. But, roughly,
25 the 15-minute breaks will be extended to 30 minutes, which

1 is fine.

2 What I -- what we do need to do is be very mindful and
3 -- about not bleeding time. I mean, it's often not your
4 issues. It's the jury issues, but, you know, it's the stop
5 -- I mean, obviously sometimes stuff happens. That's --
6 that's okay. But when we stop, it's 30 minutes on the
7 clock, back here, 30 minutes on the clock, get going. And
8 we'll try not to lose any time during any of our breaks so
9 we can get it in.

10 If there are delays, it comes off your clock. So, if
11 you're 10 minutes late getting back, it's 10 minutes less
12 that you have to do examination. Sorry to be harsh about
13 it, but it's -- we're lucky -- we're just lucky to have a
14 court reporter. Other trials they've -- they've appeared
15 remotely. So -- because everybody agreed, but, you know,
16 it's -- it's not ideal. So, we're lucky we've got coverage.
17 So, it should be fine.

18 MS. ROSENBLIT: Okay. Thank you, your Honor, for
19 that. And, just so we know, in the finalizing of the
20 schedule, are you still planning to have Thursday be a
21 shorter day?

22 THE COURT: Well, you get eight hours all in.
23 That's all you get.

24 MS. ROSENBLIT: No, I -- I understand.

25 THE COURT: So, it should be six and a half hours

1 on -- excluding jury selection. I've still got to do the
2 math. I was hoping to get seven hours in each day, which
3 leaves two hours on Thursday. And, so -- at most. And I --
4 we will have closing on Thursday, and under any way you
5 slice it, it will be to the jury by lunchtime on Thursday.
6 So, we should order the jury lunch on Thursday.

7 MS. ROSENBLIT: Oh, is that -- I was thinking that
8 we were still closing on Friday. We're going to close on
9 Thursday?

10 THE COURT: I never said not.

11 MS. ROSENBLIT: Okay.

12 THE COURT: Thursday morning. Yeah. Witness is
13 late, comes off your time. I mean, I did a very -- you
14 know, one it's for the court reporter. Two, it's for my
15 schedule. I have to be on a plane. It's going to the jury
16 by lunchtime on Thursday.

17 MS. ROSENBLIT: So, your Honor, one issue that we
18 wanted to raise is our expert was only available on Thursday
19 morning, and we anticipated, given the prior discussion and
20 schedule, that we would be still in trial on Thursday
21 morning and closing on Friday.

22 THE COURT: No. A hundred percent no. You're
23 going to have your expert on -- how -- what's your trial
24 time for your expert?

25 MS. ROSENBLIT: I think e estimated an hour for --

1 THE COURT: I mean, that's --

2 MS. ROSENBLIT: -- direct and then --

3 THE COURT: That -- that should be about -- well,
4 you know what -- you'll see how much trial time you have
5 left. I'll cut you a little slack maybe, not for extra time
6 on Thursday or not for closing on Friday. But if it ends up
7 that we -- you should have all of your witnesses in but your
8 expert, and you can put your expert on Thursday morning.

9 MS. ROSENBLIT: Okay. Understood.

10 THE COURT: Yeah.

11 MS. ROSENBLIT: Thank you.

12 THE COURT: So, that's -- and so -- because that's
13 all you'll have time for on whatever time you've allotted.
14 And remember the -- if I'm correct, it's seven hours each
15 day. You know, I still got to do the math because we're
16 cutting it close. But if it's seven hours each day, there's
17 an hour left on Thursday. Now, if -- because your expert's
18 only available and it will still work from a timing
19 perspective from my schedule, from the court reporter's
20 schedule, it's not going to kill the jury if we break early
21 on Thursday -- or on Wednesday with the last witness. The
22 one witness left, an expert, should take about an hour or
23 whatever, an hour plus cross examination. You'll have to
24 give me -- it will be whatever time is left. So --

25 MS. ROSENBLIT: We think it's like 30 to 45

1 minutes.

2 THE COURT: Exactly. So, that will be fine.
3 We'll -- we're breaking a little early on Wednesday. Let's
4 just do an instructions conference if we need a follow-up
5 one. I -- I -- I -- I did push through the substantive
6 instructions now because you asked me to do that in lieu of
7 a proper instructions conference during the trial, but
8 they're expert instructions, and they're like judicial
9 notice. I mean, maybe I'm going to judicially notice
10 something. Maybe I'm not. But at last we can -- at least
11 you can organize your exhibits. They usually go into the
12 jury electronically.

13 MS. ROSENBLIT: Um-hmm.

14 THE COURT: And, so, it will give you time to get
15 organized on those points. So, I think that we can use the
16 time productively even if we start with the expert on
17 Thursday. I think it will work fine.

18 MS. ROSENBLIT: Okay.

19 THE COURT: Because if it's just an hour and a
20 half, that's 8:30 to 10:00, 15-minute break, you close.

21 MS. ROSENBLIT: Then we close before lunch.

22 THE COURT: Yeah. I mean, I might give you -- I
23 think -- it's not a 15-minute break. It's a 30-minute
24 break. I'll give you a little bit more to get your head
25 around it. Like, we can always take a 45-minute break or

1 something, and then we'll close. But they'll -- it will --
2 it will get to them by -- by lunchtime.

3 MS. ROSENBLIT: Okay. Thank you for that --

4 THE COURT: Okay.

5 MS. ROSENBLIT: -- clarification and
6 understanding. I appreciate that.

7 THE COURT: Oh, no. It's fine. I just can't
8 close on Friday. It's just not going to work. I mean, I --
9 it might work, but we're going to close on Thursday. I
10 think it's the normal pace of the trial. I don't think the
11 jury would be very happy going home at 10:30 or 11:00 on
12 Thursday and coming back to close. If it ends up -- you'll
13 be -- you'll be mostly fresh. The expert's not going to be
14 a lot of surprises. Whatever prep you do that afternoon
15 Wednesday, if you need any more prep, you'll still have
16 plenty of time to conceptualize your closing. So, I think
17 it will be -- I think it will be fine, and it will be --
18 you'll have your cross examination that you'll do with the
19 expert. It will be fine. And it's always kind of nice to
20 have a deep breath before an expert. And, oh, so, but --
21 well, so, wait a minute. Let me just -- yeah, so, it's you.
22 That's fine. It's not a problem, yeah, because it's
23 Defense.

24 MS. ROSENBLIT: Okay.

25 THE COURT: Okay.

1 MS. ROSENBLIT: Okay.

2 THE COURT: So, let's see what else we have to
3 talk about. So, I already did the trial day. Then I have
4 to figure this out a little bit. So, we're going to lose,
5 let's see, one, two -- we should actually -- we'll get
6 almost seven hours in each day.

7 These are some things that I hope I'll remember but I
8 decided to cover along the way. The courtroom won't be
9 sealed. This is to the health information. You -- if you
10 want, because there's health information in here, if you
11 want to redact the transcript afterwards, if you want access
12 to the transcript to redact the -- that it's not going to be
13 recorded except for by the reporter. If -- if you really
14 don't want sensitive information displayed for reason, you
15 can manage that by how you tilt the display. No one will
16 see it. And then just think about that from a transcript
17 perspective. I'm sure we -- just remember to raise it. I
18 won't necessarily remember. Just remember to raise it with
19 me, and then you can get the transcripts, and then you can
20 do any redactions, show them to the Government. But it
21 would really be HIPAA type information, and -- and I -- and
22 I think we can work out a process that both satisfies the
23 open courtroom and -- and satisfies any concern about
24 medical privacy.

25 MS. JIAM: And I assume that it would be fine with

1 the Court if we just raise the transcript issue after the
2 end of trial?

3 THE COURT: Oh, yes, exactly. I just -- I think
4 what you'll find we'll just talk about and say -- we'll talk
5 about and say, Hey, can we get a -- can we -- we're going to
6 do the sealing thing first before we file on the public
7 docket.

8 And then I realized -- sorry. Let me just -- there are
9 way too many things going on here. I forgot about we need
10 to do the for causes right away.

11 THE CLERK: Counsel who just spoke, please
12 identify yourself for the record.

13 MS. JIAM: Yes. Hannah Jiam. Thank you.

14 THE COURT: Okay. So, everything looked fine, but
15 I did not see in my binder -- I was able to read the -- and
16 the reason we're doing this so fast, Angela, is I promised
17 the Jury Office that by 2:30 we'd get them in for causes,
18 and the lawyers were good enough to actually submit a
19 stipulation or order. So, it will be about a two-second
20 filing job.

21 There were -- it all -- it all looked fine, but I
22 didn't see questionnaires for 26 and 35, and I wondered how
23 you all stipulated to them as a for cause challenge.

24 UNIDENTIFIED SPEAKER: All right. Well, I'll --
25 go ahead.

1 MR. FISHER: This is Ramsey Fisher for the
2 Plaintiffs. I believe these two did not fill out
3 questionnaires.

4 THE COURT: Right.

5 MR. FISHER: And our thinking was that we agreed
6 to stipulate that anybody who declined to answer to the
7 vaccination question we would strike for cause.

8 THE COURT: No, I -- I definitely picked up on all
9 the reasons.

10 MR. FISHER: Yeah.

11 THE COURT: They didn't fill out questionnaires,
12 but I understand from the jury that -- office that sometimes
13 people just -- they're not that tech -- you know, they --
14 they forget. They're not savvy. There are always a few
15 missing ones. And, so, what they'll do is in the morning
16 we'll get a couple of extra questionnaires for jurors who
17 show up but did not fill out the online -- and maybe they
18 meant to. Maybe they meant to do the poll and they didn't
19 do it on their phone or something happened. So, we -- we
20 always let -- we always -- so, what I would say is we will -
21 - we'll -- we'll cabin
22 -- we'll cabin Jurors 26 and 35 until tomorrow. I guess
23 those are the only two questionnaires we're missing.

24 THE CLERK: Yes.

25 MR. FISHER: Right.

1 THE COURT: Which Aaron's not here today, right?

2 THE CLERK: Correct. And I did confirm with Jury
3 Office that those two are still missing.

4 THE COURT: I don't -- I never really thought that
5 they were missing. I just -- so, Aaron did tell me that
6 they were missing. So, how many does that leave us if we
7 get rid of these people? So, we have 45 questionnaires in
8 all --

9 THE CLERK: Forty-three.

10 THE COURT: So 43 in all?

11 MR. FISHER: Forty-three questionnaires in all.

12 THE COURT: Great. We --

13 MR. FISHER: Taking away --

14 THE COURT: -- pulled 45. We actually have 43.
15 That's a great net rate actually. It's a great net rate.
16 So, getting rid of -- so, we had -- we had a total of 45
17 went out, and of those, two questionnaires are missing.
18 One, two, three, four, five, six, seven, eight, nine -- so,
19 that's -- that gets us down to 30 with a potential four
20 more, gets us down to 26. We need -- we need 14 after for
21 cause so we have a padding of -- of 12. Probably would be
22 enough, but let's -- let's -- let's -- let's defer 26 and 35
23 until tomorrow. They'll probably be no-shows, but, in any
24 event, so I have reviewed the -- for the record, I've
25 reviewed the challenges that the parties raised for cause in

1 their joint stipulation. I reviewed all of the
2 questionnaires, and I agree for the questionnaires of --
3 that are identified in the stipulation at ECF Number 203 --
4 this will go into the minute order -- I excused those in the
5 proposed order at ECF 203 at page four except for -- and,
6 so, I don't know how you want to do this, Angie. I'm just
7 striking 26, 35, will -- and I'm just putting in here will
8 evaluate 26 and 35 during jury selection.

9 So, Angie, this is -- I'm just going to hand that back
10 to you. You could give it back to me because it's my copy,
11 but if that -- that would be -- if you don't mind filing
12 that proposed order with that line --

13 THE CLERK: Okay.

14 THE COURT: -- on it and sending the Jury Office a
15 CC of it.

16 THE CLERK: Will do.

17 THE COURT: And they -- they did make me promise
18 to do it by 2:30.

19 THE CLERK: Will do.

20 THE COURT: Okay. Thank you. Okay. So, that
21 takes care of that. You know, they take the Jury Office
22 very seriously.

23 Okay.

24 UNIDENTIFIED SPEAKER: Your Honor, for the --

25 THE COURT: And for the other ones we'll just take

1 them up tomorrow.

2 UNIDENTIFIED SPEAKER: Okay. Great.

3 THE COURT: I think it's better to do it in
4 context. So, I just -- I really just wanted to agree to for
5 causes. It means -- it helps the Jury Office. It reduces
6 the number of people coming in. We'll just do the other for
7 causes on the record tomorrow. We'll just defer it because
8 you may agree when -- at the end or you may change your
9 mind. So, that's fine.

10 MS. JIAM: Understood. And while we're talking
11 about jury selection, if we can ask a couple of questions.
12 So, tomorrow, do you anticipate going through any like
13 background questions or the parties submit a joint --

14 THE COURT: I do -- I do hardship.

15 MS. JIAM: Okay.

16 THE COURT: And then you do -- you do voir dire.
17 I'll tell you exactly what I do. Just let me -- I'll tell
18 you just so you know. I -- I am very much taken with the
19 research that says lawyers know their cases better, and they
20 do voir dire better than judges. And I think the research
21 shows that, and, in particular, I think the research tends
22 to show that jurors want to please the judge. You can
23 rehabilitate people. And why don't you ask the questions
24 designed to eliminate, you know, bias. Everybody's just
25 looking in jury selection for someone who can be fair to

1 either and get rid of people who can't be fair, and that's
2 bias. However it is, it comes in all sorts of forms, and I
3 think you should ask those questions. And -- because it's
4 organic. You can follow up questions. You can extend the
5 question to anybody else. So, what I do -- I haven't -- yet
6 have not -- not yet gone through my jury selection, but the
7 way it works -- and Rose is helping us I think tomorrow, and
8 -- I can't remember.

9 THE CLERK: Yes.

10 THE COURT: Rose and Karen are mostly the people
11 helping us during trial, and so we do the oath. I do
12 welcome. I do the statement of the case. You guys stand
13 and introduce yourself and your clients and any client
14 representative, Mr. Rice, for example, sitting at counsel
15 table with you.

16 They've already -- and then I do -- and I think
17 sometimes you say -- and I can't remember if this went out
18 in your questionnaire. I was just looking -- I was really
19 quickly looking at it just for a bias. I don't know if yo
20 listed the witnesses.

21 MS. ROSENBLIT: We didn't.

22 THE COURT: And, so, remind me. I've got to
23 remember. I'll go through the witnesses and ask if anybody
24 knows them, any witnesses. And I'll just say them out --
25 out loud. I'll tell the about the timing of the trial,

1 introduce the voir dire process. Because we've had a
2 questionnaire and we've identified a lot of the hardships
3 and people have been good about telling us, you know, I'm
4 doing a startup or, you know, I'm not going to say some of
5 the excuses that were given because they were confidential,
6 but okay. Fair enough. So, mostly I take a light view
7 because you don't want people to sort of think, oh, that's
8 how I get off of a jury. So, I take a very light view of
9 it. I -- but I let you -- and it will be very light because
10 we've got a questionnaire. And I -- I really -- so, I
11 really just do hardships, and that's mostly done, and I will
12 let that happen organically, and we'll give people an
13 opportunity to say anything else that we think -- say
14 anything else. We'll give them an opportunity to do that.

15 And then -- then you guys will do voir dire, and that's
16 for 30 minutes each. It doesn't -- and I'll tell everybody
17 it's a short day, and I'll just say because of the holiday
18 -- I'll tell them why, it's over the holiday. We lost a
19 day, and so we wanted to ensure that we could deliver the
20 case to them for deliberation next week. And then it's over
21 to you to ask whatever you want. And -- because hopefully
22 you'll have already dealt with the for causes. You know who
23 you're keeping an eye on, and you'll be able to do the
24 numbers because they come in the order of call. You get the
25 order of -- I -- I hated when I got random juries. It just

1 takes way too much time. So, they'll come in in the box,
2 and they'll -- they hit the box in the order of call, you
3 know, starting with one in the back and -- and it keeps on.
4 And usually Elaine will set up the courtroom. I'll try to
5 set it up myself for extra jurors so we can seat as many up
6 here as possible, because I try to do the math, right. So,
7 usually we get 20. How many seats are there? One, two,
8 three, four, five, six, seven --

9 MS. ROSENBLIT: Do you start -- sorry to interrupt
10 you. Do you start back left or back right?

11 UNIDENTIFIED SPEAKER: I think back right.

12 THE COURT: Yeah. So, usually we've got a whole
13 set of chairs set up in front.

14 UNIDENTIFIED SPEAKER: Okay.

15 THE COURT: I don't know, but I'll try to figure
16 that out, and I'll talk to Rose tomorrow and if she doesn't
17 know how to do it, I'll do it. So, that means we can get 21
18 people in.

19 UNIDENTIFIED SPEAKER: Okay.

20 THE COURT: Which that way -- and then -- and then
21 the numbers will continue over there.

22 UNIDENTIFIED SPEAKER: Um-hmm.

23 THE COURT: So, when you're doing voir dire, you
24 have a number of the possible -- you know, you have an idea
25 of the number of for causes that might be at play in those

1 first 21 jurors continuing there. The jury pool will
2 probably stop, you know, around there, but you'll be able to
3 direct your questions to everybody with this idea, and you
4 just do the math, right. You can decide how you want to
5 focus your questions, but it's -- we'll seat eight, three
6 peremptories each, and so that's 14 plus causes. Usually
7 you can get them a jury with 18 or 20. So, this should be
8 your jury here.

9 And then what we do is we then take a break. Depending
10 on what the break is, everybody -- we do perempt -- we do
11 any for causes. We go just into the jury room here with the
12 court reporter. We do for causes, and then you just
13 literally pass your peremptory sheet back and forth. And,
14 so, you've done your peremptories, and then we come back,
15 and at this point, assuming there's no reason to continue
16 any voir dire, I will have told people don't go back to your
17 seat. I guess -- I usually call people up because it's a
18 little less awkward than thanking and excusing. I'll say
19 the jurors are, you know, these numbers. And then they're
20 brought up, sworn, and given the preliminary instructions.
21 And then that's what we'll do for -- for Friday.

22 You'll remember that I said that in my last -- the
23 feedback I got in the last jury trial was the jury really
24 wanted a copy of the preliminary instructions to follow
25 along, and I don't -- we can talk about the preliminary --

1 the preliminary instructions are innocuous. It's -- it's --
2 and I'll -- by the way, I will read the statement of the
3 case during jury selection.

4 The -- the beginning instructions are innocuous, and
5 the only one that's different is the one that you jointly
6 agreed to. So, it's pretty easy, and I think it does help
7 to follow them along. You'll remember that I do do
8 questions. So, I have questions that the jurors might have
9 for the witness and then questions of the jury. So, we'll
10 have the forms out Monday for them so that during your
11 examination, we keep an eye on it. And we try to tell them
12 -- to have Rose tell them, oh, don't -- don't put your name
13 on it, but you can often tell.

14 And then what we'll do is we'll manage that process by
15 having them give us the questions. I'll look at them. I
16 might have a sidebar, which I'll let you guys look at it,
17 and then you know that the -- the process I have says just
18 because we don't ask a question doesn't mean it's not a good
19 question. It might be answered later or there might be the
20 Rules of Evidence. Sometimes you're like, that's fine, why
21 don't you ask it. They'll ask me to ask it or sometimes it
22 will be a follow-up one for one of you and you'll ask it,
23 but we always talk about it, and it's usually -- I've never
24 had a case where anyone's disagreed. Everybody has an
25 interest -- a shared interest in having the jury be able to

1 -- if you're confused about something, to remedy that
2 confusion, and Judge White started doing it, and I thought
3 it was a good idea. So, I do it.

4 So, that's the -- that's tomorrow. Any other questions
5 about tomorrow. That's just the general stuff for
6 witnesses.

7 UNIDENTIFIED SPEAKER: I have just two.

8 THE COURT: Yes.

9 UNIDENTIFIED SPEAKER: So, you mentioned that
10 you're going to read the witness list?

11 THE COURT: Correct.

12 UNIDENTIFIED SPEAKER: We have narrowed that
13 witness list substantially.

14 THE COURT: Great. So, bring it tomorrow.

15 UNIDENTIFIED SPEAKER: Okay.

16 THE COURT: Just bring your narrowed witness list
17 tomorrow.

18 UNIDENTIFIED SPEAKER: Great. And then, second,
19 how would you like us -- hopefully this doesn't happen, but
20 how would you like us to handle Batson challenges? Do you
21 want us to say, May we approach and handle it at sidebar
22 or --

23 THE COURT: We'll do it in a separate room.

24 UNIDENTIFIED SPEAKER: Okay.

25 THE COURT: It will be on the record, but it will

1 be -- I've never had a Batson challenge.

2 UNIDENTIFIED SPEAKER: Yeah. Just asking. Just
3 asking.

4 THE COURT: Good -- good for me being on it.

5 UNIDENTIFIED SPEAKER: Yeah.

6 THE COURT: We'll do it in the -- in the room, and
7 we have a -- it will -- it will be -- we have a process,
8 but --

9 UNIDENTIFIED SPEAKER: Great. Okay.

10 THE COURT: -- it will -- it will be okay, and
11 we'll just do it outside of the juror's presence.

12 UNIDENTIFIED SPEAKER: Great.

13 THE COURT: We don't do any objections in front of
14 the jury. It's just so unnecessary. We finish the voir.
15 We take a break. We give them a break. We go talk about it
16 on the record, and then we decide there.

17 UNIDENTIFIED SPEAKER: Yeah.

18 THE COURT: And we put it on the record there and
19 not in the jurors' presence.

20 MS. JIAM: So, just one question for me, just so I
21 am clear. So, we have the 35 folks, and I understand where
22 they're going to be sitting. So, when --

23 THE COURT: We should have 21 right here, because
24 I'll set four chairs in front.

25 MS. JIAM: When counsel and I do our voir dire,

1 we're voir diring the entire 35? We're not --

2 THE COURT: You don't -- well, you don't --

3 MS. JIAM: We're not going to do some and then do
4 the like scooch down, fill in --

5 THE COURT: No, no.

6 MS. JIAM: No. We're just doing it all?

7 THE COURT: I do the modified Arizona method, but
8 the basic thing is they're all in the box. You're virtually
9 certain that your jury's coming from the ones right in front
10 of you, and you can do the math along the way. Like, if you
11 know someone's problematic, you're like -- like that's my
12 peremptory. So, you can -- you can sort of do the math
13 along the way. You can -- with reasonable certainty, you
14 could get your -- you can know who your jury is. You don't
15 have a lot of for causes left just based on the
16 questionnaires. Maybe there'll be more. But it should be
17 okay. And it will have -- but it will be easy from a -- a
18 safe perspective because they're all right there. You may
19 have a couple who are potentially in the pool over there in
20 that corner, but it should be okay.

21 MS. JIAM: Okay. Thank you.

22 THE COURT: Okay. So, you said you had other
23 questions?

24 UNIDENTIFIED SPEAKER: Oh, those are my two.

25 THE COURT: Okay.

1 UNIDENTIFIED SPEAKER: I have two.

2 THE COURT: Okay. That's jury selection, pretty
3 straightforward. If you haven't done voir dire, you know,
4 it feels a little scary. But it's actually fun. So, no one
5 else -- I mean, Judge Corley does it. I don't -- Judge
6 Corley and I do it. I don't know if anyone else does it,
7 but we think it's better. It's better experience for you,
8 right. That's why you went to law school.

9 UNIDENTIFIED SPEAKER: I did have a couple of
10 housekeeping things.

11 THE COURT: Yes.

12 UNIDENTIFIED SPEAKER: I don't know if now is the
13 right time for that.

14 THE COURT: Sure.

15 UNIDENTIFIED SPEAKER: Okay. So, first, on the
16 schedule for us to exchange witnesses and exhibits --

17 THE COURT: Yes.

18 UNIDENTIFIED SPEAKER: We've reached a tentative
19 agreement that's slightly different from --

20 THE COURT: That's fine.

21 UNIDENTIFIED SPEAKER: That's fine?

22 THE COURT: Yeah.

23 UNIDENTIFIED SPEAKER: Okay.

24 THE COURT: Just out of curiosity, what's your --
25 what's your agreement?

1 UNIDENTIFIED SPEAKER: So, we're going to exchange
2 -- the issue is there's a lot of overlapping witnesses,
3 right, in this case. And, so, we're going to exchange -- do
4 a mutual exchange of case in chief exhibits --

5 THE COURT: Okay. Great.

6 UNIDENTIFIED SPEAKER: -- for Tuesday on Sunday.

7 THE COURT: Yeah, that's perfect. I mean, I was
8 trying to spare you the weekend if you could, but -- all
9 right. Nice try.

10 MS. JIAM: I gave up on that a while ago, but
11 thank you.

12 THE COURT: And, so, that's just fine.

13 UNIDENTIFIED SPEAKER: Okay.

14 THE COURT: I was just concerned -- if you're
15 doing demonstratives in opening, show them to each other
16 before opening. My view on demonstratives in opening is if
17 it's coming in as evidence, you can talk about it in
18 opening. So, yeah. Yeah, okay. So, that's -- that's --

19 UNIDENTIFIED SPEAKER: There was a --

20 THE COURT: Yes?

21 UNIDENTIFIED SPEAKER: I think the -- the pretrial
22 order suggested that on Tuesday and Wednesday, we should
23 notify the Court of any outstanding disputes on exhibits by
24 close of business?

25 THE COURT: I -- I understand that's --

1 UNIDENTIFIED SPEAKER: Okay. I just -- I was just
2 giving you heads up that email might be coming a little
3 later.

4 THE COURT: Well, so -- yeah. But be careful. I
5 mean, be careful about it. Try not to be too contentious.
6 I mean, at a certain point it won't get read. I did -- in
7 your case, your hours will confine your exhibits. So, they
8 just won't all come in. And, so, most -- my view is
9 evidence is easy, and there's almost never a reason that
10 something can't come in if you want to get it in. So, it
11 then becomes sort of a substitute for in limine. And you
12 should have raised it at an in limine, but I understand that
13 stuff comes up. But you're supposed to meet and confer at
14 the end of every day. You should do it right here. You've
15 exchanged your case in chief stuff on Sunday. So, I'll let
16 you get through most issues on -- see, mine was that you
17 were exchanging Sunday for Tuesday and that it's -- if
18 you're exchanging for a case in chief, you're really mostly
19 exchanging Sunday for the trial. So, there really shouldn't
20 be a big issue about disputes for the next day.

21 UNIDENTIFIED SPEAKER: I think that -- I think
22 that's right.

23 THE COURT: And -- because -- yeah, evidence --
24 there really shouldn't be disputes about evidence. So,
25 Sunday's great. I mean, that gives you plenty of time to

1 digest, and then you should confer on Monday, and then I'm
2 unlikely to be checking my email on Monday, just so you
3 know. I mean, I'll just -- that's a little bit of a joke.
4 In my case that was five weeks, Judge Freeman's former law
5 clerk was lovely, she came up to me and said Judge Freeman
6 would never let people do -- it was a -- it was a four,
7 five-week trial, and 5,000 exhibits that got whittled down
8 to under 100, and -- and that -- that -- the enormity of the
9 case meant that it was impossible for things to shake out
10 except as things go along. And, so, that's why I have these
11 processes which say, Well, I get that. I get that. I will
12 hear them. None of it should be that big a deal, but we're
13 around to pay attention at some reasonable period of time
14 after the end of the trial day. But hopefully you'll -- and
15 then remember that we start the trial sharp at 8:30. So,
16 8:00 o'clock is when we decide those issues, and we decide
17 them on the sound system, not with a court reporter. And
18 that's mostly why I -- well, why I say the night before,
19 yeah.

20 MS. JIAM: Yeah. Do you need us to let you know
21 in advance if we need to put stuff on the record at 8:00
22 a.m. or can we just show up at 8:00 and --

23 THE COURT: You -- you can, but it's a little
24 easier. So, I'll tell how they did it in -- they filed in
25 limine motions or whatever. They filed something at 8:00 --

1 you know, 7:00 o'clock at night, and then I had it. I could
2 look at it, and I could note again at 7:30 to try to read
3 it. I mean, I'm coming in -- the jury comes in at quarter
4 to 8:00. I -- if I don't hear anything, I'm assuming you
5 don't need me and then I don't need to be here until 8:30.

6 MS. JIAM: Okay.

7 THE COURT: Yeah.

8 MS. JIAM: Okay.

9 THE COURT: So, that's the reason for that.

10 MS. JIAM: Okay.

11 THE COURT: If that comes up, I'll make a good
12 effort to be here before 8:00 o'clock everyday because stuff
13 comes up. But in this kind of case it really shouldn't. I
14 will tell you like in the sort of standard civil rights
15 litigation, which I put this in that category, we don't have
16 a lot of trial issues. We just don't. When it's about the
17 company kind of thing, we have a lot of trial issues, but
18 this one we don't. Civil rights, we just don't. They are
19 significant cases that people -- they've got their head in
20 the game. It's all organized. They're going in a certain
21 way, and it's not an issue.

22 UNIDENTIFIED SPEAKER: For discovery designations,
23 I think we agreed to just handle it pursuant to our
24 exchange. So, if we wanted to use something that was -- we
25 designated as like an interrogatory response, we would just

1 list it on the exchange. We'd meet and confer about it. If
2 there was an issue, we'd level it up to you with --

3 THE COURT: That sounds fine.

4 UNIDENTIFIED SPEAKER: Okay.

5 THE COURT: And I don't know. With depo
6 designations, I'll just remind you I have very specific
7 procedures, and really it is -- you really can't do those
8 usually, especially if you're impeaching, but you do have to
9 stop, you know, you identify the pages, identify it by page
10 number, give opposing counsel an opportunity to read through
11 it. So, usually completeness, just -- and it's not worth it
12 to try and say, well, they can do what they want in cross
13 examination, just for completeness. And I will get my head
14 around all of the different instructions that we give along
15 the way when all those issues come up.

16 UNIDENTIFIED SPEAKER: Is -- can we -- are we --
17 are we able to admit discovery responses into evidence or do
18 you want us to just read those into the record?

19 THE COURT: Well, it depends if there's a -- or if
20 I -- well, let me --

21 UNIDENTIFIED SPEAKER: It's a party -- you know,
22 yeah.

23 THE COURT: Yeah, it's a -- if it's a party --
24 I've actually -- usually it comes up in the form of records.
25 And, so, the records come in. With the depositions, I've

1 never had anybody designate an admission in a deposition
2 transcript and try to admit it. I suppose it's conceptually
3 possible.

4 UNIDENTIFIED SPEAKER: And we're thinking like RFA
5 responses or ROG responses.

6 THE COURT: Yeah. I mean, it's -- usually people
7 don't. That's all I'll say. But if there's a ground for
8 admitting it and you want to -- well, if it's in your case
9 in chief, it should already be in your exhibit list. If
10 it's not in your case in -- because you -- if you
11 contemplated it as an exhibit, it would be the -- typically,
12 it's not done. Usually you're doing it for impeachment.
13 Usually you're doing it to rehabilitate. People don't
14 usually deny what they said before.

15 UNIDENTIFIED SPEAKER: Couple other questions.

16 THE COURT: And this is just a thing, Angie. It's
17 really warm in here. Do you mind emailing GSA just to let
18 them know --

19 THE CLERK: Sure.

20 THE COURT: -- it's a bit -- they -- they can
21 bring the temperature down, but they -- they probably didn't
22 know we had a -- we had court in here today, just make sure
23 that they know --

24 THE CLERK: Okay.

25 THE COURT: -- we're on next week.

1 THE CLERK: Sure. Will do.

2 THE COURT: This is not typical. They usually
3 cool it down just fine. So --

4 MR. FISHER: We've asked the City this request
5 already. Mr. Rice is anticipated to testify on Tuesday.
6 We'd ask that he be able to have a hand towel with him on --

7 THE COURT: Sure.

8 MR. FISHER: -- the stand, just to --

9 THE COURT: Sure. Whatever makes you comfortable
10 is fine with me.

11 MR. FISHER: That's -- oh, one last issue. I
12 assume we don't have to exchange demonstratives for closing,
13 but I don't know if you have a separate rule on that.

14 THE COURT: Well, I don't think my standing order
15 speaks to it. I -- I also don't think you want to -- I
16 don't think you want objections, you know. And, so, I don't
17 have a firm rule on that. I mean, usually you -- I mean,
18 this is my view of things. Closings are far more work than
19 like than openings. Openings you have to be concerned about
20 not over promising. You can't promise what you can't
21 deliver, but you need to show your story well enough. You
22 want to show some of your evidence and give a visual to it.
23 You don't want to overdo it. In closing, you're walking the
24 jury through your exhibits.

25

1 So, I would say if your demonstratives are usually your
2 exhibits or the verdict form or the jury instruction, that
3 sort of goes without saying. All that stuff is fair game,
4 and you don't have to show it. If there's something
5 derivative that's potentially objectionable, then you'd
6 probably want to do it because you don't want to catch an
7 objection in your closing. So, I think the reason it
8 doesn't come up it's mostly because you're walking through
9 your evidence. Okay. And it may be something you've shown
10 already in court. If you're showing something for the first
11 time in closing, it's not typical.

12 MS. ROSENBLIT: Renee Rosenblit. I anticipate
13 that we'll use a PowerPoint, and so --

14 THE COURT: Your PowerPoint will have things
15 like --

16 MS. ROSENBLIT: It will be --

17 THE COURT: -- evidence and the jury verdict form
18 and all that. You don't have to --

19 MS. ROSENBLIT: Right.

20 THE COURT: -- show PowerPoints to each other.

21 MS. ROSENBLIT: Okay.

22 MR. FISHER: Okay.

23 MS. ROSENBLIT: Thanks.

24 THE COURT: It's just the content if there's
25 something new you created.

1 MR. FISHER: That's everything on my list.

2 THE COURT: Okay. And I think that's everything.

3 MS. ROSENBLIT: Did you want to discuss jury
4 instructions?

5 THE COURT: Yeah, I'm happy to do that. That's
6 why I attend.

7 MS. ROSENBLIT: Okay.

8 THE COURT: So we can talk about jury
9 instructions.

10 MS. ROSENBLIT: Great. And then, just so the
11 Court knows --

12 THE CLERK: Please identify yourself, Counsel.

13 MS. ROSENBLIT: Thank you. Renee Rosenblit for
14 the City.

15 Jury instructions, and then we had a couple of
16 clarification questions about your (indiscernible) on MILs.

17 THE COURT: Okay. Sure.

18 MS. ROSENBLIT: Thank you.

19 (Pause.)

20 THE COURT: So, do you want to do jury
21 instructions first or motions in limine first?

22 MS. ROSENBLIT: Let's do jury instructions.

23 (Pause.)

24 THE COURT: All right. So, I -- so, my process,
25 so you know, is obviously we went a long way with the

1 summary judgment order to identifying the standards. I
2 based -- I looked at the CACI instructions because the
3 standard under the state FHA statute is modeled on the
4 federal statute. So, it's the same. I looked at the ADA
5 statute just for construction because -- because some of the
6 issues are the same but not all of them. I, of course,
7 looked at the statute, and I looked at the civil rights
8 statutes because it -- it mimics in form the civil rights
9 form. So -- and those are all stock. Those are all -- on
10 the federal side, those are all standard instructions, and
11 that was the model for the form of the instruction.

12 I -- I obviously made calls on the motions in limine
13 that are reflected in the jury instructions. So, that's
14 another piece of it. And, so, I'm happy to talk about
15 whatever instructions you'd like to talk about.

16 MS. ROSENBLIT: Okay. Great. Thank you, Judge.
17 And than you for --

18 THE COURT: And if -- and if there's a model
19 instruction, I go with the model instruction. That's a
20 damages thing, you know. That's the damages, and I just
21 went with the Ninth Circuit's.

22 MS. ROSENBLIT: Okay. Yes. So, Renee Rosenblit
23 for the City. Thank you, Judge, for these final jury
24 instructions. They're very helpful. So --

25 THE COURT: It's a process. That's for sure.

1 MS. ROSENBLIT: Yes. A couple typos I just
2 thought I would drop first.

3 THE COURT: Okay. I was rushing. So, thank you
4 for doing -- for doing that.

5 And do you mind -- you can ask Steven to do this. I
6 have a settlement conference. Will you tell them that I'm
7 running -- that they're trailing my CMC.

8 THE CLERK: Okay. Will do, your Honor.

9 THE COURT: Okay. So, tell me that.

10 MS. ROSENBLIT: So, I've reviewed --

11 THE COURT: I did run spell check, but I --

12 MS. ROSENBLIT: I reviewed these quickly too. So,
13 I may not have caught everything, but on page eight, the
14 Fair Housing Act introductory instruction references 42
15 U.S.C. Section 4204. It should be 3604.

16 THE COURT: Yes. So, which instruction?

17 MS. ROSENBLIT: That is the -- it's page eight --

18 THE COURT: Okay.

19 MS. ROSENBLIT: -- Fair Housing Act introductory
20 instruction.

21 THE COURT: 36.

22 MS. ROSENBLIT: 3604.

23 THE COURT: Exactly. So, I don't know how that
24 happened. Okay. 3604. Thank you.

25 MS. ROSENBLIT: The other silly one that you don't

1 need me for is page 11, 3.2, there's just a typo in the
2 title.

3 THE COURT: Okay. Thank you. You know -- you
4 know what that is. That's a Control S to save, but I -- but
5 I missed the Control. Okay.

6 MS. ROSENBLIT: Okay.

7 THE COURT: Okay. Thanks for grabbing those.

8 MS. ROSENBLIT: Absolutely. Okay. So, then --

9 THE COURT: I'm probably not going to -- I'll
10 probably wait until -- because some of these instructions
11 may come out, I will fix them on my -- on my -- I'll fix
12 them now, but some of these instructions may come out, you
13 know, as I said. So, I'll probably -- in trial will take
14 out any instructions that don't apply.

15 MS. ROSENBLIT: Okay. Thank you.

16 THE COURT: Maybe you don't have charts that are
17 in evidence or things like that.

18 MS. ROSENBLIT: Right. That makes sense.

19 So, then, substantively, for the 42 U.S.C. Section 3604
20 instruction, I was just going to put a few objections on the
21 record, your Honor. I understand that you have ruled and --

22 THE COURT: Well, no, I'm not going to talk about
23 it. So --

24 MS. ROSENBLIT: Okay. Okay. Great.

25 THE COURT: -- I'm going to flip open -- I've got

1 an organizational system. If you'd just give me a second.
2 I did some research. I have everything -- I had thoughts
3 behind what I did so we can talk about that. It just -- I
4 wasn't just -- tried not to make it up. I tried to do it by
5 reference to the -- to the statute. So -- so, this is
6 disputed instruction one.

7 MS. ROSENBLIT: Disputed instruction three.

8 THE COURT: Exactly. Okay. Got it. So, I've got
9 your argument in front of me. So, what would you like to
10 talk about?

11 MS. ROSENBLIT: Okay. Great. So, on -- let's
12 see. So, on the proposed final instruction, the second to
13 the last paragraph that starts in "An accommodation is
14 reasonable" --

15 THE COURT: Yes.

16 MS. ROSENBLIT: Defendants have proposed
17 additional language with respect to reasonableness. It is
18 clear that these two categories I will call them are
19 certainly -- it's clear that it would be -- an accommodation
20 would be unreasonable if it imposed a fundamental alteration
21 in the nature of the program or created an undue financial
22 or administrative burden. But I do not think that those are
23 the only two situations in which an accommodation could be
24 unreasonable.

25 Defendant's proposed language --

1 THE COURT: I mean, isn't your whole argument that
2 it's -- so, I'll look at your argument, but -- and I'm
3 looking at what you're saying. I'm looking at your -- I
4 need to pull out my summary judgment order too.

5 (Pause.)

6 THE COURT: Okay.

7 MS. ROSENBLIT: Okay. So, Defendant's proposed
8 language that says:

9 "An accommodation is reasonable if
10 it seems reasonable on its face or
11 reasonable given the specific
12 circumstances related to Plaintiff's
13 request. Additionally, an accommodation
14 is unreasonable if the accommodation
15 would fundamentally alter the nature of
16 the program or the accommodation imposes
17 an undue financial and administrative
18 burden."

19 And I think that first sentence is important. I
20 think, again, that these two situations where it's
21 unreasonable are not the only situations in which an
22 accommodation could be found to be unreasonable.
23 Reasonableness is for the jury to determine. We cited some
24 cases in our proposed instructions that --

25 THE COURT: So, which case in particular?

1 MS. ROSENBLIT: Sure. So, let's see. I don't
2 know how to pronounce it. I think it's Skochko v. Mercy
3 Housing, Incorporated.

4 THE COURT: Okay. I have the cases. So, let me
5 just see.

6 MS. ROSENBLIT: For the record, we cited these
7 cases on page 12 of Document 189, which was the parties'
8 proposed jury instructions.

9 (Pause.)

10 THE COURT: Yes. And what line number is it on
11 then?

12 MS. ROSENBLIT: It' -- oh, on the -- on page 12?
13 Line 19 --

14 THE COURT: Line 19.

15 MS. ROSENBLIT: -- to 22.

16 THE COURT: Okay. There it is. Okay. So --

17 MS. ROSENBLIT: So, there the Court said that the
18 trier of fact must determine whether a requested
19 accommodation posed an undue burden or was otherwise
20 unreasonable under the circumstances. That's -- that's my
21 paraphrasing.

22 We also cited Wolf v. City of Millbrae where the Court
23 found the Plaintiff failed to state a Fair Housing Act claim
24 where granting the Plaintiff's accommodation would require
25 the City to violate the law essentially, and violation of

1 the law is not one of these two enumerated categories, but
2 it just makes sense that where the Defendant would
3 potentially face liability or have to violate a law, such an
4 accommodation would be unreasonable.

5 THE COURT: Okay. So, let's just -- let's just --
6 just look at it right here now.

7 MS. ROSENBLIT: Sure.

8 (Pause.)

9 THE COURT: Okay. So, the -- the line you say is:

10 "An accommodation is reasonable if
11 it seems reasonable on its face or
12 reasonable given the special
13 circumstances related to the Plaintiff's
14 request."

15 Is that the line we're talking about?

16 MS. ROSENBLIT: In our proposed jury instruction?

17 THE COURT: Yes.

18 MS. ROSENBLIT: So, our -- it is, yes, page 11,
19 line -- it's kind of off line, line 20 to 22:

20 "An accommodation is reasonable if
21 it seems reasonable on its face or
22 reasonable given the specific
23 circumstances related to Plaintiff's
24 request."

25 And that language I actually took from the Ohio House,

1 LLC v. City of Costa Mesa, those jury instructions, and that
2 case which was brought against another municipality, the --

3 THE COURT: Where was -- where -- that's not a
4 Ninth Circuit case.

5 MS. ROSENBLIT: No, it's not. It's not. It's a
6 District Court case.

7 THE COURT: The problem with the out of Ninth
8 Circuit authority -- here's -- here's my view is I'm very
9 happy to look at what Ninth Circuit authority says, but the
10 standards are different in different circuits. And I just
11 can't spelunk into it enough to figure out like what the
12 differences are. We've got the key cases.

13 So, I -- I'm perfectly happy to look at Judge Corley's
14 order and have issues of law -- you know, I did a search
15 too. I -- I found a case in Arizona, found the second case
16 that you have. Judge Spero did one about 20 years ago. So,
17 I was com -- you would be stipulating to that instruction.
18 I found a case in the Southern District of California which
19 gave instructions in the language of the statute and was
20 affirmed on appeal at the Ninth Circuit. So, I just -- I
21 looked, and I -- and I -- and the only case in the entire
22 Northern District of California that I could find was, in
23 fact, Judge Spero case, not on this case.

24 So -- so, I -- I -- my concern about that line, An
25 accommodation is reasonable if it seems reasonable on its

1 face or reasonable given the specific circumstances related
2 to the request, I -- you know, it's like that to me is a --
3 an accommodation is reasonable if it seems reasonable. And,
4 so, it just doesn't seem to add a lot. And, so, I'm --
5 let's think about your point about you worry that it looks
6 unduly restraining to have the jury instruction --

7 UNIDENTIFIED SPEAKER: Well, your Honor --

8 THE COURT: -- as it is.

9 MS. ROSENBLIT: Yeah. And, Judge, if I may, just
10 before we give Plaintiff a chance. I'm happy to wordsmith
11 that sentence, but I think the -- the Defendant's concern is
12 that the -- that reasonable means more than just those two
13 examples of unreasonableness, and the jury should be
14 entitled to consider -- to use its common sense and to
15 consider reasonableness under its normal definition. We
16 could -- we can make that sentence shorter. I'm happy to
17 wordsmith it, but --

18 THE COURT: Well, so -- so, let's -- we need to
19 just sort of think about this because we're going to have
20 limited time on -- we'll do it sometime on next Wednesday.
21 We can think about it, and we can see how the evidence comes
22 in and kind of think about it next Wednesday. I'm not going
23 to post anything until after Wednesday.

24 But here's the thing. Here's the standard. Under the
25 Fair Housing Act a reasonable accommodation inquiry is

1 highly fact specific, requiring case-by-case determination.
2 And, so, I mean, there's -- I'm going to think about it now.

3 MS. JIAM: Your Honor, this is Hannah Jiam --

4 THE COURT: Let me just finish my thought first
5 before -- of course, I do want to hear from you.

6 I -- I hear the concern that it may feel too
7 restrictive and too much of a pronouncement. It is an
8 accurate citation of the law. So, I'm not concerned about
9 that. The reality is it's a fact-specific inquiry, and you
10 don't -- I'm not going to not put in that line, but it does
11 seem to me that probably I -- I could wordsmith it a little
12 bit, and then you guys can reconsider it next Wednesday. I
13 mean, you've got at least the gist of what an instruction
14 will look like.

15 Yes, from the Plaintiff's perspective?

16 MS. JIAM: Your Honor, we actually have looked at
17 both of those cases that the City cites, and it's actually
18 not quite accurate that the standard is simply that an
19 accommodation is reasonable based on what it looks --
20 whether it's reasonable on its face.

21 If you look at Skochko v. Mercy Housing, if you go to
22 the Westlaw link on the citation of page seven, the Court
23 clearly states that the Plaintiff has the burden of
24 demonstrating that the particular accommodation she requests
25 is reasonable on its face, but then the Court then states

1 that the Ninth Circuit has formulated that burden as one of
2 evidentiary production, and if the Plaintiff meets the
3 burden, then the standard is the Defendant must demonstrate
4 that the particular circumstances of this case, the
5 requested accommodation would cause it to either suffer
6 undue hardship or of rebutting the Plaintiff's showing that
7 the requested accommodation was, in fact, reasonable. So,
8 that's not actually what the standard is.

9 And if we go to Wolf v. City of Millbrae which is the
10 second case that the Defendant relies on --

11 THE COURT: Well, let me catch up with you.

12 MS. JIAM: Sure.

13 (Pause.)

14 THE COURT: Okay.

15 MS. JIAM: Wolf clearly states what the standard
16 of a reasonable accommodation is. It states:

17 "An accommodation is reasonable
18 where it would not require a fundamental
19 alteration in the nature of the housing
20 provider's business or impose on the
21 housing provider an undue financial or
22 administrative hardship."

23 So, that's exactly what the standard for reasonableness
24 is. And asking for an accommodation that would require the
25 City to face liability for violating federal law, which was

1 the situation in Wolf, is, no doubt, an accommodation that
2 would impose either undue financial or administrative
3 hardship.

4 So, I don't think that Wolf was stating a --

5 THE COURT: Well, of course --

6 MS. JIAM: -- different standard.

7 THE COURT: -- all those things would come out at
8 summary judgment if there was an -- if -- I mean, the
9 reality is those are grounds for summary judgment or
10 judgments as a -- I don't know how the evidence is going to
11 come in, but if -- if somehow -- well, you know, again, we
12 didn't really unpack this as a legal matter at summary
13 judgment.

14 MS. ROSENBLIT: We -- your Honor, we also didn't
15 introduce anything that we thought would be an issue of
16 disputed fact. So, I think now that we're here --

17 THE COURT: Yeah, yeah, no, no, I'm just trying to
18 figure out how -- how it's going in.

19 Well, interesting. I got the cases right here. And
20 you're citing the pin cite star five of Wolf, is that the
21 page number you're looking at, the Westlaw?

22 MS. ROSENBLIT: I don't have the exact pin cite.
23 I just quote -- copied and pasted the quote.

24 THE COURT: Okay. Well, let's just see.

25 (Pause.)

1 THE COURT: This is such a different case, but --
2 okay. I -- you know, I hear the point. I'm going to think
3 about it. I may scriben it a little bit. It's -- we can
4 talk about it next Wednesday. I think it was good to kind
5 of go most of the way of trying to do the jury thing. So,
6 I'm putting an asterisk by that and maybe scriben it.

7 MS. ROSENBLIT: One more just thought for your
8 consideration --

9 THE COURT: Yes.

10 MS. ROSENBLIT: -- while we're thinking about it
11 is I think counsel's reference to the reasonable on its face
12 and then Defendant has to prove it's unreasonable speaks to
13 -- some of the courts talk about this, burden shifting back
14 and forth, but the case law is really clear that we're not
15 supposed to do the burden shifting work with the jury. In
16 other words, we don't want to instruct the jury the
17 Plaintiff has to prove this and if they do this, then it
18 shifts to the Defendant to prove X, Y, Z.

19 I think the -- the parties worked really hard on the
20 retaliation claim to eliminate all that stuff. I think
21 counsel's point speaks a little bit to that burden shifting.
22 And, so, my effort was to make it an accurate statement of
23 law that wasn't overly limited and didn't burden the jury
24 with this burden shifting.

25 THE COURT: I think that what makes for good jury

1 instruction is real precision tethered to pronouncements
2 that the courts -- that the Ninth Circuit makes in defining
3 what the rules are. Otherwise, it just is a lot of
4 explaining, and I don't think that those work very well.

5 So, I mean, I appreciate why you put in that sentence.
6 That's to try to get that it's a fact-specific inquiry. You
7 know, that -- you know, I'm going to think about it because
8 maybe there's a solution, but it's the rules that are
9 articulated that go into the jury instructions, not, you
10 know, all of the stuff around the periphery, but I
11 understand why you made the objection, and it's good that --
12 I mean, I didn't intend not to have discussion about this.
13 That's why I call them proposed.

14 MS. JIAM: And, your Honor, one last point.

15 THE COURT: Yes.

16 MS. JIAM: Hannah Jiam from Morrison and Foerster.
17 Pin cite page six of Skochko actually just states the
18 standard again of:

19 "An accommodation is reasonable
20 under the FHA when it imposes no
21 fundamental alteration in the nature of
22 the program or undue financial
23 administrative burdens."

24 THE COURT: Yes.

25 MS. JIAM: And, so, we think it's fairly clear,

1 and we have concerns that if the jury is just told determine
2 what is reasonable based on what you think is reasonable,
3 it --

4 THE COURT: No, no, it's -- it's too loosey
5 goosey, but --

6 MS. JIAM: Right.

7 THE COURT: -- the issue is, you know, this --
8 it's fact intensive in terms of the circumstances of the
9 case. There's a fair observation it's not a bright line
10 rule. So, I'm going to think about it, and then I'll see
11 what that looks like. It's a tough one because no one's
12 written on it. And, so, and you don't have that nice -- in
13 civil rights cases, you have that nice jury instruction 9.25
14 which talks about the reasonable alternatives where they've
15 really baked every case into the Ninth Circuit, and it's
16 just -- it's a lot tougher here. It's a lot tougher.

17 MS. JIAM: Okay. Good. Helpful. Thank you.
18 Okay.

19 MS. ROSENBLIT: All right.

20 MS. JIAM: We also had an objection we'd like to
21 raise and argue on that same instruction, 3604.

22 THE COURT: Okay.

23 MS. JIAM: Unless --

24 MS. ROSENBLIT: No. Go ahead. Go ahead.

25 MS. JIAM: We wanted to object to the Court's

1 instruction of 3604 requiring that the accommodation that
2 Mr. Rice requested is necessary as opposed to --

3 THE COURT: As opposed to May?

4 THE CLERK: -- may have been necessary.

5 THE COURT: I went back and forth, yeah. The
6 problem with it -- and I understand the objection a hundred
7 percent, because I changed -- it was may, may is, may is.
8 The statute says may. And I want to hear more, but I'm
9 going to like pull out the statute now and read it to you
10 because I thought about how it reads. I mean, the statutes
11 are so poorly written generally, and then the Ninth Circuit
12 absolutely says in the case it is -- is. It doesn't say
13 may. It says is. Interestingly, the one jury instruction I
14 could find in the Ninth Circuit in the SDCAL used -- I said
15 it was just in the language of the statute.

16 So, let me just pull out my statute to tell you why I
17 -- because the case law says is. And, so, let me just -- I
18 have my statute. So -- so, the statute says -- it's
19 (f) (3) (B). So -- so, if the issue is discriminate:

20 "For purposes of this subsection,
21 discrimination includes a refusal to
22 make reasonable accommodations in lieu
23 of policies, practices or services where
24 such accommodations may be necessary to
25 afford equal opportunity to use or enjoy

1 a dwelling."

2 And, you know, it's sort of interesting when you hear
3 the whole tone of how may iterates in that sentence and then
4 let's go to the Ninth Circuit case.

5 (Pause.)

6 MS. JIAM: And, your Honor, there are multiple
7 Ninth Circuit cases with this language. So, which -- which
8 case are you specifically referring to?

9 THE COURT: Keebler (phonetic), which is where the
10 standard comes from. I may be mispronouncing it too. To
11 prove that an accommodation is necessary, it says it begins
12 with the statute, you know, we conclude -- if the adjustment
13 "may be necessary to afford an equal opportunity to use and
14 enjoy" -- was reasonable within the meaning of the statute.
15 We turn to those questions to prove that an accommodation is
16 necessary. The Plaintiff must show -- I mean, query -- this
17 to the CCSF, query whether the use of the word "may" makes
18 much of a difference.

19 So, I'm going back to my jury instruction. This is
20 what my desk looked like. I'm so organized. It just -- all
21 the different things you need to look at to try to get to
22 the right instruction.

23 So, the way this instruction is written, you must prove
24 by a preponderance of the evidence that the accommodation
25 you've requested may be necessary to afford an equal

1 opportunity to use -- so, number three is -- you change it
2 to may.

3 And then you go down to that sentence, and you say, To
4 prove that an accommodation may be necessary, the Plaintiff
5 must show that but for the accommodation, he's likely -- he
6 likely will be denied an equal opportunity to enjoy the
7 housing of his choice.

8 So, it almost seems like -- because I agree 100 percent
9 with the CCSF that that's the standard, that but for strong
10 argument, I've made up my mind that's correct, the Ninth
11 Circuit says. So, I think I'm safe. And the issue is does
12 "may" really change it, because the -- you know, the -- the
13 thing that the Plaintiff has to prove is defined by the but
14 for accommodation language. And it's weird, right, because
15 it's weird, and you want to be -- you want to be careful not
16 to have an instruction that's -- I went back and forth quite
17 literally. Took me on -- after my calendar. I was going to
18 read it this weekend, but I -- and worked on it some last
19 week, but I went back and forth on it. So, I don't know
20 what your view is on that because it kind of -- you're
21 getting what you want because the term is being defined as
22 you suggest it should be.

23 UNIDENTIFIED SPEAKER: Okay. Let me back up. So,
24 yes, of course, the statute says may be necessary. But the
25 Ninth Circuit, as you've said, is very clear on what that

1 statutory interpretation is.

2 THE COURT: And it's kind of a this sort of thing
3 as may be necessary. That's kind of the way the statute's
4 pronounced, and so that's how I ended up reconciling it to
5 is.

6 MS. JIAM: And, so, I --

7 THE COURT: So, remember to order this transcript
8 because I'm not writing it out. But that's what I thought,
9 you know, is you read the statute, and then you have to --
10 you can't read all meaning out of the statute. The Ninth
11 Circuit has read the statute in a very particular way.
12 Okay.

13 MS. ROSENBLIT: So --

14 THE COURT: Yeah, you -- that was sort of a win
15 for you, just a little bit. So, let's hear from -- and then
16 you can circle back, because I -- I've gone back and forth
17 on the may versus is.

18 MS. JIAM: Yes, and we -- we hear you in terms of
19 the -- the portion that you referenced from Keebler, which
20 we note is a Ninth Circuit case from 2003. Note that
21 Keebler also does use the may be necessary language on pin
22 cite 1155, but if you look at other Ninth Circuit cases
23 since then that address 3604 -- so, one of them is Howard v.
24 HMK Holdings, and another --

25 THE COURT: So, we might as well look at that.

1 I've got -- I've got them all. So, we might as well just
2 look at them along the way. It's a lot faster than just
3 listening and then trying to -- Howard may not be in this
4 folder.

5 Okay. Go on.

6 MS. JIAM: So, Howard, if you go to pin cite 1189,
7 the Court states:

8 "The Howards base their FHA
9 discrimination claim on 42 U.S.C.
10 3604(f)(3)(B) which prohibits
11 discrimination in the form of" --

12 And then it describes that, and then it says:

13 "When such accommodations may be
14 necessary to afford such a person equal
15 opportunity to use and enjoy a
16 dwelling."

17 Other Ninth Circuit cases such as Budnik (phonetic) --

18 THE COURT: So, what was the page number from
19 Howard?

20 MS. JIAM: Howard, it's -- the pin cite is 1189,
21 but the cite is 988 F.3d 1185.

22 THE COURT: I just took a shovel into another
23 folder, 988 F.3d 11 -- at 1189. And, so, what's the other
24 case?

25 MS. JIAM: The next is Budnik v. Town of Carefree,

1 518 F.3d 1109. That's a 2008 case in the Ninth Circuit.
2 And the pin cite in which they use the may be necessary
3 language is 1119. And, your Honor, I actually noted that
4 you -- you used that will be like the but for, the
5 combination will likely language from Budnik, and we think
6 that will likely reflects the may be necessary language.

7 THE COURT: Okay. Let's look at Budnik because I
8 have that one here.

9 (Pause.)

10 THE COURT: The thing is they're just parsing out
11 the statute. I mean, it's -- but I -- I see your point.

12 MS. JIAM: Right. And then another Ninth Circuit
13 case which also does the same is Dubois v. Association of
14 Apartment Owners of 2987 Kalakaua, 453 F.3d 1175. And the
15 pin cite is 1179, and that's a 2006 Ninth Circuit case.

16 But, you know, discussing this kind of -- this nexus
17 requirement, we agree that there's a nexus requirement. Our
18 concern is that the City has kind of blended the two
19 together to --

20 THE COURT: Well, the instruction is tough that
21 they wrote, but mine's a lot cleaner. So, I think we should
22 use my instruction as the point of reference.

23 MS. JIAM: And -- and we did note, actually, you
24 mentioned that there were -- you were trying to find some
25 sample jury instructions from District Courts within the

1 Ninth Circuit that have used --

2 THE COURT: One in Arizona. One in Arizona too
3 actually.

4 MS. JIAM: Oh, yeah. So, and we actually have
5 sample objections that we've printed out -- we'd be happy to
6 show you -- in which the Court used may be necessary when
7 describing --

8 THE COURT: I told you San Diego used may be
9 necessary.

10 MS. JIAM: Yes. We have one from the District of
11 Idaho, Community House v. City of Boise.

12 THE COURT: I did not do an all Ninth Circuit
13 search. I will tell you that. I did like a kind of a -- I
14 did an all Northern District search, and I did spotty -- I
15 -- I looked for cases out of different districts, and then I
16 went to PACER to get the instructions when I found the cases
17 on Westlaw.

18 MS. ROSENBLIT: So, your Honor, if I may respond.

19 THE COURT: Yes. Let me just look at Howard. So,
20 that's --

21 MS. ROSENBLIT: Okay. Go ahead.

22 THE COURT: -- 119 -- let me just read it just to
23 see if I have any ideas.

24 (Pause.)

25 MS. ROSENBLIT: You could read it through -- I

1 think she cited 1189, and then I would point you all the way
2 through --

3 MS. JIAM: Yes, 1189.

4 MS. ROSENBLIT: -- 1190.

5 (Pause.)

6 THE COURT: I keep getting drawn to necessary, but
7 we're looking for reasonable.

8 MS. ROSENBLIT: No, no. We're looking for
9 necessary.

10 THE COURT: Necessary?

11 MS. ROSENBLIT: Yes.

12 THE COURT: Okay.

13 (Pause.)

14 THE COURT: But for the accommodation, they likely
15 will be denied an equal opportunity. That's citing Keebler
16 again.

17 MS. ROSENBLIT: Right. And that we believe to be
18 a requirement absolutely under 3604, but the causal nexus is
19 separate from whether or not the standard is as the plain
20 language of the statute states, may be necessary.

21 THE COURT: They say here to prove that an
22 accommodation was necessary, they must establish that the
23 inquiry is a causal one.

24 So --

25 MS. JIAM: I hear you, your Honor. I think,

1 though, that other courts actually have addressed the
2 distinction between the nexus requirement and the may be
3 necessary. And one case that we did talk about -- it's a
4 District Court case, but it's --

5 THE COURT: Where is it?

6 MS. JIAM: It's Hernandez v. --

7 THE COURT: District?

8 MS. JIAM: District of Oregon in 2020. And the
9 cite for that case is 454 F.Supp.3d, 1029, and the pin cite
10 is 1037. And they're discussing the -- the relationship
11 between the nexus requirement and the Plaintiff needing to
12 prove that an accommodation may be necessary.

13 THE COURT: Let me -- let me just have a look at
14 it.

15 (Pause.)

16 THE COURT: Okay. I see your point.

17 MS. ROSENBLIT: Your Honor, if I may?

18 THE COURT: Yes.

19 MS. ROSENBLIT: So, I'll start with Hernandez.

20 So, that District Court case out of Oregon predates Howard,
21 and I think it's just wrong. I mean, that case does seem to
22 be a little squishy on the may be necessary. But if we look
23 at the Ninth Circuit law, so, Howard being most recent but
24 also Budnik and Keebler, all of those cases the Ninth
25 Circuit starts at the statute. And, so, in every case, of

1 course, the Court --

2 THE COURT: Says may.

3 MS. ROSENBLIT: -- says may, but then they go on
4 to explain what that means, and it's very clear in each case
5 that that means it is necessary, was necessary. Howard says
6 necessary suggests something that cannot be done without.

7 THE COURT: No. I -- I hear you.

8 MS. ROSENBLIT: So, I think the law is really
9 clear, and so then the question is do we feel like it's
10 necessary to instruct the jury both on the statutory
11 language and the meaning. And I -- Defendants submit that
12 that is just confusing. I mean, it's confusing for lawyers.
13 It's definitely going to be confusing for the jurors. I
14 don't think there's any requirement that we give them the
15 statutory language as long as we're giving them accurate
16 law.

17 And, so, what the Court has proposed here, the is
18 necessary, is the accurate most recent Ninth Circuit law.

19 THE COURT: Okay.

20 MS. ROSENBLIT: You know, and I'll just -- I'll
21 just say too like for the retaliation claim, the parties
22 agreed on that instruction. We did not provide the
23 statutory language because it's confusing, and it won't mean
24 anything for the jury.

25 THE COURT: I looked at the statutory language and

1 did find other jury instructions. I realize it's -- I was
2 fine with it. I mean, I tweaked it to -- and I see another
3 thing I want to fix.

4 MS. ROSENBLIT: To your point, I appreciate the
5 definition further down about the but for. I think that's
6 really important. But I don't think that would resolve it
7 if we changed number three to may, because then we've --

8 THE COURT: No, I --

9 MS. ROSENBLIT: It's like we've defined it, but we
10 tell them they don't have to get there.

11 THE COURT: I'm pretty -- I'm pretty -- I'm pretty
12 solid on is.

13 MS. ROSENBLIT: Okay.

14 THE COURT: Okay. Good arguments, though,
15 excellent job. I mean, excellent job. Great unpacking the
16 cases. Great being on it. So, there's substantial
17 arguments, and I told you I went back and forth, and I
18 thought about it a lot but very helpful argument for me both
19 on the issues. So, thanks for that. This is why oral
20 argument is so important, by the way, just so important.

21 Okay.

22 MS. ROSENBLIT: Thank you.

23 THE COURT: Next issue.

24 MS. ROSENBLIT: The next issue is the damages
25 instruction.

1 THE COURT: Yes.

2 MS. ROSENBLIT: 5.1, and 5.2, so Defendant would
3 object to number two, the loss of enjoyment of life. There
4 -- let me just turn to this section. Hang on. This is
5 Renee Rosenblit for Defendant, City and County.

6 So, I -- we looked, and I cannot find any Ninth Circuit
7 case saying that loss of enjoyment of life damages are
8 available under the Fair Housing Act. The cases that
9 Plaintiff cites are out of circuit. At a minimum, I think
10 it depends on the evidence that comes in at trial. And, so,
11 maybe we table it and revisit. But, you know, loss of
12 enjoyment of life usually is applicable in a tort case that
13 involves some kind of injury where you're no longer able to
14 continue doing a particular type of activity that you were
15 able to do before. I just don't think it's applicable to
16 this case. I don't think there will be evidence to support
17 it, and I -- I think adding it in here is -- is --

18 THE COURT: Okay. Just give me a second to
19 reshuffle my papers back.

20 MS. ROSENBLIT: Of course.

21 THE COURT: So, no, I'm -- I'm following you, and
22 I -- but I just wanted -- because I have cases that I -- I
23 just want to get myself.

24 (Pause.)

25 THE COURT: I never heard the word hedonic before.

1 So, that was -- that was fun. So, okay. So, now I have --
2 okay. So, yes, interesting. I did not do independent
3 research about -- I -- beyond what you cited. Let me just
4 look at this cite. Did I get out this -- this was your
5 instruction --

6 MS. ROSENBLIT: The proposal for loss of enjoyment
7 of life was Plaintiff's proposal, and it's on page --

8 THE COURT: No, I definitely got what the issue
9 is.

10 MS. ROSENBLIT: Yes. Okay.

11 THE COURT: I'm just trying to -- I've got these
12 organized by instruction.

13 MS. ROSENBLIT: Number eight.

14 (Pause.)

15 THE COURT: Okay. So, let me just think for a
16 second. I just want to think about the language.

17 (Pause.)

18 THE COURT: I'll tell you the time I -- I had it
19 -- the issue come up -- I should -- I should go back and
20 look at it. I'm going to write myself a note to go look at
21 the jury instructions in a case I had called May, which is a
22 civil rights case where the testimony was very modest. It
23 was a very guileless plaintiff, and he did talk about, you
24 know, the fallout. There was -- it was a physical injury as
25 opposed to an injury involving loss of where he lived and

1 the resulting stuff that attaches to it.

2 So, are there cases -- so, let's talk about -- and I do
3 have the cases here -- you know, the objections that you
4 raised, and you're saying that they -- it only comes up in
5 the context of actual --

6 MS. ROSENBLIT: Typi --

7 THE COURT: Yeah.

8 MS. ROSENBLIT: Typically, that's where it comes
9 up. And Plaintiff did cite some cases out of the Eastern
10 District of New York where the Court said you could have
11 loss of enjoyment of life, damages in a Fair Housing Act
12 case. I don't think -- and I'm sure he'll correct me if I'm
13 wrong -- I don't think any of those cases the Court actually
14 awarded those damages. I think it was just part of kind of
15 the legal blurb about what kinds of damages would be
16 available. But, in any event, I couldn't find any Ninth
17 Circuit law that said that loss of enjoyment of life damages
18 are available under the Fair Housing Act.

19 Maybe -- well, I won't say more importantly, but I -- I
20 just don't think there's going to be evidence in this case
21 to support it, and I could be wrong. But it may not be --

22 THE COURT: You guys have done your depositions.
23 I don't know how the testimony is going to come in at trial,
24 but it's going to be -- if the jury votes for the Plaintiff,
25 you know, say it's -- and, then, again, I won't -- just

1 because I say the case doesn't make it of any utility. The
2 stronger claim is probably claim one, you know, the one --
3 you know, just is a -- it's -- it gives this idea that he
4 didn't get the accommodation, could have gotten the
5 accommodation, and as a result of not getting it, the
6 accommodation, here's all the stuff that happened.

7 And -- and your client's going to be able to talk about
8 that, right? And, so, I guess the issue is be careful what
9 you ask for. It -- and when you read with the nature and
10 extent of the entries, you know, whatever happened to him
11 from an experiential standpoint, he's going to be able to
12 talk about it, and the question is, you know, I think when I
13 had my very first big case all by myself, you know, where I
14 was supposed to have a second chair and all the sudden the
15 second chair had something come up and it was a big case as
16 opposed to small case -- Judge Joe Zalalinover (phonetic)
17 said to me, You don't need it. And, so, I'm not going to --
18 you wonder or query whether you need it. And if it's true
19 that it usually comes up in that landscape, your client's
20 going to be able to talk about everything. Either they're
21 going to vote for you or they're -- they're -- you know, and
22 whatever, if they vote for you, then your client's going to
23 be able to talk about how bad it was for him as a result of
24 it. It's fairly captured in injury I think.

25 MR. FISHER: This is Ramsey Fisher for the

1 Plaintiff. If I may be heard briefly.

2 THE COURT: Yeah.

3 MR. FISHER: First, just where -- where did this
4 come from? Because it didn't come from the Ninth Circuit.
5 I'll give counsel that. This did not come from the Ninth
6 Circuit. It came from the Supreme Court. Curtis v.
7 Loether, 415 U.S. 189, all of these cases that we cite from
8 the districts in New York cite that case, and that case says
9 that damages under the Fair Housing Act stem in tort, and
10 loss of enjoyment of life is a standard tort damage.

11 So, that's the legal underpinning for why we included
12 it.

13 THE COURT: And what -- what happened in Crowder?
14 Like what happened in --

15 MR. FISHER: In Curtis v. Loether?

16 THE COURT: Or Curtis v. Loether.

17 MR. FISHER: It was -- your Honor, it was not this
18 sort of --

19 THE COURT: I'm all -- I'm super fact driven. So,
20 I'm -- you know, they -- I'm fact driven. We'll just go
21 over the facts, but what bad thing happened to him there?

22 MR. FISHER: I don't -- I don't have that case on
23 me. I'm happy to submit something on it.

24 THE COURT: Yes.

25 MR. FISHER: But, again, it was -- it was sort of

1 a legal discussion of what damages are available under the
2 Fair Housing Act.

3 THE COURT: Right.

4 MR. FISHER: And the logic of the Court was that
5 tort -- that damages under the Fair Housing Act stem toward
6 -- and loss of enjoyment of life is one of them. And that's
7 why it should be included in the menu of options that the
8 jury has in considering what damages to award Plaintiff.

9 In terms of this case, I mean, I'm happy to give you a
10 little bit of an attorney proffer as to why I think this is
11 important here. This case and the injury that Mr. Rice
12 suffered is not a standard he has a disability and he lost
13 his house. There's a lot of emotional trauma that we have
14 to unpack, and we have to have the jury understand. Loss of
15 enjoyment of life is just another phrase, another option
16 we're giving the jury to understand that.

17 If it's baked into nature and extent of injury, I'm
18 worried they're going to think, Oh, well, he didn't really
19 have a physical injury here. He didn't really have an
20 economic injury here. And, therefore, we don't have to give
21 him damages.

22 THE COURT: Okay. I understand the argument. I
23 -- you know, I don't know -- either the jury's going to go
24 with San Francisco Affordable Housing. You know, it's --
25 it's too much. It would be -- upend the whole system of

1 trying to make it reasonable for people to live here because
2 no one could afford to live here --

3 MR. FISHER: Right.

4 THE COURT: -- in a city that loses its ability to
5 house people. This is its sole -- either they're going to
6 go that way or they're going to go Mr. Rice's way. And I
7 don't know that it matters so much, right. I think that
8 that's -- I mean, I assume that's how the City's going to do
9 the -- well, I -- maybe they -- maybe there's the, oh, we
10 didn't -- you know, the rent paying roommate kind of issue,
11 probably knew he's asking for rent paying roommate. So,
12 that's the other way. I think -- this is for Mr. Rice. I
13 was completely wrong on my round one motion to dismiss, not
14 just because the Ninth Circuit told me so but in sort of
15 rethinking it, Mr. Rice was right in his round one motion,
16 and I'm convinced of that now, and, again, not just because
17 the Ninth Circuit told me, but I too got -- you know, I got
18 sucked into the affordable housing in San Francisco, and
19 that wasn't something I should have done in a motion to
20 dismiss phase, and -- but I got sucked in by it because I
21 thought, well, San Francisco is trying to do what it can for
22 affordable housing. But Mr. Rice was right and said -- so
23 said the Ninth Circuit. And I'm convinced now that that's
24 -- that's right. Like, I was wrong. So, you know, I'm
25 always glad to know when I'm wrong. So, it will look

1 (indiscernible), and, you know, we won't know how the case
2 sounds. I have no doubt that it was -- that it was a tough
3 experience for Mr. Rice. I know that from all of his
4 filings, and I know that he -- and, you know, I said this
5 the other day. I don't know if your lawyers reported it
6 back, but I know when we had our other pretrial conference,
7 I know how hard Mr. Rice worked to try to comply with the
8 rules. He tried to do it the right way the whole time. He
9 did it with his construction project. He did it with, Hey,
10 this is a problem. I need to do something about it, part of
11 the reason for my in limine rulings because it's just -- I
12 mean, that's how it's going to come out. And, so, I -- I
13 have no doubt that the jury will be sympathetic and you'll
14 be able to -- so, I tend to think you're right. It's tort
15 damages. I just -- and they are available under other
16 discrimination statutes, you know, civil rights statutes. I
17 think of this as a civil rights statute. It has come up in
18 other cases. You are correct. The CCSF is correct that the
19 loss of enjoyment of life cases I've had have all involved
20 some injury, but this is a -- a disability case. And, so,
21 the issue with that is the injuries that attend to that are
22 merely because they're not physical doesn't make them less
23 severe. So, on balance, I think it is a tort theory of
24 liability under Curtis, and it should probably be allowed to
25 go to the jury.

1 MS. ROSENBLIT: So, your Honor, just one more
2 thing. In response, I will say --

3 THE COURT: We have to see how the evidence goes
4 in, but -- but I think that's correct.

5 MS. ROSENBLIT: So, what I would say is that loss
6 of enjoyment of life certainly has a specific meaning. It
7 can't just be one other thing for the jury to consider
8 unless there's evidence to support it.

9 THE COURT: Right.

10 MS. ROSENBLIT: So, I would propose we revisit --

11 THE COURT: Hundred percent there has to be. I
12 mean, I would just say that Mr. Rice isn't a lawyer,
13 although he did a good job when he was representing himself,
14 but, you know, he should have described his experiences, and
15 whatever those experiences are as a matter of fact, I don't
16 think he should worry about attaching legal labels to them,
17 but he'll describe his experiences, and then we will have an
18 opportunity because on Wednesday, we'll able to do a final
19 run through the instructions and see what the evidence is,
20 and then you can decide.

21 You know, I have a lot of theories in tort cases, but
22 the main theory is that if that jury's going to go for you,
23 they're going to go for you. They're not going to get
24 bogged down in theories of damages. I've seen it. I mean,
25 we are all seeing it in every kind of case, that they -- if

1 they're going to vote for you, they're going to vote for
2 you. I -- my belief, both sides, right. So, both sides.

3 Okay. Helpful.

4 MR. FISHER: Thank you.

5 MS. ROSENBLIT: Okay. So, Judge -- I'm sorry we
6 have to keep going. So, I also noticed that the Court did
7 not include an instruction on the interactive process,
8 and --

9 THE COURT: I'm not -- yeah, exactly. That's a
10 win for you, right?

11 MS. ROSENBLIT: I -- I think it remains to be
12 seen. I'm assuming it's because --

13 THE COURT: I am trying very hard to scrub
14 interactive process from any aspect of the case, as you saw
15 in the in limine. The interactive process -- I mean, here's
16 how it's going to work, though. This is on the interactive
17 process. This is how tort cases work, one hundred percent.
18 They're tried to the standards of care. I said that in the
19 -- and, so, you're supposed to -- you shouldn't use the word
20 "interact". You're supposed to have conversations with
21 people. They did have a conversation with Mr. Rice, and
22 that's part of it. And if there are Q and A's that
23 illustrates the sort of things you could do, the question
24 might be, did you do this, did you do this, did you do this?
25 And, you know, fair enough, to try to show that they didn't

1 do their job. the reason the evidence of process is
2 important is to show that the CCSF did not do its job. It
3 is not to show it was -- 100 percent it's not to show that
4 they didn't engage in the interactive process. You were
5 right that the interactive process stuff predates the case
6 law. It would be, I'm sure, reversible error if I tried to
7 say on balance. That's why I said no interactive process.
8 I went through that memo to get -- when you -- when you take
9 out all the legal pronouncements, which I do agree risk
10 confusion to the jury because they're too legally, and
11 that's just some Q and A's. And, so -- and then it said to
12 illustrate how do you approach a problem. And that's
13 reasonable. And it, even in its introduction, describes it
14 as technical assistance and obligations to both sides of the
15 -- of the thing. So, I think it's pretty innocuous, and it
16 might be helpful, and that's how cases are tried. Every
17 case is tried that way, and I've known cases tried that way.
18 Civil rights police cases are tried to POST. It's -- it's
19 just the way they're tried. So, I think that's how it goes
20 in, but I do not want any suggestion that the -- of the
21 interactive process because the interactive process in ADA
22 cases, completely different. That's another way to find,
23 you know, you didn't do your job. And ADA cases are just --
24 with that requirement are very different, and ADA cases, if
25 you don't engage in the interactive process, jurors don't

1 like that except if you can't actually do the job.

2 And, so, that's how those cases work. So, we really
3 want to steer clear. This isn't the ADA. We want to steer
4 clear of it. So, be very careful. I know that that's
5 absolutely what the -- what the reasoning was behind my
6 motion in limine and my elimination of this instruction and
7 my editing of the HUD guidance to get it just down to Q and
8 A guidance.

9 MS. ROSENBLIT: Thank you, your Honor. I
10 appreciate that clarification too just on what is not
11 permissible.

12 THE COURT: No -- no on that stuff coming in at
13 trial, no.

14 MS. ROSENBLIT: Fantastic. The one thing I just
15 want to put a pin in and raise now, just depending on how
16 the evidence comes up in argument, you know, you mentioned
17 the other civil rights cases and POST and policy. And, so,
18 I think in every civil rights case like that that I've
19 tried, we've always had some instruction that said the
20 policy doesn't set the constitutional standard. It's not
21 the law.

22 THE COURT: I know that. I know that.

23 MS. ROSENBLIT: And, so, I think --

24 THE COURT: I never have those -- I do not have
25 that in my jury instructions.

1 MS. ROSENBLIT: Okay. Fair enough, but --

2 THE COURT: Because it's not the law, but it
3 doesn't matter because jurors -- I mean, you know, it's --
4 it's all about did you do your job or not. Jurors
5 understand the law -- jurors are presumed to follow the
6 instruction. The instruction is the instruction. The
7 instruction adequately states the law. I'm just telling you
8 how it works. Jurors look to see whether you did your job
9 or not. Then POST defines -- you know every case you see,
10 if it's -- if it complies with POST, you win. If it doesn't
11 comply with POST, you lose. And that's -- I mean, in almost
12 every case, that's -- that is how it's going to go.

13 MS. ROSENBLIT: Which I think is why you need the
14 instruction that says the policy and POST don't set the
15 legal standard. And, so --

16 THE COURT: But doesn't --

17 MS. ROSENBLIT: -- I'm just --

18 THE COURT: But I am framing that HUD thing as not
19 policy but technical guidance, Q and A, helpful insight. I
20 scrubbed -- it's not policy. It's technical guidance on the
21 introduction.

22 MS. ROSENBLIT: Okay.

23 THE COURT: I scrubbed out everything legal, and
24 there are some things in there I'm like, ehh, is it really
25 -- is it really relevant? But that's up to you. If you

1 guys want to do an abbreviated version of the stuff I left
2 in and you agree to it, great. Take out things you don't
3 want in there. If one wants it in and one doesn't, I've
4 already said I think it's innocuous, but I am not putting it
5 as policy and putting it in. So, I think underlining it
6 might actually cause the jury to think it was policy. And,
7 so, I kind of think it would have a worse effect as it is
8 just -- it's just technical guidance put out that's sort of
9 friendly. You know, here are the sorts of things you can
10 do, and it kind of illustrates -- it's actually sort of
11 helpful because it also illustrates kind of nicely to the
12 jury what it looks like, you know, what -- what it looks
13 like, you know, what -- what -- what do you do in these
14 kinds of circumstances. I don't necessarily think it hurts
15 you looking. It just sort of is helpful.

16 MS. ROSENBLIT: Just -- just so there's no
17 question later, you know, the Defendants may reraise this.
18 In our last charging conference, just based on how the
19 evidence comes in, if we think it's necessary to clarify or
20 if at the moment of trial if it seems like there might need
21 to be a limiting instruction, just because I don't want
22 there to be any confusion on the part of the jury that the
23 City was obligated to follow a certain process and if we
24 didn't follow that process that we somehow violated his
25 rights. As you've said, that was --

1 THE COURT: Well, we'll -- we'll --

2 MS. ROSENBLIT: -- that's clearly the case under
3 the ADA and not here, and so we just want there to be no
4 confusion.

5 THE COURT: That's -- it's good that we did this
6 to look through it. We'll all be tired on Wednesday.
7 You'll want to work on your closing argument. So, it was
8 good to kind of do as much as everybody can. But, yes, we
9 can revisit it on Wednesday. We'll see how the evidence
10 goes because that's another great thing. Expert on
11 Thursday, but that's -- you know, that's it. You know, the
12 evidence will be in.

13 MS. ROSENBLIT: That's great. The only other
14 thing on my list is we wanted clarification on one of the
15 other MLS, and I'll let my colleague --

16 THE COURT: Did you have anything else with jury
17 instructions or are we ready to move to MLS?

18 MS. JIAM: No. We -- we agree with you --

19 THE COURT: Okay.

20 MS. JIAM: -- your Honor.

21 THE COURT: Kind of -- you know, I think and a lot
22 of it did go your way. So, okay. All right. Not
23 everything.

24 Okay. So, let me just put my folder back this way.

25 THE CLERK: Counsel, remember to identify

1 yourself, please.

2 THE COURT: Just let me get myself organized
3 before you start so these -- so, there's that.

4 (Pause.)

5 THE COURT: If I don't put stuff back along the
6 way, just the whole elaborate system breaks down.

7 Okay. So -- okay. So, which motion in limine?

8 MR. ROLLAN: This is Raymond Rollan on behalf of
9 the City. Your Honor, we had a question or wanted to seek
10 clarification on the Court's ruling on Plaintiff's motion in
11 limine number two regarding disputes with Mr. Rice's HOA and
12 his rental company.

13 THE COURT: Yes. Okay. I kind of alluded to the
14 -- my thought process about why I did it the way I did it,
15 because it just seems too attenuated.

16 MR. ROLLAN: Sure.

17 THE COURT: You know, the -- whatever vitriolic
18 exchanges attended to the time period between 2009 and 2010,
19 I got that it straight -- it was such a like prejudicial,
20 straight into 404, and attenuated based on intent. It
21 doesn't mean you can't ask him. You might be able to why he
22 wanted to move out and -- and suggest that there are other
23 reasons, I want to travel. It did look to me that he was
24 traveling for work, but whether -- you know, what those
25 inquiries look like, that's your call. So, I would then

1 need to cut off, you know, looking into motive, but I didn't
2 want, you know, like painting him as a bad actor.

3 MR. ROLLAN: Your Honor, this is Raymond Rollan
4 again. Our intention is not to introduce -- like get into
5 the weeds and introduce, you know, evidence about his
6 restraining orders or anything like that, but simply we
7 believe that the information regarding the disputes is
8 relevant to his theory of damages in two ways, right. The
9 first is that his expert, Doctor Scott Lines (phonetic),
10 says that him leaving San Francisco because of San
11 Francisco's actions disrupted the most stable portions of
12 his life, and it's obvious from his HOA disputes that these
13 were not the most stable portions of his life. And, in fact
14 --

15 THE COURT: But, so -- so, let's -- let's -- but
16 that ends in 2012. I don't have the timeline in front of
17 me. 2014 is when he emails, May of 2014. Am I right about
18 that or was it later than that?

19 MR. ROLLAN: 2015.

20 UNIDENTIFIED SPEAKER: 2017.

21 THE COURT: 2017. Let me just look.

22 MR. ROLLAN: Which emails were you referring to,
23 your Honor?

24 THE COURT: When he first contacts Nancy whatever
25 her name was, March 2016.

1 UNIDENTIFIED SPEAKER: March 23rd, 2016 I believe.

2 THE COURT: Yeah. And, so, you know, I -- I see
3 Mr. Rice. You know, he comes across this issue. He's got a
4 rent paying -- he definitely had a period of time where I'm
5 sure it was very stressful. So, now the expert says, okay,
6 he's leaving after a period of, you know, good stability for
7 him, which all that really stops in 2012. So, some -- you
8 know, it's all resolved. And now, from 2012 at least until
9 2016, and then there's a process that attends it. It goes
10 through November. It goes into that fall in the timeline.
11 Life is good, and it's stable. And it just -- you know,
12 usually like in press actions we give a look-back period of
13 five years to kind of, you know, get a little bit of a look-
14 back period. But the idea that he had a very stressful life
15 during a period of time in 2012 followed by a period of
16 stability, then you're saying, Well, you know, you're going
17 to challenge that this was a stressful period of life. I
18 mean, really what I don't want, you know, I -- I -- what I
19 really don't want is I don't want there to be like a side
20 show about 2012.

21 MR. ROLLAN: There --

22 THE COURT: But I don't mean for you to cut off
23 that you've had other periods of instability in your life.
24 I mean, there might be some questioning. You could say it's
25 your -- it -- you know, isn't it true that during other

1 periods of time. But if you -- but if you go too much into
2 that -- into the 2012 stuff, there's some stuff there that
3 just isn't relevant.

4 MR. ROLLAN: I think your Honor --

5 THE COURT: And it's prejudicial too.

6 MR. ROLLAN: It's relevant to the extent I think
7 Doctor Lines' opinion is that the entirety of Mr. Rice's
8 stay in San Francisco represented the most stable
9 portions --

10 THE COURT: Okay.

11 MR. ROLLAN: -- of his life and --

12 THE COURT: If -- if they open the door to -- by
13 being that pronounced about it, then I think maybe it is
14 fair cross examination or --

15 MR. ROLLAN: And these just -- these are also
16 reflected in Ms. Rice's medical records which their expert
17 says he reviewed as part of his opinion.

18 THE COURT: Yes.

19 MR. ROLLAN: And, so, we believe that they're
20 entirely relevant and that we should be allowed to question
21 Doctor Lines or whoever it is regarding these issues.

22 THE COURT: Well, so -- so -- so, what is exactly
23 the medical records? Like, what does it say?

24 MR. ROLLAN: Sure. The medical records reflect --
25 and Mr. Rice is very detailed in providing the way he's

1 feeling about what's going on in his home, and it's not
2 necessarily in detail in terms of there's a restraining
3 order X, Y, and Z, but it says, you know, my relationship
4 with my HOA is making me feel depressed or anxious or X, Y,
5 and Z, right. And all of those are part of the story that
6 they're trying to tell about -- or how they're trying to
7 characterize Mr. Rice's experience from 2004 to 2017. And,
8 so, that's why we believe that we should be allowed to
9 question it.

10 And, again, to be clear, we're not questioning about
11 like the specific legal battles that may have happened, only
12 to point out that --

13 THE COURT: I mean, depending how the evidence
14 comes in, right, this is depending how the evidence comes
15 in, if, you know, I'm at this, you know, worried expanse and
16 everything like was hunky dory and it really wasn't, then I
17 think you can inquire into it, but you got to be careful
18 because I don't want -- it -- the -- Mr. Rice is a very
19 thorough reporter. I learned that in a motion to dismiss
20 when he was representing himself. This case did not suffer
21 from my inability to be able to understand what actually
22 happened, in marked contrast to lots of litigation where
23 people have represented themselves. That is not Mr. Rice's
24 problem. He's a very good reporter. And, so, I know that
25 he does that, but I don't want it to be anything, you know,

1 sort of bad acts, more like bad experiences, you know --

2 MR. ROLLAN: Sure.

3 THE COURT: -- been through rough times before,
4 but it always -- it depends on how it comes in.

5 MR. ROLLAN: And if I may, your Honor --

6 UNIDENTIFIED SPEAKER: Your Honor --

7 MR. ROLLAN: -- just the other reasoning why we
8 believe it's related to damages is that one of their
9 theories -- or is that CCSF's actions forced Mr. Rice to
10 sell his unit, and this information provides an alternative
11 explanation for his reasons for selling his condo, and it's
12 documented -- it's actually well documented that he made --
13 he expressed -- not only he -- that he expressed interest in
14 selling his condo before 2017, but that there were emails of
15 him --

16 THE COURT: Well, that's because he was having --

17 MR. ROLLAN: -- wanting to do that.

18 THE COURT: -- a very bad experience with the
19 homeowner's association, and it was so stressful to him that
20 he wanted to leave. But that situation did not exist in
21 2016 and in the time period here. So, it's not relevant.
22 If -- if what you're arguing is a life damages approach that
23 this is a -- you're trying to impeach the fact that this was
24 a bad experience for him when he's had worse experiences,
25 that -- that's not great anyway, but I don't think that you

1 get to go back to 2012 and say back then he wanted to leave
2 because it was terrible with the homeowners and they had a
3 restraining order and you did all those things and you
4 wanted to leave and now in 2018, when he finally leaves,
5 that's why, from 2012. I just don't think so. It's too
6 attenuated. It's too old.

7 MS. ROSENBLIT: Your Honor, if I may.

8 THE COURT: Yeah.

9 MS. ROSENBLIT: Sorry. Renee Rosenblit for the
10 City, only because I'm the one cross examining the
11 Plaintiff, I want to make sure I'm clear.

12 THE COURT: Yeah.

13 MS. ROSENBLIT: So, the evidence, if it could come
14 in, would show that repeatedly and consistently over the
15 years, Mr. Rice looked at selling his condo, and I think
16 that evidence, including back from 2012, is really important
17 to show --

18 THE COURT: You -- you can ask him about whether
19 he wanted to sell his condo. You can ask him about the rent
20 stuff. I just don't want to get into the dirtying up stuff
21 with the HOA.

22 MS. ROSENBLIT: I have no intention or desire to
23 get into like what the HOA disputes were, who is at fault or
24 any of that side show.

25 THE COURT: It's got to be -- it's got to be

1 liked, though, you know, or you risk you're losing your
2 audience, you know.

3 MS. ROSENBLIT: So, my -- my concern -- so, I have
4 a couple of emails from the Plaintiff to various people.
5 They weren't City employees -- they were San Francisco
6 Redevelopment Agency employees -- saying that his housing
7 experience is untenable, he is unhappy with the HOA. He's
8 going to sell under protest, which is the same language that
9 he then uses later when he does sell, and it references this
10 HOA stuff. It doesn't go into a lot of detail. I don't
11 plan to ask him about what the disputes are, but I do think
12 that I should be allowed to cross examine him about his
13 motivation to sell and -- and whether or not -- you know,
14 undermine this theory that the City forced him to sell in
15 2018. I mean, that is -- is the case and the damages for
16 the Plaintiff. And because it continues over the years, I
17 don't think that this is too attenuated. It shows that for
18 a long time, he thought about selling. Now, he didn't sell.
19 So, maybe it's not particularly compelling. I think the
20 jury will get to weigh that examination, but --

21 UNIDENTIFIED SPEAKER: Your Honor, if I -- if I
22 may respond briefly.

23 THE COURT: Okay. Let me just tell you what I'm
24 thinking.

25 UNIDENTIFIED SPEAKER: Sure.

1 THE COURT: You can't cut off all of his
2 motivations and that the idea is this is sort of a
3 consistent pattern and he's threatened to sell before and
4 this isn't really real now. You know, that's the kind of
5 argument that the CCSF -- I don't want to get into the HOA
6 details. I do not. The he was unhappy and threatened to
7 sell before, seems like it's fair cross examination, and I
8 kind of said I didn't mean for you to preclude your inquiry
9 into the circumstances of having rent paying roommates and
10 his living situation to look into his motivations about
11 what's going on now. But I don't want to get into any sort
12 of details. That's -- that's -- and if anything -- sort of
13 is not the right word necessarily, but if there are any of
14 those, then they should be redacted from the email, and the
15 jury will just say that they're not relevant.

16 MS. ROSENBLIT: And, so, your Honor --

17 UNIDENTIFIED SPEAKER: Your Honor, if I may -- if
18 I may respond.

19 THE COURT: Yes.

20 UNIDENTIFIED SPEAKER: Of course --

21 MS. ROSENBLIT: Can I just offer one -- one
22 suggestion first is just that I think at least in terms of
23 the cross examination of Plaintiff, it's going to be fairly
24 limited, and I think when I submit the exhibits to the other
25 side, they will see exactly what I'm looking at, and we'll

1 be able to discuss this in a concrete way.

2 THE COURT: Let's -- let's do that. Yes. It's
3 too hypothetical.

4 MS. ROSENBLIT: Because I really don't plan on
5 getting into anything that I think would venture at all
6 close to like a bad act. I don't think that that's helpful
7 for our case to try to --

8 THE COURT: It's not.

9 MS. ROSENBLIT: -- jury him up. So, that's not my
10 intention.

11 THE COURT: Okay.

12 MS. LEE: Your Honor, I -- I think the emails that
13 Ms. Rosenblit is speaking about -- and we can -- we can sort
14 this out in the exhibit exchange, but I believe they
15 specifically reference the HOA disputes, and I think the
16 idea that because this has been going on --

17 THE COURT: That -- that doesn't necessarily hurt
18 you, thought. That's -- we don't want to go into the sordid
19 details, right, because it's just a side show. But if Mr.
20 Rice was feeling pretty miserable in 2012 because of HOA and
21 then that gets resolved and then he's feeling good again,
22 you got to own your evidence.

23 MS. LEE: And if the City wants to show that, you
24 know, for years he was thinking of leaving, they can do that
25 from 2013 all the way to 2018, and we don't see a reason to

1 go all the way back to --

2 THE COURT: Well, he had rent paying roommates
3 since 2009. It's going to be relevant to like how important
4 that was to him. I think both of you need that evidence
5 because it cuts your way. If there's a period of time where
6 he was unhappy that got resolved, it doesn't necessarily
7 hurt you. Look at it in the context of the evidence.
8 You've heard what I've ruled. No, you know, we're not
9 getting into this like -- all this extra stuff.

10 MS. LEE: Yeah.

11 THE COURT: But let's look at it in the context of
12 the -- she's not going to beat him up too much because
13 they'll hate her if she does.

14 MS. LEE: Well, your Honor, I think we -- we're
15 concerned that if there's too much discussed about the HOA
16 and disputes, regardless of what there -- there are
17 specifics that come in, but there is going to be a picture
18 painted that other people at the building didn't like Mr.
19 Rice, and that's character evidence, and this is exactly
20 what we briefed in the MIL.

21 THE COURT: Well that's -- we're not letting in
22 any of that. None of that comes in, none of it, none of it,
23 none of it.

24 MS. LEE: Okay.

25 THE COURT: Let's look at it in the context of the

1 email. That's exactly what I'm trying to avoid by the in
2 limine ruling.

3 MS. LEE: Great.

4 THE COURT: Counsel, identify yourself, please.

5 MS. LEE: Could I just ask a -- oh, sorry. This
6 is Annie Lee for the Plaintiff.

7 Could I ask a clarifying question just to make sure we
8 know what constitutes opening the door? I -- I think the
9 City's counsel is suggesting that we can't have Mr. Rice say
10 this was the most stable period of his life without opening
11 the door, and to us that -- that seems like the line is too
12 far over.

13 THE COURT: Mr. Rice -- Mr. Rice is probably going
14 to be pretty good about telling you when things were good
15 and when they weren't, and they weren't that great for him
16 in a certain period of time before this, but there's going
17 to be a period of time when he's got rent paying -- this is
18 how it's going to go, I can promise you -- that he had rent
19 paying roommates and things were good and he was happy and
20 it worked, and that's his testimony, and he's got to own his
21 whole life. He can't pretend that it was glorious in a
22 period of time this long, and he's not the kind of person to
23 do that. So, it will be fine. No side show.

24 MS. LEE: So, if -- if Mr. Rice says something
25 like living at 200 Brannon gave me the most stable period of

1 my life, does that --

2 THE COURT: He's not going to say it that way. He
3 will say something --

4 MS. LEE: So, that would be opening the door in --

5 THE COURT: Well, if -- if it's belied by a record
6 that suggests that it wasn't, yes. But I'm still not
7 letting in all the HOA stuff.

8 MS. LEE: Understood.

9 THE COURT: It's going to be very much -- it's
10 going to be fine. I think Mr. Rice tells the truth, and he
11 tells --

12 MS. LEE: Yeah, that is true.

13 THE COURT: -- extreme detail.

14 MS. LEE: Understood.

15 THE COURT: So, that's not going to be a problem.
16 He's not -- he's not going to mischaracterize. It's just I
17 -- from the record I have, I don't think Mr. Rice is going
18 to mischaracterize anything about his life, and I think
19 probably at some part finally he was happy. He had a rent
20 paying roommate. He was able to engage in the travel he
21 did. It was stable. It was good, and that's what he's
22 going to say.

23 MS. LEE: Understood.

24 MS. ROSENBLIT: And, for clarification, when my
25 colleague, Mr. Rollan, was discussing about the most stable

1 period of his life was really the -- their expert's opinion,
2 and cross examining the expert on, you know, what -- what
3 you've reviewed and why you think it was stable and did you
4 consider this and that.

5 THE COURT: You just don't want it to be too much
6 of a factor into stuff that can't come in.

7 MS. ROSENBLIT: We will not go into sordid
8 details.

9 THE COURT: And they're going to be careful. You
10 basically pinned the expert issue for you. So, you want to
11 be careful with your expert. Is your expert -- I mean, you
12 know, you'll be able to manage it. It will be okay.

13 UNIDENTIFIED SPEAKER: We do have one more -- one
14 more issue we wanted to bring up.

15 THE COURT: Okay.

16 UNIDENTIFIED SPEAKER: Doctor Lynch served an --
17 an opening report, but he didn't provide a rebuttal report,
18 and we just want to make sure that Doctor Lynch's testimony
19 won't be going outside the bounds of his opening report,
20 even though he may be trying to respond to Doctor Lines on
21 the stand. We think that would be in violation of Rule 26.

22 THE COURT: Well, I assume he'll sit in the
23 courtroom. So -- sorry. Your expert -- I'm sure he'll sit
24 in the courtroom during -- he's allowed to respond to
25 whatever your expert says. If it's new -- your expert --

1 everybody should be confining their stuff to what's in the
2 report. Rebuttal reports are usually about prompting --
3 responding to the opening report.

4 UNIDENTIFIED SPEAKER: Right. The issue is that
5 they did not serve a rebuttal report.

6 THE COURT: No, I understand that. I'm just
7 thinking out loud.

8 UNIDENTIFIED SPEAKER: Oh, I'm sorry.

9 THE COURT: And, so, there really shouldn't be an
10 issue because if there were an issue, you would have done a
11 rebuttal report.

12 UNIDENTIFIED SPEAKER: Yes, your Honor. This is
13 being brought to my attention for the first time now, and I
14 will admit it's been a while since I looked at the -- the
15 rules on rebuttal reports, but I -- you know --

16 THE COURT: Basically, your testimony's supposed
17 to be confined to your report, period, end of story.

18 UNIDENTIFIED SPEAKER: I think -- I think it would
19 be fair game for our expert to comment on Doctor Lines'
20 testimony to the extent it's like within the realm of the
21 things he opined about in his report and at deposition. I
22 don't think that he would have some new opinion, because
23 that would be new.

24 THE COURT: He could opine on the testifying about
25 their expert consistent with opinions already rendered in

1 his report.

2 UNIDENTIFIED SPEAKER: Right.

3 UNIDENTIFIED SPEAKER: Yeah. Your Honor, we just
4 want to make sure like this -- the realm of what's in his
5 report is actually --

6 THE COURT: That's the rule. So, that's the rule.

7 UNIDENTIFIED SPEAKER: -- that we'd have to go
8 back to what was actually written, because his report was
9 pretty short, and we think that --

10 THE COURT: Well, testable. What's in his report
11 is in his report. Query whether it makes one wonder, worry
12 if there's another rebuttal report somewhere out there that
13 didn't get -- get produced, but oh well. Okay. Should be
14 fine. I mean, it's -- the -- the clear rule is that his
15 testimony is confined to what's in his report.

16 UNIDENTIFIED SPEAKER: Okay. Thank you, your
17 Honor.

18 THE COURT: Okay. Good. All right. Thanks
19 everybody. That's a wrap. Thanks Angie. Sorry it was a
20 little --

21 THE CLERK: No, that's okay.

22 THE COURT: -- but we covered a lot of down.
23 So --

24 THE CLERK: Okay.

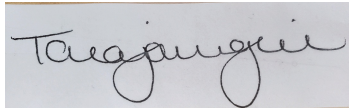
25 THE COURT: -- we'll have to do it next week.

1 THE CLERK: Court is adjourned.
2 (Proceedings adjourned at 3:37 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 black ink, appearing to read "T. J. Jurgie", is centered within a light gray rectangular box.

Echo Reporting, Inc., Transcriber

Thursday, March 21, 2024