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CASE NO.: 1046189

**IN THE SUPREME COURT OF THE STATE OF
WASHINGTON**

CASE NO.: 85888-2

**IN THE COURT OF APPEALS OF THE STATE OF
WASHINGTON**

DIVISION ONE (I), KING COUNTY

DOMINIQUE M. KEIMBAYE

Petitioner/Appellant,

v.

PROVIDENCE REGIONAL MEDICAL CENTER

EVERETT, et al.,

Respondent/Defendants.

APPEALS FROM KING COUNTY SUPERIOR COURT

Case No.: 21-2-07545-9SEA

Honorable Andrea Darvas

DOMINIQUE KEIMBAYE

PO BOX: 2024

BELLEVUE, WA 98009

Pro Se Petitioner

APPELLANT'S PETITION FOR REVIEW UNDER RAP

13.4

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I- IDENTITY OF PARTIES/PETITIONER (RAP 13.4(c)(3))

Petitioner Dominique M. Keimbaye is the self-represented appellant (a member of protected classes) against Respondents in the above captioned-case and seeks Washington Supreme Court review of the lower Courts including the Appeals Court's unpublished decision affirming (1) summary-judgment dismissal of wrongful discharge and retaliation claims under the Washington Law Against Discrimination (**WLAD**) (RCW 49.60) parallel to **Title VII of the Civil Rights Act of 1964** and (2) a judgment as a matter of law (CR 50(a)) dismissing the WLAD hostile work environment claims after Petitioner's case-in-chief.

II- CITATION TO COURT OF APPEALS DECISION AND POST-OPINION ORDERS (RAP 13.4(c)(4))

1- Opinion: *Keimbaye v. Providence Reg'l Med. Ctr. Everett*, No. **85888-2-I** (Div. I) (unpublished), filed

July 7, 2025 (Hazelrigg, C.J.), affirming summary judgment dismissal of wrongful discharge and retaliation claims and CR 50 directed verdict of hostile work environment claims for Respondents, including numerous evidentiary exclusions that effectively barred Petitioner from presenting key witness testimony (**Ms. Husted's Deposition**) and **Exhibits**.

2- Post-Opinion Orders: Order **denying** motion for reconsideration and **denying** motion to publish, filed **September 5, 2025**, after a timely motion for reconsideration and or to publish was filed by Petitioner on **July 24, 2025**, pursuant to RAP 12.4(b) and RAP 12.3(e).

3- Appendix: Copies of the opinion and orders and relevant trial court orders are included in the **Appendix** at **A-0 through A-13**. Petitioner seeks review of the decision and all parts that rule and affirm the summary-judgment and directed-verdict rulings described below.

III- INTRODUCTION

This case squarely presents whether Washington courts will continue to **liberally construe** the WLAD “to accomplish [its] purposes” of eradicating or at least reducing discrimination and retaliation, or whether technical parsing at summary judgment and directed verdict will **insulate** employers from trial where a pro se employee marshals’ evidence in this case that if credited would allow a reasonable jury to find **hostile work environment, retaliation, and wrongful discharge**. RCW 49.60.020.

The Court of Appeals affirmed dismissal despite evidence that: (1) Petitioner reported sex-based harassment by a coworker that the employer’s own HR consultant found **credible in part** and that resulted in **discipline**; (2) Petitioner was terminated shortly after reporting; and (3) coworkers and a student intern’s declaration supported persistent harassment and

differential treatment. By recasting these proofs as legally insufficient, the decisions below conflict with **Scrivener** and **Mikkelsen** on pretext and mixed motive, disregard **Marquis**, **Allison**, and the statutory command of **liberal construction**, and undercut Washington's alignment with **Meritor**, **Oncale**, **Burlington Northern**, and **Nassar**.

This Petition asks the Court to grant review under RAP 13.4(b)(1), (2), (3), and (4) because the decision **conflicts** with controlling Washington precedent; **misaligns** WLAD with Title VII's protective baseline; and raises issues of **substantial public interest** about access to juries in civil-rights cases, particularly for **self-represented** workers. Washington's civil-rights statute is "**remedial**" and must be "**liberally construed**." RCW 49.60.020. That command was not honored here.

IV- ISSUES PRESENTED FOR REVIEW

1. Liberal Construction & Summary Judgment:

Did the lower courts contravene **RCW 49.60.020** and Supreme Court precedent cases such as **Marquis, Allison, Scrivener, Martini, Kastanis,** and **Mikkelsen** by weighing credibility and drawing inferences against the non-movant thereby granting summary judgment and directed verdict where a reasonable jury could find discrimination, retaliation, and hostile work environment? Whether the trial court erred by adopting Respondents' narrow definition of "supervisor" liability under WLAD, contrary to *Brown v. Scott Paper Worldwide Co.* and RCW 49.60.020's mandate of liberal construction (**VRP at 32–34**). (**A-10**). Whether the trial court erred by accepting defense counsel's misstatements of CR 56(f) and supervisory liability law, thereby curtailing Petitioner's opportunity to develop essential evidence. Whether the Court of Appeals' decision conflicts with controlling precedent

under **WLAD** and **Title VII**, including this Court's mandate that discrimination statutes be liberally construed to accomplish their remedial purpose.

2. Conflict with Scrivener/Mikkelsen (Pretext & Mixed Motive): Did the rulings conflict with **Scrivener** (employee may survive summary judgment by showing pretext or that discrimination was a **substantial factor**) and **Mikkelsen** (rejecting “super-McDonnell-Douglas” rigor) by demanding conclusive proof and discounting circumstantial evidence? Whether the lower courts failed to apply proper standards for hostile work environment, retaliation, and wrongful discharge claims under the WLAD, and misapplied the burden-shifting framework from *McDonnell Douglas v. Green*, in disregard of substantial evidence. Whether the trial court erred by granting Respondents' motion to strike key CR 43 witnesses based solely on counsel's assertions, thereby

preventing Petitioner from presenting probative testimony supporting pretext and discriminatory motive. (**VRP at 93–94**). (**A-10**). Whether the lower courts’ refusal to consider corroborative testimony and exclusion of key evidence while rigidly applying procedural rules against a pro se litigant constitutes a substantial departure from accepted judicial practice warranting Supreme Court intervention.

3. Retaliation Standard (Burlington Northern & Nassar): Did the courts misapply retaliation standards by minimizing the **temporal proximity** between protected activity and termination, and by failing to apply **Burlington Northern’s** “materially adverse action” framework and **Nassar’s** but-for causation in a manner consistent with **Scrivener** and WLAD’s remedial scope? Whether the treatment of Petitioner’s retaliation claim disregarded evidence from which a reasonable jury could infer causation under the

McDonnell Douglas framework and **Scrivener v. Clark College**, *181 Wn.2d 439 (2014)*.

4. Directed Verdict & Jury Function: Did the CR 50(a) dismissal improperly **invade the jury's province** by rejecting the intern's corroborating declaration, Petitioner's testimony, and HR's discipline of the harassing coworker as insufficient to create a jury question on imputability, severity, and pervasiveness under **Glasgow** and **Blackburn**? Whether the directed verdict improperly usurped the jury's role by weighing credibility and drawing inferences against the non-moving party, contrary to **Mancini v. City of Tacoma**, *196 Wn.2d 864 (2021)*. Whether unequal enforcement of court orders, including failure to sanction defense counsel for provocations and instead repeatedly sanctioning Petitioner, deprived him of a fair trial.

5. Public Interest & Chilling Effect: Do the

decisions create a **chilling effect** on reporting discrimination and harassment contrary to **WLAD's** purposes and **Meritor/Oncale** by signaling that internal complaints followed by swift termination can be insulated from the trial by labeling evidence “insufficient” at threshold stages? Whether the exclusion of pro se evidence and testimony deprived Petitioner of a fair trial and undermined public confidence in anti-discrimination enforcements. Whether Respondents’ minimization of admitted physical harassment, and the trial court’s acceptance of a written memo as “remedial action,” contradicts **Meritor Savings Bank v. Vinson, Oncale v. Sundowner Offshore Services, and Glasgow v. Georgia-Pacific Corp. (VRP at 32). (A-10)**. Whether the issues presented are of substantial public interest and statewide impact, requiring clarification and intervention by the Washington Supreme Court.

6. Consistency with Title VII: Should this Court accept review to **clarify** that Washington's WLAD offers at least as much protection as Title VII, including recognition that circumstantial evidence and credibility disputes must go to the **jury**, not be resolved at summary judgment or directed verdict? Whether dismissal under **CR 41(b)** was improper given that lesser remedies were available, particularly in light of defense counsel, Ms. Rosen's own misconduct and the strong public interest in adjudicating WLAD claims on their merits. Whether the trial court erred by entertaining dismissal against a pro se civil-rights litigant under **CR 41(b)** without applying the **Burnet factors** or sanctioning Respondents' counsel for provocative and prejudicial misconduct. Whether the lower courts' approach undermines public confidence in the judicial system by setting a precedent that disproportionately prejudices self-represented and

protected-class litigants. Whether these rulings create a dangerous precedent, chilling the rights of employees to rightfully report discrimination and harassment, and undermine the remedial purposes of the WLAD and Title VII.

V- STATEMENT OF THE NATURE OF THE CASE

A- Employment and Policies. Providence hired Petitioner as an anesthesia technician in December 2017 under a collective bargaining agreement with a probationary period. Attendance and accurate timekeeping were emphasized. (**Order on SJ, May 20, 2022; employer declarations**). Petitioner's supervisors were **Travis John and Christopher Kortendick**. (Id.).

B- Protected Activity & HR Investigation. On **June 15, 2018**, while on administrative leave during a timekeeping investigation, Petitioner objected and reported **sexual harassment** by coworker **Opal Lonon**

(Ms. Lonon) from January 2018 forward, including a nonconsensual and forceful full-body hug with legs wrapping around Mr. Keimbaye and continuing unwelcome conduct (sexual signs and gestures). Providence **substantiated** part of the allegation: HR consultants **Marilyn Rice** found Lonon (by her own admission) credible in admitting the incident and issued a **written violation and warning** to Lonon on **June 28, 2018**. HR consultants **Erich Sweaney & Marilyn Rice** then sent Petitioner a closeout letter while HR Director Kathleen Groen paradoxically attempted to discredit their finding of inappropriate violation against Ms. Lonon. (**CP: 1-10; Ex. 25, 27, 36**). (**A-0; A-5**). HR consultant Marilyn Rice found that Lonon's admitted conduct violated policy but imposed only a written warning. Petitioner, however, was terminated entirely, despite being competently qualified and within his probationary period and

having no prior progressive discipline for tardiness beyond their verbal reminders.

C- Termination. Providence terminated Petitioner on **June 22, 2018**, citing tardiness and unapproved overtime (citing “51 instances of tardiness and 74 alleged instances of “unapproved overtime””) during probation (Notice of Discharge) (**Ex.: 22, CP: 2225 - 2233**) and sent a cash offer of **\$10,000.00** to coerce him to withdraw his EEOC Charge & claims against them. (**A-6**). Thus, termination occurred **days after** Petitioner’s protected complaint and **before** HR’s corrective action letter sent to the harasser (Ms. Lonon). (**Ex.: 36**). (**A-5**).

D- Action Filed and Claims. Under the Washington Law Against Discrimination (**WLAD**) (RCW 49.60), parallel to **Title VII of the Civil Rights Act of 1964, 42 U.S.C. § 2000e et seq.**, Petitioner pro se, filed his discriminatory claims for **sexual harassment, hostile**

work environment, race and national origin harassment, retaliation, and wrongful discharge in King County Superior Court. (CP: 1-30). (A-0). He clearly alleged differential treatment, management awareness, and protected activity followed by termination.

F- Summary Judgment. In May 2022, the superior Court (Darvas, J.) **granted** summary judgment on **wrongful discharge and retaliation**, finding no prima facie case and no pretext; it **denied** summary judgment on **hostile work environment**, relying on Petitioner's testimony and **intern Yulia Husted's declaration (CP: 807 - 843)** and coworkers describing near-daily harassment and differential treatment. **(Ex.: 33, 48, 49); (CP: 2225 - 2233). (A-7, A-9).** The court kept Mr. Kortendick **(authorized trainer & supervisor)** in but dismissed Mr. John **(the main supervisor & "acting OR manager")**. (SJ Ruling/Order 5/20/2022). **(A-3),**

(**VRP: 8-61**). (Exhibits, Discussion re Voir Dire, Discussion re CR 43, Court's Ruling, Motions in Limine, Discussion re Jury Panel, and Discussion re Motions in Limine Rulings). (**VRP: 63-170, 172-399**). (**A-10**).

F- Trial & Directed Verdict. Before trial, Petitioner sought to present deposition testimony from Yulia Husted, an intern who witnessed daily harassment and discriminatory treatment. The trial court excluded her deposition under CR 32(a)(3)(B) after rejecting text messages as proof of her unavailability. Trial on hostile environment proceeded in **September 5, 2023**. The court excluded reading **Husted's deposition** on unavailability grounds and excluded unauthenticated texts. (**VRP: 400-427**). (**A-10**). The court also excluded certain unauthenticated text messages and other corroborating exhibits, despite their probative value. After Pro se Petitioner's case-in-chief, the court

controversially **granted CR 50(a)** and dismissed, reasoning there was no substantial evidence to support a hostile work environment claim and that **(1) Kortendick** was not a “**supervisor**” personally liable under WLAD, or **(2) Providence authorized, knew, or should have known and failed to take prompt and adequate corrective action.** (CR 50(a) Order 9/12/2023). **(A-4)**, **(VRP: 441-449, 582-590, 591-775, 776-859, 860-968).** **(A-10)**. The ruling emphasized that Petitioner reported sex harassment **after** placement on leave; and found no evidence of earlier management notice of race/national origin harassment.

G- Appeal and Unpublished Opinion. On **July 7, 2025**, the Court of Appeals **affirmed** the summary-judgment and directed-verdict rulings, characterizing Petitioner’s evidentiary arguments as unsupported and holding that, even in WLAD cases, the record did not create genuine disputes for trial and no substantial

evidence supported jury submission. The panel rejected complaints about pro se status and evidentiary rulings. (**Op. at 1-19**). (**A-1**). On **September 5, 2025**, the court **denied** motions for reconsideration and to publish. (**Op. at 1-3**). (**A-2**),

H- Related Fee Orders. Separate fees and court costs orders (CR 11, CR 37; **\$9,291** and later **\$771** statutory costs) issued during the case ((**A-3**) and (**A-4**)); discretionary review of the early fee order was denied in 2022. (**A-2.1**). While distinct from the ultimate merits, these interlocutory rulings substantially shaped the outcome and warrant this Court’s review.

I- Record Citations. Petitioner will supply pinpoint CP and RP cites in the Appendix index: (a) **SJ Order** (May 20, 2022) (**CP: 986 - 989**); (b) **CR 50(a) Order** (Sept. 12, 2023). (**CP 2234-2239**); (c) **HR findings and discipline** (**CP: 2225 - 2233; Ex.: 25, 27, 36**); (d) **Husted declaration** (**CP: 232 – 236; CP: 807 – 843**;

Ex.: 33); (e) termination notice (CP: 1-30; Ex.: 22); (f) trial rulings re deposition (RP: 582-590, 860-968; CP: 2156 - 2158).

During proceedings, Respondents' counsel repeatedly misrepresented governing law and sought sanctions designed to terminate the litigation rather than address specific issues. When Petitioner invoked CR 56(f) to secure discovery critical to establishing supervisory liability, counsel incorrectly argued the request was untimely. The trial court itself acknowledged CR 56(f) may be invoked "as late as the day of oral argument" (**VRP at 9-39; 415:17–416:9**), yet nonetheless limited Petitioner's ability to obtain evidence. Counsel also dismissed record evidence that Mr. Kortendick exercised supervisory authority despite sworn testimony: ("I was authorized to help train, yes") (**VRP at 677-678; 802:1–12; 834-836 (A-10)**) and Providence's own documentation assigning Mr.

Kortendick’s responsibility for Code Blue trauma responses and oversight of anesthesia technicians. While the trial court admitted WLAD’s broad definition of “employer” created a factual issue, it credited Respondents’ narrative to minimize Petitioner’s evidence. **(VRP at 16: 7-25; 17: 1-25; 417:3–418:21; 421:5–422:20). (A-10).**

Respondents’ counsel also repeatedly sought to narrow the scope of liability and exclude critical testimony. Counsel argued that Mr. Kortendick could not qualify as a supervisor under the WLAD because he was a union member, rotated as a “lead,” and lacked formal authority over hiring or firing. Counsel went further, suggesting that WLAD’s broad statutory language would make “almost anyone” a supervisor, a position directly contrary to the Legislature’s directive of liberal construction under RCW 49.60.020. **(VRP at 32–33). (A-10).**

The trial court echoed and endorsed this restrictive framing, stating that liability could only attach if the alleged supervisor had control over the employee's working conditions "other than the allegedly-harassing conditions." **(VRP at 33). (A-10).**

Additionally, Respondents' counsel moved to strike Petitioner's CR 43 notices, thereby excluding from testimony human resources staff directly involved in hiring and workplace management. The court granted the motion, relying solely on counsel's representations and eliminating witnesses who could provide probative evidence of discriminatory motive. **(VRP at 93–94). (A-10).**

Moreover, Respondents minimized admitted sexual harassment by a coworker, reducing it to a single "hug" and asserting Providence's "post hoc memo" was adequate remedial action. This trivialization ignored governing precedent that even seemingly "minor" acts

can constitute actionable harassment if unwelcome and tied to protected status (**VRP at 32**).

At trial, Respondents’ counsel lastly pivoted to repeated motions for dismissal under CR 41(b), portraying Petitioner as persistently violating orders and making “very terrible and malicious statements.” (**VRP at 76-89**; 694:10–695:18; **779-783**; **120:1–123:25**). The court echoed this framing, telling Petitioner in open court, “There’s a lot wrong that you’ve done.” (VRP at 676:6–9; **784: 1-10**). When Petitioner reported that defense counsel (**Ms. Rosen**) had provoked him outside the jury’s presence by yelling “Don’t look at me like that” (**VRP at 679:12–680:7**; 682:15–25; **785: 1-25**; **786-788**), the court refused to address counsel’s conduct. Instead, the court threatened Petitioner with dismissal, warning he was “skating on thin ice.” (**VRP at 688:13–689:6**; **789:15-25**). This unequal enforcement of court orders deprived

Petitioner of the neutral application of judicial authority required under WLAD cases and Washington law.

VI- REASONS FOR REVIEW UNDER RAP 13.4(b)

A. The Decision Conflicts with Controlling Washington Precedent. (RAP 13.4(b)(1))

1. Liberal Construction & Jury Access. WLAD is a **remedial** statute to be **liberally construed**. RCW 49.60.020; **Marquis**, 130 *Wn.2d* at 109; **Allison**, 118 *Wn.2d* at 85, **Martini v. Boeing**, 137 *Wn.2d* 357, 364, 971 *P.2d* 45 (1999), **Scrivener v. Clark College**, 181 *Wn.2d* 439, 445–46, 334 *P.3d* 541 (2014), **Kastanis v. Educ. Emps. Credit Union**), especially regarding summary judgment standards and pretext analysis. Summary judgment is “often inappropriate” in discrimination cases because intent and credibility are central. **Mikkelsen**, 189 *Wn.2d* at 526–28. Despite testimony and documentary evidence showing that Mr.

Kortendick directed anesthesia technicians and exercised authority during Code Blue events (**VRP at 16: 7-25; 17: 1-25**; 479: 18-22; 417:3–418:21; 421:5–422:20), the trial court entertained Respondents’ argument that there was “no evidence” of supervisory authority. This narrow reading undermines WLAD’s mandate and improperly removed disputed factual issues from the jury. The Court of Appeals endorsed **weighing** disputed inferences and credibility to affirm both summary judgment and directed verdict, contrary to **Scrivener** and **Mikkelsen**; *Mancini v. City of Tacoma*, 196 Wn.2d 864, 877 (2021). Lower courts failed to view facts and inferences most favorably to the nonmoving party, improperly weighing credibility and disregarding substantial evidence supporting Petitioner’s claims. The decision narrows employee rights in direct contradiction of this Court’s holdings.

2. Pretext & Mixed Motive. Scrivener holds a

plaintiff defeats summary judgment by showing the employer's reason is **pretext** or that discrimination was a **substantial factor**, not the sole cause. (*181 Wn.2d at 446–47*). To establish discriminatory discharge under WLAD, an employee must show membership in a protected class, satisfactory performance, and discharge. **Crabtree v. Jefferson County Pub. Hosp. Dist. No. 2**, *20 Wn. App. 2d 493, 508 (2021)*. The burden then shifts to the employer to articulate a legitimate reason, and back to the employee to show pretext. *Mikkelsen v. Pub. Util. Dist. No. 1*, *189 Wn.2d 516, 527 (2017)*. Petitioner offered evidence, HR's credibility finding against him, disparate discipline of Lonon, corroboration from Husted's declaration, that could allow a jury to find pretext. The opinion below effectively required **conclusive** proof, discounted circumstantial evidence (temporal proximity, inconsistent rationales, HR discipline of the harasser),

and treated Petitioner's pro se presentation as a reason to narrow inferences, contrary to **Scrivener** and **Mikkelsen**.

3. Hostile Environment Elements. The directed-verdict ruling collapsed the **imputability** standard under **Glasgow**, which is satisfied if the employer "authorized, knew, or should have known" of coworker harassment and **failed to take prompt and adequate corrective action**. The WLAD prohibits harassment that is unwelcome, because of protected status, affects conditions of employment, and is imputable to the employer. (*Blackburn*, 186 Wn.2d at 260). Lonon admitted unwelcome sexual conduct. Petitioner alleged repeated racial and national origin hostility. That evidence, if believed, meets the *Blackburn* standard. Here, HR **corroborated** part of the harassment and issued **discipline**; termination occurred **days after** the complaint; and evidence supported that harassment

affected terms and conditions. Whether Providence’s response was “prompt and adequate” and whether conditions were “severe or pervasive” are **jury** questions under **Blackburn**.

B. The Case Presents Important Questions of Substantial Public Interest. (RAP 13.4(b)(2))

Washington depends on **private enforcement** of WLAD. The trial court openly declared to Petitioner, “There’s a lot wrong that you’ve done” (**VRP at 676:6–9; 784: 1-10**), while excusing defense counsel’s provocations. (**VRP at 679:12–680:7; 682:15–25; 785: 1-25; 786-788**). Counsel’s prejudicial characterizations, including allegations that Petitioner made “very terrible and malicious statements” (VRP at 694:10–695:18; 120:1–123:25) were tolerated while only Petitioner was threatened with dismissal. This unequal treatment raises substantial concerns about judicial neutrality, equal

access to justice for self-represented litigants, and the consistent enforcement of WLAD protections statewide. The decision signals that where an employee complains and is then terminated during probation, courts may insulate the employer at threshold stages even when HR substantiates misconduct and disciplines a harasser. That rule chills reporting, deters internal complaint processes, and **undermines WLAD's purpose** to eradicate discrimination and retaliation. The lower courts' application of WLAD diverges from analogous federal standards under Title VII, 42 U.S.C. § 2000e (**Meritor, Oncale, Burlington Northern**), undermining uniform enforcement of anti-discrimination statutes. The courts' restrictive reading of protected activity, hostile environment, and retaliation conflicts with both Washington and federal case law, eroding crucial protections for vulnerable employees. Affirmation of these rulings signals that technical procedural defaults

and evidentiary exclusions can override WLAD's remedial mandate. That undermines public confidence in the judiciary. Clarification is needed to ensure that **pro se** workers receive the same access to juries as represented parties.

C. The Decision Departs from Alignment with Title VII Baseline protections. (RAP 13.4(b)(3); Persuasive Authority)

This Court regularly aligns WLAD analysis with federal law **while** preserving WLAD's remedial breadth. **Estevez v. Faculty Club**, 129 Wn. App. 774, 797–98, 120 P.3d 579 (2005). Dismissal under **CR 41(b)** is a drastic sanction, appropriate only where no lesser remedy would suffice. **Burnet v. Spokane Ambulance**, 131 Wn.2d 484, 494 (1997). Here, the court entertained dismissal without making the findings *Burnet* requires, despite available lesser remedies such as curative instructions or limiting testimony. (VRP at 688:13–689:6; 789:15-25). By crediting defense

counsel's exaggerated claims of prejudice and repeatedly threatening dismissal, the court deprived Petitioner of his day in court on serious civil-rights claims. The opinion below departs from **Burlington Northern's** retaliation standard (materially adverse actions that might dissuade a reasonable worker from complaining) and **Nassar's** but-for standard as understood in a **jury-centric** framework. Here, termination occurred within one week of the harassment report, a proximity this Court has recognized as probative. The Appellate Court's approach narrows retaliation causation and ignores the **temporal proximity** and **post-complaint termination** sequence, issues the jury only should weigh with all circumstances. Review is warranted to clarify the standards for summary judgment, admissibility of pro se evidence, and proper application of the WLAD's liberal construction mandate. Without intervention, the

lower courts' approach will stifle future civil rights litigation and undercut statutory guarantees.

D. The Case Will Clarify the Proper Application of CR 56 and CR 50(a) in WLAD Cases. (RAP 13.4(b)(4))

This case presents issues of broad importance to all Washington employees, particularly pro se litigants and individuals from marginalized backgrounds. The decision threatens to chill reporting of discrimination and frustrate the WLAD's remedial purpose, potentially immunizing employers from accountability where discrimination and retaliation are proven only circumstantially or through contested evidence. The trial court's treatment of CR 56(f) directly conflicts with this Court's jurisprudence requiring liberal application of discovery rules to ensure adjudication on the merits. See **Lybbert v. Grant County**, *141 Wn.2d 29, 1 P.3d 1124 (2000)*. By adopting defense counsel's incorrect assertion of untimeliness despite

acknowledging that CR 56(f) motions may be made “as late as the day of oral argument” (**VRP at at 9-39; 415:17–416:9**), the court deprived Petitioner of the opportunity to obtain evidence central to supervisory liability.

The Court should reaffirm that courts must (1) **credit** the non-movant’s evidence and draw **all reasonable inferences** in the employee’s favor; (2) avoid credibility determinations; and (3) send **mixed-motive** and **pretext** disputes to the **jury**. The directed-verdict ruling, immediately after the plaintiff’s case, illustrates a broader problem of **premature** merits resolutions in civil-rights trials, contrary to **Davis** and **Blackburn**.

The Court of Appeals’ decision affirming summary judgment and directed verdict rests on legal errors of broad public import. First, the trial court’s adoption of Respondents’ restrictive definition of “supervisor” conflicts with **Brown v. Scott Paper Worldwide Co.**,

143 Wn.2d 349, 20 P.3d 921 (2001), and undermines WLAD’s remedial purpose. By requiring authority over working conditions “other than the harassment itself,” the court imposed an extra-statutory element unsupported by Washington precedent. **(VRP at 33). (A-10).**

Second, by striking CR 43 witnesses based solely on defense counsel’s characterizations, the court deprived Petitioner of critical testimony from HR personnel directly involved in his hiring and supervision. Such testimony was central to proving pretext under *Scrivener v. Clark College*, 181 Wn.2d 439, 334 P.3d 541 (2014), yet Petitioner was denied its benefit. **(VRP at 93–94). (A-10).**

Third, Respondents’ minimization of admitted physical harassment, and the court’s acceptance of a written warning as sufficient remedial action contradicts federal and state precedent recognizing that even

“minor” acts of unwelcome physical contact may establish a hostile work environment when motivated by sex or other protected status (*Meritor*, *Oncale*, *Glasgow*). **(VRP at 32). (A-10).**

Although analytically distinct from the ultimate merits, the interlocutory rulings in this case directly constrained Petitioner’s ability to present his claims and fundamentally shaped the outcome now on review. The trial court’s denial of CR 56(f) relief and its exclusion of key CR 43 witnesses were not collateral matters; they predetermined what evidence the jury could hear and limited Petitioner’s ability to prove supervisory liability, pretext, and discriminatory motive. Washington precedent makes clear that interlocutory rulings affecting evidence and discovery are reviewable where they alter the framework in which the merits are decided. By crediting defense counsel’s restrictive framing of these issues, the lower

courts effectively decided the merits before trial, contrary to WLAD's liberal-construction mandate and this Court's direction that discrimination claims be resolved by a jury whenever factual disputes exist. These rulings therefore warrant review because they are inextricably tied to the fairness and integrity of the merit's adjudication. (See *Burnet v. Spokane Ambulance*, 131 Wn.2d 484, 494–95, 933 P.2d 1036 (1997); *Fisons v. Fred Hutchinson Cancer Research Ctr.*, 122 Wn.2d 299, 356, 858 P.2d 1054 (1993); *Scrivener v. Clark College*, 181 Wn.2d 439, 445–46, 334 P.3d 541 (2014); *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County*, 189 Wn.2d 516, 527–28, 404 P.3d 464 (2017); *State v. Torres*, 198 Wn.2d 280, 294, 494 P.3d 413 (2021).

VII- ARGUMENT

A. The Courts Misapplied Summary-Judgment Standards and WLAD's Liberal-Construction Mandate.

1. Standard: Summary judgment is proper only if no genuine issue of material fact exists and the movant is entitled to judgment as a matter of law. **Jones**, 146 Wn.2d at 300; **CR 56**. Courts must view evidence and inferences **in favor of the non-movant**. **Young v. Key Pharm.**, 112 Wn.2d 216, 226 (1989). In WLAD cases, summary judgment is “often inappropriate,” and the statute must be **liberally construed**. **Mikkelsen**, 189 Wn.2d at 526–28; RCW 49.60.020; **Martini v. Boeing**, 137 Wn.2d at 364.

2. Application of Law: Defense counsel’s claim that Petitioner’s CR 56(f) request was untimely was contrary to the rule itself. The trial court acknowledged that CR 56(f) relief may be sought “as late as the day of oral argument” but still restricted discovery. (**VRP at 9-39; 415:17–416:9**). Counsel also insisted there was “no evidence” of supervisory authority, ignoring

testimony and Providence's own records. (**VRP at 16: 7-25; 17: 1-25; 417:3–418:21; 421:5–422:20**). These mischaracterizations were improperly credited and undermined WLAD's mandate that disputed facts go to the jury. The trial court's decision to also strike Petitioner's CR 43 witnesses (**VRP at 93–94**) deprived him of probative testimony essential to showing pretext and discriminatory motive. HR staff who hired Petitioner were uniquely positioned to confirm discriminatory practices, yet their testimony was excluded at Respondents' request, without any independent judicial inquiry. This ruling violated the principle that summary judgment and evidentiary rulings must be construed in favor of the nonmoving party (**Mikkelsen v. PUD No. 1 of Kittitas County, 189 Wn.2d 516, 404 P.3d 464 (2017)**). The trial court granted summary judgment on **wrongful discharge** and **retaliation** despite evidence that (a) Petitioner

engaged in **protected activity**; (b) Providence **investigated** and **disciplined** the harasser corroborating misconduct; (c) Providence **terminated** Petitioner days after the complaint; and (d) **Husted's declaration** described pervasive harassment and differential treatment. The court resolved factual disputes about **credibility**, **temporal proximity**, and **pretext** against Petitioner. The Court of Appeals **affirmed** by reframing the record as devoid of specifics and by relegating key pieces of evidence to irrelevance. The Court of Appeals' narrow reading of the evidence and procedural rules is inconsistent with this directive and controlling authorities (**Scrivener v. Clark College**, 181 Wn.2d at 444–45). That approach cannot be squared with **Marquis** (liberal construction), **Allison** (remedial scope), **Scrivener** (substantial-factor and pretext frameworks), and **Mikkelsen** (rejecting heightened proof). A reasonable jury could find

retaliation where termination closely followed a harassment complaint that HR **partially validated** with discipline; the jury could also infer a **substantial factor** from sequence, motive, and credibility.

3. Employer's Stated Reason vs. Mixed Motive.

Providence cites timekeeping and tardiness as the termination basis. But **Scrivener** holds the employee need not show the proffered reason is false; it is enough to show discrimination was a **substantial factor** even if other reasons also motivated the decision. (181 Wn.2d at 446–47). The close **temporal proximity**, the **credibility** disputes, and the **discipline** of the harasser supply sufficient grounds for a jury to evaluate mixed motive and pretext.

By granting summary judgment, the courts below **weighed evidence** and narrowed WLAD contrary to RCW 49.60.020. That is reversible error.

B. The Rulings Conflict with Controlling Washington Precedent on Pretext and Mixed Motive (Scrivener, Mikkelsen, Martini, Blackburn).

Scrivener sets a plaintiff-friendly standard at summary judgment: survive by showing either **pretext** or **substantial factor** causation. 181 Wn.2d at 445–47; **Frisino**, 160 Wn. App. at 777. **Mikkelsen** reinforces that courts must not *heighten* McDonnell-Douglas or require “smoking gun” proof. 189 Wn.2d at 516, 527–33 (2017). **Martini** emphasizes liberal construction and skepticism toward dispositive motions that truncate discrimination claims. (137 Wn.2d at 364). Contrary to Mikkelsen and McDonnell Douglas, the courts improperly shifted burdens, credited employer justifications as dispositive, and discounted Petitioner’s protected activity and evidence of pretext. The Court of Appeals’ analysis conflicts with these authorities by:

1. Discounting Circumstantial Evidence, including **sequence**, **HR's corroborated misconduct** and discipline, and **intern corroboration** that, taken together, could persuade a reasonable jury that protected activity was a **substantial factor** and that the employer's rationale was **incomplete or selectively enforced**.

2. Treating Pro Se Presentation as a reason to deem arguments insufficiently "supported," rather than assessing the **substance** of evidence under WLAD's remedial lens.

3. Importing a De Facto Heightened Burden at both summary judgment and directed verdict, in tension with **Scrivener/Mikkelsen** and **Blackburn** (jury's role on severity, pervasiveness, and employer's imputability).

On **Hostile Environment**, **Blackburn** recognizes that whether conduct is sufficiently **severe or pervasive**

and whether it altered the terms or conditions of employment are **jury** questions in most cases. (*186 Wn.2d at 261–66*). Evidence of unconsented physical and forceful contact (leg wrapping hug), persistent unwelcome interactions (sexual gestures), and differential treatment, as corroborated in part by HR discipline and by Husted’s declaration, raises classic **jury issues**. Under the WLAD, an employee establishes a hostile work environment by showing unwelcome harassment based on protected characteristics, affecting terms or conditions of employment, and imputable to the employer (**Glasgow**, 103 Wn.2d at 406–07; **Blackburn**, 186 Wn.2d at 260). Petitioner presented evidence of repeated, unwelcome, and severe conduct based on race and sex, which was reported internally but inadequately addressed by Providence.

C. The Handling of Retaliation Diverges from

WLAD And Title VII (Burlington Northern, Nassar)

1. Legal Standards. Under WLAD, retaliation claims mirror Title VII analysis, with Washington’s **liberal construction** overlay. **Estevez**, 129 Wn. App. at 797–98; RCW 49.60.210(1). Under **Burlington Northern & Santa Fe Ry. Co. v. White**, 548 U.S. 53, 67 (2006) (548 U.S. at 68), an action is materially adverse if it “well might have dissuaded a reasonable worker from making or supporting a charge of discrimination.” (548 U.S. at 68). Here, Petitioner reported sexual harassment during a pending investigation and was terminated days later. The temporal proximity, context, and employer actions provide sufficient evidence to survive summary judgment. The lower courts’ rigid requirements ignore the reality of workplace retaliation and misapply the standard for protected activity. **Nassar** adopts **but-for**

causation in Title VII retaliation, but but-for causation is ordinarily a **jury question**, proved with **circumstantial** and **temporal** evidence.

2. Proven Evidence Record. Petitioner reported sex-based harassment; HR **investigated** and **disciplined** the harasser; Providence had already placed Petitioner on leave for timekeeping and terminated within **days** of the complaint, before HR sent the closeout letter to Petitioner. The **timing**, the **HR substantiation**, and the **employer's knowledge** together support inferences of retaliatory causation even if timekeeping concerns existed. A jury could find that, **but for** Petitioner's complaint, the employer would have **delayed** or **re-evaluated** termination pending HR's complete remedial process or applied consistent progressive discipline. Respondents minimized admitted physical harassment by a coworker as a single "hug" and claimed Providence's

remedial memo was sufficient (**VRP at 32**). (**A-10**). Federal precedent makes clear that even isolated physical conduct, if unwelcome, can establish liability when sufficiently severe. The trial court's acceptance of this minimization eroded employee protections and ignored the deterrent purpose of WLAD.

3. Court of Appeals' Error. The opinion below minimized **temporal proximity** and treated the employer's non-retaliatory rationale as **dispositive**, contrary to **Scrivener** (substantial factor) and **Burlington Northern** (broad materially-adverse standard). That approach narrows WLAD beyond Title VII's baseline and chills reporting.

D. The CR 50(a) Directed-Verdict Dismissal Invaded the Jury's Province.

1. Standard. A directed verdict is proper only when, taking the evidence and all reasonable inferences **in the light most favorable** to the non-movant, no

reasonable jury could find for that party. (**Davis**, 102 Wn.2d at 73–77; **Mancini v. City of Tacoma**, 196 Wn.2d 864, 877 (2021)). Credibility is for the **jury**.

2. Imputability and “Supervisor” Framing. Under *Glasgow*, an employer is liable if it knew or should have known of harassment and failed to take adequate corrective action. Providence had actual knowledge after June 15, 2018, yet allowed Lonon to remain in the workplace with only a written warning while terminating Petitioner. A jury could find that corrective action was inadequate. The trial court also focused on whether Mr. **Kortendick** was a “supervisor” for **individual liability**. But employer liability for **coworker harassment** does **not** hinge on coworker supervisory status; it turns on whether the employer “authorized, knew, or should have known” and **failed to take prompt and adequate corrective action**. (**Glasgow**, 103 Wn.2d at 407; **Blackburn**, 186

Wn.2d at 260–66). Here, **HR** found part of the harassment **credible** and **disciplined** the harasser. A jury could view the employer’s overall response as **too little or too late**, particularly where termination of the complainant followed almost immediately and HR’s corrective message to Petitioner **post-dated** termination. Whether the response was **adequate** under **Glasgow/Blackburn** is a fact question for jurors. Respondents’ counsel argued that WLAD’s broad supervisor liability would make “almost anyone” a supervisor, and the trial court agreed by imposing a heightened standard requiring control beyond harassment. (**VRP at 32–33. (A-10)**). This reasoning conflicts with RCW 49.60.020 and **Brown v. Scott Paper**. WLAD liability extends to individuals acting “in the interest of an employer,” and Washington precedent does not require proof of

authority over working conditions unrelated to the harassment itself.

The lower courts improperly narrowed the definition of “supervisor” and “employer” liability, disregarding evidence that coworker Kortendick functioned in a supervisory capacity and that Providence failed to act promptly and adequately upon learning of harassment (**Brown v. Scott Paper**, 143 Wn.2d at 358; **LaRose v. King County**, 8 Wn. App. 2d at 105). The NLRA definition is not controlling in the context of state anti-discrimination law, which must be construed liberally to reach all those with effective power over terms and conditions of employment.

3. Severity, pervasiveness, and credibility. Petitioner and Husted described persistent harassment and differential treatment. The exclusion of Petitioner’s evidence, including witness depositions, declarations, and text message offers of proof, denied him a fair trial

and meaningful opportunity to present his case. The court's exclusion of Husted's **deposition** (rather than exploring alternative proof of unavailability or allowing live testimony by arrangement) magnified the risk of **premature** merits disposition and violated CR 32. But even without the deposition, Husted's **declaration** and the HR discipline created a record from which a jury could find a **hostile environment**. The trial court also rejected text messages showing her unavailability as hearsay without considering authentication alternatives under **ER 901** or the residual hearsay exception, **ER 807**. Moreover, by excluding key exhibits that contextualized Petitioner's claims, the court deprived the fact-finder of relevant evidence, contrary to **ER 402's** presumption of admissibility. The courts failed to apply **RAP 10.3, 10.4**, and relevant evidence rules with the flexibility mandated for self-represented litigants in civil rights

matters, as emphasized in **Frisino, Martini, and Scrivener**. Here, the trial court applied evidentiary rules rigidly without considering the WLAD's remedial purpose. This approach conflicts with the principle that procedural rules should not be applied to work an injustice (**Clark County**, 177 Wn.2d at 144). Resolving doubts against the non-movant at CR 50(a) was a critical error.

E. The Decisions Chill Reporting and Contravene WLAD's Public-Interest Purposes (Meritor, Oncale, Glasgow)

1. WLAD's Purpose. WLAD declares that the right to be free from discrimination is a **civil right** essential to public welfare. RCW 49.60.010, RCW 49.60.030(1). Courts must **liberally construe** to achieve that purpose. RCW 49.60.020.

2. Federal Alignment. **Meritor** and **Oncale** teach that harassment standards must be applied in **real-world workplaces**, accounting for power dynamics,

social context, and the need to **encourage** rather than **deter** internal reporting. The courts' restrictive approach is out of step with leading federal decisions (**Meritor, Oncale, Burlington Northern**), which recognize that discrimination and retaliation are rarely proven by direct evidence and must be assessed on the totality of the circumstances. Exclusion of corroborating evidence and discounting of protected activity risk insulating employers from accountability for subtle, circumstantial, or systemic forms of discrimination, contrary to the purpose of Title VII and the WLAD. Title VII doctrines reject rules that **discourage** complaints by suggesting complainants risk **swift termination** with no jury recourse.

3. Practical Effect. By treating HR's discipline of the harasser as **legally immaterial** and by insulating the close temporal link between complaint and termination, the decision signals to employees that

internal reporting may be **futile or dangerous**. That is antithetical to **Glasgow**'s framework and to WLAD's remedial goals. Supreme Court guidance is needed to avert a chilling precedent that would disproportionately harm **probationary** and **pro se** workers. The courts' approach by excluding evidence, discounting circumstantial proof, and affirming summary dispositions undermines the WLAD's fundamental purposes: eradicating workplace discrimination, protecting employees who report unlawful conduct, and ensuring access to justice. These errors risk chilling reporting, emboldening retaliation, and disproportionately harming marginalized workers. This chilling effect directly contravenes legislative intent and binding Supreme Court precedent.

4. Need for Harmonization and Leadership

Respondents' counsel provoked Petitioner outside the jury's presence (**VRP at 679:12–680:7; 682:15–25;**

785: 1-25; 786-788) and injected prejudicial accusations into the record. (VRP at 694:10–695:18; 120:1–123:25). The court, however, sanctioned only Petitioner, declaring, “There’s a lot wrong that you’ve done” (VRP at 676:6–9; 784: 1-10) and warning him he was “skating on thin ice” and prejudices the jury by signaling the court’s disapproval of Petitioner’s credibility. (VRP at 688:13–689:6; 789:15-25). No comparable scrutiny was directed toward defense counsel. (VRP at 679-714;747-755; 756-774; 776-802; 836-845; 847-859; 860-874; 876-898; 932-968). Such unequal enforcement contravenes the principle of judicial neutrality recognized in *State v. Gamble*, 168 Wn.2d 161, 187 (2010). See the **Canon 2.2** or Code of Judicial Conduct, Washington State Constitution (Article I, § 3), and U.S. Constitution (Fourteenth Amendment). Respondents also repeatedly moved for dismissal under **CR 41(b)**, exaggerating prejudice and

portraying Petitioner's self-represented status as misconduct in itself. **(VRP at 673:4–674:24; 778-783).** The trial court entertained these motions without considering lesser sanctions, despite acknowledging the drastic nature of dismissal. **(VRP at 688:13–689:6; 789:15-25).** This approach contravenes **Burnet's** requirement that courts explicitly consider and record why lesser sanctions are inadequate. The result was dismissal of valid Petitioner's WLAD claims without trial jurors on the merits, undermining both statutory policy and public trust in the courts.

This case is an opportunity for the Washington Supreme Court to reaffirm its leadership in employment discrimination law, clarify proper standards for summary judgment, retaliation, and hostile environment claims, and restore robust protections under the WLAD. The Court's intervention

is necessary to harmonize state law with federal civil rights standards and ensure equal justice.

VIII- CONCLUSION / PRAYER FOR RELIEF

For the foregoing reasons, Petitioner Mr. Keimbaye respectfully requests that the Washington Supreme Court grant and accept review under RAP 13.4(b)(1), (2), (3), and (4); **reverse** the Court of Appeals' decision; **vacate** the summary-judgment dismissal of wrongful discharge and retaliation and the CR 50(a) dismissal of hostile work environment; and remand for jury trial or lawfully and rightfully grant final judgment on Petitioner's WLAD claims with instructions reflecting **WLAD's liberal-construction mandate**.

Petitioner further asks the Court to clarify (1) proper **summary-judgment** and **directed-verdict** standards in WLAD cases; (2) **Scrivener/Mikkelsen's** pretext and substantial-factor frameworks; (3) retaliation causation and **Burlington Northern's** materially-

adverse standard; and (4) employer **imputability** under **Glasgow/Blackburn**.

The Court should entirely dismiss and vacate any and all related fees Orders and penalties (**\$9,291** and **\$771**) against Petitioner and properly reward him these fees and penalties in this case.

As a substitute, Petitioner now also seeks and requests all **just and equitable relief and interest in his entire claims** (Sex Harassment & Hostile Work Environment, Race & National Origin Harassment, Retaliation, and Wrongful Discharge), including **costs** at trial, **costs** on appeal, and any **compensatory damages (Loss of Earnings, Mental Anguish, Pain and Sufferings, and Loss of Enjoyment of Life)** and other remedies available and deemed proper by this Court under **WLAD RCW 49.60.**, Washington State law, and Title VII.

CERTIFICATE OF COMPLIANCE (RAP 18.17)

I, Pro se Petitioner, certify that this Petition complies with RAP 18.17's form and length limits for petitions for review. The Petition uses a proportionally spaced typeface and complies with RAP 10.3 and 10.4 formatting requirements. Thus, the Amended Petition contains exactly **6898 words count** , less than 7000 words, as ordered and required by the Supreme Court.

DATED: this 26th September 2025, Seattle, Washington.

Respectfully submitted by:

s/Dominique Keimbaye
Appellant Pro se

APPENDIX

- A-0** **Petitioner's Filed Claims with the Superior Court**
- A-1** Court of Appeals **Opinion** (No. 85888-2-I, filed July 7, 2025)
- A-2** Court of Appeals **Order** denying reconsideration and publication (Sept. 5, 2025)
- A-2.1** Court of Appeals' Denial decision on Discretionary Review regarding sanctions.
- A-3** Superior Court **Order on Summary Judgment** (May 20, 2022) & **Order on Defendants' Cost Bill**
- A-4** Superior Court **CR 50(a) Order/Judgment as a Matter of Law** (Sept. 12, 2023) & **Order on Defendants' Cost Bill**
- A-5** HR investigation memorandum and **discipline of harasser** (June 27 & 28 & August 21, 2018)
- A-6** Petitioner's **termination notice** (June 22, 2018) along with a cash offer to coerce him from withdrawing his discrimination charge and claims.
- A-7** Husted declaration and witnesses' interviews & testimonies
- A-8** Trial rulings re deposition use and evidentiary objections
- A-9** Ms. **Husted's Deposition**
- A-10** Verbatim Report of Proceedings-**VRP** (Vol.1 & 2)

A-11 Pertinent WLAD statutory excerpts (RCW 49.60.010, .020, .030(1), .180, .210)

A-12 Relevant Title VII excerpts (42 U.S.C. § 2000e et seq.)

A-13 Mr. Kortendick’s performance & authorized supervisory roles compared to Relevant National Labor Relations Act excerpts (29 U.S.C. § 152(11) – Definition of “supervisor”)

A-0

Petitioner's Filed Claims with the Superior Court

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JUN 08 2021

DEPARTMENT OF
JUDICIAL ADMINISTRATION

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington Non-
Profit Corporation, and TRAVIS H. JOHN &
CHRISTOPHER S. KORTENDICK,
individuals,

Defendants.

CASE NO.:

21-2-07545-9SEA

**COMPLAINT FOR NATIONAL ORIGIN
DISCRIMINATION, SEX
DISCRIMINATION/HARASSMENT, &
RETALIATION**

COMES NOW Plaintiff, Dominique Keimbaye, and states and alleges the following facts
and causes of action against the above-named Defendants:

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter. RCW 48.30.015.
2. Venue is proper in King County under RCW 4.12.020 because the part of the
cause of action arose there in King County.
3. Venue is proper in King County under RCW 4.12.020 because the Defendant
Providence Regional Medical Center Everett (PRMCE) is part of and or owned by Providence
Health & Services and Providence St. Joseph Hospital (PSJH) which performs work in Renton,
a city in King County.

1 **PARTIES**

2 4. Plaintiff Dominique Keimbaye is a resident of Washington State.

3 5. Defendant Providence Regional Medical Center Everett (Providence Health &
4 Services/PSJH) is a Washington corporation that is an employer under the Washington Law
5 Against Discrimination ("WLAD"), RCW 49.60.

6 6. Defendants Travis John and Chris Kortendick acted directly or indirectly in the
7 interest of Providence Regional Medical Center Everett and therefore are an employer under
8 WLAD, RCW 49.60.

9 **FACTUAL BACKGROUND**

10 7. Plaintiff is a black male who immigrated from the Republic of Chad on or around
11 December 4, 2003. Although Plaintiff speaks fluent English, he speaks with an accent.

12 8. Plaintiff began working for Providence Regional Medical Center Everett
13 (PRMCE) on December 27, 2017, as an Anesthesia Technician.

14 9. Prior to his employment at PRMCE, Plaintiff had worked at Providence Health
15 and Services in Portland, Oregon since 2008.

16 10. Plaintiff's direct supervisors at PRMCE were Travis John, the Anesthesia Lead
17 Supervisor, and Chris Kortendick, the Anesthesia Technician Lead.

18 11. In January 2018, Plaintiff's coworker Opal Lonon began sexually harassing
19 Plaintiff. Ms. Lonon frequently harassed Plaintiff in the presence of his supervisors, Mr. John
20 and Mr. Kortendick.

21 12. On one occasion, Ms. Lonon coiled her legs around Plaintiff and hugged him
22 tightly in the anesthesia workroom in the presence of Mr. Kortendick.

23 13. Ms. Lonon attempted to hug Plaintiff several other times and made comments that
24 Plaintiff was missing out on her body. She also tried to remove Plaintiff's scrub shirt because
25 she "loved men with hairy chests" and wanted to see him topless.

1 14. Plaintiff repeatedly rebuffed Ms. Lonon's advances by asking her to stop, telling
2 her he had a girlfriend, and generally trying to avoid her.

3 15. Mr. John and Mr. Kortendick would say her behavior was funny and often
4 laughed about Ms. Lonon's "interest" in Plaintiff, despite Plaintiff's obvious discomfort and
5 repeated requests for Ms. Lonon to stop.

6 16. Ms. Lonon called Plaintiff on his cell phone when he'd asked her not to and had
7 not given her his phone number.

8 17. Ms. Lonon shared her fantasies about Plaintiff with his coworkers, which
9 embarrassed him.

10 18. After continuous rejections of Ms. Lonon's advances, she became angry with him.

11 19. Ms. Lonon then set out to make Plaintiff suffer at work by spreading rumors
12 about him and accusing him of performance issues to his peers and supervisors. Among these
13 accusations were time management deficiencies and padding his time.

14 20. Her actions significantly increased the daily stress and anxiety of his job,
15 especially given that he was a newer employee.

16 21. Not only were Plaintiff's supervisors Mr. Kortendick and Mr. Travis aware of Ms.
17 Lonon's activities, but she was so open about her obsession with Plaintiff (first dating him and
18 then punishing him for rebuffing her advances) that it became common knowledge. His
19 coworkers told him on several occasions throughout April, May, and June that Ms. Lonon was
20 talking badly about him to his coworkers and his supervisors.

21 22. In May 2018, Plaintiff contacted Mr. John and Mr. Kortendick informing them
22 that he wanted to file a report with HR about Ms. Lonon. Mr. John and Mr. Kortendick laughed.
23 They promised Plaintiff they would introduce him to their local HR staff and get him the proper
24 paperwork, but they did not follow up and Plaintiff did not receive any further assistance from
25 them or HR.

1 23. In addition to the improper treatment by Ms. Lonon, from the time Plaintiff was
2 hired, many of his coworkers and supervisors treated him differently, and at times quite
3 negatively, compared to other non-African employees.

4 24. Mostly Mr. Kortendick instigated the negative treatment. He frequently went out
5 of his way to make work difficult for Plaintiff. He often mocked Plaintiff's accent and
6 commented on Plaintiff's complexion and ethnicity: "he stated to Plaintiff you are so dark that he
7 believes you are from Sudan."

8 25. Mr. Kortendick bullied Plaintiff by resetting the anesthesia screen monitors in
9 Plaintiff's assigned OR rooms including open-heart surgery room to cause difficulty for him, as
10 he was responsible for setting up the anesthesia machines in the operating rooms. His actions
11 made Plaintiff look bad because Anesthesia Technicians were not supposed to touch or change
12 the screen monitor settings except the Biomed Department.

13 26. Mr. Kortendick also hid parts of the anesthesia machines (Y-type or 3-way
14 connections for Oxygen, air, nitrogen), causing Plaintiff to look disorganized and unprepared to
15 set up and assist Anesthesiologist with the patient care. Mr. Kortendick's actions caused Plaintiff
16 to miss his breaks because of the additional time it took him to find hidden machinery and set up
17 the operating rooms. His actions also risked creating harm for patients.

18 27. On one occasion, after Mr. Kortendick reset a screen monitor in a room that
19 Plaintiff was responsible for prepping, anesthesiologist provider Dr. Kim Portfield shouted at
20 Plaintiff not to touch their screen monitors again or to "get the hell out of the operating room
21 (OR)." Dr. Portfield then disparagingly stated to Plaintiff "if he had gotten his Anesthesia
22 technician training in Africa." He intentionally meant to putdown and mocked Plaintiff's abilities
23 in front of other coworkers and OR staff in the operation room.

24 28. Following this incident, Plaintiff learned that Mr. Kortendick had been
25 Responsible for the resetting of the screen monitors. He confronted Mr. Kortendick, who initially

1 denied his actions, but then admitted he had been changing Plaintiff's screen monitors.

2 29. In April 2018, Plaintiff complained to Mr. John and Mr. Don, the OR
3 administrator about Mr. Kortendick's bullying behaviors. Mr. John told Plaintiff they were aware
4 of Mr. Kortendick's behavior and encouraged Plaintiff not to quit or resign. Mr. John then
5 reassured and told Plaintiff that "he was the type of employee and technician they needed and
6 thanked him for his hard work," but still did not put an end to the degrading behavior to which
7 Plaintiff was being subjected.

8 30. Because Mr. Kortendick was a Lead Anesthesia Technician and continued
9 reporting negatively about him to her good friend Chris Maddy and Mr. John, Plaintiff felt as
10 though there was not much that he could do about his behavior if Mr. John would not address it,
11 so he just hoped the behavior would cease.

12 31. Further demonstrating management's disregard for Plaintiff, in March and May
13 2018, Plaintiff was unknowingly exposed to tuberculosis in the operating room. In both
14 instances, management immediately notified all exposed staff except Plaintiff, who was
15 eventually informed by coworkers.

16 32. In April 2018, Plaintiff began to work on completing an online Advanced
17 Cardiovascular Life Support (ACLS) certification via HealthStream, with permission from
18 Nursing Education Administrative Assistant, Karla Brunner. ACLS was a required certification
19 for Anesthesia Technicians as it prepared them to assist with cardiovascular emergencies in the
20 operating rooms (OR).

21 33. Periodically, Plaintiff would stay on the clock, with permission, to work on his
22 ACLS certification.

23 34. On May 31, 2018, Plaintiff discovered that his ACLS certification module had
24 been deleted from his HealthStream account. At this point, he had completed 30 out of 32
25 required modules and was almost finished. Plaintiff did not know who had deleted the training

1 for this certification from his account, or why.

2 35. After inquiring about the deleted account, Plaintiff received an email from
3 Training Center Coordinator Shanie McLaren, noting that she had removed Plaintiff's ACLS
4 assignment from his HealthStream account because it was "not required for Plaintiff's job." To
5 his knowledge, the ACLS certification was required and necessary because it equipped
6 Anesthesia Technicians with the skills and knowledge to assist safely and effectively with
7 managing cardiovascular emergencies. Several of Plaintiff's coworkers, who were also
8 Anesthesia Technicians, possessed this certification. In fact, Plaintiff was ironically and mostly
9 assigned to work in the open-heart and cardiovascular surgery rooms

10 36. Because of the environment, Plaintiff felt hopeless and started to look for another
11 job. However, Plaintiff heard that PRMCE staff including Travis H. John had interfered with
12 prospective employment elsewhere by contacting those places and discouraging them from
13 recruiting Plaintiff.

14 37. On June 12, 2018, Mr. John contacted Plaintiff on his Call-In-Sick day to inform
15 him that he was being placed on an administrative leave of absence while concerns related to
16 Plaintiff's tardiness and timekeeping were investigated.

17 38. Plaintiff believed the alleged concerns triggering his administrative leave were
18 drummed up by Ms. Lonon's retaliatory and hostile actions, Mr. Kortendick's revenge for his
19 bullying behaviors, and Plaintiff's own rights to Call-In-Sick on that day. As such, Plaintiff
20 decided to elevate his complaints about Ms. Lonon with the hope that the investigation would be
21 fair and unconnected to her attempts to denigrate Plaintiff's performance. He believed the
22 allegations were surely a manifestation of Ms. Lonon's revenge campaign, and that his report
23 could clear up any misunderstandings.

24 39. Plaintiff filed an Integrity Line report stating that he was being sexually harassed
25 by his coworker, Ms. Lonon. In this report, Plaintiff indicated that this harassment had been

1 ongoing since January 2018, and that the harassment was occurring onsite. Plaintiff noted that at
2 the time of the filing of this report, management was aware of the harassment. Plaintiff also
3 noted that Ms. Lonon had lied to other employees that Plaintiff was taking advantage of the
4 system and using his ACLS online courses and training to get more hours.

5 40. Moreover, regarding timekeeping, on numerous occasions Plaintiff had requested
6 assistance with Mr. John and Chris Maddy (PRMCE Scheduler) with timekeeping because he
7 felt there were aspects and codes that he did not understand. Plaintiff told Mr. John he needed
8 more training with timekeeping. Mr. John would say okay but then would never get back with
9 him about specific training.

10 41. Concerning allegations of tardiness, Mr. John had regularly informed Plaintiff that
11 most employees were late due to traffic—especially from Bellevue where Plaintiff resided.
12 Because of this practice, Mr. John stated “Plaintiff was not in any danger of being disciplined in
13 connection with periodic tardiness.” Additionally, Mr. John told “Plaintiff that other employees
14 (including Ms. Lonon) lived near work and were still late.”

15 42. On June 22, 2018, Plaintiff was terminated by HR staff Eric Sweeney and OR
16 manager Rebecca Carbajal. The Notice accused Plaintiff of being chronically late without
17 permission. The notice also accused Plaintiff of falsely claiming to work on HealthStream and
18 thus dishonestly accruing overtime without authorization on multiple dates, which was untrue.

19 43. After terminating Plaintiff, on June 27, 2018, he received a confirmation letter
20 from PRMCE concluding an investigation into his concerns regarding the sexual harassment and
21 inappropriate conduct by Opal Lonon, determining there was evidence of PRMCE Policy
22 violations.

1 **COUNT I: WLAD NATIONAL ORIGIN DISCRIMINATION / HARASSMENT**

2 **(against Defendants PRMCE, John, and Kortendick)**

3 44. Plaintiff realleges and incorporates by reference each and every averment of this
4 Complaint as though fully set forth herein.

5 45. The less favorable treatment described herein occurred because of Plaintiff's
6 national origin.

7 46. Plaintiff was treated differently and negatively compared to non-African
8 employees. He was taunted, harassed, and ridiculed because of his accent, color, and birthplace
9 by Kortendick and others including Dr. Kim Portfield.

10 47. Defendants created a hostile, offensive or intimidating work environment for
11 Plaintiff that interfered with the terms and conditions of his employment.

12 48. Defendants' treatment of Plaintiff deprived Plaintiff the benefits and privileges of
13 his employment.

14 49. Defendant PRMCE knew or should have known of the unlawful behavior and
15 treatment through his OR staff including Mr. John and Kortendick and did not take adequate
16 preventive measures to address it.

17 50. Plaintiff was terminated based on Defendants' differential and negative treatment
18 compared to other employees because he is a black man of African descent.

19 51. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered
20 damages, including lost wages and emotional distress.

21 **COUNT II: WLAD SEX DISCRIMINATION / HARASSMENT**

22 52. Plaintiff realleges and incorporates by reference each and every averment of this
23 Complaint as though fully set forth herein.

24 53. The above-described conduct set forth herein created a sexually hostile, offensive,
25 or intimidating work environment and detrimentally affected Plaintiff.

1 54. The language and conduct described herein was of a sexual nature and/or
2 occurred because of Plaintiff's sex.

3 55. The above-described language and conduct was offensive, pervasive, abusive
4 and/or and altered the terms or conditions of Plaintiff's employment.

5 56. The language and conduct described herein was unwelcome and Plaintiff
6 considered it undesirable and/or offensive and did not solicit or incite it.

7 57. Defendant PRMCE knew or should have known of the unlawful behavior and
8 treatment and did not take adequate preventive measures to prevent it.

9 58. Defendant did not take Plaintiff's treatment seriously despite his objections.

10 59. As a direct and proximate cause of Defendant's actions, Plaintiff has suffered
11 damages, including lost wages and emotional distress.

12 **COUNT III: WLAD RETALIATION**

13 **(against Defendants PRMCE, John, and Kortendick)**

14 60. Plaintiff realleges and incorporates by reference each and every averment of this
15 Complaint as though fully set forth herein.

16 61. Plaintiff engaged in protected activity under the WLAD by reporting sexual
17 harassment and negative treatment based up his national origin to his employer including
18 PRMCE, John, and Kortendick. Plaintiff also requested that Mr. Kortendick's behavior cease in
19 the presence of his supervisors: Travis John and Mr. Don, the OR administrator. Defendants took
20 the perpetrator's retaliatory and derogatory comments about Plaintiff's performance into
21 consideration in terminating him.

22 62. Defendants retaliated against Plaintiff because he engaged in this protected
23 activity by failing to discipline employees who deliberately harassed him and by terminating
24 Plaintiff from his employment.

63. As a direct and proximate cause of Defendants' actions, Plaintiff has suffered damages, including lost wages and emotional distress.

REQUEST FOR RELIEF

64. Plaintiff Dominique Keimbaye requests all damages allowable under Washington law, including the following:

- a. Compensatory damages, including lost wages and garden variety emotional distress damages;
- b. Pre- and post-judgment interest;
- c. Attorney's fees, costs, and expenses;
- d. Any and all other and further relief this Court deems just and proper.

Dated this 08 day of 08, 2021.

Respectfully submitted by:

Com

Signature of Plaintiff

Name and address of Plaintiff:

DOMINIQUE KEIMBAYE

PO Box 2024

BELLEVUE, WA 98009

A-1

Court of Appeals **Opinion** (No. 85888-2-I, filed July 7, 2025)

LEA ENNIS
Court Administrator/Clerk

*The Court of Appeals
of the
State of Washington*

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July 7, 2025

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Case #: 858882
Dominique M. Keimbaye, App. v. Providence Regional Medical Center Everett, et al.,
Res.
King County Superior Court No. 21-2-07545-9

Counsel:

Enclosed is a copy of the opinion filed in the above-referenced appeal.

Counsel may file a motion for reconsideration within 20 days of filing this opinion pursuant to RAP 12.4(b). If counsel does not wish to file a motion for reconsideration but does wish to seek review by the Supreme Court, RAP 13.4(a) provides that if no motion for reconsideration is made, a petition for review must be filed in this court within 30 days.

In accordance with RAP 14.4(a), a claim for costs by the prevailing party must be supported by a cost bill filed and served within ten days after the filing of this opinion, or claim for costs will be deemed waived.

Should counsel desire the opinion to be published by the Reporter of Decisions, a motion to publish should be served and filed within 20 days of the date of filing the opinion, as provided by RAP 12.3 (e).

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis".

Lea Ennis
Court Administrator/Clerk

e/jg

c: Honorable Andrea Darvas

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DOMINIQUE KEIMBAYE,

Appellant,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington
Non-Profit Corporation, and
CHRISTOPHER S. KORTENDICK, an
individual,

Respondents.

No. 85888-2-I

DIVISION ONE

UNPUBLISHED OPINION

HAZELRIGG, C.J. — Dominique Keimbaye, representing himself, appeals the dismissal of his lawsuit against his former employer Providence Regional Medical Center Everett, his supervisor Travis John, and his coworker Christopher Kortendick, where he alleged several violations of the Washington Law Against Discrimination (WLAD).¹ The trial court dismissed Keimbaye's claims for wrongful discharge and retaliation on summary judgment. At the close of evidence, the court granted Providence's CR 50 motion for a directed verdict² dismissing Keimbaye's remaining hostile work environment claims. Because the trial court did not err, we affirm.

¹ Ch. 49.60 RCW.

² "Motions for directed verdict and motions for judgment notwithstanding the verdict were renamed 'motions for judgment as a matter of law' effective September 17, 1993." *Delgado Guijosa v. Wal-Mart Stores, Inc.*, 144 Wn.2d 907, 915, 32 P.3d 250 (2001) (quoting *Litho Color, Inc., v. Pac. Emp'rs Ins. Co.*, 98 Wn. App. 286, 298 n.1, 991 P.2d 638 (1999)). However, because both parties use the term "directed verdict" throughout their briefing, we generally use that term for the interest of clarity.

FACTS

On December 27, 2017, Providence hired Keimbaye as an anesthesia technician at its regional medical center in Everett. The offer letter stated that Keimbaye's employment was subject to a collective bargaining agreement and Providence could end his employment at any time during his probationary period. The letter named Travis John as Keimbaye's supervisor. As part of the onboarding process, Keimbaye signed an "Acknowledgement of Commitment to the Code of Conduct" which specified that compliance was "a condition for, but not a guarantee of, continued employment." Providence's "Standards of Conduct," in turn, described "[r]egular and predictable attendance" as an "essential function" and stated that "[a]ll caregivers are required to accurately record their time worked."

In February 2018, Providence's timekeeper and scheduler Chris Maddy informed John that Keimbaye had been coming in late to work almost every day. John verbally reminded Keimbaye that he was expected to arrive on time. Despite John's apparent assertion in an e-mail documenting the exchange that Keimbaye "agree[d] to work on it," he continued to be late to work. On April 3, John spoke again with Keimbaye regarding his tardiness. In another e-mail memorializing the conversation, John specified that Keimbaye needed to "put more effort into being on time" in accordance with Providence's absence and lateness policy. On June 11, Maddy informed John that Keimbaye's timekeeping records appeared to show "a pattern of manipulation and timecard fraud."

On June 12, John placed Keimbaye on administrative leave pending an investigation into his tardiness and timekeeping records. The investigation

established that during his six-month probationary period, Keimbaye had 51 instances of reporting late for work and 74 occurrences of accumulating unapproved overtime by working late without permission from management, a practice Maddy characterized as “padding the timecard.” On June 22, Providence terminated Keimbaye’s employment for “Misconduct/Policy Violation.”

However, while the investigation was pending, Keimbaye called Providence’s human resources hotline on June 15 to report that anesthesia technician Opal Lonon had been sexually harassing him since January 2018. Keimbaye alleged that Lonon “hugged [him] tightly” and “coiled her legs around [his] legs.” Keimbaye further alleged that the harassment persisted even though he told Lonon the conduct was unwelcome and she “ha[d] gone around telling other employees that [he] [was] taking advantage of the system to get more hours, which [was] not true.”

Providence senior human resources consultant Marilyn Rice investigated Keimbaye’s allegations and issued her report on June 25. Rice interviewed Keimbaye, Lonon, and several other individuals that Keimbaye identified as witnesses, including his supervisor John and his coworker Chris Kortendick. None of the interviewees corroborated any part of Keimbaye’s allegations except Lonon, who admitted that on one occasion in early January 2018 she hugged Keimbaye with both arms and wrapped her leg around his. Lonon denied Keimbaye’s remaining allegations. Rice found that Keimbaye lacked credibility as the coworkers he identified as witnesses did not corroborate his claims, but that Lonon was credible because she admitted to the January 2018 incident. Rice

recommended that John, as supervisor, “take appropriate disciplinary action to address Ms. Lonon’s inappropriate conduct.” On June 28, John took corrective action in the form of a written warning memorializing Lonon’s policy violation and notifying her that continued violations could result in discharge from employment. John also sent Keimbaye an investigation closeout letter.

Almost three years later, on June 8, 2021, Keimbaye filed a complaint under the WLAD against Providence, Kortendick, and John alleging “national origin discrimination/harassment,” “sex discrimination/harassment,” and “retaliation.” In the complaint, Keimbaye described himself as a Black male who immigrated from the Republic of Chad and speaks fluent English with an accent. Keimbaye alleged that John and Kortendick were Keimbaye’s “direct supervisors” and Lonon frequently harassed him in their presence, but they laughed and refused to help. He further alleged that John, Kortendick, and other employees treated him “differently and negatively compared to non-African employees” and he was terminated in retaliation for reporting harassment.

Keimbaye represented himself through all stages of this litigation. During the course of discovery, the trial court found that Keimbaye’s pursuit of frivolous motions may have warranted an award of fees and costs to Providence pursuant to CR 37 and CR 11, but refrained from ordering sanctions “with the understanding that [Keimbaye] will comply with the court’s orders in the future.” On February 3, 2022, the trial court denied Keimbaye’s motion to compel discovery, found that the motion violated CR 11(a), and awarded Providence fees incurred in responding to the motion contingent upon presentation of a cost bill. Keimbaye petitioned this

court for discretionary review of the resulting cost bill order and a commissioner of this court denied review.

In April, 2022, Providence moved for summary judgment on all of Keimbaye's claims. Keimbaye filed a cross motion for summary judgment, relying on his own declaration and attachments thereto as well as the declaration and deposition of Yulia Husted, an anesthesia technician student clinical intern who left Providence in March 2018. In her declaration, Husted asserted that Keimbaye was subject to racism and sexual harassment "almost daily" and he was "maliciously and indifferently accused and discharged" from his job. During her deposition, however, Husted clarified that she never witnessed John harassing or mistreating Keimbaye.

On May 20, 2022, the trial court granted summary judgment dismissal of Keimbaye's claims for wrongful discharge and retaliation but denied summary judgment as to his hostile work environment claims. The trial court dismissed Keimbaye's wrongful discharge claim because he did not present "any evidence to establish a prima facie case that his termination from employment was motivated in any way by his race, sex, or national origin." Providence "presented substantial un rebutted evidence that [Keimbaye] was terminated because of his repeated violations of the employer's policies regarding clocking in and clocking out from work," and Keimbaye "produced no evidence that the reasons given for his termination were pretextual." Regarding his retaliation claim, the trial court ruled that Keimbaye "did not present any evidence to establish a prima facie case that he was the subject of any adverse employment action because of any

protected activity.” The court also dismissed John as a party, leaving only Providence and Kortendick as named defendants. Providence and Keimbaye each petitioned this court for discretionary review of the partial summary judgment order, and a commissioner of this court denied review.

Trial on the hostile work environment claim commenced in September 2023. Keimbaye moved to designate Husted’s deposition in lieu of her testimony on the ground that she was unavailable to testify at trial. Keimbaye sought to admit unauthenticated text messages as an offer of proof. Providence opposed the motion, arguing that Keimbaye had failed to offer admissible evidence establishing that Husted was unavailable. The trial court agreed with Providence and ruled that Husted’s deposition could not be read to the jury. At the conclusion of Keimbaye’s case in chief, Providence moved for judgment as a matter of law under CR 50(a). On September 12, 2023, the trial court granted Providence’s motion and dismissed Keimbaye’s remaining claims.

Keimbaye timely appealed.

ANALYSIS

I. Scope of Appellate Review

As a preliminary matter, we address standards governing the availability and scope of our review. “The scope of a given appeal is determined by the notice of appeal, the assignments of error, and the substantive argumentation of the parties.” *Clark County v. W. Wash. Growth Mgmt. Hr’gs Bd.*, 177 Wn.2d 136, 144, 298 P.3d 704 (2013). An appellant must provide “argument in support of the issues presented for review, together with citations to legal authority and references to

relevant parts of the record.” RAP 10.3(a)(6). “Strict adherence to [RAP 10.3] is not merely a technical nicety.” *In re Est. of Lint*, 135 Wn.2d 518, 532, 957 P.2d 755 (1998). “The purpose of [RAP 10.3] is to enable the court and opposing counsel efficiently and expeditiously to review the accuracy of the factual statements made in the briefs and efficiently and expeditiously to review the relevant legal authority.” *Litho Color, Inc. v. Pac. Emp’rs Ins. Co.*, 98 Wn. App. 286, 305-06, 991 P.2d 638 (1999). We need not consider arguments that a party does not support by references to the record, meaningful analysis, or citation to pertinent authority. *Cowiche Canyon Conservancy v. Bosley*, 118 Wn.2d 801, 809, 828 P.2d 549 (1992); *see also Holland v. City of Tacoma*, 90 Wn. App. 533, 538, 954 P.2d 290 (1998) (“Passing treatment of an issue or lack of reasoned argument is insufficient to merit judicial consideration.”); *West v. Thurston County*, 168 Wn. App. 162, 187, 275 P.3d 1200 (2012) (“[B]ald assertions lacking cited factual and legal support” will not be addressed on appeal.).

Keimbye presents 30 assignments of error on appeal challenging numerous trial court rulings. But, his notice of appeal designated for review only the September 12, 2023 order that granted Providence’s CR 50(a) motion to dismiss his remaining claims as a matter of law. RAP 2.4(a) governs the scope of our review, and it limits our review to the “decision designated in the notice of appeal.” *See also* RAP 5.3(a)(3) (notice of appeal “must . . . designate the decision or part of decision which the party wants reviewed”).

Neither party addresses whether the undesignated orders implicated by Keimbye’s assignments of error are reviewable. In general, a ruling not

designated in the notice of appeal will not be reviewed unless it “prejudicially affects the decision designated in the notice.” RAP 2.4(b)(1). An order “prejudicially affects” the decision designated in the notice of appeal where the designated decision “would not have happened but for” the undesignated order. *Right-Price Recreation, LLC v. Connells Prairie Cmty. Council*, 146 Wn.2d 370, 379-80, 46 P.3d 789 (2002). Additionally, RAP 5.3(f) authorizes us to overlook defects in the form of a notice if it “clearly reflects an intent by a party to seek review.” Applying these principles, we conclude that the cost bill order is not before us for review because it arose as a consequence of Keimbaye’s decision to repeatedly file motions that the trial court deemed frivolous and does not prejudicially affect the order designated in the notice of appeal. We will consider Keimbaye’s remaining assignments of error, including those challenging the summary judgment order and related rulings, to the extent his briefing enables us to do so.³

II. Self-Represented Appellant

Keimbaye argues that the trial court’s stringent application of procedural rules without adequate consideration of his status as a self-represented litigant unfairly impeded his ability to effectively argue his case. He further contends that the court failed to provide him with substantive guidance and support. We are

³ Providence argues that this court need not consider Keimbaye’s challenge to the summary judgment order and the cost bill order because this court already considered and rejected the same arguments when it denied discretionary review. But, “the denial of discretionary review of a superior court decision does not affect the right of a party to obtain later review of the trial court decision or the issues pertaining to that decision.” RAP 2.3(c). As the commissioner did not rule on the merits, Keimbaye is entitled to raise the same arguments on appeal.

mindful of the difficulties of self-representation. However, “the law does not distinguish between one who elects to conduct [their] own legal affairs and one who seeks assistance of counsel—both are subject to the same procedural and substantive laws.” *In re Marriage of Olson*, 69 Wn. App. 621, 626, 850 P.2d 527 (1993) (quoting *In re Marriage of Wherley*, 34 Wn. App. 344, 349, 661 P.2d 155 (1983)); see also *Westberg v. All-Purpose Structures, Inc.*, 86 Wn. App. 405, 411, 936 P.2d 1175 (1997) (“Pro se litigants are bound by the same rules of procedure and substantive laws as attorneys.”). The trial court did not apply these principles unfairly. To the contrary, the record indicates that the trial court conscientiously addressed Keimbaye’s questions and concerns without providing improper assistance. See *Edwards v. LeDuc*, 157 Wn. App. 455, 460-64, 238 P.3d 1187 (2010) (trial court may exceed limits of impartiality by offering excessive assistance to a self-represented party).

Relatedly, Keimbaye asserts in assignment of error 20 that the trial court unfairly failed to control defense counsel’s allegedly unprofessional behavior towards him. “Trial judges have wide discretion to manage their courtrooms and conduct trials fairly, expeditiously, and impartially.” *In re Marriage of Zigler*, 154 Wn. App. 803, 815, 226 P.3d 202 (2010). The record does not support Keimbaye’s allegations; to the contrary, the trial court properly exercised its discretionary authority to manage its courtroom.

III. Evidentiary Issues

Keimbaye challenges numerous evidentiary rulings in assignments of error 3, 4, 5, 11, 13, 17, 18, 19, 23, 24, 28, 29, and 30. We review a court’s evidentiary

rulings for abuse of discretion. *Bengtsson v. Sunnyworld Int'l, Inc.*, 14 Wn. App. 2d 91, 99, 469 P.3d 339 (2020). “A trial court abuses its discretion when its exercise of discretion is manifestly unreasonable or based upon untenable grounds or reasons.” *Davis v. Globe Mach. Mfg. Co., Inc.*, 102 Wn.2d 68, 77, 684 P.2d 692 (1984).

Keimbaye generically challenges numerous unspecified evidentiary rulings on the basis that the rulings were somehow unfair, improper, unclear, unexplained, or inconsistently applied. However, he often fails to identify the precise ruling he challenges or articulate a cognizable legal basis for his assertions. Such arguments are unsupported by sufficient authority, relevant references to the record, or meaningful analysis to permit review. See *Cowiche Canyon*, 118 Wn.2d at 809; *Multicare Health Sys. v. Dep’t of Soc. & Health Servs.*, 173 Wn. App. 289, 299, 294 P.3d 768 (2013) (“We cannot and will not comb through the record on the possibility that some mistake may lie somewhere within.”).

To the extent that we are able to discern the basis for certain of Keimbaye’s evidentiary challenges, the claims lack merit. Keimbaye repeatedly argues that the court excluded evidence, including hearsay, without considering its relevance to his claims. “All relevant evidence is admissible *unless its admissibility is otherwise limited.*” *Salas v. Hi-Tech Erectors*, 168 Wn.2d 664, 669, 230 P.3d 583 (2010) (emphasis added); ER 402. Notably, hearsay is not admissible except as provided by the hearsay exception rules. ER 802. “The rules do not give trial courts discretion to admit inadmissible evidence.” *State v. Gonzales-Gonzalez*,

193 Wn. App. 683, 689, 370 P.3d 989 (2016). Keimbaye does not acknowledge these rules or explain how the court erred in applying them.

Keimbaye argues that the court should have excluded evidence of his prior lawsuits because it was unfair and prejudicial, but Keimbaye himself opened the door to this evidence by mentioning it in his opening statement at trial. See *Bengtsson*, 14 Wn. App. 2d at 109 (party may open door for admission of otherwise inadmissible evidence).

Keimbaye also argues that the trial court improperly excluded his affidavit and Husted's deposition. He contends that the court's dismissal of this evidence without trial to assess credibility contravened the guidelines established in ER 602 (restricting testimony to matters about which witness has personal knowledge) and ER 701 (governing opinion testimony by lay witnesses). We disagree. CR 32(a)(3)(B) provides that a deposition may be admitted at trial if the court finds that the witness "resides out of the county and more than 20 miles from the place of trial, unless it appears that the absence of the witness was procured by the party offering the deposition." Here, the trial court declined to admit Husted's deposition testimony because it determined that the text messages Keimbaye offered as proof of her unavailability were inadmissible hearsay. Keimbaye does not provide any meaningful argument or legal authority in support of the proposition that the court erred in doing so. Keimbaye also cites CR 56(e) for the proposition that affidavits and depositions should be considered if they are material to the case, but that rule addresses admissibility of evidence on summary judgment, not at trial.

IV. Jury Issues

Keimbaye argues that the trial court committed numerous errors that prejudicially impacted the jury's perception of the case, set out in assignments of error 5, 6, 8, 9, 11, 12, 13, 16, 18, 19, 24, and 29. He contends that the voir dire process was flawed and inconsistent, the jury instructions were unclear and legally inaccurate, the court improperly allowed Providence to discuss his history of litigation, an exhibit should have been admitted earlier, and the improper exclusion of key evidence limited the jury's ability to understand his claims. A trial court's error is not reversible "unless it affects, or presumptively affects, the outcome of the trial." *Brown v. Spokane County Fire Prot. Dist. No. 1*, 100 Wn.2d 188, 196, 668 P.2d 571 (1983). Here, the trial court entered a directed verdict dismissing Keimbaye's remaining claims before the jury deliberated, so the alleged errors could not possibly have affected the outcome of any verdict.

V. Partial Summary Judgment

Assignments of error 1, 2, 3, 8, and 27 all go to Keimbaye's contention that the trial court erred when it granted summary judgment dismissal of his claims for wrongful discharge and retaliation and dismissal of John as a party. We disagree.

We review an order on summary judgment de novo, performing the same inquiry as the trial court. *Jones v. Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment is appropriate if there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Lybbert v. Grant County*, 141 Wn.2d 29, 34, 1 P.3d 1124 (2000); CR 56(c). We consider all facts and reasonable inferences in the light most favorable to the

nonmoving party. *Young v. Key Pharm., Inc.*, 112 Wn.2d 216, 226, 770 P.2d 182 (1989).

“In discrimination cases, summary judgment is often inappropriate because the WLAD ‘mandates liberal construction.’” *Frisino v. Seattle Sch. Dist. No. 1*, 160 Wn. App. 765, 777, 249 P.3d 1044 (2011) (quoting *Martini v. Boeing Co.*, 137 Wn.2d 357, 364, 971 P.2d 45 (1999)). We will nevertheless affirm summary judgment of a WLAD claim “when the plaintiff fails to raise a genuine issue of fact on one or more prima facie elements.” *Id.*

The WLAD prohibits employers from terminating employment based on race, color, national origin, sex, and other protected characteristics. RCW 49.60.180(2). “A violation of RCW 49.60.180(2) supports a discriminatory discharge claim.” *Crabtree v. Jefferson County Pub. Hosp. Dist. No. 2*, 20 Wn. App. 2d 493, 507, 500 P.3d 203 (2021). The WLAD also prohibits retaliatory discharge based on engaging in protected activity. RCW 49.60.210(1). Our Supreme Court has held that where the employee lacks direct evidence of intentional discrimination, we apply the burden shifting evidentiary framework announced in *McDonnell Douglas Corp. v. Green*⁴. *Mikkelsen v. Pub. Util. Dist. No. 1 of Kittitas County*, 189 Wn.2d 516, 527, 404 P.3d 464 (2017).

To establish a prima facie case of discriminatory discharge, an employee must show that they were “(1) within a statutorily protected class, (2) discharged by the defendant, and (3) doing satisfactory work.” *Crabtree*, 20 Wn. App. 2d at 508. If the employee makes this showing, “the burden shifts to the employer, who

⁴ 411 U.S. 792, 802, 93 S. Ct. 1817, 36 L. Ed. 2d 668 (1973).

must ‘articulate a legitimate, nondiscriminatory reason’ for the discharge.” *Id.* (internal quotation marks omitted) (quoting *Mikkelsen*, 189 Wn.2d at 527). If the employer carries this burden, the burden shifts back to the employee to produce sufficient evidence that the proffered explanation for the adverse action is pretextual. *Id.* “An employee may satisfy the pretext prong by offering sufficient evidence to create a genuine issue of material fact either (1) that the defendant’s reason is pretextual or (2) that although the employer’s stated reason is legitimate, discrimination nevertheless was a substantial factor motivating the employer.” *Scrivener v. Clark Coll.*, 181 Wn.2d 439, 446-47, 334 P.3d 541 (2014). “The employee is not required to show that discrimination was the only motivating factor for the discharge because an employer’s decision may be based on both legitimate and illegitimate reasons.” *Crabtree*, 20 Wn. App. 2d at 508-09.

Similarly, “[t]o establish a prima facie case of retaliation for a protected activity under [the WLAD], an employee must show that (1) [they] engaged in statutorily protected activity, (2) an adverse employment action was taken, and (3) there was a causal link between the employee’s activity and the employer’s adverse action.” *Estevez v. Faculty Club*, 129 Wn. App. 774, 797, 120 P.3d 579 (2005). The employer may rebut the presumption by providing a nondiscriminatory explanation, and the employee may then attempt to prove that the explanation was pretextual. *Id.* at 798.

Keimbaye argues that the trial court overlooked and failed to fully consider key evidence when it dismissed his wrongful discharge and retaliation claims on summary judgment. But, he does not specify what that evidence is, so it is not

possible to evaluate his claim. See *Cowiche Canyon*, 118 Wn.2d at 809. To the extent Keimbaye argues that evidentiary errors prejudicially impacted the trial court's summary judgment ruling, we have considered and rejected those claims.

Keimbaye asserts that the evidence strongly suggests his termination was retaliatory and Providence's reasons for terminating him were pretextual. We disagree. Providence's investigation established that Keimbaye had 51 instances of reporting late for work and 74 occurrences of accumulating unapproved overtime during his six-month probationary period. In light of this evidence, the fact that Providence terminated him days after his harassment report does not establish pretext or retaliation. See *Milligan v. Thompson*, 110 Wn. App. 628, 638-39, 42 P.3d 418 (2002) (summary judgment appropriate where "nonretaliatory evidence is strong").

Keimbaye also argues that the court failed to properly consider evidence of John's harassment and failure to act. However, Keimbaye admitted that he could not recall anything John did towards him that was discriminatory. Additionally, the record shows that John promptly disciplined Lonon in response to Keimbaye's sexual harassment claims. Keimbaye does not otherwise describe or provide citations to the record in support of this claim.

Keimbaye also asserts that the court's summary judgment ruling misapplied the law regarding Kortendick's liability as a supervisor under the WLAD. But, the court refused to dismiss Kortendick as a party on summary judgment, so the ruling was favorable to Keimbaye. Similarly, Keimbaye's claim that the trial court erred when it denied his CR 56(f) motion for extension of time to file an opposition to

Kortendick's motion for summary judgment is immaterial given that Kortendick's motion was denied.

VI. Judgment as a Matter of Law/Directed Verdict

Keimbaye next argues that the trial court erred when it granted Providence's CR 50(a) motion and dismissed his hostile work environment claims on directed verdict. We disagree.

A trial court's decision on a CR 50 motion to dismiss is reviewed de novo. *Williams v. Dep't of Soc. & Health Servs.*, 24 Wn. App. 2d 683, 697, 524 P.3d 658 (2022). "A motion for directed verdict 'should be granted only when, after viewing the evidence in the light most favorable to the nonmoving party, there is no substantial evidence or reasonable inferences therefrom to support a verdict for the nonmoving party.'" *Mancini v. City of Tacoma*, 196 Wn.2d 864, 877, 479 P.3d 656 (2021) (quoting *H.B.H. v. State*, 192 Wn.2d 154, 162, 429 P.3d 484 (2018)). "Substantial evidence is evidence sufficient to persuade a fair-minded, rational person that the premise is true." *Jenkins v. Weyerhaeuser Co.*, 143 Wn. App. 246, 254, 177 P.3d 180 (2008).

The WLAD prohibits employment discrimination on the basis of protected characteristics, including race, sex, and national origin. RCW 49.60.010, .030(1), .180(2)(3). To establish a prima facie claim for discrimination in the form of a hostile work environment, an employee must show that "the harassment (1) was unwelcome, (2) was because of a protected characteristic, (3) affected the terms or conditions of employment, and (4) is imputable to the employer." *Blackburn v. Dep't of Soc. & Health Servs.*, 186 Wn.2d 250, 260, 375 P.3d 1076 (2016). "An

employer will be responsible for harassment by the plaintiff's supervisors or coworkers if the employer '(a) authorized, knew, or should have known of the harassment and (b) failed to take reasonably prompt and adequate corrective action.'" *LaRose v. King County*, 8 Wn. App. 2d 90, 105, 437 P.3d 701 (2019) (quoting *Glasgow v. Ga.-Pac. Corp.*, 103 Wn.2d 401, 407, 693 P.2d 708 (1985)).

Here, the trial court granted Providence's motion for directed verdict because it concluded that Keimbaye failed to present substantial evidence or create a reasonable inference that Kortendick was a supervisor who could be held personally liable under the WLAD for the alleged harassment or that Providence authorized, knew, or should have known of the harassment and failed to take prompt and adequate corrective action. We conclude that the trial court did not err in doing so.

The WLAD defines "employer" to include "any person acting in the interest of an employer, directly or indirectly, who employs eight or more persons." RCW 49.60.040(11). It is well established that supervisors may be held personally liable for their discriminatory acts when acting in their employer's interest. *Brown v. Scott Paper Worldwide Co.*, 143 Wn.2d 349, 358, 20 P.3d 921 (2001). In contrast, coworkers who are not acting in a supervisory capacity cannot be held personally liable under the WLAD. *Jenkins v. Palmer*, 116 Wn. App. 671, 674-75, 66 P.3d 1119 (2003) (dismissing coworker from lawsuit under WLAD where "actions she allege[d] . . . did not affect her compensation or other similar terms or conditions of her employment").

The WLAD does not provide a definition for the term “supervisor,” but “[f]ederal law is instructive with regard to our state discrimination laws.” *Dedman v. Wash. Personnel Appeals Bd.*, 98 Wn. App. 471, 478 n.8, 989 P.2d 1214 (1999). The National Labor Relations Act (NLRA), 29 U.S.C. § 152(11) defines “supervisor” as “any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.” Keimbaye offered no evidence that Kortendick did any of those things.

Keimbaye refers to Kortendick as a “lead” and argues that the trial court overlooked evidence that Kortendick performed supervisory roles by assigning tasks, overseeing daily activities, and influencing employment conditions. The term “lead” is derived from the collective bargaining agreement that covers anesthesia technicians at Providence. John testified that four anesthesia technicians, including Kortendick, rotated as “leads” and are in the same collective bargaining unit. John testified that “leads” have no power to hire, fire, discipline, transfer, give raises, approve training, absences, late arrivals, or overtime, or set the work schedule. John also testified that he could not be part of the same collective bargaining unit as the other anesthesia technicians because he was a member of the leadership team. See 29 U.S.C. § 152(3) (excluding “any individual employed as a supervisor” from definition of “employee” under NLRA). Thus, if

Kortendick were a supervisor, he could not have been a member of the technicians' collective bargaining unit. Viewing the evidence in the light most favorable to Keimbaye, substantial evidence does not support a finding that Kortendick was a supervisor who could be held personally liable under the WLAD. As to Providence's liability, Keimbaye points to no evidence that Providence knew of Keimbaye's allegations of sexual or race/national origin harassment while he was still working for Providence. Keimbaye reported the alleged sexual harassment after he was placed on administrative leave, and the record demonstrates that Providence took prompt action. As to Keimbaye's claims of race/national origin harassment, there is no evidence that he filed a report on that basis while working at Providence, so his former employer had no opportunity to investigate or take action.

Keimbaye also argues that the court's handling of the directed verdict motion was confusing and procedurally unclear, but he does not explain why or provide any reasoned legal argument in support of this claim. As previously discussed, Keimbaye's assertions regarding the alleged impact of evidentiary error on the court's ruling lack merit.

Because Keimbaye fails to establish reversible error, we affirm.

WE CONCUR:







A-2

Court of Appeals **Order** denying reconsideration and publication (Sept. 5, 2025)

*The Court of Appeals
of the
State of Washington*

DIVISION I
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September 5, 2025

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Case #: 858882

Dominique M. Keimbaye, App. v. Providence Regional Medical Center Everett, et al.,
Res.

King County Superior Court No. 21-2-07545-9

Counsel:

Enclosed please find a copy of the Order Denying Motions for Reconsideration and to
Publish Opinion entered in the above case.

Within 30 days after the order is filed, the opinion of the Court of Appeals will become
final unless, in accordance with RAP 13.4, counsel files a petition for review in this
court. The content of a petition should contain a "direct and concise statement of the
reason why review should be accepted under one or more of the tests established in
[RAP 13.4](b), with argument." RAP 13.4(c)(7).

In the event a petition for review is filed, opposing counsel may file with the Clerk of the Supreme Court an answer to the petition within 30 days after the petition is served.

Sincerely,

A handwritten signature in black ink, appearing to read "Lea Ennis". The signature is written in a cursive, flowing style.

Lea Ennis
Court Clerk/Administrator

khn

c: Reporter of Decisions

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

DOMINIQUE KEIMBAYE,

Appellant,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington
Non-Profit Corporation, and
CHRISTOPHER S. KORTENDICK, an
individual,

Respondents.

No. 85888-2-I

DIVISION ONE

ORDER DENYING MOTIONS
FOR RECONSIDERATION
AND TO PUBLISH OPINION

Appellant filed a motion for reconsideration and a motion to publish on July 24, 2025. After consideration of the motions a panel of this court has determined that the motions shall be denied.

Now, therefore, it is hereby

ORDERED that the motion for reconsideration is denied; and it is further

ORDERED that the motion to publish is denied.

FOR THE COURT:



A-2.1

Court of Appeals' Denial decision on Discretionary Review regarding sanctions.

*The Court of Appeals
of the
State of Washington*

July 12, 2022

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Case #: 837770

Dominique M. Keimbaye, Petitioner v. Providence Regional Medical Center Everett, et al, Respondents
King County Superior Court No. 21-2-07545-9

Counsel:

The following notation ruling by Commissioner Jennifer Koh of the Court was entered on July 12, 2022:

Dominique Keimbaye seeks discretionary review of a February 28, 2022 superior court order awarding \$9,291 in attorney fees to Providence Regional Medical Center Everett in connection with his motion to compel discovery. For the reasons discussed below, discretionary review is denied.

Keimbaye sued Providence for employment discrimination. In the course of the ongoing litigation, the trial court found that Keimbaye's pursuit of apparently frivolous motions may have warranted awards of fees and costs to Providence under CR 37 and CR 11. In two orders entered on August 26, 2021, the trial court granted Keimbaye "the benefit of the doubt, at least this time," and refrained from awarding sanctions "with the understanding that [Keimbaye] will comply with the court's rules in the future."

On January 31, 2022, the trial court denied Keimbaye's motion regarding tampering with a witness, finding "no evidence whatsoever that defense counsel deliberately misled nor coerced [the witness] in any way," but reserved Providence's request for an award of fees. On February 4, 2022, the trial court denied Keimbaye's motion to compel discovery, finding that he "failed to specify for the Court what discovery he believes is being withheld" and "failed to present evidence" to contradict Providence's "substantial evidence that they have complied fully with their discovery obligations." The trial court found that Keimbaye's motion "violates CR 11(a)" and awarded Providence their attorney fees incurred in responding to the motion if presented in a cost bill/attorney fee declaration within 10 days.

In the February 28, 2022 order, the trial court found defense counsel's hourly billing rates reasonable and the hours spent on their response to the motion to compel reasonable and awarded \$9,291 in attorney fees. The order states that the award may be reduced to judgement on appropriate notice to Keimbaye if not paid within 30 days of entry of the order.

Keimbaye seeks discretionary review under RAP 2.3(b)(1). "Interlocutory review is disfavored." *Minehart v. Morning Star Boys Ranch, Inc.*, 156 Wn.App.457, 462, 232 P.3d 591 (2010); *Maybury v. City of Seattle*, 53 Wn.2d 716, 721, 336 P.2d 878 (1959). "It is not the function of an appellate court to inject itself into the middle of a lawsuit and undertake to direct the trial judge in the conduct of the case." *Maybury v. City of Seattle*, 53 Wn.2d 716, 720, 336 P.2d 878 (1959). Discretionary review can be granted under RAP 2.3(b)(1) if the trial court "committed an obvious error which would render further proceedings useless."

Although he does not cite the rule or address its application to the circumstances of this case, Keimbaye also relies on the criteria of RAP 2.3(d)(1) (conflict with appellate authority), (2) (significant constitutional question), and (3) (issue of substantial public interest). RAP 2.3(d) applies to requests for review of decisions of the superior court when sitting as the appellate court to review a decision of a court of limited jurisdiction, such as a district or municipal court. As Keimbaye initiated his lawsuit in superior court, RAP 2.3(d) does not apply to this case. Accordingly, the present motion must be evaluated under RAP 2.3(b).

Keimbaye contends (1) imposing sanctions against him is unjust; (2) he endured systemic discrimination in violation of state and federal law during his probationary employment at Providence; (3) Providence's counsel is "constantly arrogant towards" him, "mocking and bullying him"; (4) cases should be decided on the merits, rather than by procedure; (5) his claims involve significant constitutional questions in the public interest; and (6) he should be allowed to continue litigating his case against Providence. Again, whether Keimbaye means to raise constitutional questions in the public interest as to either (1) his

employment discrimination claim, or (2) his challenge to the fee award, that is not the relevant inquiry under RAP 2.3(b) and the circumstances of this case.

As to obvious error, although Keimbaye clearly perceives injustice in the February 28 order, I am not persuaded by the materials presented that the trial court obviously erred by imposing a monetary sanction under the circumstances. The trial court explicitly warned Keimbaye in its August 2021 orders that additional violations of the rules of civil procedure may lead to monetary sanctions. And, Keimbaye does not argue or show obvious error in the trial court's findings that (1) his motion to compel discovery violated CR 11; (2) Providence had incurred attorney fees in opposing the motion; or (3) the fees incurred were reasonable.

As to the effects of the order, nothing in the materials presented suggests that the February 28 order constituted a decision on the merits of Keimbaye's employment discrimination claims or will prevent him from continuing to litigate those claims. Whether Providence has or intends to seek entry of a judgment on the fee award, I am not persuaded that further proceedings on the merits of Keimbaye's lawsuit would be useless.

Similarly, to the extent Keimbaye's motion can be read to assert grounds for review under RAP 2.3(b)(2), which allows for review based on "probable error" in a superior court decision that "substantially alters the status quo or substantially limits the freedom of a party to act," I am not persuaded that review is appropriate. Again, nothing in the February 28 order or the materials presented suggests that Keimbaye is not free to continue litigating his employment discrimination claims before the trial court.

Accordingly, Keimbaye fails to show grounds for review under RAP 2.3(b); the motion for discretionary review is hereby denied.

In the event counsel wishes to object, RAP 17.7 provides for review of a ruling of the Commissioner. Please note that a "motion to modify the ruling must be served . . . and filed in the appellate court not later than 30 days after the ruling is filed."

Sincerely,



Lea Ennis
Court Administrator/Clerk

law

c: The Honorable Andrea Darvas

A-3

Superior Court **Order on Summary Judgment** (May 20, 2022) & **Order on Defendants' Cost Bill**

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FILED
2022 MAY 20 12:56 PM
KING COUNTY
SUPERIOR COURT CLERK
E-FILED
CASE #: 21-2-07545-9 SEA

The Honorable Andrea Darvas

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington Non-Profit
Corporation, and TRAVIS H. JOHN &
CHRISTOPHER S. KORTENDICK, individuals,

Defendants.

No. 21-2-07545-9 SEA

ORDER ON DEFENDANTS'
MOTION FOR SUMMARY
JUDGMENT

THIS MATTER came before the Court on Defendants' Motion for Summary Judgment.

The Court considered the following:

1. Defendants' Motion for Summary Judgment with accompanying declarations of Kathryn Rosen, Travis John, Marilyn Rice, Erich Sweaney, and Christopher Kortendick, with attachments thereto;
2. Plaintiff's Response in Opposition;
3. Plaintiff's Declaration in Opposition and Cross motion for summary judgment and attachments thereto;
4. Declaration of Yulia Husted and attachments thereto;
5. Defendants' Reply; and.

1 7. The remaining pleadings and papers on file with the Court, including Plaintiff's
2 Complaint.

3 The Court also heard oral argument this day on the record in open court, via Zoom, on May
4 13, 2022. Following the Court's oral ruling, defense counsel offered to prepare a proposed order
5 consistent with this Court's ruling, provide it to the Plaintiff, and circulate it to the Court. How-
6 ever, the Court has not received any proposed order from any party, and therefore now enters its
7 own order. After considering the submissions from the parties, oral argument of the parties, and
8 being fully informed, it is hereby

9 ORDERED that Defendants' motion for summary judgment is GRANTED IN PART and
10 DENIED IN PART as follows:

11 1. Defendants' motion to dismiss Plaintiff's claim for wrongful discharge brought under
12 the Washington Law Against Discrimination ("WLAD") is GRANTED. Plaintiff has not
13 presented any evidence to establish a prima facie case that his termination from employment was
14 motivated in any way by his race, sex, or national origin. The employer presented substantial
15 unrebutted evidence that Plaintiff was terminated because of his repeated violations of the
16 employer's policies regarding clocking in and clocking out from work. Plaintiff produced no evi-
17 dence that the reasons given for his termination were pretextual.

18 2. Defendants' motion to dismiss Plaintiff's claim for retaliation is GRANTED. Plaintiff
19 did not present any evidence to establish a prima facie case that he was the subject of any adverse
20 employment action because of any protected activity.

21 3. Defendants' motion to dismiss Plaintiff's claims for harassment/hostile work environ-
22 ment based on his race, national origin, and sex are DENIED. Plaintiff's testimony and that of
23 Ms. Husted are sufficient to establish a prima facie case on these claims, and the Court finds they
24 were adequately pled in Plaintiff's Complaint.

25 4. Defendants' motion to dismiss Christopher Kortendick as a party is DENIED. This
26 issue was previously decided by the Court on a prior motion by this Defendant.

5. Defendants' motion to dismiss Travis John as a party is GRANTED. Plaintiff produced no evidence to establish a prima facie case that Travis John discriminated against the Plaintiff, harassed the Plaintiff, or took any adverse action against the Plaintiff on any unlawful basis.

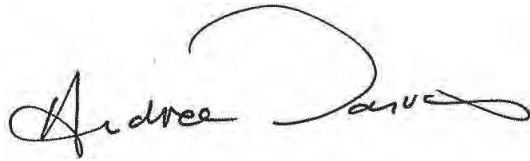
DATED this 20th day of May, 2022.

/s/ _____
THE HONORABLE ANDREA DARVAS
King County Superior Court Judge

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-07545-9
Case Title: KEIMBAYE vs PROVIDENCE REGIONAL MEDICAL CENTER
EVERETT ET AL
Document Title: ORDER RE ON DEF MSJ

Signed By: Andrea Darvas
Date: May 20, 2022

A handwritten signature in black ink, appearing to read 'Andrea Darvas', is positioned above a horizontal line.

Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: A0508A9EC49C5AD88584C7F2E36F1D39ADCAE781
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O=KCDJA, CN="Andrea Darvas:
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THE HONORABLE ANDREA DARVAS
HEARING DATE: June 1, 2023
WITHOUT ORAL ARGUMENT

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington Non-Profit
Corporation, and CHRISTOPHER S.
KORTENDICK, individual,

Defendants.

No. 21-2-07545-9 SEA

JUDGMENT

[Clerk's Action Required]

I. JUDGMENT SUMMARY

1. Judgment Creditors: Defendant Providence Regional Medical Center Everett
Defendant Christopher Kortendick
2. Attorneys: Paula L. Lehmann, Kathryn S. Rosen, Rachel Marshall
DAVIS WRIGHT TREMAINE LLP
3. Judgment Debtors: Plaintiff Dominique Keimbaye
4. Attorneys: Pro Se
5. Principal Judgment Amount: \$9,291.00
6. Interest: To accrue at the statutory rate
for torts from the date of entry of this judgment

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II. JUDGMENT

This matter is pending in King County Superior Court, the Honorable Andrea Darvas presiding. Plaintiff Dominique Keimbaye has appeared *pro se*. Defendants Providence Regional Medical Center Everett and Christopher Kortendick (collectively, “Defendants”) have appeared through their attorneys of record, Paula L. Lehmann, Kathryn S. Rosen, and Rachel Marshall of Davis Wright Tremaine LLP.

On February 3, 2022, this Court denied Plaintiff’s Motion to Compel and awarded Defendants their attorneys’ fees incurred in responding to Plaintiff’s motion. Defendants timely filed their Cost Bill on February 11, 2022. On February 28, 2022, this Court entered an Order awarding Defendants their attorneys’ fees in the amount of \$9,291.00 and ordered that Plaintiff pay the amount within 30 days after entry of the Order. Plaintiff has made no payment of this amount as of the date of this Order.

Defendants brought their motion for entry of judgment in this matter on May 18, 2023, and the Plaintiff did not file or provide to the Court any responsive pleadings in opposition to the motion. Pursuant to Civil Rule 54(d)(2), the Court finds that there is no just reason for delay of entry of judgment on the Court’s Order. Consistent with the Court’s Order in this action, the Court enters Judgment in this matter as follows:

1. Defendants are awarded Judgment in the amount of \$9,291.00.
2. This amount shall be paid to the order of Providence Health and Services within 60 days of the date this Order is signed.
3. This Judgment is for an attorney fee award in connection with a discovery motion. Entry of this Judgment does not end this lawsuit, nor address the Plaintiff’s claims against the Defendants herein.

DATED this 6th day of June, 2023.

/s/ _____
HONORABLE ANDREA DARVAS
King County Superior Court Judge

1 Presented by:

2 DAVIS WRIGHT TREMAINE LLP

3 *Attorneys for Defendants*

4 By s/ Kathryn S. Rosen

5 Paula L. Lehmann, WSBA #20778

6 Kathryn Rosen, WSBA #29465

7 Rachel Marshall, WSBA #54169

8 920 Fifth Avenue, Suite 3300

9 Seattle, Washington 98104-1610

10 Telephone: 206.622.3150

11 Fax: 206.757.7700

12 Email: paulalehmann@dwt.com

13 Email: katierosen@dwt.com

14 Email: rachelmarshall@dwt.com

1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I caused the document to which this certificate is attached to be
3 delivered to the following as indicated:

4 Dominique Keimbaye
5 PO Box 2024
6 Bellevue, WA 98009

7 Email: dkeimbay@gmail.com

- ☐ Messenger
☐ U.S. Mail, postage prepaid
☐ Federal Express
☐ Facsimile
☒ **Email**
☒ **ECF**

8
9 Declared under penalty of perjury under the laws of the State of Washington.

10 DATED at Renton, Washington this 18th day of June, 2023.
11

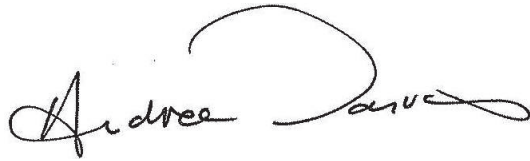
12 /s/ Greta Nelson

13 Greta Nelson, Legal Assistant
14 DAVIS WRIGHT TREMAINE LLP
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King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-07545-9
Case Title: KEIMBAYE vs PROVIDENCE REGIONAL MEDICAL CENTER
EVERETT ET AL
Document Title: ORDER RE JUDGMENT ON ATTY FEES

Signed By: Andrea Darvas
Date: June 06, 2023

A handwritten signature in black ink, appearing to read 'Andrea Darvas', is positioned above a horizontal line.

Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

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Certificate expiry date: 7/16/2023 2:36:32 PM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Andrea Darvas:
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A-4

Superior Court **CR 50(a) Order/Judgment as a Matter of Law** (Sept. 12, 2023) & **Order on Defendants' Cost Bill**

1 THE HONORABLE ANDREA DARVAS

2
3
4
5
6 SUPERIOR COURT OF THE STATE OF WASHINGTON
7 KING COUNTY

8 DOMINIQUE KEIMBAYE,

9 Plaintiff,

10 v.

11 PROVIDENCE REGIONAL MEDICAL
12 CENTER EVERETT, a Washington Non-Profit
13 Corporation, and CHRISTOPHER S.
14 KORTENDICK, individual,

Defendants.

No. 21-2-07545-9 SEA

ORDER GRANTING DEFENDANTS'
MOTION FOR ORDER OF DISMISSAL
WITH PREJUDICE

Clerk's Action Required

15 THIS MATTER came on for consideration on the Defendants' CR 50(a) motion to dismiss,
16 which was brought when Plaintiff rested his case. Dismissal of a plaintiff's claims under CR
17 50(a) "is appropriate when, viewing the evidence most favorable to the nonmoving party, the court
18 can say, as a matter of law, there is no substantial evidence or reasonable inference to sustain a
19 verdict for the nonmoving party." *Guijosa v. Wal-Mart Stores, Inc.*, 144 Wash. 2d 907, 915, 32
20 P.3d 250, 254 (2001). "Substantial evidence is said to exist if it is sufficient to persuade a fair-
21 minded, rational person of the truth of the declared premise." *Id.*, quoting *Brown v. Superior*
22 *Underwriters*, 30 Wash. App. 303, 306, 632 P.2d 887 (1980).

24 In this matter, the Court carefully considered the evidence presented by the Plaintiff in his
25 case in chief, and concluded that the Plaintiff failed to present substantial evidence or a reasonable
26 inference that (1) Defendant Christopher Kortendick was "a supervisor acting in the interest of an
27

ORDER DISMISSING CASE WITH PREJUDICE

1 employer”¹ while the Plaintiff was employed as an anesthesia technician at Providence, nor (2)
2 that Plaintiff’s employer “authorized, knew, or should have known of the harassment, and . . .
3 failed to take reasonably prompt and adequate corrective action.”²

4 With respect to the first issue, Keimbaye testified that his supervisor and manager was
5 Travis John, and that John introduced Plaintiff to Kortendick as his trainer, in order to familiarize
6 Keimbaye with his work stations and how the anesthesia technicians did their work. Keimbaye
7 admitted that Kortendick was not in charge of Keimbaye’s schedule; that Keimbaye would contact
8 John – not Kortendick, regarding scheduling issues, including if Keimbaye was going to be late to
9 work or had to take sick leave. Keimbaye acknowledged that Kortendick did not do any perfor-
10 mance evaluations of Keimbaye, never disciplined Keimbaye nor made any disciplinary recom-
11 mendations, was not involved in hiring Keimbaye, and that Keimbaye had no knowledge whether
12 Kortendick had anything to do with his termination of employment.
13

14 The same analysis applies to Plaintiff’s claim of sexual harassment by anesthesia techni-
15 cian Opal Lonon. Indeed, Plaintiff does not even claim that Lonon was a manager or a supervisor,
16 even though the evidence at trial established that Lonon served as a “lead” in Kortendick’s absence.
17 Instead, Plaintiff claims that Kortendick was aware of Lonon’s alleged sexual harassment of
18 Keimbaye, but failed to take steps to address and correct such conduct.
19

20 There was undisputed evidence that Kortendick was a member of the same union as
21 Keimbaye and the other anesthesia technicians, and that Kortendick had nothing to do with discip-
22 line, hiring, firing, or scheduling of anesthesia technicians such as Keimbaye.
23
24

25 _____
26 ¹ *Brown v. Scott Paper Worldwide Co.*, 143 Wash. 2d 349, 358, 20 P.3d 921 (2001).

27 ² *Estevez v. Faculty Club of Univ. of Wash.*, 129 Wn. App. 774, 794 (2005).

1 In short, there was simply no substantial evidence from which a reasonable trier of fact
2 could conclude or infer that the Plaintiff met his burden of proof to show that Kortendick was
3 individually liable to the Plaintiff for any of the conduct that Plaintiff alleged.³

4 With respect to Plaintiff's claim for a hostile work environment, Keimbaye was required
5 to prove that he suffered harassment at the workplace and (1) the harassment was unwelcome; (2)
6 the harassment was because of Keimbaye's race, sex, or national origin; (3) the harassment
7 affected the terms or conditions of employment; and (4) the harassment can be imputed to the
8 employer. *Glasgow v. Georgia—Pacific Corp.*, 103 Wash. 2d 401, 406-07 (1985); *Washington v.*
9 *Boeing Co.*, 105 Wash. App. 1, 10, 19 P.3d 1041, 1046 (2000).

11 While Keimbaye testified that Kortendick harassed him and was aware that Opal Lonon
12 had harassed him, there was no substantial evidence that Kortendick was Mr. Keimbaye's super-
13 visor, as noted above.

14 Where the person harassing the worker is not in management, the
15 employer is not held responsible for the discriminatory work environ-
16 ment created by a plaintiff's supervisor or co-worker. This is
17 subject to the exception that if the employer (1) authorized, knew, or
18 should have known of the harassment and (2) failed to take
reasonably prompt and adequate corrective action there can be
liability.⁴

19 It is undisputed that Keimbaye made his first formal report of sexual harassment by Lonon
20 only after Keimbaye's last day of work at Providence, after Mr. Keimbaye had been placed on
21 administrative leave for chronic tardiness and for violating his employer's clock-out policies.
22 There is no evidence that Keimbaye ever made any kind of formal report of alleged harassment by
23

24
25 ³ See also, *Ellorin v. Applied Finishing, Inc.*, 996 F. Supp. 2d 1070, 1076 (W.D. Wash. 2014); and
26 *Hotchkiss v. CSK Auto Inc.*, 918 F. Supp. 2d 1108, 1119–20 (E.D. Wash. 2013)

27 ⁴ *Washington v. Boeing Co.*, 105 Wash. App. 1, 11, 19 P.3d 1041, 1047 (2000).

1 Kortendick to anyone until long after he was discharged by Providence. Keimbaye did not testify
2 or otherwise provide any evidence that he reported any alleged harassment to his manager, Travis
3 John, or to any other member of Providence's management while Keimbaye was working at
4 Providence.

5 In short, there was no evidence from which a reasonable trier of fact could conclude or
6 reasonably infer that Providence management knew or should have known about the alleged
7 harassment by Kortendick or Lonon – let alone that Providence management failed to take reason-
8 ably prompt and adequate corrective action.
9

10 Given the lack of evidence at trial, the Court is compelled to grant the Defendants' motion
11 for judgment as a matter of law. Therefore, it is hereby

12 ORDERED that Plaintiff's claims herein are dismissed with prejudice.

13
14 DATED this 12th day of September, 2023.

15 /s/ _____
16 THE HONORABLE ANDREA DARVAS
17 King County Superior Court Judge

18 Presented by:

19 DAVIS WRIGHT TREMAINE LLP
20 *Attorneys for Defendants*

21 By /s/ Kathryn Rosen

22 Kathryn Rosen, WSBA #29465
23 920 Fifth Avenue, Suite 3300
24 Seattle, WA 98104-1610
25 Telephone: (206) 622-3150
26 Email: katierosen@dwt.com

27 By /s/ Paula Lehmann

By /s/ Margaret Burnham

By /s/ Rachel Marshall

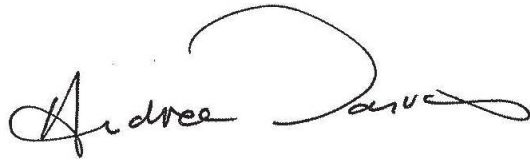
Paula Lehmann, WSBA #20678
Margaret Burnham, WSBA #47860
Rachel Marshall, WSBA #54169
929 108th Avenue NE, Suite 1500

Bellevue, WA 98004
Telephone: (425) 646-6100
Email: paulalehmann@dwt.com
Email: megburnham@dwt.com
Email: rachelmarshall@dwt.com

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-07545-9
Case Title: KEIMBAYE VS PROVIDENCE REGIONAL MEDICAL CENTER
EVERETT ET AL
Document Title: ORDER OF DISMISSAL

Signed By: Andrea Darvas
Date: September 12, 2023

A handwritten signature in black ink, appearing to read 'Andrea Darvas', is positioned above a horizontal line.

Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 904DAED763572BCCA10953B0B64F1AC58703963A
Certificate effective date: 7/17/2023 11:32:01 AM
Certificate expiry date: 7/17/2028 11:32:01 AM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Andrea Darvas:
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SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington Non-Profit
Corporation, et al.,

Defendants.

No. 21-2-07545-9 SEA

**ORDER REGARDING
DEFENDANTS' COST BILL
AND VERIFICATION**

THIS MATTER came before the Court on Defendant Providence Regional Medical Center Everett and Christopher S. Kortendick's ("Defendants") Cost Bill and Verification ("Cost Bill").

The Court has considered the following documents:

1. Notice for Hearing on Defendants' Cost Bill;
2. Defendants' Cost Bill and Verification;
3. Declaration of Kathryn Rosen in support of Defendants' Cost Bill, and the exhibits attached thereto.

1 Plaintiff Dominique Keimbaye did not timely respond to the motion¹, and as of the date
2 and time of filing this Order, no response has been filed or received.

3 As an initial matter, the court notes that, in the absence of a contractual or statutory basis
4 for recovery of actual costs and/or attorney fees, a prevailing party is limited to recovering on the
5 statutory costs enumerated in RCW 4.84.010. Thus the costs of depositions are not recoverable
6 unless the transcripts were used at trial², and then only pro rata for those portions of the deposi-
7 tion that were used at trial.³ While “[a] party that prevails on a summary judgment motion may
8 recover costs “incurred in taking depositions specifically considered by the trial court,”⁴ “if only
9 a portion of the deposition transcript was used, the prevailing party can recover for that portion
10 on a pro rata basis.”⁵ Defendants have made no attempt to show what portions of depositions
11 were used either as substantive evidence in dispositive motions or for impeachment at trial.
12 Absent such a showing, the court cannot properly award costs for deposition testimony.

13 RCW 4.84.010 “narrowly defines the costs that a prevailing party may recover. [A]bsent
14 a statute expressly permitting expanded cost recovery, [the prevailing parties] are not entitled to
15 costs beyond those enumerated in RCW 4.84.010.”⁶ RCW 4.84.010 does not authorize an award
16 of costs for a “testimony room” for witness Marilyn Rice.

17 Finally, with regard to the “filing fees” claimed by the defense, the King County Superior
18 Court’s e-filing fees for courtesy working copies are not recoverable under RCW 4.84.010.⁷

19 NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

20 Defendants are awarded the following statutory costs pursuant to RCW 4.84.010:

21

¹ Plaintiff’s response was due October 2, 2023. LCR 7(b)(4)(D).

22 ² “Under RCW 4.84.010(7), a prevailing party is entitled to the costs of taking depositions **if the depositions were**
23 **taken and used at trial** as substantive evidence or for impeachment purposes.” *Payne v. Paugh*, 190 Wash. App.
383, 413, 360 P.3d 39, 55 (2015) (emphasis added).

24 ³ RCW 4.84.010(7).

25 ⁴ *Estep v. Hamilton*, 148 Wash. App. 246, 260, 201 P.3d 331 (2008)

26 ⁵ *Payne v. Paugh*, *supra*, citing RCW 4.84.010(7).

27 ⁶ *Dave Johnson Ins., Inc. v. Wright*, 167 Wash. App. 758, 784, 275 P.3d 339, 354 (2012), citing *Hume v. Am.*
Disposal Co., 124 Wash.2d 656, 674, 880 P.2d 988 (1994).

⁷ *Washington League for Increased Transparency & Ethics v. Fox News*, 19 Wash. App. 2d 1006 (Div I, 2021).

1 Attorney fees: \$ 200.00
2 Process service fees: \$ 571.00
3 TOTAL: \$ 771.00

4 DATED this 5th day of October, 2023.

5
6 /s/ _____
7 THE HONORABLE ANDREA DARVAS
8 King County Superior Court Judge

9 Presented by:

10 DAVIS WRIGHT TREMAINE LLP
11 *Attorneys for Defendants*

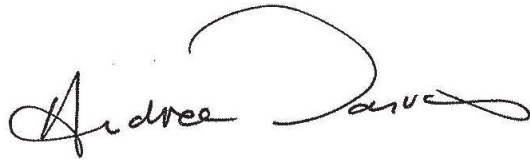
12 By /s/ Kathryn Rosen
13 Kathryn Rosen, WSBA #29465
14 Margaret Burnham, WSBA #47860
15 920 Fifth Avenue, Suite 3300
16 Seattle, WA 98104-1610
17 Telephone: (206) 622-3150
18 Email: katierosen@dwt.com
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25 Email: paulalehmann@dwt.com
26 Email: rachelmarshall@dwt.com
27

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-07545-9
Case Title: KEIMBAYE VS PROVIDENCE REGIONAL MEDICAL CENTER
EVERETT ET AL
Document Title: ORDER RE DEF'S MOT FOR AWARD OF COSTS

Signed By: Andrea Darvas
Date: October 05, 2023

A handwritten signature in black ink, appearing to read 'Andrea Darvas', is positioned above a horizontal line.

Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 904DAED763572BCCA10953B0B64F1AC58703963A
Certificate effective date: 7/17/2023 11:32:01 AM
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Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Andrea Darvas:
SBOI2y7w7RG/CMIM/CyjcQ=="

A-5

HR investigation memorandum and **discipline of harasser** (June 27 & 28 & August 21, 2018)



June 27, 2018

Dominique Keimbaye
909 112th Avenue NE
Apt 714
Bellevue, WA 98004

Dear Dominique Keimbaye:

As you know, Providence Health & Services has conducted an investigation into your concerns. Specifically, we have investigated your concerns over inappropriate conduct.

Thank you for bringing your concerns to our attention and participating in the investigation. We take matters of this nature very seriously. Please be assured that no adverse employment action will result against you because of your involvement in this investigation or any information that you provided as part of this investigation.

During the course of the investigation, the investigator spoke with multiple witnesses to ensure a thorough investigation into these complaints. At this time, we have found evidence that a violation of Providence Health & Services policy has occurred and have taken appropriate steps to remedy the situation and ensure that it does not occur again.

This investigation and our conclusions resulting from the investigation are strictly confidential and should not be discussed with anyone who does not need to know the basis or outcome of the investigation. Please remember that retaliation against anyone named in the complaint or participating witnesses is strictly prohibited. If you experience or witness behavior that you perceive is retaliatory, in violation of Providence's policy you must immediately report the behavior, either to me, any Human Resources team member, any member of the management team, or the Providence Integrity Line.

Thank you for your cooperation in this investigation. If you have further concerns, please feel free to contact me at 425-258-7928.

Sincerely,

A handwritten signature in black ink, appearing to read "Erich Sweaney", written over a horizontal line.

Erich Sweaney
HR Business Partner

Employee ID

476398

Corrective Action

PROVIDENCE REGIONAL MEDICAL CENTER EVERETT

EE Name: LONON, OPAL R.

Position: ANESTHESIA TECH I

Dept: ANESTHESIOLOGY

Date: 06/28/2018

Type: WRITTEN WARNING

Category: BEHAVIOR/CONDUCT/SERVICE STANDARDS

Core Value: RESPECT

JUSTICE

EXCELLENCE

COMPASSION

-- SELECT ONE --

Reason(s) for corrective action:

Violations of the Standards of Conduct, Code of Conduct: Workplace Environment Standards, and Value-Based Service and Behaviors Standards Policies.

You admitted during the investigatory meeting that you, in January 2018, did wrap/coil your legs around Dominick Keimbaye and hug him, which is a violation of policy.

Impact and consequences:

The above mentioned behaviors and conduct are not acceptable and violate our mission, code of conduct, and core values.

Code of Conduct: Workplace Environment, "Providence is committed to maintaining a workplace free of discrimination, harassment, violence, bullying and other abusive conduct. Harassment includes unsolicited remarks, gestures or physical contact, displays or circulation of written materials or pictures derogatory to any protected group. This list is not all-inclusive."

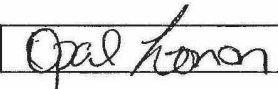
Harassment Free Environment, "Inappropriate Behavior that involves or is related to one of these protected characteristics rises to the level of harassment when: (1) submission to the harassment is made either explicitly or implicitly a term or condition of employment; (2) submission to or rejection of the harassment is used as the basis for employment decisions affecting the individual; or (3) the harassment has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment."

Supervisor Print Name: Travis H. John Signature:  Date: 6/28/18

Consequences of failing to improve performance: The purpose of this warning is to give you an opportunity to improve your performance in the area(s) outlined above. You are responsible for making these improvements and for getting any clarification, assistance, or support necessary. The Employee Assistance Program is available and encouraged should there be any circumstances outside of work affecting current performance. Improvement of your performance must be immediate and sustained. Your performance in all areas must be consistent and continued, or further corrective action may result, which may include your discharge from employment.

Employee Acknowledgement: I have read this notice, it has been discussed with me, and I have received a copy. I understand that my signature acknowledges receipt of copy only and is not necessarily an agreement with its contents. I understand that if I fail to show consistent and continued performance improvement in all areas as outlined in this notice, further corrective action may result, which may include discharge of my employment. I understand that a copy of this form may be placed in my Employee Personnel File.

Employee Comments:

Employee Print Name: Opal Lonon Signature:  Date: 6/28/18

Once document is signed and any supporting documents are attached please email this form to HRdocstoHRSC@providence.org

Summary of prior action:

Providence routinely educates our caregivers on our Code of Conduct policy. You were provided training on these important requirements as a new hire (during new employee orientation) and on an annual basis.

Performance expectations:

You are expected to follow our core values as well as the code of conduct policy. You are expected to take appropriate steps to improve your behavior and interactions with others. Improvement must be immediate and sustained.

You are required to complete training in this important area by completing the following steps:

- Log into HealthStream.
- Click on blue Catalog button.
- Search for: PHCSC: Mission and Values 2016 and PPHS: ICP 2017 Core Compliance
- Click on top result – this is the training module with the same name.
- Click "Enroll in this Course" button on the right.
- Go to your "My Learning" tab to complete the training.

The course must be completed by July 13, 2018. Verification of course completion is required.

August 21, 2018

Dominique Keimbaye
[REDACTED]

VIA EMAIL and US MAIL

RE: Follow up from July 26, 2018 meeting

Dear Dominique,

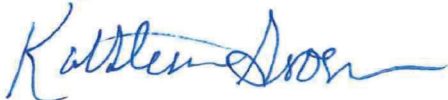
Thank you for taking the time to meet with Colin Henderson, HR Generalist and me regarding your discharge from employment within your probationary period. We have reviewed the concerns you raised during the meeting, and have reexamined your discharge in light of these concerns. In short, the reasons stated for your discharge were validated and your allegations of misconduct were determined to be unfounded.

As you are aware, you were still in your probationary period at the time of your discharge. Ordinarily, probationary caregivers do not have access to the PRMCE internal review process for discipline/discharge. Here, we made an exception so that you could fully explain your perceived issues with your discharge to local HR leadership. To complete this process, Mark Smith, Chief HR Officer for Washington/Montana, will review your appeal and make a final decision as to your discharge. You should receive that decision soon.

Although this subject is unrelated to the above, since it was raised in your appeal, I will also note that notwithstanding your assertions to the contrary, your sexual harassment claim was fully investigated by PRMCE. Appropriate action was taken as a consequence of that investigation. We consider that matter to be closed.

Thank you for taking the time to share your concerns with us. I wish the best in your future endeavors.

Sincerely,



Kathleen Groen
Human Resources Director

A-6

Petitioner's **termination notice** (June 22, 2018)

Employee#:

3	3	8	2	5	9



Notice of Discharge

Employee Name: Dominique Keimbaye

Position: ANESTHESIA TECH I

Dept: Anesthesiology Category: Misconduct / Policy Violation

Date: 6/22/2018 Core Value: ☒ Respect ☒ Compassion ☒ Justice ☒ Excellence ☒ Stewardship

Reason(s) for discharge: *Violations of Code of Conduct, Absence and Control, and Progressive Discipline and Constructive Counseling policies within your probationary period.*

Probationary Dismissal during the Probationary Period: A probationary employee is an employee who has been hired on a full-time or part-time basis and who has been continuously employed by the Employer for less than six (6) months of actual work. You were hired on December 27, 2018, and currently in a probationary employee status. The probationary/orientation period is a time in which either side (the caregiver or the employer) may part ways without recourse to the grievance process.

During your probationary period since December 27, 2017 through June 7, 2018, you had 51 occurrences of reporting late for work, in addition to 74 occurrences of working after the end of your shift without permission from management. You were coached in March 2018 regarding PRMCE's Absence and Control Policy and expectation to report to late on-time. Since March 2018, you had 21 additional occurrences of reporting late for work.

In addition to the above we have determined that in the months of May and June there were multiple instances of working past the end of your shift where you claimed you were working on Healthstreams and subsequently accruing overtime without authorization. Not only were you not authorized to work on Healthstream during the times/dates you indicated in the course of our investigatory meeting, but a review of Healthstream showed that you had not entered or completed any Healthstream modules at all on the days in question. In fabricating time spent in Healthstream, you have further violated PRMCE policies related to dishonesty, fraud, and time theft.

Repeated occurrences of reporting late for work, dishonesty and timecard fraud and theft are considered dischargeable infractions. As stated in PRMCE Progressive Discipline and Constructive Counseling policy:

Dischargeable Infractions are types of serious misconduct that can affect the harmonious operation of Providence Regional Medical Center Everett. These infractions - such as Absence without reasonable cause, reporting late for work, theft, fighting, dishonesty, insubordination, or other similar offenses - usually result in termination without prior warning.

Summary of prior action: March 2018, you were coached regarding your numerous occurrences of reporting late for work. You were also provided training on Code of Conduct requirements as a new hire (during new employee orientation).

Based on the above information, your employment is being ended during a probationary employment status, effective immediately. Please note the following information with regard to this transition:

- Your eligibility for rehire status will be noted in your personnel record as follows: Ineligible for rehire - PSJH
- If you are currently on health insurance benefits, those benefits will continue through the end of the month. If applicable, COBRA information will be sent to you at your home address on record in the near future.
- You will receive your final paycheck on the normal schedule.
- If you have remaining PTO accruals, those will be: Forfeited due to misconduct..

You may contact the System Retirement Office (SRO) directly should you wish to discuss your retirement account(s), as follows: Phone: 866.776.8727 (Monday – Friday, 8:00 a.m. to 5:00 p.m.)

E.mail: SRO@providence.org

Road 2 Retirement website: <https://r2r.providence.org/View/default.aspx>

If you have any questions about your transition, please contact HR Client Manager, Erich Sweaney 425.258.7928.

October 23, 2018

Dominique Keimbaye
909 112th Avenue NE, Apt 714
Bellevue, WA 98004

VIA US MAIL

Dear Dominique,

Thank you for taking the time to meet with me to discuss your concerns about your discharge. As promised, I reviewed your case and I'm making a decision based on the initial investigation and our conversation.

I appreciate hearing your perspective on the circumstances surrounding your discharge. It was helpful to learn your understanding of the situation. After reviewing the investigation and visiting with you, I find that the termination was appropriate. Therefore, I'm upholding the decision to discharge you from your employment with Providence Regional Medical Center during your probationary period. While I know this is difficult news, and I regret any discomfort this may cause you, following my review and our conversation, I can see no reason to overturn or otherwise modify your discharge.

On a separate note, I asked you during our conversation to share your desired outcome with me. You did so via letter dated October 17. I have had an opportunity to review your requests, and simply can't provide you what you suggested. However, I'm willing to make the following offer of resolution to you on a limited basis:

- \$10,000 payment, less applicable tax withholdings.
- Provisional rehire status. This means we would not rehire you at Providence Regional Medical Center Everett, but that you may apply for other positions for which you're qualified at other Providence or affiliate locations.

To be eligible for the payment and provisional rehire status, you would need to withdraw your pending EEOC claim and sign a release agreement. For the pending charge to be considered "withdrawn" for purposes of my proposed resolution, the withdrawal must actually be approved by the EEOC.

Please let me know if you'd like to pursue my proposed resolution by or before **Friday, November 9**. This is my best and final offer to you and I want you to know I won't consider other options.

Thank you for taking time to share your concerns with me. I strongly encourage you to consider the resolution I'm offering you. I look forward to hearing back from you with your answer by November 9.

Sincerely,



Mark Smith
VP and Chief Human Resources Officer
Washington and Montana Region



CHARLES G. BRADLEY
Direct (425) 525-3157
Charles.Bradley@providence.org

November 16, 2018

UPLOADED VIA EEOC PORTAL

Mary Hammock, Esq.
U.S. Equal Employment Opportunity Commission
909 First Avenue, Suite 400
Seattle, WA 98104-1061

**RE: Dominique Keimbaye and Providence Regional Medical Center Everett
EEOC Case No. 551-2018-03651**

Dear Ms. Hammock:

I am writing on behalf of Providence Regional Medical Center Everett ("Providence") in response to the Charge filed by Dominique Keimbaye ("Mr. Keimbaye"). I would like to extend my thanks for the extension of time to respond to this Charge. This letter serves as Providence's initial response.¹

Mr. Keimbaye alleges discrimination based on race/color (Black/African American), national origin (Chad), and sex (Male). Further, he alleges he was subjected to sexual harassment and retaliation for engaging in protected activity. Providence conducted a thorough investigation and concluded that Mr. Keimbaye's claims are without merit. Providence has, at all times, treated Mr. Keimbaye fairly, professionally, and absolutely without regard to his race, color, national origin, sex, or any other protected category. Providence has not found merit in Mr. Keimbaye's allegations of harassment or sexual harassment. Providence respectfully requests the dismissal of this Charge.

THE PARTIES

A. Providence Regional Medical Center Everett

As an initial matter, Providence is committed to the principles of equal opportunity and compliance with all laws. Our employment practices are administered without regard to race, religion, color, age, sex, sexual orientation, national origin, disability, or other factors protected by federal or state law. Attached as **Exhibit 1** is Providence's Equal Employment

¹ Providence provides this response based on its understanding and interpretation of the charge and good faith understanding of the facts and circumstances as presently known. Providence will seek clarification of the charge and will amend, withdraw, or supplement the information as necessary. Providence objects to the use of this response for any purpose other than EEOC's consideration of this charge.

Opportunity/Diversity policy. Attached as **Exhibit 2** is Providence's harassment policy. All other written policies relating to the issues raised in this Charge (including Standards of Conduct, Introductory Period, Absence Lateness Control, Corrective Action, Timekeeping and Hours Worked, Progressive Discipline, Employment, Resignation and Discharge, and Dispute Resolution) are attached as **Exhibit 3**.

B. Mr. Keimbaye's Employment at Providence

Mr. Keimbaye began his short tenure as an Anesthesia Technician I at Providence Regional Medical Center Everett on December 27, 2017. Mr. Keimbaye was an introductory (probationary) employee for the first six months of his employment. Mr. Keimbaye's employment was terminated on June 22, 2018, due to multiple issues, including: Violating multiple policies by accumulating 51 occurrences of reporting late to work; 74 occurrences of working after the end of his shift without permission; and multiple instances of dishonestly accruing overtime pay without authorization by claiming he was working on HealthStream (Providence's third-party educational resource for all employees) when in fact, an audit showed he had not been working on HealthStream.

During Mr. Keimbaye's tenure, he reported to Travis John, Anesthesia Technician Supervisor.

FACTUAL BACKGROUND

A. Mr. Keimbaye's Performance at Providence

Mr. Keimbaye was qualified for his position and performed his Anesthesia Tech duties competently, however he failed to adhere to Providence attendance policy and procedure and it was discovered in June 2018 that he had committed multiple counts of timecard fraud. In March 2018, Mr. John verbally coached Mr. Keimbaye on his chronic tardiness and late clock-outs. At that time, he had four partial unexcused absences, 36 occurrences of tardiness, and 21 occurrences of late and unapproved clock-outs. On April 5, 2018, Mr. John again coached Mr. Keimbaye on his tardiness and late clock-outs and provided him with a copy of his timecard and Providence's Absence and Tardy Control Policy. **Exhibit 4**.

On June 8, 2018, Timekeeping/ Scheduler Chris Maddy notified Mr. John that Mr. Keimbaye had incorrectly told her his call/standby start time and Ms. Maddy and Mr. John agreed to update Mr. Keimbaye's timecard accordingly. However, after further review of Mr. Keimbaye's timecards, Ms. Maddy noticed a pattern of timecard fraud. She wrote:

I am very concerned about this as I am starting to see a pattern of manipulation and timecard fraud. He has told me incorrect things on multiple occasions - told me he was on standby when he wasn't and told me his standby started earlier than everyone else. In the past he has arrived late and then stayed late to make up for his

missed time along with claiming missed breaks/meal periods. We refer to this as “padding the timecard.”

I have updated his and have documented the changes below:

5/30: Dominique has entered .75 hours of Missed Breaks/Meal periods for his callback 2016-2353. I have deleted his missed breaks/meal periods because per the Washington Rest and Meal Break Chart he doesn’t qualify for breaks or meal periods until he works over 4 hours. He only worked 3.75 hours.

Wed. 6/6: Dominique said he was on standby this day. He was not on standby. I have deleted his standby and callback for this day.

His time from 1921-2119 was allocated to callback. Since he wasn’t on-call I took out the callback transfer code and his punches for that day are: 0627-2119. He also has entered 9.0 hours of Standby. You will notice below that he has also entered 0.0 hours of standby to mirror what is usually on his timecard. When I enter standby on the schedule it comes through in purple font.

I do not know why he stayed until 2119 as he was scheduled to be off at 1700 and we had Myra on standby.

6/7: Dominique was on Standby Thurs. 6/7. When he spoke with me on Friday he said that his standby that day started at 1737. I told him that ATECH Standby starts at 1900 and he said no, his started early that day because he was the only one here on the 3rd floor. And if he wasn’t here then nobody would have been able to do the work so his started early that day. I have updated his timecard to allocate to callback from 1900-1921 instead of the 1737 he originally had in there per our conversation.

Original timecard: (see his standby he entered for 6/6 (as a Pay Code)). Also, see his callback starting at 1737 6/7. Also see missed breaks for 5/30.

Exhibit 5. Mr. John forwarded Ms. Maddy’s email to HR Business Partner Erich Sweaney and stated his concern and that the issues would be addressed. *Id.*

On June 12, 2018, Mr. John placed Mr. Keimbaye on leave pending an investigation into his timecard fraud. The main issues of concern were that Mr. Keimbaye indicated on his timecard that he was on standby when he was not on standby, he entered missed rest and meal breaks for which he was not qualify for (he only worked 3.75 hours of a callback shift), and he untruthfully told Ms. Maddy that his standby started early one day when it had actually not. Providence

audited Mr. Keimbaye's timecards and schedule and determined that Mr. Keimbaye had four partial unexcused absences, 51 occurrences of tardiness, 74 occurrences of late and unapproved clock-outs (most of which were between 30 minutes and 2 ½ hours), one instance of a 4 hour and 19 minute late clock-out that Mr. Keimbaye falsely designed as call back/standby time (Mr. Keimbaye was not on standby that night), and one instance of a 5 hour and 20 minute late clock-out that Mr. Keimbaye falsely designed as standby time. **Exhibit 6.**

During an investigatory meeting with Mr. Keimbaye on June 18, 2018, Mr. Keimbaye explained that he had been working on HealthStream when he worked late. As a result, Providence audited Mr. Keimbaye's HealthStream usage. **Exhibit 7.** It was determined that in the months of May and June 2018, there were multiple instances that Mr. Keimbaye worked past the end of his shift (which he claimed later was due to his work on HealthStream) subsequently accruing unauthorized overtime. Mr. John only provided approval to stay late on one occurrence – May 10, 2018. **Exhibit 8.** Not only was he not authorized to work on HealthStream during that time, but a review of HealthStream showed that he had not entered or completed any HealthStream modules at all on the days in question.

As a result of Mr. Keimbaye's misconduct and policy violations, his employment was terminated on June 22, 2018. **Exhibit 9.** No one has been hired to replace Mr. Keimbaye.

RESPONSE TO ALLEGATIONS

Providence conducted a thorough investigation into the allegations outlined in Mr. Keimbaye's Charge. The following paragraphs outline Mr. Keimbaye's allegations and Providence's response.

Allegation: **Personal Harm: Respondent knew that I was being sexually harassed and about the inappropriate conduct against me; their response was to retaliate against me with abusive accusations and excessive discipline and discharge.**

Response: First, Providence strives to provide a positive work atmosphere that reflects its core values of respect, compassion, justice, excellence, and stewardship. For that reason, Providence has no tolerance for discrimination, and expects everyone in the workplace to conduct themselves in a manner consistent with this philosophy. Providence is committed to providing a work environment free of discrimination and allegations of unacceptable behavior are taken very seriously and promptly investigated. Workforce members are encouraged to immediately report any concerns regarding discrimination promptly to their supervisor. If the supervisor is unavailable or the employee does not feel comfortable reporting to the supervisor, the employee may contact the supervisor's manager, the Human Resources department, or lodge a complaint through the anonymous Providence hotline available by phone or online.

That said, Providence had no knowledge of Mr. Keimbaye's allegations of sexual harassment until *after he was placed on an administrative leave of absence, pending an investigation into his timecard fraud*. Mr. Keimbaye was placed on administrative leave on June 12, 2018 and three days later filed an Integrity Line report on June 15, 2018, alleging he was sexually harassed by a co-worker, Opal Lonon, more than five months earlier in January 2018. **Exhibit 10.** In this report, Mr. Keimbaye also alleged that Ms. Lonon "has gone around telling employees that [Mr. Keimbaye] is taking advantage of the system to get more hours, which is not true. The caller did receive permission to stay after work to fulfill this by his/her supervisor."

After receiving this report, Providence immediately commenced an investigation on June 18, 2018. The investigation concluded on June 25, 2018. It was determined that Ms. Lonon had inappropriately hugged and coiled her legs around Ms. Keimbaye, [REDACTED] **Exhibit 11.** In other words, Providence rapidly and quickly responded to Mr. Keimbaye's complaint once it was received.

Again, prior Mr. Keimbaye's June 15 integrity line report, he had never complained (anonymously or otherwise) to Providence Human Resources, leadership, or via the Integrity Line about being sexually harassed.² But once Providence received Mr. Keimbaye's complaint on June 15, it immediately commenced an investigation and, upon the completion of the investigation, issued appropriate discipline to Ms. Lonon. Further, Mr. Keimbaye's complaints of sexual harassment had no bearing on Providence's investigation into his timecard fraud. Mr. Keimbaye committed timecard fraud and had chronic attendance issues well before his June 15, 2018 complaint. The investigation was completed and Ms. Lonon [REDACTED] *after* Mr. Keimbaye's employment was terminated. Mr. Keimbaye received a closure letter concerning his complaint *after* his employment was terminated. **Exhibit 12.** In short, Mr. Keimbaye was not subjected to any retaliatory treatment.

Allegation: **Shortly after I began my employment with Respondent, I was bullied and mocked by Chris Kortendick, Anesthesia Technician Lead.**

Response: Providence has no knowledge concerning Mr. Keimbaye's allegation that he was bullied or mocked by Chris Kortendick. This allegation in the instant Charge is the first time that Providence has heard from Mr. Keimbaye about this issue. Mr. Keimbaye had ample opportunity (particularly if he claims that the bullying/mocking occurred shortly after his employment started) to report Mr. Kortendick's alleged behavior. Mr. Keimbaye obviously knew how to file an

² Post-termination, Mr. Keimbaye emailed Marilyn Rice, HR Consultant, on July 11, 2018, claiming that he was receiving death threats from Ms. Lonon, and that she has sexually harassed him. **Exhibit 17.**

Integrity Line report (see Exhibit 9), but he did not file one concerning Mr. Kortendick. Further, the Integrity Line report he did file concerning Ms. Lonon did not mention bullying/mocking. Likewise, Mr. Keimbaye had a union representative throughout his tenure (he was a represented bargaining unit member of UFCW Local 21), but Mr. Keimbaye never had his union representative reach out to Providence with any allegations of bullying/mocking. Further, Mr. Keimbaye himself never told HR or leadership that he was being bullied or mocked by anyone. Lastly, during the June 18, 2018, investigatory meeting, Mr. Keimbaye made no mention that Mr. Kortendick bullied and mocked him. In short, Mr. Keimbaye had ample opportunity to discuss with Providence any issues he was having with Mr. Kortendick, but he did not.

Allegation: **I was unceasingly sexually harassed by Opal Lennon, Anesthesia Technician Preceptor.**

Response: Providence had no knowledge of Mr. Keimbaye's allegations of sexual harassment until after he was placed on an administrative leave of absence, pending an investigation into his timecard fraud. Mr. Keimbaye was placed on administrative leave on June 12, 2018 and three days later filed an Integrity Line report on June 15, 2018, alleging he was sexually harassed by a co-worker, Opal Lonon, more than five months earlier in January 2018. **See Exhibit 10.** After receiving this report, Providence immediately commenced an investigation on June 18, 2018. The investigation concluded on June 25, 2018. It was determined that Ms. Lonon had inappropriately hugged and coiled her legs around Ms. Keimbaye. **See Exhibit 11.** As noted above, Providence rapidly and appropriately responded to Mr. Keimbaye's complaint once it was received.

Again, prior Mr. Keimbaye's June 15 integrity line report, he had never complained (anonymously or otherwise) to Providence Human Resources, leadership, or via the Integrity Line about being sexually harassed. But once Providence received Mr. Keimbaye's complaint on June 15, it rapidly and quickly responded and issued the appropriate discipline to Ms. Lonon.

Allegation: **I was maliciously kept from completing the Advanced Cardiac Life Support (ACLS) training and certification by the Human Resources Business Partner Mr. Erich Sweeney and the supervisor Mr. Travis John.**

Response: The HealthStream ACLS course is an elective course, and is not a requirement of Mr. Keimbaye's position. **Exhibit 13.** The ACLS course was removed by Ms. Shanie Laren, Training Center Coordinator, and Mr. Keimbaye was notified of this on June 4, 2018. **Exhibit 14.**

Allegation: I was denied a similar position at the Swedish Medical Center in Seattle by the recruiter Mr. Nick Bash on the same day (June 12) that Mr. Travis John put me on Administrative Leave for their alleged charges against me. As a result, I was subsequently discharged after complaining of sexual harassment and discrimination based on my protected status.

Response: On June 5, 2018, Mr. Keimbaye applied for a Perioperative Support Technologist II position at Swedish Medical Center. On June 11, 2018, Mr. Keimbaye sent an email to Nick Bach, Recruiter, stating in part, "I would like and appreciate if you can follow up my application for the position of Anesthesia Technician and Technologist at Swedish Health Services." **Exhibit 15.** On June 12, 2018, Mr. Bach sent an email to Mr. Keimbaye stating, "...Thank you for reaching out! Unfortunately the hiring manager has selected someone for the position you listed below. He has had a couple people in mind from the get go so I don't know if there is going to be an opening at this time that would be available." *Id.* On June 12, 2018, Mr. Keimbaye was placed on administrative leave.

Mr. Keimbaye initiated the contact with Mr. Bach. Mr. Bach replied in a timely manner. Mr. Bach's response was several hours (8 hours) before Mr. Keimbaye was placed on administrative leave. Mr. Bach does not report to Mr. John or any Providence Regional Medical Center Everett leadership.

Mr. Bach reported that Mr. Keimbaye did not respond again to him after the June 12, 2018 email. Mr. Bach also reported that the candidate selected was an internal union employee and accordingly received the job offer.

Mr. Keimbaye's termination of employment was unrelated to his allegations of sexual harassment and it was not based on his protected status.

Allegation: Respondent's Reason for Adverse Action: Violations of Code of Conduct, Absence and Control, and progressive discipline and constructive counseling policies within your probationary period. I was basically told that I committed fraud, I was dishonest, and that I am a time card thief.

Response: Unfortunately, Mr. Keimbaye was dishonest and he did indeed commit timecard fraud. Mr. Keimbaye's actions were his own and he was ultimately held accountable for his policy violations. Providence in no way subjected Mr. Keimbaye to adverse action. Mr. Keimbaye's employment was indeed terminated during his probationary period.

Allegation: Discrimination Statement: I believe that I was discriminated against because of my race (Black/African American); my national origin (Chad); and my sex (Male), in violation of Title VII of the Civil Rights Act of 1964,

as amended. I also believe that I was retaliated against for participating in protected activity.

Providence denies these allegations, for which there is no supporting evidence. Mr. Keimbaye provides no evidence of discrimination or retaliation. He relies solely on his subjective belief and bare allegation. No evidence is alleged or available to Providence that would indicate any sort of race/color, national origin, or sex-based considerations at any time during Mr. Keimbaye's employment. In short, Mr. Keimbaye has made conclusory allegations that are meritless. Further, Mr. Keimbaye has made no allegation that there was a connection between any adverse action taken against him and any discriminatory motive. Indeed, all interactions, communications, and employment decisions made with respect to Mr. Keimbaye were made for the legitimate nondiscriminatory reasons explained in detail above.

Lastly, Rebecca Carbajal, Manager of the Cardiovascular Lab, made the decision to end Mr. Keimbaye's employment, as Mr. John was on PTO at the time. Attached as **Exhibit 16** is a list of all employees disciplined and/or discharged by Ms. Carbajal and Mr. John from 2017 to date for similar infractions. In summary, there were 9 caregivers disciplined and of those 5 were female/4 were male and 6 were non-minorities/3 were minorities. None of these employees besides Mr. Keimbaye was still in their introductory period when the discipline occurred.

CONCLUSION

Mr. Keimbaye cannot support his allegations that he was discriminated against because of his race/color, nor can he provide evidence that he was retaliated against. Providence believes that Mr. Keimbaye was treated fairly and justly at all times, and his claims of race and color discrimination and retaliation are without merit. Accordingly, Providence requests that this charge be dismissed without further action. If you have any further questions, please do not hesitate to call me at 425-525-3157 or Charles.Bradley@providence.org.

Very truly yours,

s/ Charles G. Bradley

Charles G. Bradley
Senior Labor & Employment Counsel
Enclosures (Exhibits 1-17)

A-7

Husted declaration and witnesses' interviews & testimonies

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR THE COUNTY OF KING

DOMINIQUE KEIMBAYE,

Plaintiff(s),

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, a Washington Non-Profit
CORPORATION and TRAVIS H. JOHN &
CHRISTOPHER S. KORTENDICK,
individuals

Defendant(s).

CASE NO.: 21-2-07545-9SEA

**DECLARATION OF YULIA HUSTED IN
SUPPORT OF PLAINTIFF'S COMPLAINT**

This declaration is made by:

Name: YULIA HUSTED

Relationship To The Parties In This Action:

1. I, YULIA HUSTED, was doing my clinical practice as Anesthesia Technician at Providence Regional Medical Center Everett (PRMCE) and become coworkers and friends with Plaintiff Dominique Keimbaye before he was maliciously and indifferently

1 accused and discharged after I left his employer to work at Swedish Hospital in Seattle.

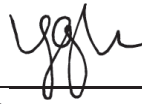
2 2. I, Yulia Husted, state and declare from my own witness and other OR staff's statements
3 that Plaintiff Keimbaye was poorly and intentionally mistreated, disparaged, put-down by
4 the OR management staff including Travis John and Chris Kortendick. These two folks
5 would laugh or mock at Plaintiff when he spoke with accent or asked them for help or
6 clarification to complete his tasks and assist anesthesiologists in the operation rooms.
7

8 3. I can attest that during my time as an Anesthesia tech intern at Providence Regional
9 Medical Center, I have noticed immediate hostility towards Dominique which included
10 racist remarks, accent mocking, and unwelcoming and unjust demeanor towards his work
11 ethic. Plaintiff Keimbaye was completely alienated from any chatter that would occur in
12 the work room, and ignored from any discussions that were led by Chris Kortendick. I felt
13 immensely uncomfortable towards such prejudice, which is why I chose not to accept the
14 position at Providence Regional Medical Center when I completed my clinical internship.
15

16 4. Furthermore, Plaintiff Keimbaye has experienced sexual harassment and unwanted
17 attention from another co-worker almost daily at Providence Medical Center, he felt
18 cramped in such tension thus resulted him in being alone, and not asking for any additional
19 help during his daily work/tasks. When he expressed his concern to file a complaint, he
20 was laughed at and neither of the staff members intervened to do so.
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1 I declare under penalty of perjury under the laws of the State of Washington that I have read
2 this declaration, know its contents, and I believe the declaration is true.
3

4
5 DATED: 06/08/2021
6

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8 
9 Signature
10 Yulia Husted
11 (ADDRESS HERE)
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MEMO TO FILE

MATTER: Dominique Keimbay

RE: Witnesses (notes of Leslie, Legal Asst.)

1. Yuliana Husted, Anesthesia Technician
2. Gustavo or Gus, Anesthesia Technician
3. Mr. Dido, OR Core Technician
4. Dr. Joy, Anesthesiologist

1 Ms. Yuliana Husted, Anesthesia Technician

Yuliana Husted answered my call. She spoke to me for just a few minutes and this is the information she provided to me:

- she witnessed a lot of hostility towards Dominique from certain techs but does not recall specifics.
- she witnessed racism towards him which were comments about his accent and nationality. She said she was a student at the time and worked on days he did not and certain techs would talk negatively about him.
- she said there was a particular female tech who was married and showed interest in Dominique. He did not show any interest in her and when the tech realized he was not interested in her, she became very negative toward him. She went to other employees and would say that Dominique had poor work ethic, he cheats on his time, and she made a lot of accusations against him.

Yuliana is no longer employed with that company and works at a different place now.

2 Mr. Gustavo or Gus, Anesthesia Technician

I spoke with Gustavo today. Gustavo said he did not leave on the best of terms with Providence as he was out on FMLA and they fired him. He said he felt pressured to sign a release stating he couldn't sue them.

He said there were 3 guys who were close friends, Travis John, Chris Kortendick, and Anthony Wentworth or Waltworth. These 3 guys did things outside of work such as going hunting and going to the shooting range. He told me the place was very segregated and he felt they didn't like Dominique possibly because he was from another country but that he could not prove this.

Gustavo said that these 3 guys were always trying to micromanage Dominique to where it was uncomfortable for Gustavo to watch. They would say that Dominique didn't listen and he didn't do this and that—they basically picked on him. Gustavo said he never had an issue with Dominique. He said he didn't know anything about sexual harassment.

3 Mr. Dido, OR Core Technician

I spoke with Mr. Dido and he said that Dominique talked to him about the sexual harassment like a friend. Mr. Dido did not witness anything directly because he worked in a different department than Dominique. He told me he did believe him when he spoke to him. He told me that a lot of them have quit.

4 Dr. Joy, Anesthesiologist

I attempted to get in touch with Dr. Joy on 4 separate instances. I left messages and the call was never returned.

A-8

Trial rulings re deposition use and evidentiary objections

SUPERIOR COURT OF THE STATE OF WASHINGTON
KING COUNTY

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, et al.,

Defendants.

No. 21-2-07545-9 SEA

ORDER ON DEFENDANTS'
OBJECTIONS TO PLAINTIFF'S
DEPOSITION DESIGNATIONS
FOR YULIA HUSTED

THIS MATTER came before the Court for a ruling on Defendants' objections to the deposition designations that Plaintiff indicated he wished to offer from the deposition of Yulia Husted in the event that the deposition excerpts are admissible under CR 32(a)(3)(B). Plaintiff did not make any objection to the Defendants' counter-designations.

Pages / lines	Defendants' Objection	Court's Ruling on objections	Defendants' Counter Designations
11:12-15:20	ER 401, 402, 403, 404, 602, 608, 802	Overruled	
15:21-17:14	ER 403, 608, 802	Overruled	
18:5-18	ER 403, 602, 802.	Overruled	17:21-18:4
19:24-20:11	ER 401, 402, 403, 802	Overruled	
20:24-24:13	ER 403, 602, 608, 802	Overruled as to 20:24-21:19. Sustained as to 21:20-24:13	24:14-22

Pages / lines	Defendants' Objection	Court's Rulings on objections	Defendants' Counter Designations
35:25-37:9	ER 403, 602, 802, 106	As defendants counter-designated portions of the deposition that overlap with plaintiff's designations, their objections to these portions are deemed waived.	35:10-38:1
38:20-40:20	ER 403, 404, 602, 802	Sustained as to 38:20-40:15. Overruled as to 40:16-20.	40:16-41:19
43:17-52:1	ER 403, 404, 602, 608, 802	Overruled as to 43:17-45:18; 48:11-13; 51:1-52:1. Sustained as to the remainder of plaintiff's designations.	46:24-47:4; 47:20-48:2; 48:14-16
53:1-56:7	ER 403, 602, 802	Sustained	
62:25-64:12	ER 403, 404, 602, 802	Overruled as to 62:25-63:17. Sustained as to the remainder of the designation.	
70:1-83:5	ER 401, 402, 403, 404, 608, 802	Strike 70:1-71:13. Overruled as to 71:15-73:24, & objections of counsel should be stricken. Sustained as to 74:1-80:3, and 80:18-83:5	80:4-80:17

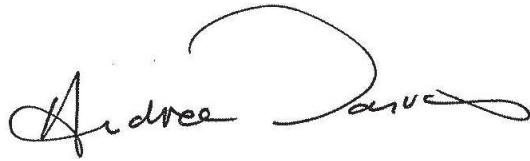
DATED this 5th day of September, 2023.

/s/ _____
JUDGE ANDREA DARVAS

King County Superior Court
Judicial Electronic Signature Page

Case Number: 21-2-07545-9
Case Title: KEIMBAYE VS PROVIDENCE REGIONAL MEDICAL CENTER
EVERETT ET AL
Document Title: ORDER RE OBJECTIONS TO HUSTED DEPOSITION

Signed By: Andrea Darvas
Date: September 06, 2023



Judge: Andrea Darvas

This document is signed in accordance with the provisions in GR 30.

Certificate Hash: 904DAED763572BCCA10953B0B64F1AC58703963A
Certificate effective date: 7/17/2023 11:32:01 AM
Certificate expiry date: 7/17/2028 11:32:01 AM
Certificate Issued by: C=US, E=kcscefiling@kingcounty.gov, OU=KCDJA,
O=KCDJA, CN="Andrea Darvas:
SBOI2y7w7RG/CMIM/CyjcQ=="

A-9

Ms. Husted's Deposition

Deposition of Yulia Husted

**Keimbaye v. Providence Regional Medical Center
Everett, et al.**

April 5, 2022



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Page 1

THE SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR KING COUNTY

DOMINIQUE KEIMBAYE,)
Plaintiff,)
vs.) No. 21-2-07545-9 SEA
PROVIDENCE REGIONAL)
MEDICAL CENTER EVERETT; a)
Washington nonprofit)
corporation; and TRAVIS)
H. JOHN and CHRISTOPHER)
S. KORTENDICK,)
individuals,)
Defendants.)

VIDEOTAPED VIDEOCONFERENCE DEPOSITION
UPON ORAL EXAMINATION
OF
YULAI HUSTED

Taken at Seattle, Washington
(All parties appearing via Zoom)

DATE TAKEN: APRIL 5, 2022
REPORTED BY: KIM DORE-HACKBARTH, RPR, CCR 2072

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VIDEOTAPED VIDEOCONFERENCE DEPOSITION
UPON ORAL EXAMINATION
OF
YULAI HUSTED

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1 APPEARANCES
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Jason@BuellRealtime.com

14 * * * * *

Page 4

1 SEATTLE, WASHINGTON; APRIL 5, 2022
2 10:00 A.M.
3 -o0o-

4 VIDEOGRAPHER: We are on the record. This
5 is the deposition of Yulia Husted in the matter of
6 Dominique Keimbaye vs. Providence Regional Medical
7 Center Everett, et al., Cause No. 21-2-07545-9 SEA in
8 the Superior Court of the State of Washington, King
9 County, and was noticed by Katie Rosen.

10 The time now is approximately 10:01 a.m. on
11 this 5th day of April, 2022, and we are convening via
12 Zoom. My name is Jason Neuerburg from Buell Realtime
13 Reporting, LLC, located at 1325 Fourth Avenue, Suite
14 1840 in Seattle, Washington 98101.

15 Will counsel and all present please identify
16 themselves for the record.

17 MS. ROSEN: Katie Rosen and Rachel Marshall
18 on behalf of the defendants.

19 MR. KEIMBAYE: Dominique Keimbaye,
20 plaintiff.

21 VIDEOGRAPHER: The court reporter may now
22 swear in the witness.

23 ///

24 ///

25 ///

1 (Pages 1 to 4)

Page 5 1 YULIA HUSTED, witness herein, having been 2 first duly sworn on oath, 3 was examined and testified 4 as follows: 5 6 EXAMINATION 7 BY MS. ROSEN: 8 Q. Ms. Husted, we met a moment ago. My name is 9 Katie Rosen and I represent the defendants in this 10 matter Mr. Keimbaye has brought a lawsuit against, and 11 not only Providence Everett, but also Chris Kortendick 12 and Travis John. So there's three different defendants 13 in this matter and I represent all three of them. 14 I'm going to ask you some questions and you will 15 provide answers today, and then Mr. Keimbaye will have 16 an opportunity to ask you questions as well once I am 17 done. 18 Before we get into the actual questions that I 19 have for you, I just want to go over some ground rules 20 in having your deposition taken. 21 Have you ever had your deposition taken before? 22 A. No. 23 Q. Have you ever testified in court? 24 A. No. 25 Q. Can you just state and spell your full name for	Page 7 1 Q. I will ask questions, I am sure, that don't make 2 sense. If I do that, please ask me to rephrase the 3 question and I will be happy to do that. Can we agree 4 on that today? 5 A. Okay, yes. 6 Q. And can we agree that if you answer one of my 7 questions, I will assume that you have understood it? 8 A. Yes. 9 Q. The court reporter cannot take down nonverbal 10 answers, so everything we do today has to be verbal. 11 Head shakes, nods or grunts, she can't take down, so can 12 we agree on that today? 13 A. We can. 14 Q. Okay. 15 And as I said before we got on the record, any 16 time you need to take a break, just let me know and we 17 will take a break. The only exception to that is if 18 there's a question pending, I am entitled to an answer 19 to my question before we take a break; do you understand 20 that? 21 A. I understand. 22 Q. Okay. 23 Are there any reasons why you can't answer my 24 questions truthfully today? 25 A. No.
Page 6 1 the record, please. 2 A. My name is Yulia Husted. First name is spelled 3 Y-U-L-I-A, last name Husted, H-U-S-T-E-D. 4 Q. And have you ever gone by any other names? 5 A. Yes, I have gone by Yakovleva in the past for 6 the last name. 7 Q. Can you spell that, please. 8 A. Yes, Y-A-K-O-V-L-E-V-A. 9 Q. And is that -- is Husted your married name? 10 A. Yes. 11 Q. And, okay. 12 So I will ask questions, you will provide 13 answers -- I will try not to talk over you, and I ask 14 that you not talk over me. So I will try and finish my 15 question, I will try and let you finish your answer 16 before I ask another question. And all I ask is that 17 you let me finish my question before you provide an 18 answer. Can we agree on that today? 19 A. Yes. 20 Q. You understand today that your testimony here 21 has the same force and effect as testimony in a court of 22 law? 23 A. Yes, I do. 24 Q. And that you are under oath today? 25 A. Yes.	Page 8 1 Q. Are you taking any kind of medication that would 2 impact your ability to answer my questions truthfully? 3 A. No. 4 Q. Did you do anything to prepare for today's 5 deposition? 6 A. No. 7 Q. Did you speak with anybody about today's 8 deposition? 9 A. No. 10 Q. Did you review any documents before the 11 deposition? 12 A. No. 13 Q. Did you bring any documents with you today to 14 the deposition? 15 A. No. 16 Q. So you did not communicate with Mr. Keimbaye 17 about today's deposition? 18 A. No. 19 Q. When is the last time you communicated with 20 Mr. Keimbaye? 21 A. It was around June or July of 2021. 22 Q. That was when he asked you to sign the 23 declaration? 24 A. I believe so, that was, yes. 25 Q. Okay.

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1 **What is your -- do you have a bachelor's degree?**

2 A. No, I do not.

3 **Q. Okay.**

4 **Do you have any type of degree?**

5 A. I have an associate's degree of applied science.

6 **Q. And where is that from?**

7 A. Renton Technical College.

8 **Q. Is that -- you also have worked as an anesthesia tech; is that the same degree?**

9 A. Yes, that is correct. I got my associate's of
10 applied science and anesthesia technologist at Renton
11 Technical College.

12 **Q. And that was in 2018?**

13 A. Yes, March 2018 is when I graduated and I pretty
14 much started working soon after.

15 **Q. And you currently work at Swedish First Hill?**

16 A. I currently worked -- well, besides being on
17 maternity leave --

18 **Q. Right.**

19 A. -- so I worked for Swedish First Hill, but then
20 I transferred to Swedish Edmonds because it was closer
21 to home.

22 **Q. And you are working as an anesthesia tech at Swedish Edmonds when you are not on maternity leave?**

23 A. Yes.

Page 10

1 **Q. And when are you scheduled to go back to work?**

2 A. My FMLA is approved until October 2022.

3 **Q. Oh, nice, that's a nice long leave.**

4 A. Yes, it is. I am happy for it, yes.

5 **Q. Yes, definitely.**

6 **So when was your baby born?**

7 A. January 1st.

8 **Q. Okay.**

9 **A boy or a girl?**

10 A. Boy.

11 **Q. Okay.**

12 **Boys are -- I have both, and boys are way**
13 **easier.**

14 A. I don't know, mine is colicky like crazy. I
15 told my husband you need to take him because I am busy
16 today.

17 **Q. Overall boys are easier, though.**

18 A. Thank God.

19 **Q. Okay.**

20 **And so when did you transfer to Edmonds?**

21 A. Boy, that's what was like -- to be honest, I do
22 not recall. I tried contacting my supervisor because I
23 needed it for my record for FMLA, but I'm not entirely
24 sure. I tried to calculate it based on my pay stubs so
25 I'm not sure. So I know I worked with them, probably I

Page 11

1 would say about five or six months, but not entirely
2 sure.

3 **Q. And then so you graduated in what month of 2018?**

4 A. March, March was our graduation, I think so. It
5 was scheduled for March 2018, yes, it was March.

6 **Q. And then you went directly from graduation to Swedish First Hill?**

7 A. Yes, I pretty much got accepted right away, took
8 time with onboarding, but yes, I started April. I
9 believe it was April for me that I was already
10 officially hired.

11 **Q. And did you apply to Edmonds, Providence Edmonds? I mean Providence Everett, sorry.**

12 A. Providence Everett, after my graduation you are
13 talking about?

14 **Q. Yes.**

15 A. No, I did not apply to Providence Everett. I
16 got -- Travis has asked me to come on board, but I
17 declined. As I stated when I spoke with Rachel
18 Marshall, that I said I did not want to take a position
19 working for Providence based on the environment at that
20 time.

21 **Q. What was it about the environment that led you**
22 **to make that decision?**

23 A. Well, I saw mistreatment of Mr. Keimbaye, and

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1 the hostility and the environment, I did not see myself
2 working there, so that's why I declined the position
3 there that was offered to me by Travis. Because he said
4 I would like you to come on board when you are done with
5 your graduation.

6 **Q. What hostility are you referring to?**

7 A. Well, not able to openly ask questions.
8 Mr. Keimbaye was consistently ignored by Chris when he
9 asked questions about something, the racist remarks and
10 the discrimination that he has faced there pretty much
11 daily.

12 **Q. Okay.**

13 **Let's break that down.**

14 **What racist remarks did you witness being**
15 **directed at Mr. Keimbaye?**

16 A. From what I recall, I do remember that there
17 were many remarks in regarding his skin color. There
18 were comments about his accent. Chris would make fun or
19 mocking remarks that he didn't understand what
20 Mr. Keimbaye would say because of his accent, and things
21 of that sort that I would remember.

22 And like he would say he didn't understand. If
23 Mr. Keimbaye would ask a question, he say he didn't
24 understand and would turn around to face the computer.
25 Like if Mr. Keimbaye would walk into the workroom where

3 (Pages 9 to 12)

Page 13

1 our supplies were kept, he would laugh and then turn
2 back around and, you know, his back would be faced
3 towards the computer, Chris's, and he wouldn't answer
4 and just make fun of Mr. Keimbaye.

5 **Q. So you said that he would -- and this is all**
6 **Chris Kortendick you are talking about?**

7 A. Yes, that is correct.

8 **Q. Okay.**

9 **And you said he would, he would make remarks**
10 **about Mr. Keimbaye's skin color, his accent, and he**
11 **would ignore him, ignore Mr. Keimbaye?**

12 A. Yeah, ignore his questions. He did make fun of
13 his skin color saying he was too black. He didn't
14 understand his accent, the way he was speaking based on
15 his accent, yes.

16 **Q. And did you witness anybody else make what you**
17 **would characterize as racist comments other than Chris**
18 **Kortendick?**

19 A. Racist comments, no, no. It was mostly Chris.

20 **Q. And are there any other comments toward**
21 **Mr. Keimbaye that you remember Chris making that you**
22 **haven't already testified to?**

23 A. No, I think it was mostly that, that I can
24 recall at this time, yes.

25 **Q. And how many times do you think that you**

Page 15

1 he would be ignored if he had a question. He was given
2 difficult assignments. Because Chris would give a
3 schedule in the morning, like assignments where everyone
4 would be placed. I was mostly with my preceptor because
5 I was a student, and Mr. Keimbaye would be given
6 difficult assignments, which was, I believe it was on
7 the third floor, like second floor and third floor, I
8 believe. And there were heart cases and vascular cases,
9 difficult cases, and he would be there alone. And it's
10 hard to get those cases started by yourself and not get
11 any help.

12 So he, and, you know, there were comments about
13 his work ethic, but that was not -- I do not recall,
14 maybe, maybe occasionally was from Chris, but another
15 employee there made comments about, started making
16 comments about his work ethic. That it's fine if
17 Dominique gets the harder assignments, he's lazy anyway,
18 he needs to be trained like that, and things of that
19 nature. It was just very uncomfortable, but yes, that's
20 what I witnessed.

21 **Q. Who was making comments about his work ethic?**

22 A. Well, Opal, I believe her last name Lonon, I am
23 not entirely sure, but Opal was the first name, would
24 make such comments to other workers there. She made a
25 comment to me, and would laugh about it. Because I many

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1 **witnessed Chris Kortendick make derogatory comments**
2 **about Mr. Keimbaye's skin color?**

3 A. Are you referring to in a workday that I was
4 there, or like are you talking about in the whole
5 duration period that I was there?

6 **Q. In the whole period you were there.**

7 A. Oh, gosh, a lot, because like I said, it pretty
8 much be every, every day that I can recall. Maybe --
9 because I would be there that I would recall four times
10 a week, one day a week I was in class, so I would say
11 about two, three times out of the week, so a lot. I
12 can't really pinpoint a certain number.

13 **Q. Okay.**

14 **So weekly you would hear him make these**
15 **comments?**

16 A. Yes, weekly. Fair to say weekly, absolutely.

17 **Q. And can you give me an example of what one of**
18 **the comments was, like a quote?**

19 A. Like a quote, I don't remember specifically like
20 the exact word, but like I said, he consistently would
21 make remarks about his skin color, that he was too
22 black, that he didn't understand him based on his
23 accent.

24 It was hostile because like I said, I could feel
25 the tension. Mr. Keimbaye would walk into the room and

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1 times have said that that's really unfair. I would say
2 that's really unfair that he gets put to do these
3 difficult cases and, you know, he doesn't get much help.
4 And rarely people would ask him, you know, if
5 there was downtime, Hey, Mr. Keimbaye, do you need any
6 assistance or, you know -- he never asked, but you could
7 see that, you know, in his facial expression that, like
8 Mr. Keimbaye was alone and he couldn't really ask for
9 help because of the hostility there.

10 **Q. How many times would you say you witnessed Chris**
11 **make a comment about Mr. Keimbaye's accent?**

12 A. Oh, Lord. It's so hard to pinpoint like a
13 number, like, you know -- I know it was very
14 uncomfortable. So I would say, I mean, I know it was
15 weekly, but I can't say like it was every day, but it
16 was definitely weekly.

17 **Q. Was there -- and you said there was nobody else**
18 **who was making racist-type comments toward Mr. Keimbaye**
19 **other than Chris Kortendick that you witnessed, correct?**

20 A. No, Chris would make the comments and then his,
21 I believe the other employee there, I think his name, I
22 do not recall his last name, but Anthony, when Anthony
23 worked, I don't recall his schedule, but I do remember
24 that Chris would make comments about Dominique to
25 Anthony and they would laugh about it.

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1 And like I said, it would happen when I would
 2 come in to grab some supplies in the workroom or I would
 3 sit on my phone when there was downtime.
 4 **Q. And how many times would you say you saw Chris**
 5 **just ignore Mr. Keimbaye?**
 6 A. Oh, that was pretty much daily. Because if
 7 anything needed to be asked him, you can't really ask
 8 Chris because, like I said, he would just ignore, turn
 9 his back towards Mr. Keimbaye, laugh, you know, turn up
 10 his music louder or do things of that nature. When
 11 Mr. Keimbaye would ask questions he would, uh-huh, I
 12 don't understand what you are saying, turn around
 13 towards the computer, put on the volume of the music
 14 louder.
 15 **Q. Did you ever witness Travis John make any racist**
 16 **comments about Mr. Keimbaye or toward Mr. Keimbaye?**
 17 A. I do not recall if it was in that nature. It
 18 was mostly between Chris and Travis because they, as I
 19 understood and I witnessed there, they are buddies. So
 20 he probably was, but I cannot say for sure.
 21 **Q. So just so I'm clear, you never witnessed Travis**
 22 **John make any racist comments about Mr. Keimbaye,**
 23 **correct?**
 24 A. I do not recall, no.
 25 **Q. I think we got a double negative there.**

Page 18

1 I just want to make sure I have a clear answer.
 2 So did you ever witness Travis John make any
 3 racist comments about or toward Mr. Keimbaye?
 4 A. No.
 5 **Q. And then you said that Mr. Keimbaye was**
 6 **discriminated against. What did you mean by that?**
 7 A. Well, discriminated against because, like I have
 8 explained, because he was, because he was ignored, made
 9 comments about his skin color, his accent, I believe it
 10 all contributed to the discriminatory effect.
 11 **Q. Were there any other ways that you thought that**
 12 **Mr. Keimbaye was treated unfairly in the workplace that**
 13 **you haven't already talked about?**
 14 A. No, I think I mentioned that he was given
 15 difficult assignments and he felt just, like I said,
 16 isolated that, isolated that he couldn't be part of the
 17 work team because of such daily comments. So no, I
 18 believe I have brought everything up today.
 19 **Q. Okay.**
 20 **And how long did you do your student training at**
 21 **Everett?**
 22 A. I believe it was about, I think it was about six
 23 months, I would say, five or six months.
 24 **Q. You told me you would do one day in the**
 25 **classroom and then three days actually on site at**

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1 **Providence; is that right?**
 2 A. No, no, no, four days, four days on site and one
 3 day. Initially I believe when I talked to Rachel
 4 Marshall I, when I was asked the question, when I went
 5 back and thought about it, at first I said it was five
 6 days, but when I checked back, I do remember having only
 7 one day in classroom.
 8 So it was four days on site at Providence
 9 Everett, and then one day at Renton Technical College.
 10 It was Fridays that we would meet up.
 11 **Q. And what shift did you work when you were**
 12 **actually on site at Providence Everett?**
 13 A. I believe it was either 6:30 to 2:30 or
 14 7:00 a.m. to 2:30, because I remember I would go to work
 15 right after. So I do remember ending my shift at around
 16 2:30.
 17 **Q. And you said you had a preceptor?**
 18 A. Yes, I had a preceptor who was consistent, but
 19 then it was rotated, but I did have a preceptor, yes.
 20 **Q. And who was your preceptor when you first**
 21 **started?**
 22 A. I believe it was Gus Ramos. I do remember my
 23 preceptor being Gus.
 24 **Q. And then at some point it changed?**
 25 A. It was occasionally, when Gus wasn't there, I

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1 would get -- my preceptor would then become very
 2 inconsistent. You know, I would say who my preceptor
 3 would be because Chris would be like a lead, but then he
 4 would act as a supervisor. So I went to him and I would
 5 ask him and he, he didn't really care. He was like, oh,
 6 today just be with Amy, and then every day would be
 7 like, okay, you are with Opal today.
 8 If like Gus wasn't there, it would be very
 9 inconsistent and I would get thrown around. He was
 10 never my preceptor, referring to Chris. So most of the
 11 time it was Gus Ramos.
 12 **Q. And so when the -- did that mean you just**
 13 **shadowed Gus for all of his assignments?**
 14 A. Yeah, I would shadow, but we would be left alone
 15 too sometimes. When our preceptor was comfortable, we
 16 could do little tasks, like if the provider would call,
 17 you know, Gus on the phone and say, Hey, we need so and
 18 so, I could go and retrieve the supplies from the
 19 workroom and get it to the provider or we could clean
 20 rooms and, you know, things of that nature.
 21 But most of the time I would watch him, yes,
 22 because we could not help with intubations or placing
 23 arterial lines or running difficult equipment yet.
 24 **Q. And so when you had interaction with**
 25 **Mr. Kortendick and Mr. Keimbaye, that was in the**

5 (Pages 17 to 20)

Page 21 1 workroom primarily? 2 A. Primarily, yes. I mean, because we would walk 3 down the hall, and so mostly it was in a confined space 4 in the workroom, yeah. Because I didn't, I didn't 5 recall, maybe it was in the midst sometimes of cleaning 6 a room, like I'll clean a room, then maybe I would hear 7 Chris say a comment, sometimes help each other out, but 8 most of the time it was in a workroom. 9 Q. And did Gus Ramos have a certain kind of case he 10 specialized in or that he was generally assigned to? 11 A. Mostly assigned to, like I said, the second 12 floor. And there were pretty simple cases, like you 13 would place an LMA, shorter duration cases is what I am 14 trying to say. 15 So, no, just given random rooms, assigned random 16 rooms, but like I said, Mr. Keimbaye would most of the 17 time be assigned to the third floor, which were longer 18 duration cases, more complicated cases, and most of the 19 time could result in a code, if there was a code. 20 Q. And you thought that was unfair that 21 Mr. Keimbaye was being assigned to the third floor 22 cases? 23 A. Yes, absolutely. I mean, everybody needs to 24 have an equal share of rotation. I don't think one 25 person needs to be particularly in that difficult cases,	Page 23 1 maybe they were afraid of him, because of the way he 2 presented himself, Chris, because he was lead. He would 3 give, assign assignments and he would direct people and 4 he would like talk to them kind of in, in kind of like a 5 down tone, but you could see that Mr. Keimbaye's 6 treatment was different. 7 Q. Were you ever aware of Chris hiding supplies 8 that Mr. Keimbaye needed? 9 A. I don't know if he was hiding, but I know he 10 would rotate things in different places. So if somebody 11 needed to get it, I know that he would rotate where 12 things were. And I know he would sabotage sometimes 13 anesthesia machines so that when the call came from the 14 provider, that he would be the one to fix the issue and, 15 you know, appear that he knows it all and nobody else 16 doesn't. 17 Q. So you are not aware of that, like him hiding, 18 hiding different things that Mr. Keimbaye would need 19 specifically? 20 A. I am not sure if he would hide it, no. 21 Q. And are you aware of him ever tampering with an 22 anesthesia machine that Mr. Keimbaye was using? 23 A. Well, yes, because when he would go to the third 24 floor, he was like, I'm going to go and check up on the 25 third floor, like when Mr. Keimbaye was already assigned
Page 22 1 in those difficult cases, so I do think it's unfair. 2 Q. Did Mr. Keimbaye ever complain to you about his 3 treatment by anybody at Providence? 4 A. No, he didn't complain. I brought it up to him, 5 I said to him, you know, it's kind of unfair. And I 6 have said it to other employees that, you get placed on 7 the third floor, I don't think it's fair that Chris is 8 treating you this way. 9 But Mr. Keimbaye would most likely be kept to 10 himself, and he just did his work and, but you could see 11 the, like I said, the uncomfortable look on his face 12 because it was of the mistreatment, but he didn't really 13 complain, no. 14 Q. Did you ever witness Chris treat anybody else 15 poorly? 16 A. No, he was just -- he was a mean person, if 17 that's what you mean, but he wasn't like rude towards 18 me, I would say. I could see the difference between the 19 treatment of other people and how he would treat 20 Mr. Keimbaye directly, like yes, he's just a difficult 21 personality person Chris, and he was rude towards other 22 people. 23 Like if I said good morning, he wouldn't 24 respond, but based on how he treated other people, I 25 think people were just used to him at that point, or	Page 24 1 there. 2 So I didn't directly witness him, but I wouldn't 3 be surprised if that occurred because occasionally he 4 would say, even though Mr. Keimbaye was already given 5 that assignment to assist on third floor, he would say, 6 oh, I'm just going to go check the rooms, check with the 7 providers. 8 I mean, I thought it was weird, because I'm like 9 well, Mr. Keimbaye is already there. In my head I am 10 thinking why would you need to check. For me I would 11 understand why he would need to check because I'm a 12 student, but Mr. Keimbaye comes with experience, you 13 know, and so I was a bit confused with that. 14 Q. So you never were aware of him tampering with 15 Mr. Keimbaye's anesthesia machine? 16 A. No, I didn't see. If you are saying if I placed 17 my eyes on it, no. But like I said, it's possible if he 18 went up there many times to check on the rooms and did 19 rounds like I said. 20 Q. And you are also not aware of him ever hiding 21 Mr. Keimbaye's equipment? 22 A. It wasn't in my presence that that occurred. 23 Q. Okay, that's what I am asking. 24 Okay. 25 And so your internship ended in, when you

Page 25

1 graduated in March of 2018; is that right?

2 A. Correct.

3 Q. Okay.

4 And you shadowed -- who else do you remember
5 shadowing or precepting with other than Gus and Opal?

6 A. Amy. I do not recall her last name. Amy was
7 also my preceptor at some times.

8 Q. And those three, were they considered leads, to
9 your knowledge?

10 A. Maybe they were, but most of the time it was
11 Chris. Oh, and Laura. Laura, I sometimes shadowed
12 Laura, but I wouldn't call her my preceptor because it
13 was very rare.

14 Q. So they helped -- so essentially they were
15 helping to train you, those three --

16 A. Correct.

17 Q. -- the preceptors?

18 A. Yes.

19 Q. And you don't know whether or not they were
20 leads?

21 A. I do not know. I mean, if they were, they were
22 probably given that role by Chris when he didn't feel
23 like being a lead.

24 Q. Okay.

25 So how long did you overlap with Mr. Keimbaye at

Page 27

1 still there.

2 Q. And so did he work the same schedule as you did
3 generally?

4 A. Yes.

5 Q. And did you ever work with Mr. Keimbaye on a
6 case?

7 A. I do not recall. Like working directly, like
8 one-on-one on a case?

9 Q. Right.

10 A. No.

11 Q. And did you ever work in the OR with him?

12 A. In the OR, if you mean like I would assist him
13 with cleaning rooms and getting supplies, then, yes,
14 like that, but not assist with the case, because I
15 didn't -- I wasn't in a place to assist him. If he even
16 needed help, I couldn't help him.

17 I didn't know things like setting up arterial
18 line yet or running Cell Saver, like the blood fusions.
19 But I would assist him when I had downtime. I would
20 ask, Hey, do you need assistance with cleaning a room
21 because we would hear overhead that the room needs
22 cleaning.

23 And I knew Mr. Keimbaye was on the third floor,
24 so I would go and see and check if he need any help with
25 retrieving supplies and things of that nature. So yes,

Page 26

1 the internship?

2 A. Frequently. I don't remember what his schedule
3 was like, Mr. Keimbaye, but like I said, since I was
4 there four times a week, I think so, I pretty much saw
5 him every day.

6 Q. Was he there -- I am sorry, go ahead.

7 A. He may correct me if I am wrong.

8 MR. KEIMBAYE: Can I mention something?

9 MS. ROSEN: No, no, you can't talk right
10 now, Mr. Keimbaye. When I am done asking questions, you
11 can ask questions.

12 MR. KEIMBAYE: Okay.

13 BY MS. ROSEN:

14 Q. Sorry, Ms. Husted.

15 So was he there the entire six months you were
16 there?

17 A. No, he came on board later. He wasn't there
18 initially. I don't remember Dominique being there when
19 I started my internship, externship, so, no, he wasn't.
20 It was probably, I would say about the last, maybe last
21 three months I would say, three, four months that I
22 recall.

23 Q. And so he was -- his employment was terminated
24 after you had already left, correct?

25 A. Yeah, he was there when I -- when I left, he was

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1 I would say worked with him in the OR but not directly
2 on the case.

3 Q. Got it.

4 How did you communicate with him? Was it via
5 text?

6 A. No, on the phone. We had -- there were like
7 Cisco, they are called Cisco phones, that's how I
8 remember them, so on the work phone.

9 Q. Did you ever spend time with Mr. Keimbaye
10 outside of work?

11 A. No.

12 Q. You never did anything social with him outside
13 of work?

14 A. I do not recall. I went out with other
15 coworkers. I don't remember going with Mr. Keimbaye,
16 no.

17 Q. And then did you ever talk to him outside of
18 work, like on your phone or on text?

19 A. Not frequently. Probably, how's your weekend,
20 how is school going, things of that nature, but nothing
21 in particular.

22 Q. Okay.

23 And did you -- how did you get his phone number
24 to text him?

25 A. Probably we talked about it and exchanged the

7 (Pages 25 to 28)

Page 29 1 numbers. 2 Q. Okay. 3 And so while you were both working there, did 4 you have each other's cell phone numbers at this point? 5 A. When I was a student there? 6 Q. Yes. 7 A. No. Only probably when I left, I said Hey, I 8 don't know who said to who, but I said, let's keep in 9 touch with school and how things are going, but, you 10 know, I'm pretty social and kind of friendly to 11 everyone. 12 So I said I had Opal's phone number. The other 13 student at that time, Leanna, Laura was another, Amy. 14 So I had people's phone numbers just like I do now from 15 Swedish First Hill I have coworkers. So probably like 16 that I said, Hey, let's keep in touch with anything new, 17 but, you know, most of the time things get, people move 18 on and you don't hear from them. 19 Q. Right. 20 A. That's kind of what happens in life, you know. 21 Q. So then after you -- so it's your recollection 22 that you, the two of you traded numbers when you were 23 getting ready to leave just so you could keep in touch; 24 is that accurate? 25 A. Yes.	Page 31 1 A. I do not know. I am sure that the manager 2 wouldn't just disclose information. He would say, we 3 have somebody, like if we needed a worker, we have 4 somebody that put in an application, but never a name 5 was stated, no. 6 Q. So when did you learn that his employment was 7 terminated? Was it when somebody from my office 8 contacted you? 9 A. I believe so, because I didn't hear from anybody 10 else. I do remember, I do remember that Opal mentioning 11 that maybe Dominique was altering the time he would 12 leave work and things of that nature, but nobody told 13 me. 14 Q. Okay. 15 So nobody from Everett reached out to you and 16 told you anything about Mr. Keimbaye's separation? 17 A. No, I don't recall any of that, no. 18 Q. Okay. 19 And who did you still talk to from Providence 20 Everett, if anybody? 21 A. Probably Gus, but that was probably around 22 Christmastime, and I said Merry Christmas to you and 23 your family, and that was about it. 24 Q. So when Mr. Keimbaye first reached out to you to 25 ask you for help about this lawsuit, when was that? Was
Page 30 1 Q. And then did he let you know that his employment 2 was terminated? 3 A. We didn't talk about that, no. 4 Q. Okay. 5 How did you find out that his employment was 6 terminated? 7 A. I didn't find out it was terminated. I just ask 8 him how things were going, and I believe it was said, 9 like I am not at Providence anymore, because I remember 10 that Dominique then probably stated that based on the 11 environment. 12 And I said, Hey, you know, you want to come to 13 Swedish, but I think because of the work schedule, and I 14 know, I believe he's more in the Eastside, and, you 15 know, First Hill is in Seattle, so I think it just 16 didn't work with his schedule. But I wasn't aware that 17 it was terminated. 18 Q. Did you ever have any discussions with anyone at 19 Swedish about Mr. Keimbaye? 20 A. No. 21 Q. Did you ever hear anyone at Swedish talking 22 about him? 23 A. No. 24 Q. Do you know whether he ever applied to work at 25 Swedish?	Page 32 1 that in June? 2 A. It was summer, yeah, summertime, yes. 3 Q. And what did he say? 4 A. From what I remember, I think he said, I am 5 bringing up a case against Providence, from what I 6 recall, based on what you witnessed, would you be able 7 to assist me. Something to that nature. 8 Q. And you agreed to do that? 9 A. Yes, because I was there and I witnessed and 10 stating facts what I have seen, yes, I did. 11 Q. And then he sent you a declaration, correct? 12 A. Yes. 13 Q. And he wrote the first part of the declaration, 14 would that be accurate to say? 15 A. The first part, yeah, I do remember then, I 16 would bring on, forth my opinion and what I witnessed. 17 So yes, I would fill in the other part of the 18 declaration. 19 Q. Okay. 20 So how many declarations did he have you sign? 21 A. Just one from what I recall. 22 Q. Okay. 23 And did he tell you what he was going to use the 24 declaration for? 25 A. Well, the declaration is probably used in a, for

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1 court purposes, I would say. So I mean, so I would
2 think that I would be the witness, right?

3 **Q. Okay.**

4 **Let me show you, I am going to share my screen
5 and show you a document.**

6 A. Okay.

7 **Q. Okay, can you see this document?**

8 A. Yes, yes, I do see, now, yes.

9 **Q. So it looks like he reached out to you in May of
10 2021?**

11 A. Okay.

12 **Q. Does that sound about right?**

13 A. Probably based on the email, yeah. I just
14 remember it being June, but yeah, that's probably
15 correct, yes.

16 **Q. And he sent you a copy of a declaration.**

17 A. Copy of declaration.

18 Are you talking about this one?

19 **Q. Yeah, do you see where it's attached at the
20 bottom of the email?**

21 **So did the two of you talk on the phone before
22 this?**

23 A. No, other than, like I said, when I asked him
24 that he said when he's no longer working for Providence
25 I told him you should come and work for Swedish.

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1 **Q. So -- but what kind of communication did you
2 have with him prior to him sending you this declaration?**

3 A. On the phone.

4 **Q. And that's when he asked you to sign something?**

5 A. Then he would, then he reached out to me and
6 he's like, Hey, do you remember the treatment that I
7 have had at Providence when you were a student, would
8 you be willing to sign a declaration regarding because
9 I'm bringing forth a lawsuit against Providence.

10 **Q. And then it looks like you sent the declaration
11 back signed, correct?**

12 A. Yes, I did sign it, yes.

13 **Q. And then he emails you again and you can see
14 this where it says -- and this is going to be Exhibit 1,
15 sorry if I didn't cover that, Kim.**

16 (Exhibit No. 1 was marked.)

17 BY MS. ROSEN:

18 **Q. You see where he says he reviewed your
19 declaration and edited it; do you see that?**

20 A. I see that now, yes.

21 **Q. And do you remember what he edited?**

22 A. To be honest, I do not. I do not know what was
23 edited. And I read it fairly quickly, so I am not
24 entirely sure what exactly was edited.

25 I know that -- what I do know is that when he

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1 put my name Declaration of Yuliana Husted I told him
2 it's Yulia. And he said, I am sorry, I thought the
3 former name was Yuliana and I corrected him. So maybe
4 he edited that part, but I'm not entirely sure what else
5 could be edited.

6 **Q. Okay.**

7 **Well, let's look at the declaration because that
8 will be easier.**

9 A. Okay, sounds good.

10 **Q. Okay, do you see the declaration?**

11 A. I do now, yes. The I, "Yuliana," I see that
12 part, like name, just short, yes, I see it, yeah, yeah.

13 **Q. So Yuliana is not your proper name, it's Yulia?**

14 A. Correct.

15 **Q. Okay.**

16 **I want to look at some of this, the paragraph,
17 so --**

18 A. Okay.

19 **Q. -- it says you became coworkers and friends with
20 plaintiff; do you see that?**

21 A. Yes.

22 **Q. And then it says, "before he was maliciously and
23 indifferently accused and discharged." Do you see that?**

24 A. Yes.

25 **Q. Do you know anything about the circumstances**

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1 **around his discharge?**

2 A. Maybe like I said, when Opal says that, she was
3 saying comments like, Dominique was altering his time,
4 but she never witnessed it from what I remember. I know
5 that she showed her interest in him, so she would be the
6 one making comments that his work ethic was very poor,
7 so maybe in that sense, but I do not know directly why.

8 **Q. So -- but here you say, you are writing under
9 oath that he was maliciously and indifferently accused
10 and discharged.**

11 A. Right, so accused, like I said, Opal was the one
12 that would bring those comments about him altering the
13 time, so from what I witnessed.

14 **Q. When did Opal tell you that; were you still
15 working there?**

16 A. Yeah, I was still a student there, yes.

17 **Q. Okay.**

18 A. And she was saying about his poor work ethic and
19 saying that Dominique is probably messing with his time
20 to, you know, clocking in and out for a lunch
21 inappropriately or on his breaks.

22 **Q. But just so I am clear, you don't know anything
23 about why he was discharged, correct, other than what
24 Opal told you?**

25 A. Right, no, like if you are saying did Travis

9 (Pages 33 to 36)

Page 37 1 reach out to me and tell me, no, I do not know that. I 2 just know based on the treatment that he has endured 3 there, and the comments made towards him, that's why I 4 believe it was wrong accusation. Because like I said, 5 his work ethic from what I have seen, it's very strong, 6 he's willing to help people. He communicates well. 7 I did never witness Dominique, you know, 8 altering his time or leaving on breaks or lunch at 9 inappropriate times. 10 Q. Okay. 11 All I'm asking is if you know why he was 12 discharged. 13 A. No. 14 Q. Okay. 15 You don't know, because you weren't working 16 there at the time, correct? 17 A. Correct. 18 Q. Okay. 19 And then -- and Mr. Keimbaye wrote that first 20 sentence; is that right? 21 A. This one, the "maliciously indifferently 22 accused"? 23 Q. Yes. 24 A. I am not entirely sure. Probably, yes. But I'm 25 not entirely sure what was edited, if that's what you	Page 39 1 And I can agree to the -- from when it says, "from my 2 own witness, Mr. Keimbaye was poorly and intentionally 3 mistreated," then yes, that is definitely correct, and 4 that he would be laughed at based on his accent. 5 Q. And when you say in here that you "state and 6 declare from my own witness and other OR staff 7 statements"; do you see where it says that? 8 A. Yeah, because I do recall that Laura would state 9 that it's unfair how Chris would treat Mr. Keimbaye, 10 along with Gus Ramos as well. 11 Q. Did anyone else comment on it? 12 A. It was Amy, Opal. Amy would occasionally state 13 things, but she did not like conflict much and she 14 stayed to herself, so... 15 Amy, but it was very rare, like I said, she 16 tried to avoid conflict and stay away. 17 Q. What do you remember Laura saying about it? 18 A. Laura would make comments like the statements, I 19 would say it's unfair that Dominique gets placed on the 20 third floor to do assignments that Chris would assign 21 him there. 22 She would -- when Chris would make fun of 23 Mr. Keimbaye's accent, we would look at each other and 24 just roll our eyes. And when we would come out of the 25 workroom, and down the hall, kind of to ourselves, she
Page 38 1 are asking me. I am not sure. 2 Q. Did he write the next paragraph as well? Go 3 ahead and read the next paragraph. 4 A. The whole thing? 5 Q. Yeah, not out loud, just to yourself. 6 A. (Witness reviews document.) 7 Okay. 8 Q. And did Mr. Keimbaye write that paragraph, to 9 the best of your knowledge? 10 A. I wrote, I wrote it, most of it, definitely, 11 yes. 12 Q. No, I am asking, did you write it or did 13 Mr. Keimbaye write it? 14 A. Well, I wrote it, but I am not entirely sure 15 what was edited or, you know, or taken in or placed in 16 or taken out from the paragraph. From what I recall, 17 yes, I did write it. 18 Q. Well, your first name is wrong, though. 19 A. Exactly. 20 Q. So does that refresh your recollection as to who 21 wrote this paragraph, whether it was you or 22 Mr. Keimbaye? 23 A. Well, I told him that the first name was wrong. 24 So, I mean, what I am saying is maybe some of my 25 sentences were there because this is what I have seen.	Page 40 1 would say, that is just so rude, like, I don't 2 understand how anyone can function like that. 3 Q. And what do you remember Gus saying about it? 4 A. Gus would make remarks that, well, 5 Mr. Kortendick is racist. He's clearly racist. And I 6 am like yes, I understand that. Because I have said 7 it's really unfair because you could see that, you know, 8 he can understand him clearly, what Mr. Keimbaye is 9 asking, he doesn't need to make fun of his accent or the 10 color of his skin when he did. 11 Q. And what do you remember Amy saying about it? 12 A. The same, that she would say that, you know, 13 Mr. Kortendick is racist, but it was things like that 14 she would say, but it was, it wasn't frequent. 15 Q. Okay. 16 And so then you say "Plaintiff Keimbaye was 17 poorly and intentionally mistreated, disparaged, put 18 down by the OR management staff." Is that the things 19 that you have already described to me -- 20 A. Yes. 21 Q. -- when you say "mistreated, disparaged and put 22 down"? 23 A. Yes, I would say it all ties into it, yes. 24 Q. And was he mistreated, disparaged and put down 25 by Travis John?

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1 A. If I -- I do not recall that, no. Like I said,
2 if it was, it was probably in communication with Chris
3 and Travis, because they were buddies, but I did not see
4 it myself.

5 **Q. Okay.**

6 **But it says in here that he was mistreated,**
7 **disparaged and put down by Travis John.**

8 A. Then I am not entirely sure then, maybe that
9 part was edited, I am not sure.

10 **Q. So that's inaccurate, correct?**

11 A. I didn't witness Travis John.

12 **Q. You didn't witness Travis John doing that to the**
13 **plaintiff, correct?**

14 A. No.

15 **Q. Okay.**

16 **We have a double negative.**

17 **Did you witness Travis John mistreating,**
18 **disparaging or putting down Mr. Keimbaye?**

19 A. No.

20 **Q. It says these two folks would laugh or mock at**
21 **plaintiff when he spoke with an accent. So that, in**
22 **that you are just referring to Chris Kortendick,**
23 **correct?**

24 A. Chris Kortendick and Anthony, who was the other,
25 he would laugh with him, the other employee there at

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1 that time.

2 **Q. Do you know Anthony's last name?**

3 A. I don't, no.

4 **Q. Okay.**

5 **And then the next, these are -- I am assuming**
6 **these are comments from Mr. Keimbaye of things he wants**
7 **you to add, these next things that are starred?**

8 A. Right here you are talking about, 11, line 11?

9 **Q. Yes, yes.**

10 A. Well, I think not what he wants to add, I think
11 he just saying what you remembered and saw at the time
12 that you were there.

13 **Q. So does that refresh your recollection as to who**
14 **wrote the first paragraphs? Do you think Mr. Keimbaye**
15 **wrote these first paragraphs and then sent this to you**
16 **to add to or do you know?**

17 A. I do not know. I know I wrote the paragraph,
18 but maybe something was added.

19 **Q. Because it's not accurate, this paragraph?**

20 A. Not entirely, that's what you are asking,
21 because I did not witness Travis John. But all of it is
22 except from -- because I did witness other OR subs that
23 are brought, except Travis John, so yes in that sense.

24 **Q. Okay, got it.**

25 **So part of it is true?**

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1 A. Yes. Well, maybe the Travis John part is not.

2 **Q. Right. Do you know what this means at the**
3 **bottom where it says, "Please attach any email or report**
4 **against Dominique as evidence to this declaration?" Do**
5 **you know what's that referring to?**

6 A. Maybe it's like, any like comments that you had
7 from other workers sent to you via text or contacted via
8 phone, I am assuming.

9 **Q. Did you have anything like that?**

10 A. No.

11 **Q. Okay.**

12 **And then let's look at this second, I guess --**

13 A. This one?

14 **Q. The one that says "have a different paragraph."**

15 A. Yeah, "have a different paragraph, regarding,"
16 uh-huh.

17 **Q. So what's your understanding of this alleged**
18 **sexual harassment that Mr. Keimbaye allegedly**
19 **experienced?**

20 A. From Opal Lonon, from Opal that he experienced
21 the sexual harassment, from what I am understanding
22 unwelcoming behavior towards him. I know she expressed
23 her interest in him and would touch him inappropriately,
24 like put her hands on his thigh.

25 **She would, she would say like, she would put her**

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1 hands on his thigh and say, If you ever need help, I am
2 always there to help you, or she would place her arm on
3 his stomach and would feel, like it feels nice and
4 tight; just inappropriate comments of that nature. And
5 Mr. Keimbaye did not welcome such behavior.

6 **Q. And you witnessed those comments?**

7 A. Yes, yes, I was there. Because I remember Amy,
8 Amy would laugh and say, oh, Opal, you are so, you are
9 so hungry or thirsty or something of that nature. She
10 would laugh at that and say something to that extent.
11 So, yeah, I was there.

12 **Q. How frequently do you recall witnessing comments**
13 **of a sexual nature from Ms. Lonon to Mr. Keimbaye?**

14 A. I don't recall her work schedule either. I
15 mean, so I would say it's pretty much on the daily. She
16 did show her interest in him daily. Only when
17 Mr. Keimbaye was not, like obviously he showed, he tried
18 to avoid himself from her, that she started making
19 comments about his poor work ethic and saying that he
20 alters his time, wouldn't answer his phone.

21 **She said oh, the room called me from his, like**
22 **he would be assigned a room on the third floor, and they**
23 **would call and ask maybe for something and she's like**
24 **oh, it's because Mr. Keimbaye is not answering his**
25 **phone, he's nowhere to be found.**

11 (Pages 41 to 44)

Page 45 1 She would say things that nature, but sometimes 2 people can be tied up in the room or in a code, and you 3 are not, can't answer the phone all the time. So then 4 the providers do call other techs, anesthesia techs, to 5 see, you know, where's my tech or who can help me bring 6 this or assist me in that. 7 Q. So how many times did you see her, though, make 8 comments of a sexual nature to Mr. Keimbaye? 9 A. When she was there, it was pretty, it felt like 10 it was every day. She would, she would really show her 11 interest in him. She would touch him, come up behind 12 him, touch his shoulders. When he was in the workroom, 13 when we would sit on, like there's chairs that roll and 14 she would push herself towards him on the chair. And 15 when he would come in in the morning she would run 16 towards him, oh, Dominique, Dominique, like tried to 17 give him a hug, but that's not appropriate in the 18 workplace at all. 19 Q. Did he ever talk to you about it? 20 A. He did say it's, he did say it's uncomfortable. 21 Q. Did he ever talk to you beyond that? 22 A. In what sense are you talking about? 23 Q. Did he ever talk to you more about it other than 24 just to say it was uncomfortable? 25 A. Well, he says it's uncomfortable and	Page 47 1 A. No, I did not witness. If it was brought up, 2 it's going to be brought up in a private setting. So 3 no, I did not see him go directly into Travis John's 4 office and speak to him in regards to this matter. 5 Q. But he told you he was going to speak with 6 Travis John? 7 A. He said he was going to bring it up, yes, to a 8 manager. And, well, he said to the manager, so Travis 9 John was the manager, yes, at that time. 10 Q. And do you know whether he ever did that? 11 A. I believe he, I believe he did say to me that he 12 spoke to Travis John, but like I said, never saw him go 13 in into his office, but he did say that he spoke with 14 Travis John. 15 Q. And what did he tell you that Travis John said? 16 A. I don't recall what he said, what Travis John 17 said, but when I saw that the behavior continued, I 18 thought in my head, probably it wasn't escalated further 19 how it should have been. 20 Q. So you don't know whether, it's like it says in 21 here, that Travis and Chris laughed about, you don't 22 know whether that's true or not? 23 A. Well, I do know that -- like I said, I didn't 24 see Travis John make any remarks, but I do remember that 25 they whispered about something in the hallway, and
Page 46 1 inappropriate. 2 Q. And do you know whether he ever tried to report 3 it? 4 A. I think he did say he was going to bring it up 5 to Travis John, but I think from the paragraph when I 6 said the Travis John part, or if it was edited, what 7 I -- what I -- from what I know, I do not believe it was 8 brought up to higher-ups. 9 When Mr. Keimbaye was going to talk to Travis 10 John about his complaint towards Opal, I didn't see that 11 anything was changed, so most likely Travis John didn't 12 escalate it further. 13 Q. Well, do you know whether he ever talked to 14 Travis John about it? 15 A. Well, if you are saying did I see Mr. Keimbaye 16 go to Travis John's office, no, I didn't see that. 17 Q. Right, that's what I am here to ask you about is 18 your firsthand knowledge. Because things that somebody 19 told you are not admissible in court, so that's -- those 20 are hearsay. 21 So really what we are trying to figure out today 22 is what is your firsthand knowledge, what did you 23 actually witness. 24 And so did you ever witness him telling Travis 25 John about Opal Lonon's treatment of him?	Page 48 1 laughed about it, Travis John and Chris Kortendick, but 2 I did not hear what exactly it was in regards to. 3 Q. Okay. 4 A. But based on that environment, that's -- based 5 on what was going on, I probably thought because they 6 were buddies that it was most likely related to 7 Mr. Keimbaye. 8 Q. Yeah, I understand that you thought that, but 9 you never witnessed Travis or Chris laughing about any 10 kind of report, correct? 11 A. About report, I remember Chris laughing about 12 Opal showing her interest in Mr. Keimbaye, but about the 13 report, no. 14 Q. And you don't, you do not know whether they went 15 to HR or not, correct? 16 A. I don't. 17 Q. Okay. 18 So this declaration is not signed. If I scroll 19 down, see it says "Gustavo Ramos" here, so, and it looks 20 like Dominique put all these notes here for things he 21 wanted you to write in the declaration, correct? 22 A. Some of it, but like I said, I have attested to 23 the things that, confirm to the things that I saw. Like 24 I said, the Travis John part, I didn't see him being 25 discriminatory or making any racist comments other than

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1 the laughter when the event of Mr. Keimbaye being
2 sexually harassed or showing any unwelcoming behavior
3 from Opal.

4 So part of it -- most of it is truth from that
5 sense. And that regarding sexual harassment, yeah, have
6 a different paragraph regarding sexual harassment, that
7 is true because I did see that.

8 **Q. But you did not see Travis John laugh about it,**
9 **correct?**

10 A. Not in regards to that. He -- only when Chris
11 said about Opal being sexually attracted to
12 Mr. Keimbaye, that's the only time that I saw Travis
13 laugh with Chris, but not about the report.

14 **Q. When did that occur?**

15 A. I don't remember the month, but it was, it was
16 pretty soon because I think it wasn't long before
17 Dominique, Mr. Keimbaye, has expressed that he was going
18 to talk to Travis John.

19 **Q. Okay.**

20 **So what did you -- tell me what you witnessed.**

21 A. From -- regarding Travis John and Chris
22 Kortendick?

23 **Q. Yeah, laughing.**

24 A. Yeah, it was in the hallway when Mr. Kortendick
25 was writing assignments on the board out in the hallway.

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1 **So it's your testimony as you sit here today**
2 **under oath that you heard Travis John and Mr. Kortendick**
3 **laughing about Opal being attracted to Mr. Keimbaye?**

4 A. Yes, I did hear that.

5 **Q. When did that occur?**

6 A. It was -- like I said, it wasn't soon after
7 Mr. Keimbaye, it was maybe about a month that he
8 tolerated that, maybe a month, maybe less. And I do
9 remember, I can't say the date for sure, but maybe a
10 month of him being kind of treated by Ms. Opal like
11 that.

12 **Q. Okay.**

13 **And you only heard that or saw that once; is**
14 **that right?**

15 A. That Travis John and Chris Kortendick would
16 laugh about that?

17 **Q. Yes.**

18 A. Yes.

19 **Q. And -- and, again, tell me exactly what you**
20 **remember them saying.**

21 A. Chris Kortendick said, Oh, like in a laughing
22 manner, Oh, it's funny that Opal is showing her interest
23 in Mr. Keimbaye, touching him daily, this and that,
24 Travis John would just laugh. He didn't say anything,
25 but they would just laugh, stand there and laugh from

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1 And Travis would come up and say -- rarely, you know,
2 that I saw him -- but he would say, I think they are
3 gone, what's going on, blah, blah, blah. They would
4 chat about this and that, but when I was walking, I
5 heard him say to Mr. John that oh, Opal is showing her
6 interest, she is showing her interest in Mr. Keimbaye.

7 She's touching him daily, so-and-so, but he
8 would say it in like mocking, kind of like laughing, ha,
9 oh, it's so funny that Opal is showing her interest in
10 Mr. Keimbaye. And then they would laugh about that, but
11 not about the report.

12 **Q. Okay, how many times did you witness that?**
13 **Because earlier you said you witnessed them laughing in**
14 **the hallway, but you had no idea what they were talking**
15 **about.**

16 A. Yes, that happened as well, that happened as
17 well. That was after that Mr. Keimbaye already said he
18 was going to, you know, complain or bring up his concern
19 regarding Opal.

20 So that, but then they were whispering about
21 that, so no, I did not hear that. And like I said, it
22 was mostly, he rarely come into the workroom. When he's
23 writing assignments he would say, Hey, good morning,
24 stop by the workroom afterwards, things of that nature.

25 **Q. Okay.**

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1 that comment.

2 **Q. Okay.**

3 **So if we look back at Exhibit 1 -- let's look**
4 **back, Exhibit 1, let me share this one.**

5 **Can you see Exhibit 1 on the screen?**

6 A. Are you talking about this email? Yeah, I see
7 Exhibit 1, yes, the whole Gmail thing, yeah.

8 **Q. So on this first email there's a declaration**
9 **attached to the email to you, correct?**

10 A. Yeah, I see that, down below, yes.

11 **Q. Is that Exhibit 2 that's attached?**

12 A. Where? What are you talking about, Exhibit 2?

13 **Q. See where it shows "Declaration"?**

14 A. Yes.

15 (Exhibit No. 2 was marked.)

16 BY MS. ROSEN:

17 **Q. Okay, let me put the other one up.**

18 A. So Exhibit 2 right here, the draft you are
19 talking about?

20 **Q. Yes.**

21 A. But I don't see the screen from it. It said
22 Exhibit 1 and it's highlighted on that and that one is
23 blanked out. What does it say in Exhibit 2?

24 **Q. Hold on.**

25 **I am not trying to pause my screen sharing.**

13 (Pages 49 to 52)

Page 53 1 So we have Exhibit 1 attaching a declaration, 2 correct? 3 A. Yes, I see the email here, "Hi Yulia," and the 4 declaration and the Word document. 5 Q. Yes. 6 A. Yes, I see that part. 7 Q. So what I am asking you is, is this what was 8 attached, this declaration right here, because we have a 9 number of different drafts of declarations; so is this 10 what was attached to that email? 11 A. Most likely, yes. 12 Q. Okay. 13 So he sent this to you where he wrote -- does 14 that refresh your recollection as to who wrote the first 15 two paragraphs of this, whether it was you or 16 Mr. Keimbaye? 17 A. Like I said, I most likely wrote it, but if 18 something was added to it, because like I say my name is 19 not Yuliana, it's Yulia, so that part, and I told him 20 that, but I wrote this stuff because I witnessed it. 21 Q. I understand that, but I'm asking you, did you 22 write these first two paragraphs, is it your testimony 23 that you wrote these or that Mr. Keimbaye wrote these? 24 I understand you might have edited it, I am just 25 asking who wrote these initially.	Page 55 1 (Witness reviews document.) 2 Okay. 3 Q. So the first two paragraphs are the same except 4 your name is spelled correctly, correct? 5 A. Yes, yes, yes, identical, yes. 6 Q. And then where it says "I can attest," do you 7 see that? 8 A. Yes. 9 Q. Is this paragraph -- go ahead and read the 10 paragraph and let me know when you are done. 11 A. Okay, like this whole thing, okay. 12 Q. Yeah, just read it to yourself. 13 A. Okay. 14 (Witness reviews document.) 15 So yes, it is true, yes. 16 Q. And you wrote this paragraph? 17 A. Yes. 18 Q. Okay. 19 A. Yeah, because that is true, he would be 20 alienated and most of the discussions were led by Chris 21 Kortendick, yes, that's correct. 22 Q. Those are things that you already testified 23 about today, correct? 24 A. Correct. 25 Q. Why did you not report the conduct toward
Page 54 1 A. Well, I did. 2 Q. Okay. 3 You wrote these and you spelled your own name 4 wrong? 5 A. I didn't spell -- no, I did not do that part, 6 no. But I probably read it, because it was already 7 prefilled Yuliana part, and I just wrote the part and I 8 informed him that my name was spelled wrong. 9 Q. Okay. 10 All right. 11 We have more declarations, so let me just -- 12 Okay. 13 So then we have this declaration, let's look at 14 this one. 15 If you need to take a break, we can take a 16 break, we have been going about an hour. 17 A. No, it's fine. My husband is still with the 18 baby. 19 Q. So let me share this one, this is another 20 declaration. 21 (Exhibit No. 3 was marked.) 22 BY MS. ROSEN: 23 Q. So I can scroll down and you can look at this 24 one. 25 A. Uh-huh.	Page 56 1 Dominique? 2 A. Well, because, to be honest, because I wasn't 3 comfortable. I was never in a situation like that in 4 the past, and I was a student, I was afraid that if I 5 brought it up, that I wouldn't finish my clinical 6 practice and that I would be most likely discharged from 7 my program. 8 Q. Okay. 9 And then the next paragraph, the one that starts 10 with "Furthermore," you wrote that whole thing? 11 A. Okay. 12 (Witness reviews document.) 13 Yeah, I have already brought up Opal, correct. 14 Q. But it says, "When he expressed his concern to 15 file a complaint he was laughed at and neither of the 16 staff members intervened to do so." That's not 17 something you know from personal knowledge, correct? 18 A. Only from the laughter I talked about from, when 19 I heard Chris making fun that Opal was showing her 20 interest in Mr. Keimbaye. 21 Q. But this talks about filing a complaint. 22 A. Yeah. 23 Q. So this is not accurate either, correct? 24 A. Well, I don't recall if he said it to somebody 25 in the room that was there, so I don't, I do not recall,

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1 no.
 2 **Q. Okay.**
 3 **So there's a lot of inaccuracies in this**
 4 **declaration?**
 5 A. Well, I wouldn't really say it's a lot of
 6 inaccuracies because I don't see where it would be a lot
 7 of the inaccuracies, other than where I stated that he
 8 would laugh. Dominique has expressed his concern
 9 towards the unwelcoming behavior from Opal.
 10 **Q. Ms. Husted, this is a very short declaration**
 11 **that you signed under the penalty of perjury; do you see**
 12 **this?**
 13 A. Uh-huh.
 14 **Q. You say "I declare under the penalty of**
 15 **perjury," and you signed. Perjury is a crime. And so**
 16 **you declared under penalty of perjury everything is**
 17 **right and it's not.**
 18 A. You are talking about the part where he
 19 expressed his concern to file a complaint?
 20 **Q. I am talking about that part, I am talking about**
 21 **that part up at the top that Travis John mistreated and**
 22 **disparaged and put down Mr. Keimbaye, those are all**
 23 **inaccurate, correct?**
 24 MR. KEIMBAYE: Can I say something?
 25 MS. ROSEN: No, you can't.

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1 THE WITNESS: That Travis John part is
 2 incorrect in that sense because -- well, I wouldn't
 3 really say it's incorrect because if I saw Chris make a
 4 comment and laugh to Travis John, and Travis John is the
 5 manager, it's his responsibility, actually, if you think
 6 about it.
 7 BY MS. ROSEN:
 8 **Q. That's not what this says. This says that the**
 9 **plaintiff was intentionally mistreated, disparaged and**
 10 **put down by Travis John, and you said that did not**
 11 **happen and now you are recanting that testimony. I**
 12 **mean, there's some serious credibility problems here.**
 13 A. I do understand what you are saying, but
 14 mistreated in a sense that it wasn't addressed properly.
 15 **Q. I am just -- all I'm asking you is, you already**
 16 **said this sentence is not accurate, and then I am saying**
 17 **this one on the bottom you have testified is not**
 18 **accurate, correct?**
 19 A. Most likely, yeah.
 20 **Q. Okay.**
 21 **Do you -- and do you remember Mr. Keimbaye**
 22 **making edits to any of this?**
 23 A. To this part, no, no, because from what I said
 24 today, stated the facts, no, I do not believe that this
 25 was edited.

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1 **Q. Okay.**
 2 **And then do you know why there's a whole blank**
 3 **page?**
 4 A. Here you talking about?
 5 **Q. Yeah, before your signature.**
 6 A. No, I did not know why it was blank, no. I
 7 didn't even think of it, no.
 8 **Q. Okay.**
 9 **Now there's another declaration.**
 10 **This one you signed, but let's look at this**
 11 **other declaration.**
 12 A. Okay.
 13 **Q. Let me find it.**
 14 MR. KEIMBAYE: Can I say something?
 15 MS. ROSEN: No, you cannot. If you start
 16 talking, I am going to end this deposition. This is not
 17 your time. You can object to my questions by objecting
 18 to the form, that's all you can do. When it's your turn
 19 you can say whatever you want. It's not your turn right
 20 now.
 21 MR. KEIMBAYE: I would like to object to the
 22 form that you are presenting here.
 23 MS. ROSEN: Okay.
 24 MR. KEIMBAYE: It's the same --
 25 MS. ROSEN: No, sir, object to the form,

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1 that's it. No explanations, no testifying on the record
 2 yourself. Object to the form, that's it.
 3 (Exhibit No. 4 was marked.)
 4 BY MS. ROSEN:
 5 **Q. Okay, can you see this latest one, Ms. Husted?**
 6 A. Not yet, no.
 7 **Q. Okay, hold on.**
 8 **Okay, can you see it now?**
 9 A. Yes.
 10 **Q. Okay.**
 11 **And do you know what the difference is between**
 12 **this one and the one we just looked at?**
 13 A. The only difference that I can see is probably
 14 the page that you said was empty.
 15 **Q. Got it.**
 16 **Okay.**
 17 A. That's the only difference that I see, based on
 18 looking at it quickly, yes.
 19 **Q. Did you do a hand signature or an electronic**
 20 **signature?**
 21 A. It was most likely -- I think it was hand
 22 signature, like by electronically, like through the
 23 computer, through the computer.
 24 **Q. So you didn't sign it and then pdf it or fax it**
 25 **to Mr. Keimbaye?**

15 (Pages 57 to 60)

Page 61 1 A. No, no, I didn't fax it, no. 2 Q. Okay. 3 A. When I signed it, I sent it back in its original 4 form. 5 Q. And you recall signing two different 6 declarations like this one and the one we looked at, 7 Exhibit 3? 8 A. I probably did, yes. 9 Q. Okay. 10 And you said when you signed it, you didn't 11 review it very carefully; is that right? 12 A. Which one are we referring to? 13 Q. Either one of these, No. 3 or No. 4. 14 A. I read it fairly quickly, but I did put in my 15 own thoughts into it, my own facts and statements from 16 what I witnessed. 17 Q. You put that into the declaration? 18 A. Yeah, from what I discussed today, the racist 19 comments, the skin color, things of that nature, yeah. 20 Q. Did you type that in? 21 A. Yeah. 22 Q. Okay. 23 And you don't know what edits Mr. Keimbaye made, 24 correct? 25 A. I do not know of the edits that have been made,	Page 63 1 I mean, in the workplace? 2 A. Like friends with, like you are saying in the 3 workplace, like who he engaged in conversations with? 4 Q. Right. Who was he friendly with? 5 A. I think he was just friendly with everyone. I 6 don't think -- he's very approachable and he's willing 7 to help. So I would say pretty much he would chat with 8 Laura, with Amy, with Gus Ramos, me, the other student, 9 Leanna. And let's see who else was there, or Morgan, 10 and she was our per diem tech, so she was there very 11 rarely because she was on call mostly to fill in if 12 somebody was out or if we needed additional staffing 13 help. 14 So, yes, except he didn't engage any 15 conversations with Chris or Anthony. And Opal, he would 16 chat occasionally, but when she started to be 17 inappropriate, then it wasn't much to converse about. 18 Q. And did you ever talk to Opal about 19 Mr. Keimbaye? 20 A. In what sense like talk to Opal about 21 Mr. Keimbaye? 22 Q. Did she ever share like any, that she was 23 interested in him or anything with you? 24 A. She did say he was a very attractive and she 25 wouldn't mind sleeping with him.
Page 62 1 no. 2 Q. Okay. 3 I am just looking at my notes. 4 Did Chris Kortendick ever treat you unfairly? 5 A. He was rude, like I said, in the, in the past, 6 like he was rude and he wasn't a pleasant individual. 7 But I wouldn't say he made fun of me in any way or made 8 any comments. 9 Q. Tell me, give me an example, if you can recall, 10 of him being rude to you. 11 A. Well, I would ask him to say -- to ask him where 12 something was if I needed to get it to a provider, and 13 he would say, well, you are a student, find it yourself, 14 you need to learn. Just turn around and be in his 15 computer, be on the computer in the workroom. 16 Because when I would say good morning, he would 17 just laugh and walk away. 18 Q. You talked about Mr. Keimbaye being alienated 19 from chatter in the workplace, what did you mean by 20 that? 21 A. What do I mean by that is that when he would 22 come into the workroom, Chris stopped the conversation, 23 whatever he would be talking about, and then it was just 24 silence and it was very uncomfortable. 25 Q. Who was Mr. Keimbaye friends with in the office,	Page 64 1 Q. And you said later on she told you that he was 2 clocking in for time where he wasn't working? 3 A. After she was probably upset that he wasn't 4 accepting her invitation, you know, of being more than 5 coworkers, most likely, because she would then say, like 6 I said, my comments would be like gosh, that's so unfair 7 that Mr. Keimbaye's upstairs again working on a hard 8 case. And she said, it doesn't matter, he's lazy, let 9 him learn, and then she's like Mr. Keimbaye is nowhere 10 to be found, when the providers are calling for him. 11 So -- like that, it would happen after she 12 noticed that he wasn't accepting of her behavior. 13 Q. Did you ever witness Travis John be present when 14 Chris Kortendick engaged in any of this behavior that 15 you thought was problematic for Mr. Keimbaye? 16 A. Not that I recall, no. If it was, it was 17 probably one time, one time, because he would be 18 checking in on us, but it was very rare. And I know 19 that Mr. Kortendick confided in Travis John and they 20 would go out and fish or hunt or whatever they said they 21 did together, so... 22 Q. Did you ever witness Travis John witness any of 23 the behavior from Opal toward Mr. Keimbaye? 24 A. No, because only from the comment that 25 Mr. Kortendick has made to Travis John in the hallway by

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1 the assignment board.

2 **Q. Okay.**

3 **And Travis John was your supervisor; is that**
4 **right?**

5 A. Yeah, he was a supervisor for us, yes.

6 **Q. Do you know Leanna Krofcheck (phonetic)?**

7 A. Yes, she was the other student that I mentioned,
8 yeah.

9 **Q. Oh, right, yes.**

10 **And there's a text message, and we can look at**
11 **it, where you talk about her being crazy; do you recall**
12 **that?**

13 A. No, but if you put the message to who did I talk
14 to, to her?

15 **Q. No, to Dominique. I will put it up.**

16 A. Okay.

17 (Exhibit No. 5 was marked.)

18 BY MS. ROSEN:

19 **Q. Do you see that?**

20 **I'll scroll down so you can read the whole**
21 **thing.**

22 A. Okay, I am reading her, I deleted her now.

23 **Q. Tell me when to scroll.**

24 A. Okay, yes, I do see. I see the part where you
25 are talking about the crazy girl's number, okay.

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1 **We are going to look at two more text message**
2 **strings and then it will be Mr. Keimbaye's turn to ask**
3 **questions, and hopefully we can take a quick break.**

4 A. Okay.

5 **Q. I want to -- I am going to share this string and**
6 **I want you to read it, and just let me know when you are**
7 **done.**

8 A. Okay.

9 **Q. Okay, I will scroll down. Tell me when to**
10 **scroll down.**

11 A. (Witness reviews document.)

12 Uh-huh.

13 One person is unwelcoming. I meant unwelcoming,
14 probably, okay.

15 Okay.

16 **Q. So is the one person you are referring to here**
17 **Chris Kortendick?**

18 A. Uh-huh, yes.

19 **Q. Is that a yes?**

20 A. Yes, yes, yes.

21 **Q. And so you did not agree that it was**
22 **unwelcoming, an unwelcoming environment?**

23 A. In the sense that from everybody, no.

24 **Q. Okay.**

25 **Let's look at your next text message.**

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1 (Witness reviews document.)

2 **Q. That's it for this one.**

3 A. Okay.

4 **Q. What do you mean "that girl lost her credibility**
5 **and reputation a long time ago"?**

6 A. So what I meant is I think I talked to Rachel
7 Marshall when she asked me about that, is that Leanna
8 wanted to bring a case against, I believe Travis John,
9 but definitely Chris Kortendick, that she was sexually
10 harassed by them or sexually assaulted.

11 Because I remember she reached out to me and
12 asked me if I could confirm that, and I denied her
13 request because I said I wasn't even there and did not
14 witness anything, such behavior, so I know that. And
15 then Travis told me as well that she was let go.

16 **Q. Do you know -- how did you know she had a case**
17 **against Children's?**

18 A. Case against Children's, because I believe one
19 of the students that works at Swedish, he was a student
20 at Swedish and I was a student at Providence, has
21 mentioned that, Hey, did you hear that Leanna is
22 bringing a complaint against Children's. He overheard
23 from somebody else and told me about it.

24 **Q. Okay.**

25 **All right.**

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1 **Okay, let me know when to scroll down on this**
2 **one. Just read it to yourself.**

3 A. Okay.

4 **Q. So -- where it says here, "Chris is affecting**
5 **not just Gus, but everyone who worked with him before."**

6 **I understand that Mr. Keimbaye is saying that,**
7 **but do you know what he's referring to?**

8 A. Who worked with him before -- no. If it's a
9 particular person, then no. I mean, I think what he --
10 well, I think what he means is just a rude individual
11 that he is, but I don't know who else would he, maybe --

12 (Witness reviews document.)

13 No, I'm not entirely sure.

14 **Q. And do you know what ethnicity Gus is?**

15 A. Hispanic.

16 **Q. Okay.**

17 **And did you witness Chris engage in racist**
18 **behavior towards Gus?**

19 A. He might have said something, I don't recall,
20 but it was mostly directed to Mr. Keimbaye. Maybe he
21 did, but I don't -- I don't remember. I think he made
22 comments about, I think he made comments about the music
23 or something with Mr. Ramos, making fun of Hispanic
24 music, but from what I recall.

25 **Q. Okay.**

17 (Pages 65 to 68)

Page 69 1 Do recall him making any other comments towards 2 Mr. Ramos that you thought were objectionable? 3 A. Not from, not from my recollection right now, 4 no. 5 Q. But you do recall him making fun of Hispanic 6 music? 7 A. Yeah. 8 Q. More than once? 9 A. Yeah. 10 Q. How many times? 11 A. In the time I was there, I would say like over 12 20 times. 13 Q. And do you know whether Mr. Ramos is an 14 immigrant? 15 A. Well, I don't know that. No, I don't know if he 16 was born here or migrated, no. 17 Q. Are you an immigrant? 18 A. Yes. 19 Q. Okay, when did you come to the United States? 20 A. 1998, in September I believe. 21 Q. So Mr. Kortendick never treated you badly based 22 on your immigrant status, correct? 23 A. Correct. He was rude, but he didn't make any 24 comments about my country, no. 25 Q. Okay.	Page 71 1 Q. I don't have many questions to ask you. You 2 clearly witnessed everything, what you stated in your 3 declaration are true -- 4 MS. ROSEN: Mr. Keimbaye, you can't testify 5 like this. You have to, you have to ask questions. You 6 can't testify. 7 MR. KEIMBAYE: It's my time, so I would 8 please ask if you cannot interfere. 9 MS. ROSEN: No, I'm going to object because 10 this is not a proper use of deposition time. You need 11 to ask questions. You don't get to summarize your view 12 of the evidence for the record. You need to ask 13 questions. 14 BY MR. KEIMBAYE: 15 Q. Have you witnessed discrimination behavior and 16 unfair treatment for Dominique Keimbaye during his 17 employment at Providence Everett, yes or no? 18 MS. ROSEN: Object to the form and it's been 19 asked and answered. 20 MR. KEIMBAYE: Say again. 21 MS. ROSEN: Me? 22 MR. KEIMBAYE: What did you say? 23 MS. ROSEN: I objected to the form of your 24 question and I objected because I already asked her 25 that. So I objected that it's been already asked and
Page 70 1 MS. ROSEN: Let's go ahead and take like a 2 ten-minute bathroom break. And then, Mr. Keimbaye, you 3 do not have to ask questions, you are entitled to 4 questions, you don't have to ask questions. 5 So let's take our break and then we can come 6 back and you can ask questions or we can start with your 7 deposition, it's up to you. 8 MR. KEIMBAYE: I have some questions I need 9 to ask. 10 MS. ROSEN: Okay, then let's take ten 11 minutes to 11:45 and then we will come back. 12 VIDEOGRAPHER: Going off the record. The 13 time now is 11:35 a.m. 14 (Break taken from 11:35 a.m. to 15 11:49 a.m.) 16 VIDEOGRAPHER: We are back on the record. 17 The time now is 11:49 a.m. 18 MS. ROSEN: Mr. Keimbaye, you can start 19 asking your questions. 20 EXAMINATION 21 BY MR. KEIMBAYE: 22 Q. Ms. Husted, thank you so much for giving us, 23 especially myself, for your most important time from 24 your family to be here. 25 A. Of course.	Page 72 1 answered. 2 You can answer it again, Ms. Husted. 3 THE WITNESS: Yes. 4 BY MR. KEIMBAYE: 5 Q. Have you witnessed racial harassment, mocking, 6 bullying by Mr. Kortendick and others toward 7 Mr. Keimbaye at Providence Everett, yes or no? 8 MS. ROSEN: Object to the form. 9 BY MR. KEIMBAYE: 10 Q. Was Mr. Keimbaye unfairly treated compared to 11 similarly situated anesthesia technicians at Providence 12 Everett, yes or no? 13 MS. ROSEN: Object to the form. 14 You can answer if you can, Ms. Husted. 15 THE WITNESS: Yes, yes, unfairly treated -- 16 can you repeat again, Mr. Keimbaye. 17 BY MR. KEIMBAYE: 18 Q. Compared to similarly situated anesthesia 19 technicians at Providence Everett -- 20 A. Yes. 21 Q. -- do you believe Mr. Keimbaye had to endure 22 systemic discrimination and unfair treatment based on 23 his national origin, race and color, yes or no? 24 MS. ROSEN: Object to the form. 25 MR. KEIMBAYE: You can answer yes or no.

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1 THE WITNESS: Yes, based on the color and
 2 accent yes, I have already said yes to that, yes.
 3 BY MR. KEIMBAYE:
 4 Q. During your employment at Providence Everett,
 5 were you trained, directed and supervised by
 6 Mr. Kortendick to go about your daily work and tasks,
 7 yes or no?
 8 MS. ROSEN: Object to the form.
 9 MR. KEIMBAYE: You can still answer.
 10 THE WITNESS: Can you clarify what do you
 11 mean by -- well, yes, he was the lead, acted as
 12 supervisor. What was the question again?
 13 BY MR. KEIMBAYE:
 14 Q. During your employment at Providence Everett,
 15 were you trained, directed and supervised by
 16 Mr. Kortendick to go about your daily work and tasks,
 17 yes or no?
 18 MS. ROSEN: Object to the form.
 19 You can't tell her yes or no, she can answer
 20 it however she wants to answer it.
 21 THE WITNESS: So like I said, he was the
 22 lead, acted as supervisor, he assigned tasks to
 23 individual. It was Mr. Kortendick who assigned the
 24 tasks and develop where everyone was going to be.
 25 BY MR. KEIMBAYE:

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1 Q. Thank you.
 2 A. You are welcome.
 3 Q. Have you witnessed both supervisors Travis John
 4 and Chris Kortendick being accused of sexual harassment
 5 by Leanna, who was a clinical anesthesia tech student?
 6 MS. ROSEN: Object to the form.
 7 THE WITNESS: So yes, like I have mentioned
 8 before, Leanna, from what I recall, was going to be
 9 bring up a case against Travis John, but definitely
 10 against Chris Kortendick, and regarding the sexual
 11 harassment or misconduct that she claimed she endured.
 12 BY MR. KEIMBAYE:
 13 Q. Have you witnessed Mr. Keimbaye being sexually
 14 harassed by his preceptor, Opal Lonon, on a daily basis?
 15 MS. ROSEN: Object to the form.
 16 THE WITNESS: Yes.
 17 BY MR. KEIMBAYE:
 18 Q. Do you strongly believe that Travis John and
 19 Chris Kortendick were aware of Mr. Keimbaye being
 20 sexually harassed by Opal Lonon?
 21 MS. ROSEN: Object to the form.
 22 THE WITNESS: Yes, I do believe that both
 23 individuals were aware of the sexual misconduct of Opal
 24 presented on a daily basis towards Mr. Keimbaye.
 25 BY MR. KEIMBAYE:

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1 Q. Thank you.
 2 Did you witness Opal Lonon verbally express that
 3 Travis John and Chris Kortendick told her that she
 4 wouldn't lose her job because Mr. Keimbaye was wrong
 5 with his accusation against her?
 6 MS. ROSEN: Object to the form.
 7 THE WITNESS: I don't recall that specific
 8 comment.
 9 BY MR. KEIMBAYE:
 10 Q. Did you witness Ms. Lonon and Mr. Kortendick
 11 talking badly and poorly to other OR staff about
 12 Mr. Keimbaye to just affect his job performance and get
 13 him in trouble?
 14 MS. ROSEN: Object to the form.
 15 THE WITNESS: Yes, in the sense that Opal
 16 has multiple times claimed that your work ethic was
 17 poor, that you deserved to be placed to work on a third
 18 floor with difficult cases, so yes.
 19 BY MR. KEIMBAYE:
 20 Q. Thank you.
 21 On July 2nd, 2018, at the restaurant in
 22 Marysville, did you witness Opal Lonon verbally express
 23 in front of her coworkers, including Mr. John and
 24 Mr. Kortendick, that she will kill Mr. Keimbaye if she
 25 gets a chance?

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1 A. I don't recall if she said the word "kill," but
 2 I do remember going out as the coworkers, but she, she
 3 did say she hated you.
 4 Q. Thank you.
 5 A. You are welcome.
 6 Q. During your witness testimony intake with
 7 Mr. Keimbaye lawyers on the phone on or around 2019 or
 8 2020, were you pressured by anyone to make your
 9 statement in support of Mr. Keimbaye?
 10 A. Pressured by someone to make a statement against
 11 you?
 12 Q. I mean, were you pressured to make a statement
 13 in support, like?
 14 A. No, I was not pressured to uphold your
 15 statement -- is that what you are saying -- no.
 16 Q. Yes.
 17 A. Nobody pressured me, no.
 18 Q. Do you still strongly stand by your declaration
 19 and statement to date?
 20 MS. ROSEN: Object to the form.
 21 THE WITNESS: Yes.
 22 BY MR. KEIMBAYE:
 23 Q. Based on your declarations for Mr. Keimbaye's
 24 complaint signed on June 8, 2021, were you pressured by
 25 anyone to make that declaration or sign, sign it?

19 (Pages 73 to 76)

Page 77 1 A. I was not pressured, no. 2 Q. Do you still strongly stand by your declaration 3 in the statement today? 4 MS. ROSEN: Object to the form. You just 5 asked this question, it's been asked and answered. 6 BY MR. KEIMBAYE: 7 Q. So when you were first contacted by defendant 8 counsel, especially by Rachel Marshall, do you strongly 9 believe they were first faking and pretending to be 10 Mr. Keimbaye attorney and then quickly changing your 11 statement to say they were representing Providence 12 Everett? 13 MS. ROSEN: Object to the form. 14 MR. KEIMBAYE: You didn't ask this question 15 before. 16 MS. ROSEN: I know. I am objecting to the 17 way you worded the question. 18 THE WITNESS: So do I answer or I do not? 19 BY MR. KEIMBAYE: 20 Q. Let me repeat the question. 21 A. I understand it. So yes, when Rachel Marshall 22 initially contacted me, I understood from the way it was 23 presented that I thought that she was representing 24 Mr. Keimbaye. 25 When Rachel Marshall reached out to me regarding	Page 79 1 Q. Ms. Husted, when Ms. Marshall first contacted 2 you, did she say she was representing Dominique 3 Keimbaye? 4 A. I understood it, like I said, maybe it was 5 misinterpreted, but it was said so fast that I 6 understood it that she was a counsel for Mr. Keimbaye. 7 I did initially believe that, yes. 8 Q. But did she tell you that? 9 A. The way I heard it was, was in such a sense that 10 I understood it that she was representing Mr. Keimbaye. 11 Q. Right. I am asking you did she use those words, 12 did she say, I am a lawyer for Mr. Keimbaye? 13 A. I do believe something to that extent. That's 14 why I probably misinterpreted and that's why I confirmed 15 it. I said oh, are you an attorney for Mr. Keimbaye and 16 it was somehow lost in translation. 17 I believe there is an email to Rachel Marshall 18 saying, and said, No, I represent Providence, Travis 19 John and Chris Kortendick, so I -- maybe it was my 20 mistake, but from what I understood and how it was 21 presented probably, that she did represent Mr. Keimbaye. 22 Q. So it's your testimony as you sit here today 23 under oath that Rachel Marshall from my office called 24 you and said she represented Mr. Keimbaye? 25 A. From what I understood, yes, when I initially
Page 78 1 the deposition, the deposition, I asked her whether she 2 was an attorney for Mr. Keimbaye. And then it was, I 3 guess, miscommunicated and she said, I was the counsel 4 for Providence. But, yes, initially, I did understand 5 it as Rachel Marshall was counsel for Mr. Keimbaye. 6 Q. Thank you. 7 A. You are welcome. 8 Q. Were you -- were you caused in any way to change 9 your story or declaration in support of Mr. Keimbaye 10 since the defendant counsel have been contacting you by 11 phone and email? 12 MS. ROSEN: Object to the form. 13 THE WITNESS: So whether the counsel -- you 14 are asking whether the counsel has pressured me to 15 change my testimony? 16 MR. KEIMBAYE: Yes. 17 THE WITNESS: No, I was not pressured, no. 18 MR. KEIMBAYE: So I have asked you the 19 questions that I need to hear you from, so thank you so 20 much for me. 21 MS. ROSEN: I just have a couple follow-up 22 questions. 23 THE WITNESS: Okay. 24 EXAMINATION (CONTINUED) 25 BY MS. ROSEN:	Page 80 1 understood and that's why I confirmed it. And then she 2 clarified and I said I am sorry for the problem 3 misinterpreting or miscommunication. 4 Q. So you said earlier that you never spent any 5 time with Mr. Keimbaye outside of work; is that right? 6 A. I do not recall outside of work. Maybe after I 7 already was working for Swedish, maybe one time. 8 Q. Did you, did the two of you go to dinner at 9 Joey's together at U Village? 10 A. That's probably the one time that I am referring 11 to, yeah. 12 Q. And when was that? 13 A. Oh, God, I don't recall. Honestly, I don't 14 recall. I do remember it was one time that we probably 15 went out, yeah. 16 Q. Was it just the two of you? 17 A. Joey's, yes, yes. 18 Q. Was it a date? 19 A. I don't think it was a date, no. I mean, I 20 didn't interpret it as such. I thought it was just old 21 coworkers meeting up and stuff like that. 22 Q. Did you guys also meet for coffee together? 23 A. Maybe, but I don't recall that moment, no. 24 Q. And do you recall trying to help him get a ride 25 to church?

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1 A. A ride to church?
 2 **Q. Yeah.**
 3 A. No, I don't recall getting him a ride to church
 4 at all, no.
 5 MR. KEIMBAYE: Can I answer that?
 6 MS. ROSEN: No, you cannot.
 7 THE WITNESS: I don't recall getting him a
 8 ride to church, no, I did not.
 9 BY MS. ROSEN:
 10 **Q. And do you recall planning to visit him in the**
 11 **hospital when he had his car accident?**
 12 A. I might have said, when he did mention about the
 13 car accident, I might have said if you need anything,
 14 let me know. But it's nothing out of the unusual. I
 15 would have done it to anybody, any of the coworkers that
 16 I am in contact with and do not have any conflict with.
 17 **Q. You would have talked about visiting any of your**
 18 **coworkers in the hospital?**
 19 A. Pretty much that I talk to, yes, because I have
 20 someone at Swedish -- I talk to everybody and I keep in
 21 contact with anyone, yes. If somebody informed me that
 22 they were in a car accident or had a bad health
 23 condition, then yes, I would.
 24 Because I did the same thing to Laura when I
 25 asked one of the coworkers, Morgan, recently about Laura

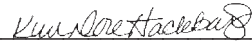
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1 and she informed me of her health condition. And I said
 2 Hey, do you have Laura's number so I can see what's
 3 going on, if I can help her in any way. Yes, I would,
 4 I'm that type of person. I don't see anything wrong
 5 doing that.
 6 **Q. I am just asking because you originally said you**
 7 **had no relationship with Mr. Keimbaye outside of work,**
 8 **but that sounds like it wasn't true.**
 9 A. I wouldn't say it's a relationship, it was just
 10 being friendly. I wouldn't really say it's a
 11 relationship. A relationship has to be something
 12 consistent.
 13 **Q. So do you know whether he ever had romantic**
 14 **feelings toward you?**
 15 A. I do not know that, no.
 16 **Q. Did you ever have --**
 17 A. I don't believe so.
 18 **Q. Did you ever have romantic feelings towards him?**
 19 A. Romantic feelings, no, just like him as an
 20 individual. Like I said with any coworker, like Gus
 21 Ramos, same thing, I like him as a good human being.
 22 **Q. Okay.**
 23 **Anything else now that your memory is refreshed**
 24 **about activities you did with Mr. Keimbaye outside of**
 25 **work?**

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1 A. Well, no, when you ask me about it's just that
 2 one time that I do remember about going out meeting him
 3 for dinner, but the coffee I do not recall, and nothing
 4 about getting a ride for church. I don't remember
 5 anything like that.
 6 **Q. Okay.**
 7 MS. ROSEN: I don't have any further
 8 questions. Mr. Keimbaye, do you have any other
 9 questions?
 10 MR. KEIMBAYE: I am satisfied with my
 11 questions.
 12 MS. ROSEN: Okay.
 13 So Kim, we will order and we will hold off
 14 on video right now, but we will order this transcript.
 15 VIDEOGRAPHER: This concludes the
 16 deposition. The time now is 12:07 p.m. and we are going
 17 off the record.
 18 (Deposition concluded at 12:07 p.m.)
 19 (By agreement between counsel and
 20 the witness, signature was
 21 waived.)
 22 -o0o-

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1 **C E R T I F I C A T E**
 2
 3 STATE OF WASHINGTON)
 4) ss.
 5 COUNTY OF KING)
 6
 7 I, KIM M. DORE-HACKBARTH, a Certified Shorthand
 8 Reporter in and for the State of Washington, do hereby
 9 certify that the foregoing transcript is true and
 10 accurate to the best of my knowledge, skill and ability.
 11 IN WITNESS WHEREOF, I have hereunto set my hand
 12 and seal this 13th day of April, 2022.
 13
 14 
 15 KIM M. DORE-HACKBARTH, RPR, CCR
 16 Certified Court Reporter No. 2072
 17 (Certification expires 5/27/22.)
 18
 19
 20
 21
 22
 23
 24
 25



21 (Pages 81 to 84)

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Verbatim Report of Proceedings-**VRP** (Vol.1 & 2)

WASHINGTON STATE COURT OF APPEALS, DIVISION I

DOMINIQUE M.	) Court of Appeals # 858882
KEIMBAYE,	)
Plaintiff,	)
v.	) King County Superior Court
	) #21-2-07545-9 SEA
PROVIDENCE REGIONAL	)
MEDICAL CENTER	) LETTER OF RESPONSE
EVERETT, ET AL,	) OF TRANSCRIPTIONIST
Defendants.	) DEBORAH S.
	) ANDERSON
	)

**LETTER OF RESPONSE OF DEBORAH S. ANDERSON
RE OBJECTIONS TO REPORT OF PROCEEDINGS**

First, I thank you for the opportunity to respond. I take pride in my work and it is important to me to be accurate. I will address the points of clarification that the Court wishes me to address: (1) the accuracy of the volume numbers; (2) the sources consulted for describing the number of trial days; and (3) the sources consulted for references to Lehmann and Marshall (Vol. I at p.2; Vol. II at p. 502).

- 1) I did err in the volume numbering on the title page of Volume I. That error has been corrected in my Amended Verbatim Report of Proceedings filed at the

same time as this letter to reflect that there are only two volumes (Vol. I, Page 1).

- 2) It is best practice to consult the Clerk's Minutes for sources of trial dates. On the minute entry sheet for the hearing date of September 1, 2023, it states: "Commit as Jury Trial." In my usual course of business, notating the type of hearing date for each transcript, I usually count that as Day 1 of the trial proceedings.

To avoid any further confusion, I have amended the Verbatim Report of Proceedings to no longer notate the "day" of trial, but just that it was a jury trial on the subsequent hearing dates.

- 3) The source consulted for appearances was, again, the clerk's minutes. Ms. Lehmann's appearance was announced by Ms. Rosen on May 13, 2024 (Vol. II. at Page 28, Line 11) and thus will remain on the appearance page of Volume I (Page 2).

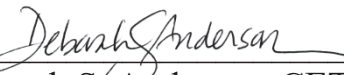
Judge Darvas referenced that Ms. Marshall and Ms. Lehmann were included in the list of attorneys that represented the Defendants (Vol. I, at Page 178, Lines 3

through 5.) I erroneously assumed that also meant they were in attendance, but not announced.

It is my error and I happily removed their names from the appearance page of Volume I (Page 2) in the Amended Verbatim Report of Proceedings referencing dates after 5/13/24 (re Lehmann). Neither Ms. Lehmann's or Ms. Marshall's names will fall on the Appearance page of Volume II (Page 502).

Second, as stated above, Amended Verbatim Reports of Proceedings (Volumes I and II) have been filed on the same date as this letter of explanation. Again, thank you for allowing me to respond and correct my work product as indicated.

DATED at Lykens, PA, on September 16, 2024.

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THE SUPERIOR COURT OF THE STATE OF WASHINGTON

IN AND FOR THE COUNTY OF KING

DOMINIQUE KEIMBAYE,

Plaintiff,

v.

PROVIDENCE REGIONAL MEDICAL
CENTER EVERETT, ET AL,

Defendants.

)

)

) KING COUNTY

) CAUSE NO. 21-2-07545-9 SEA

)

) COA NO. 858882-I

)

)

)

)

)

VERTABIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on regularly for hearing at the King County Superior Courthouse, 516 Third Avenue, Department 23, Seattle, Washington.

VOLUME I OF II

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(PAGES 27-62)

FRIDAY, SEPTEMBER 1, 2023

(PAGES 63-171)

TUESDAY, SEPTEMBER 5, 2023

(PAGES 172-399)

WEDNESDAY, SEPTEMBER 6, 2023

(PAGES 400-500)

Proceedings recorded by electronic sound recording;
Transcript produced by Anderson Transcription Solutions

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SEATTLE, WASHINGTON

FRIDAY, MARCH 11, 2022

MORNING SESSION - 9:04:00

MOTION HEARING:

(The following proceedings were had in open court:)

THE COURT: Good morning.

MS. ROSEN: Good morning, Your Honor.

MR. KEIMBAYE: Good morning, Your Honor.

THE COURT: All right. We are here on the matter of Keimbaye versus Providence Regional Medical Center of Everett, cause 21-2-045 -- I'm sorry. Let me start that one over. 21-2-07545-9, Seattle designation. This matter is on for hearing on the Defendant's motion for partial summary judgment to dismiss Christopher Kortendick as an individual Defendant in this matter.

We are here in open court in courtroom 4J at the Maleng Regional Justice Center. The courtroom doors are unlocked. Nobody's here except me and my clerk and my bailiff, but people are free to come in and observe.

Let me go ahead and ask the parties and counsel to introduce yourselves for the record.

MS. ROSEN: Sure. I'm Katie Rosen and I'm joined by my colleague, Jordann Vandor, on -- here on behalf of the Defendant.

THE COURT: Welcome.

1 MS. ROSEN: Thank you.

2 MR. KEIMBAYE: I'm the -- I'm the Plaintiff.
3 My name is Dominique Keimbaye.

4 THE COURT: Keimbaye. Okay. I'll try to
5 remember how to pronounce your name correctly, Mr. Keimbaye.
6 Thank you.

7 All right.

8 MR. KEIMBAYE: The "e" is silent.

9 THE COURT: Okay. And I -- I did receive the
10 motion and accompanying materials. I received the response
11 from Mr. Keimbaye requesting CR 56(f), continuance of the
12 hearing, and then the Defense reply and accompanying
13 materials.

14 Ms. Rosen, you have the floor.

15 DEFENDANT'S MOTION FOR SUMMARY JUDGMENT

16 MS. ROSEN: Thank you, Your Honor.

17 First, Your Honor, I'd like to address --
18 address the Plaintiff's request for an extension.

19 THE COURT: Uh-huh.

20 MS. ROSEN: We don't think it's appropriate
21 here because, first of all, it was filed a week late after
22 the deadline for filing an opposition to our motion for
23 summary judgment. You know, Mr. Keimbaye is pro se
24 Plaintiff, obviously, but still needs to follow the Court
25 rules. And that's been an issue throughout this litigation.

1 So we would ask, number one, that the 56(f)
2 not be considered because it was filed late. If Your Honor
3 wants to consider the 56(f), it still doesn't meet the
4 standards that's laid out in the rules for an extension of
5 time. The rules lay out three different factors that need to
6 be considered in granting an extension of time, and
7 Mr. Keimbaye doesn't satisfy any of them.

8 THE COURT: Uh-huh.

9 MS. ROSEN: The first standard that needs to
10 be satisfied is that there needs to be good reasons provided
11 for the need for the extension. And, here, there hasn't been
12 any good reason provided other than that he was busy working
13 on his opposition to our cost bill, which was, again, caused
14 by his failure to follow the rules. And that's not a --
15 that's not a justifiable reason under the rules.

16 Also, the evidence that he claims that he
17 needs to get to oppose our motion is a declaration from an
18 expert witness, and then some unspecified affidavits or
19 declarations. We just don't see how those would make any
20 difference here because there's just no evidence in the
21 record that Mr. Kortendick is a supervisor, within the
22 meaning of the law, and there's no evidence that Mr. Keimbaye
23 could -- could get that would show that he was, in fact, a
24 supervisor.

25 And Mr. Keimbaye has had ample time to conduct

1 discovery in this case. There's no reason why he couldn't
2 have gotten whatever materials that he believes that he needs
3 to oppose us in our judgment in time to oppose our summary
4 judgment.

5 So then going into the substantive issues
6 here, Your Honor, I mean, it's well-settled Washington law
7 that a supervisor can be named in a lawsuit and held
8 individually liable for violations of the Washington law
9 against discrimination, but only a supervisor and not a
10 coworker. And in this case, there's just simply no evidence
11 that Mr. Kortendick was a supervisor. He had the exact same
12 job title as the Plaintiff. He was in the Union, and
13 supervisors are not allowed to be with Unions.

14 He also reported to the same person that
15 Plaintiff reported to, Mr. Travis John, who is
16 named as the Defendant here, and who we are not filing a
17 motion for summary judgment on behalf of at this time, at
18 least not on the supervisor issue. And there's no evidence
19 that Mr. Kortendick controlled any of the terms or conditions
20 of Mr. Keimbaye's employment. He didn't have anything to do
21 with discipline or compensation decisions or promotion or
22 demotion decisions.

23 And, in fact, the evidence we've submitted to
24 the record shows that the supervisor of both Mr. Keimbaye and
25 Mr. Kortendick was Mr. Travis John.

1 So the Plaintiff hasn't provided any evidence
2 that Mr. Kortendick was anything more than a coworker. And
3 he has, in fact, admitted in his briefing Mr. Kortendick was
4 a coworker. And -- and nothing that the Plaintiff has filed
5 for a request for an extension, there -- there's nothing that
6 he has specified that he will be able to provide that -- that
7 will show that Mr. Kortendick was a supervisor because he was
8 not.

9 THE COURT: All right. Thank you.

10 Mr. Keimbaye?

11 MR. KEIMBAYE: Yes. Yes, Your Honor?

12 THE COURT: Oh. I was inviting you to respond
13 to Ms. Rosen's arguments.

14 ORAL ARGUMENT BY THE PLAINTIFF

15 MR. KEIMBAYE: Yes. Thank you for the
16 opportunity. I reached out first, you know, as the
17 Plaintiff, I -- the -- the time allowed for me to -- in
18 response to the motion for summary judgment, is not enough
19 because of -- I have the rights -- I have a right as a -- as
20 a Plaintiff to -- to defend and a response to the motion for
21 the cost bill. And --

22 THE COURT: Well -- but that's not --
23 that's -- that's -- that's -- look. If you were a lawyer,
24 you would still have to respond to their motion for a cost
25 bill. The fact that you were -- that you were busy

1 responding to a cost bill that was incurred because of your
2 motion to compel isn't -- isn't an excuse for not responding
3 on time to a motion for summary judgment. The rules apply to
4 you the same way they would apply to a lawyer representing a
5 party. And --

6 MR. KEIMBAYE: Your -- Your -- Your -- Your
7 Honor, I -- I totally understand, but at the same time, they
8 bombard me with both motions. A motion for cost bill and
9 motion for, you know, summary judgment, at the same time.
10 So I --

11 THE COURT: Well, you had a month. You had a
12 month to -- well, not quite a month, but you had 11 days shy
13 of a month to respond to the motion for summary judgment.
14 And -- and you could have asked for more time. Ms. Rosen is
15 arguing that you didn't ask for more time. But frankly,
16 Ms. Rosen -- hold on. I'm not aware of a deadline for
17 bringing a CR 56(f) motion for additional time. You are
18 correct that there are certain criteria for bringing it, but
19 I -- but I'm not aware of a time limit for that. I've seen
20 them brought as late as the day of the oral argument. And --
21 and the rule certainly doesn't say they have to be brought
22 within a certain period of time.

23 But -- but let me ask you this, Mr. Keimbaye.
24 If your request for a continuance on the motion for summary
25 judgment were to be granted, what additional evidence would

1 | you be able to produce to show that Mr. Kortendick should be
2 | individually liable as opposed to just Providence Regional
3 | Medical Center of Everett being potentially liable to you if
4 | you prove your -- your claims?

5 | MR. KEIMBAYE: Thank you. First, when I
6 | started on my job, the first week of -- of my job, my -- I
7 | went to the front desk, I met with the Travis John. Travis
8 | John then walked me around and introduced me to the -- the OR
9 | managers and walked me to the -- to the anesthesia workroom.
10 | From there, he called Christopher Kortendick. And we all,
11 | three of us walking and toward Travis John's, you know,
12 | office. From there, he hand me over to him saying that
13 | this -- this -- this guy will be your primary supervisor. I
14 | am more into the front desk because Dan, who is -- who was at
15 | the time the -- the OR manager, was retiring that year.

16 | And Travis John -- I've been -- Travis John,
17 | was enrolled in -- in business administration and they have
18 | been, you know, promoting him, to become the OR manager. So
19 | he was like pretty much working with the -- Dan, the -- the
20 | main OR manager. So from there, he told me that the --
21 | Christopher Kortendick is going to be your main supervisor.
22 | He -- you will report everything to him, and you will --

23 | THE COURT: So I -- I -- I'm so sorry,
24 | Mr. Keimbaye, but my question was what additional evidence
25 | would you be able to present with a continuance that you were

1 not able to present now? I mean, what you're telling me now
2 is something that was already within your knowledge and you
3 certainly could present that, but -- but I'm not taking
4 testimony today.

5 So -- so my question is if you get another
6 month, like you're asking for, what -- what would you be able
7 to present that you couldn't have presented or can't present
8 today?

9 MR. KEIMBAYE: My -- my -- my coworkers that,
10 you know, were part of, you know, my witness case. They -- I
11 have been begging, you know, since, you know, one of the
12 attorneys reached out to Yulia Husted, she -- she has been,
13 you know, reluctant not to speak to me because she -- she's a
14 newly mom, and her -- her husband, after, you know, Rachel
15 Marshall, reached out to her, her husband has been pushing
16 her not to get involved with a, you know, with the -- the
17 lawsuit. And so each time when I reach out to her, you know,
18 begging her for that, you know, she can be my witness in
19 these days, like today, or -- she said that she cannot, like,
20 you know, get involved anymore.

21 THE COURT: Okay. But how is more time going
22 to help you with that?

23 MR. KEIMBAYE: Right now, she -- she reached
24 out to me a day or two days ago that, you know, that thing --
25 Rachel Marshall reached out to her again at, you know, she

1 either, you know, agree -- agrees to speaks to them or they
2 will subpoena her. And so, she reached out to me to let me
3 know. And so I told her that, you know, if not for her to
4 supervise, but, you know, I really need her help so that, you
5 know, we can find out that, you know, Christopher Kortendick,
6 is not only the anesthesia tech, but the supervisor.

7 And, as a matter of fact, Christopher
8 Kortendick was undeniably and temporarily authorized by the
9 employer, Providence, to direct, manage, and work with the --
10 work with, and also supervise -- supervise Mr. Keimbaye
11 any -- any work assignments during his entire employment.

12 Mr. Kortendick had the -- had the permission
13 and authority to undertake and recommend tangible job
14 decisions, which qualified him as a supervisor during
15 people's employment. So when the employer give the
16 permission and authority for Christopher Kortendick to
17 undertake, to recommended tangible -- tangible job decisions,
18 I said, you know, since he has the authority, he is
19 automatically a supervisor, even though he's not technically
20 on the hiring and management decision, he's my supervisor
21 because he -- he has the authority from his employer to
22 undertake and recommend the tangible job decisions that
23 affects me.

24 THE COURT: And -- and what were those
25 tangible job decisions, again, that affected you?

1 MR. KEIMBAYE: Say one more time.

2 THE COURT: So you just -- you just told me
3 that Mr. Kortendick had the power to undertake and recommend
4 tangible job decisions that affected you, and I'm asking you,
5 which tangible job decisions are you referring to?

6 MR. KEIMBAYE: Yes. Where you can put in our
7 anesthesia department, he was -- he's the one that is
8 recommended to lead in terms of the trauma of Code Blue. So
9 he will be leading the anesthesia team, directing us, you
10 know, to what we need to bring to the ER department, in terms
11 of the trauma of Code Blue.

12 THE COURT: Okay.

13 MR. KEIMBAYE: He would tell us, Bring this,
14 you know -- you know, fiber optic. Or, you know, so he would
15 supervise the whole entire trauma case by delegating each
16 anesthesia technician to -- to run either fiber optics for
17 the -- for the -- for the intubation --

18 THE COURT: Okay.

19 MR. KEIMBAYE: -- and making, you know, central
20 line, you know, for the arterial line.

21 THE COURT: So -- so, okay. I -- I -- I get
22 that. I get that. So, you know, he's telling the different
23 techs, Okay, here's what you need to bring with you to a code
24 situation. But how does that affect your -- your -- your
25 employment conditions?

1 MR. KEIMBAYE: It affects it because, you
2 know, I -- I work under his super -- supervision and I have
3 to be -- I have to do things that, you know, are the norm
4 with the -- with the, you know, the company policy and all
5 those things, that -- and if I violate the company policy,
6 then you would be reporting either to Travis John or to the
7 higher one because if they give you the authority to direct
8 me and that, you know, supervise and manage me, I, you know,
9 regarding my daily work activities.

10 And, in fact, in a Defendant's Exhibit C of
11 the Motion for Summary Judgment, they describe exactly the --
12 the type of, you know, authority or tangible drug decision
13 that they gave it to Christopher Kortendick. Now, if you
14 have, Your Honor, if you have a Defendant's Exhibit C in the
15 Motion for Summary Judgment, on page two, they describe
16 exactly the type of tangible -- employment decision or job
17 decision that, you know, Mr. Kortendick had-- had at that
18 time.

19 He said, Work with Opal and Gus to bring
20 preceptor skills to a higher level, to streamline technique
21 and operations practice, and ensure all new employees have
22 been brought in and on board the same way to reduce new hire
23 frustrations and turn out an increased employment retention.
24 That's -- that's a huge responsibility to -- to -- to hand it
25 to -- to someone. And whoever is working under him, he's

1 automatically -- their super -- he's automatically their
2 supervisor because he has the -- he has the -- the -- the
3 authority to undertake and recommended, you know, to new
4 employees or -- or to the new coworkers, you know, to do
5 things that, you know, he's recommend -- he's authorized, you
6 know, to -- to, you know, to direct them to do.

7 THE COURT: Okay. And did you say this is --
8 oh. Okay. This is Exhibit D?

9 MR. KEIMBAYE: Exhibit C, page 2.

10 THE COURT: C as in cat?

11 MR. KEIMBAYE: Yes. C.

12 THE COURT: Okay.

13 MR. KEIMBAYE: And -- and it -- it says it
14 somewhere under where should -- where should the caregiver
15 focus keys for -- for development at work for the year.

16 And, by the way, this is exactly what he was
17 doing when Tracy was working during that time. And he -- he
18 worked with the Opal and Dan. And during that time, when
19 Christopher Kortendick was not supervising Mr. --
20 Mr. Keimbaye, then he handed Mr. Keimbaye to Opal Lonon to --
21 to supervise Mr. Keimbaye. And that's where the sexual
22 harassment begin.

23 THE COURT: Okay. Thank you.

24 Ms. Rosen? Any rebuttal?

25 REBUTTAL ARGUMENT

1 MS. ROSEN: Your Honor, I think most of what
2 Mr. Keimbaye is describing are -- are lead technicians'
3 duties, which we don't dispute that Mr. Kortendick was a lead
4 anesthesia tech and that -- that job description is laid out
5 in the collective bargaining agreement and is specifically a
6 member of the Union and so not a supervisor.

7 And Mr. Keimbaye hasn't provided any -- any
8 evidence that Mr. Kortendick has an ability to control the
9 terms and conditions of his employment, nor has he met the
10 standard of 56(f) for a continuance.

11 So we just request that Your Honor enter
12 summary judgment today in our favor and dismiss
13 Mr. Kortendick from this MSJ because he's been, you know,
14 very traumatized by being personally named, especially where
15 he never had a supervisory role. Thank you.

16 COURT'S RULING

17 THE COURT: Thank you. Well, it's -- it's not
18 entirely clear to me what a continuance is going to
19 accomplish here. But looking at the merits, the -- the lead
20 case that the Defense relies upon here is *Jenkins v. Palmer*,
21 116 Wn.App. 671, which held -- actually it cited an earlier
22 decision, *Brown*, that managers and supervisors may be
23 personally liable under the Washington Law Against
24 Discrimination when acting in their employ -- employer's
25 interest. And they acknowledge that the *Brown* court

1 recognized that the statute mandates a liberal construction
2 of the WLAD, but -- and -- and that there's a broad
3 definition of the term "employer" as including any person
4 acting in the interests of an employer.

5 And in that case, summary judgment dismissal
6 was of the individual-named defendant was appropriate because
7 the Plaintiff did not contend that Jenkins was acting in the
8 interests of the Washington correctional -- I'm sorry. It
9 has WCC and I can't remember what it stands for, but it was a
10 prison case, a prison guard case, or that his conduct was
11 anything other than personal. So she has not shown Jenkins
12 liability under the statute.

13 The Defense also cites a number of unpublished
14 decisions from the Western District of Washington, which,
15 frankly, are apropos, if not very much in terms of -- in --
16 in terms of precedent. But I did take a look at some of
17 them, and -- and again, they -- they primarily appear to be
18 sexual harassment or assault-type cases where it was very
19 clear, and the Plaintiff wasn't even alleging, that the
20 individual defendant was either a supervisor or a manager
21 that would make him individually liable under the WLAD.

22 And Defense pointed out that Mr. Kortendick
23 cannot technically be a supervisor. He is or he isn't.
24 Given the broad definition of employer, though, in that
25 statute, I'm not convinced that -- that this is a summary

1 judgment issue.

2 Mr. Keimbaye indicates in his declaration
3 that -- that Mr. Kortendick was supervising and training him
4 during his on-the-job orientation and also was leading and
5 supervising the Plaintiff and Plaintiff's coworker's daily
6 assignments and tasks the entire time that Mr. Keimbaye was
7 working there.

8 That language in his declaration is -- is --
9 is somewhat conclusory, but I went back and I took a look at
10 the complaint and it -- the complaint indicates that
11 Mr. Keimbaye considered himself to be a victim of sexual
12 harassment and assault; that he complained to Mr. Kortendick,
13 and Mr. Kortendick made fun of him; made comments about his
14 ethnicity, about that fact that he was from Africa, about his
15 coloring.

16 He makes an allegation that Mr. Kortendick
17 bullied him by resetting the anesthesia screen monitors in
18 the Plaintiff's assigned OR rooms during open heart surgery
19 to cause difficulty for him; spoke disparagingly about
20 whether he'd gotten his anesthesia technician training in
21 Africa. This stuff isn't all in his declaration, but I'm
22 imagining it wouldn't be too difficult for him to put it in
23 there.

24 And, ordinarily, in response to a motion for
25 summary judgment, the Court is very well-aware that a party

1 can't rest on the allegations in his complaint. But given
2 Mr. Keimbaye's pro se status and the fact that he wrote this
3 complaint, it wasn't drafted for him by an attorney, you
4 know, it seems to me that it's a question of fact, assuming
5 that the Plaintiff's allegations are true, which the Court is
6 required to do in the context of a motion for summary
7 judgment.

8 I mean, ultimately, at trial, it's going to be
9 his burden to prove it. But assuming that the allegations
10 are true, as I must at this point, it seems to me that there
11 is an issue of fact as to whether Mr. Kortendick was acting
12 on behalf of the employer in allegedly bullying Plaintiff,
13 laughing at him, refusing to assist him in reporting his
14 sexual harassment complaints to HR, and so forth.

15 And -- and I don't think that this case is the
16 same case as the *Jenkins* case and -- and those Western
17 District cases where the allegations were clearly against a
18 coworker who had no authority whatsoever, and both sides
19 agreed had no authority whatsoever over the Plaintiff, nor
20 was there any claims that the harassing coworker was acting
21 on behalf of the employer.

22 Here, I think at the very least, there's an
23 issue of fact, taking all the allegations and the reasonable
24 inferences from them in the light most favorable to the
25 nonmoving party.

1 I cannot grant this motion. I'm going to deny
2 it without prejudice. You know, if something comes up in
3 discovery and certain -- certain admissions are made during
4 discovery or what have you, we can revisit the issue.

5 Yes, Mr. Keimbaye?

6 MR. KEIMBAYE: Your Honor.

7 THE COURT: Yes?

8 MR. KEIMBAYE: If -- I would like a
9 cross-motion in the --

10 THE COURT: Pardon?

11 MR. KEIMBAYE: -- would like a cross-motion
12 and I would like -- you know, the problem, you know,
13 granting, you know, motion for a summary judgment against
14 this Defendant, I --

15 MS. ROSEN: No. No -- no -- no. We're not --
16 no -- no. Sir, that's -- that's just procedurally totally
17 wrong. If you want to make a motion for summary Judgment,
18 you need to note it for hearing with 28 days' notice, get a
19 date from my bailiff for oral argument --

20 MR. KEIMBAYE: Okay.

21 THE COURT: -- and brief the issue, and
22 support it according to the rules and the law. We -- we
23 don't do motions for summary judgment on the fly at a
24 hearing.

25 MR. KEIMBAYE: Okay. I will do that.

1 THE COURT: Okay. I'm not saying you -- you
2 should do that. I'm saying if you want to bring such a
3 motion, that's how you must do that.

4 MR. KEIMBAYE: Yes.

5 THE COURT: You have to follow the rules.

6 MR. KEIMBAYE: Yes. Yes. I would like that.
7 I will oblige.

8 THE COURT: All right. Anything further that
9 I can assist the parties with this morning?

10 MR. KEIMBAYE: I also have a statement
11 regarding the -- the argument that I was going to present, if
12 you would allow me.

13 THE COURT: On what?

14 MR. KEIMBAYE: On -- on the fact that, you
15 know, he was authorized --

16 THE COURT: I already -- I already denied the
17 motion for summary judgment, Mr. Keimbaye. I don't need to
18 hear anymore argument about that.

19 MR. KEIMBAYE: Thank you.

20 THE COURT: Okay?

21 MR. KEIMBAYE: Thank you.

22 THE COURT: All right. Thank you, everyone.
23 That will conclude this hearing.

24 MS. ROSEN: All right. Thank you.

25 THE COURT: Thank you.

1 (Proceedings adjourned at 9:33:45 a.m., to recommence on May
2 13, 2022.)
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1 SEATTLE, WASHINGTON

2 FRIDAY, MAY 13, 2022

3 MORNING SESSION - 11:05:40 A.M.

4 MOTION HEARING:

5 (The following proceedings were had in open court:)

6 THE COURT: Oh, they can't hear me. Good
7 morning.

8 MS ROSEN: Good morning, Your Honor.

9 THE COURT: Mr. Keimbaye, do you have a
10 camera? Mr. Keimbaye? Am I saying your name right?

11 MR. KEIMBAYE: Yes.

12 THE COURT: Do you have a camera?

13 MR. KEIMBAYE: I do have a camera. Yes.

14 THE COURT: Could you turn it on so we can see
15 you?

16 MR. KEIMBAYE: It shows here it's on button.

17 THE COURT: All I can see is a black square
18 with your name below it. We can't see your face. We can't
19 see anything, actually.

20 MR. KEIMBAYE: Apologize for that, Your Honor.

21 THE COURT: That's all right. If you could
22 turn on your camera, or uncover it, or whatever you need to
23 do.

24 In the meantime, I'll put this case on the
25 record. This is Keimbaye versus Providence Regional Medical

1 Center, cause number 21-2-07545-9, Kent designation. This
2 matter is on for hearing today actually on two issues. One
3 is the Defense motion for summary judgment; the second is a
4 pretrial conference, which I suppose wouldn't be necessary if
5 the case were to be dismissed. Mr. Keimbaye is participating
6 as his own attorney. Everyone is participating in this
7 hearing, which is on the record in open court, via Zoom
8 teleconferencing. And I'll go ahead and invite Counsel to
9 state your names for the record.

10 MS. ROSEN: Good morning, Your Honor. Katie
11 Rosen, and I'm accompanied by my colleague, Paula Lehmann, on
12 behalf of the Defendant.

13 THE COURT: Welcome.

14 Mr. Keimbaye, have you figured out your
15 camera?

16 MR. KEIMBAYE: I am still trying.

17 THE COURT: Okay. Well, we'll go ahead and
18 proceed.

19 MR. KEIMBAYE: Thank you.

20 THE COURT: Yeah.

21 All right. Who is arguing this motion?

22 MS. ROSEN: I am, Your Honor.

23 THE COURT: Okay. Very good. Ms. Rosen?

24 DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

25 MS. ROSEN: Thank you, Your Honor. At the

1 outset, I think it's important to note here the compelling
2 evidence that Mr. Keimbaye was terminated for timekeeping
3 violations and not based on national origin, sex, or in
4 retaliation. He does not dispute that he was tardy 51 times
5 in six months and that's, Your Honor, almost every other day.
6 So Mr. Keimbaye does not dispute that. He also doesn't
7 dispute that he worked past the end of his shift 74 times and
8 without permission some of those times. And those both are
9 direct violations of Providence policy and Providence
10 timekeeping policy.

11 And Mr. Keimbaye was -- his employment was
12 terminated due to those issues because that -- you know
13 that's an excessive amount of tardies and an excessive amount
14 of work after your shift in a six-month period. And the work
15 after the shift is really alarming because it's at the
16 overtime rate and so it costs the hospital a lot of money
17 when somebody stays after a shift. And that's why it has to
18 be with permission.

19 The decision-makers in this case, who made the
20 decision to terminate Mr. Keimbaye's employment, did an
21 investigation, and most of them, including the HR folks, had
22 never met Mr. Keimbaye. So they don't -- they didn't know
23 anything about his national origin, or anything like that.

24 Mr. Keimbaye has been caught in lies about
25 staying late and why he was staying late by the people that

1 did the investigation and he doesn't refute that. I mean,
2 there were times where they could tell by the schedule that
3 he was not on call or standby and he was staying late without
4 permission. And he claims to know the instances to be on
5 call or standby.

6 I think it's important here, Your Honor, that
7 the person who identified the problem with his time, the fact
8 that he was staying without permission, and that he was tardy
9 so frequently, was not any of the people that he accuses of
10 discrimination. It was Maddy, who is the timekeeper person
11 at Providence Everett, who's the one that flagged all these
12 issues and raised the issues first with his supervisor. And
13 he doesn't accuse her of any kind of discrimination.

14 And if his supervisor was out to discriminate
15 against him, you would think that he would go searching for
16 reasons to discipline him and he did not. In fact, he was
17 notified by somebody else.

18 And the Plaintiff was verbally warned numerous
19 times about not being tardy and staying after without
20 permission. And that's in emails and discussions with him,
21 and he continued to do that. So the Plaintiff was on notice
22 that that behavior was not acceptable and he continued to do
23 it.

24 So I think, Your Honor, there's a strong case
25 here that Plaintiff's national origin that -- or in

1 retaliation had nothing to do with his discharge. The
2 retaliation that Plaintiff claims is any man moving target.
3 He's claimed that the hospital is retaliating against him for
4 complaints he made about the doctors, but the doctors aren't
5 even employed by Providence. And it's not in the record
6 whether anyone from Providence ever witnessed this alleged
7 conduct by the doctors.

8 And then he was also claiming retaliation
9 based on his report about Opal Lonon, but that report didn't
10 occur until after he was put on administrative leave. So he
11 already knew that he was in danger of losing his job when he
12 made the reports to the integrity line about Opal Lonon.

13 So the retaliation piece here, I'm unclear
14 exactly what Plaintiff claims is the basis for that piece.
15 But the different things that he said, I just addressed and
16 explained why I don't think that claim has any merit.

17 The harassment that Plaintiff alleges to have
18 been subjected to specifically by Chris Kortendick and Opal
19 Lonon, both -- and I'll address the issue of Chris Kortendick
20 as a supervisor a little bit later. But Chris Kortendick and
21 Opal Lonon were not supervisors. They were coworker leads of
22 the Plaintiff.

23 And when Providence learned about the conduct
24 that Plaintiff says occurred by Ms. Lonon, it took immediate
25 action to investigate the issue and it issued Ms. Lonon a

1 memo chastising her for hugging Mr. Keimbaye when apparently
2 that hug was unwanted. So Ms. Lonon's conduct cannot be
3 imputed to Providence because she was a coworker. And as
4 soon as Providence was made aware of her conduct, it took
5 prompt and affective remedial action.

6 Chris Kortendick, Your Honor, does not meet
7 the criteria of a supervisor. As Plaintiff testified in his
8 deposition Mr. Kortendick did not hire -- was not at all
9 involved in his hiring process, did not have the authority to
10 fire him, and, in fact, wasn't at all involved in his
11 termination, had no authority to determine his compensation,
12 had no authority to discipline him. And he didn't tell
13 Mr. Kortendick when he was going to be tardy. He didn't ask
14 his permission to work late.

15 And Kortendick, importantly, was a member of
16 the Union, and as we explained in our briefing, a member of
17 the Union cannot also be a supervisor. And there were five
18 other techs in that department who also had the lead
19 assignment. And it's important to look at it, it's -- the
20 lead thing is an assignment, it's not a role.

21 So Mr. Kortendick could have been working
22 shifts where he was not assigned the lead position, where
23 somebody else was assigned the lead position. And so he
24 wasn't acting as a lead in that capacity. And, regardless,
25 he did not have the ability to affect the terms and

1 conditions of Plaintiff's employment, which I think is how
2 federal law defines a supervisor, and how the courts that
3 have looked at it in Washington have defined a supervisor.

4 And granted, Your Honor, there's not a lot of
5 jurisprudence on this issue. And I admit that the WLAD
6 definition is pretty broad. And -- but under the WLAD
7 definition, almost anyone would be a supervisor. Anyone that
8 comes to work is acting in the interest of their employer.
9 So, I mean, I think --

10 THE COURT: Well, no. No, no, no, no, no. I
11 think the distinction to be drawn -- in fairness, because
12 obviously it's not any coworker -- but the case law, as I
13 understand it, talks about whether the conduct of the person
14 alleged to be a supervisor was in the interest of the
15 employer and whether that person had some control over the
16 working conditions, other than the allegedly-harassing
17 working conditions of the Complainant.

18 So in those cases where, for instance, someone
19 who is completely on equal footing with a plaintiff, but who
20 sexually harasses that plaintiff, I mean, clearly, the sexual
21 harassment is not in the interest of the employer. And if
22 there's no ability to control the working conditions, other
23 than having to endure the harassment, then it's not imputed
24 to the employer.

25 But if that person were to exercise with the

1 consent of the employer control over working conditions, I
2 think, arguably, that person, for WLAD purposes, qualifies as
3 a representative of the employer. At least that's how I
4 understood the law. It's not necessarily how the NLRB
5 defines who is and who is not a supervisor.

6 MS. ROSEN: Yeah. And I think we just
7 included that as helpful, I think, background. But I think
8 the *Jenkins* and the *Burrett* cases, if you take a look at
9 them, they talk about impacting the terms and conditions of
10 employment. And maybe that's what Your Honor means by the
11 conditions of, you know, the conditions.

12 But somebody who just basically directs
13 somebody as like, Go to this room at this time, that isn't
14 impacting the terms and conditions of employment. The terms
15 and conditions of employment are what I said. There are
16 things that has material -- materially impacted somebody's
17 employment.

18 THE COURT: Okay.

19 MS. ROSEN: Okay. And, Your Honor, I think
20 the next point I want to raise is that Travis John, as a
21 Defendant, be dismissed from the case because Plaintiff
22 admitted in his deposition that Mr. John never discriminated
23 against him. And that's the standard for holding a
24 supervisor liable. And, I mean, there's not much more to say
25 on that. We have a clear admission that he said Travis John

1 never discriminated against him.

2 He seems to reference an aiding and abetting,
3 but he has not pled an aiding and abetting claim. There's a
4 lot of things that Plaintiff has, I think, conflated in his
5 briefing and managed with a number of different claims that
6 are not in his complaint and that he has not pled, and aiding
7 and abetting is one of them. And so we don't have that claim
8 here, so I think Travis John can -- should be dismissed.

9 The other issue on the national origin and sex
10 discrimination claim that Plaintiff made is the same actor
11 doctrine. And the same actor doctrine requires an inference
12 that there was no discrimination when the same person that
13 hired plaintiff is then the same person accused of
14 discriminating against plaintiff, based on characteristics
15 that were obvious when the plaintiff was hired.

16 And so in this case, Travis John hired the
17 Plaintiff, was part of the hiring process, and there is an
18 inference that --

19 THE COURT: Presumably knew -- yeah, to the
20 extent that Mr. Keimbye has an accent, or what his race is,
21 what his gender is, and so on, were evident to him at the
22 time of hiring, I assume.

23 MS. ROSEN: Yes. Exactly, Your Honor.

24 THE COURT: Yeah.

25 MS. ROSEN: And the cases make an issue about

1 | there being temporal proximity between the hire and then the
2 | alleged discriminatory act. And I think there's no question
3 | we have that here because we're only talking about six
4 | months.

5 | THE COURT: Uh-huh.

6 | MS. ROSEN: The next issue I wanted to raise
7 | is that this alleged harassment based on national origin and
8 | sex were -- was not severe or pervasive. The harassment that
9 | Mr. Keimbaye testified to in his deposition, and he has later
10 | changed his story in his declaration that he submitted, was
11 | that when he testified to in his deposition was that
12 | Ms. Lonon's comments toward him were isolated and there were
13 | no more than four or five.

14 | And then the same was true with
15 | Mr. Kortendick, where he testified in his deposition with
16 | Mr. Kortendick that Mr. Kortendick only ever asked him about
17 | his -- where he was from, that comments about his accent were
18 | not made in his presence. That people told him
19 | Mr. Kortendick was making comments about his accent, but that
20 | nobody -- Mr. Kortendick never said that to his face, that he
21 | just said -- he asked where he was from. And, Your Honor, I
22 | submit that that is not harassment to ask where somebody is
23 | from. And that he also claims that Mr. Kortendick --

24 | THE COURT: I suppose it might depend on how
25 | one asks, right?

1 MS. ROSEN: Yeah. No. Fair enough. But as
2 an isolated comment, it's not -- I don't think even if
3 somebody asked in a, you know, negative tone, I still don't
4 think it's enough to be severe or pervasive harassment.

5 The other issue, Your Honor, is that
6 Mr. Keimbaye alleges that Mr. Kortendick engaged in, like,
7 changing the -- some kind of machine in the surgery room and
8 that that was something he was doing that was harassing.
9 And, again, Mr. Keimbaye testified he did that for people who
10 were new. And he did that to his white new people, and he
11 did that to male new people, so the race and the sex was
12 really not the issue.

13 Finally, I wanted to bring up, Your Honor,
14 that Plaintiff's other issue is devoid of any kind of
15 citation most of the time to the record. Mostly he cites to
16 his own declaration that contradicts some things in his
17 deposition and is not permissible under case law to submit a
18 declaration like that --

19 THE COURT: What --

20 MS. ROSEN: -- and trying to keep summary
21 judgment --

22 THE COURT: So let me -- let me just, in the
23 interest of time, let me interrupt. Frankly, what concerned
24 me the most was Ms. Husted or Husted, I don't know how to
25 pronounce her name, deposition testimony. You know, she

1 describes many remarks at work by Mr. Kortendick to other
2 people about Mr. Keimbaye's skin color and his accent; that
3 Mr. Kortendick would make mocking remarks about not
4 understanding Mr. Keimbaye, and ignoring questions that he
5 asked; making fun of his skin color, saying he was too black.
6 She said this happened nearly every day; that he went out of
7 his way to give Mr. Keimbaye unusually difficult assignments.

8 She agreed that she never witnessed Mr. John
9 make any racist remarks or disparage Mr. Keimbaye in any way.
10 But she described Mr. Kortendick sometimes acting as a
11 supervisor by making assignments, and directing people, that
12 he treated Mr. Keimbaye differently from others.

13 And so, with respect to Mr. Kortendick, I
14 mean, she had some very specific testimony that she says she
15 witnessed and that were occurring very, very regularly, not
16 isolated incidents. I mean, she said almost daily.

17 And she said similar things about Ms. Lonon,
18 touching Mr. Keimbaye inappropriately and making
19 inappropriate remarks. I think she said pretty much daily,
20 and that Mr. Kortendick knew about it, and laughed about it,
21 and made jokes about it.

22 So, frankly, if I didn't have that, I'd be
23 much more inclined to be persuaded by the arguments that I'm
24 hearing from the Defense, but I do have that. And, of
25 course, I have to take all of the evidence in the light most

1 favorable to the Plaintiff, as long as there is evidence;
2 CR 56 requires that. So what am I to make of that?

3 MS. ROSEN: And, Your Honor, Ms. Husted
4 disavowed a number of things that she put in her declaration.

5 THE COURT: No. This is her deposition
6 testimony I am citing. I made notes. I went through it and
7 I made notes.

8 MS. ROSEN: Right. Right. But I'm telling
9 you that Ms. Husted is not a reliable witness. She - it's --

10 THE COURT: Oh, but I can't decide that on
11 summary judgment. Come on.

12 MS. ROSEN: Oh, you can because there is case
13 law that says that if reason -- two reasonable lines could
14 differ about something then -- that summary judgment is
15 appropriate. In this case, I don't think that anybody would
16 dispute that Ms. Husted's testimony is unreliable and
17 shouldn't be used because a lot of it's hearsay, and a lot of
18 what I drilled down with her on the things she alleged to
19 have seen, a lot of it she heard about, or someone told her
20 about.

21 And even if you accept it's true that Opal
22 Lonon and Chris Kortendick subjected the Plaintiff to this,
23 it doesn't -- it's not -- that's not race harassment. It's
24 not -- I'm sorry, that's not race discrimination. It's not
25 sex discrimination and it's not retaliation. So the cases

1 | your left with are race harassment -- I mean, national origin
2 | harassment and sex harassment. And on both of those cases,
3 | Opal Lonon was not a supervisor, and Plaintiff doesn't even
4 | contend she was a supervisor.

5 | THE COURT: I understand.

6 | MS. ROSEN: And so when Providence learned
7 | about Opal Lonon, it took prompt and effective remedial
8 | action. So her conduct -- even if you accept Ms. Husted's
9 | declaration as true, her conduct can't be imputed to
10 | Providence.

11 | And then with regard to Mr. Kortendick, even
12 | if you accept Ms. Husted's testimony with regard to him as
13 | true, then he's also not a supervisor and nobody was aware of
14 | his conduct. Mr. Keimbaye -- when Mr. Keimbaye reported the
15 | issue with Ms. Lonon, he didn't mention Mr. Kortendick. When
16 | he called the integrity line, he didn't mention
17 | Mr. Kortendick at all.

18 | THE COURT: Uh-huh.

19 | MS. ROSEN: And he had the Union's information
20 | as early as May 1st, where he could have called the Union and
21 | said something. We know, based on after Mr. Keimbaye was
22 | terminated, he submitted no less than four letters to all
23 | levels of Providence management. So he knows how to advocate
24 | for himself and complain. He's filed four other lawsuits pro
25 | se. So this is somebody who knows how to do that.

1 So, Your Honor, I think -- I understand why
2 you're troubled by Ms. Husted's declaration. But I think --

3 THE COURT: Deposition.

4 MS. ROSEN: -- even if you accept everything
5 in that declaration as true, we still prevail on summary
6 judgment for the reasons that I just outlined.

7 THE COURT: Okay. And just to clarify, I'm
8 talking about her deposition that was taken by Defense
9 Counsel, even if -- you know, even leaving aside her
10 declaration.

11 So, anyway, in the interest of time, I need to
12 give Mr. Keimbaye an opportunity to respond because I want to
13 leave enough time to move forward if appropriate.

14 So go ahead, Mr. Keimbaye.

15 ORAL ARGUMENT BY THE PLAINTIFF

16 MR. KEIMBAYE: Your Honor, Dominique Keimbaye
17 is a pro se Plaintiff in this case. Plaintiff filed a case
18 of employment discrimination against the Defendants, based on
19 his protected class, harassment, bullying and retaliation.
20 There are clear material issue of fact in his case regarding
21 Plaintiff serious grief and claims in his lawsuit.

22 Plaintiff has unquestionable demonstrate that
23 there are direct and circumstantial evidence in his affidavit
24 which prove Defendants discriminatory allegations was here.
25 Therefore, Defendant cannot demonstrate both the absence of

1 material issue of material fact and on paper of the -- and
2 for judgment as a matter of law. This Court should
3 undeniably grant judgment to Plaintiff today.

4 THE COURT: No. I'm not doing that.

5 MR. KEIMBAYE: Plaintiff should --

6 THE COURT: Mr. Keimbaye, there's no way
7 that's happening. I saw in your brief that you were making a
8 cross-motion. It was not properly brought. It's not
9 properly before the Court, so that's not happening. The
10 question is whether you get a trial. That's the question.

11 So let me -- just in the interest of time, if
12 I could direct you to the things that Defense Counsel brought
13 up, do you have any evidence that Mr. John personally
14 discriminated against you?

15 MR. KEIMBAYE: Mr. John, as a supervisor, has
16 the responsibility and authority to assist in how to stop
17 harassment that was happening to Plaintiff. Around May, when
18 Plaintiff begged Mr. John to tell him to please, you know, I
19 -- you know, ask him to guide him, so that he can go to the
20 HR -- the local HR office to report the sexual harassment and
21 all kind of, you know, bullying and, you know, derogatory
22 comments about him to the HR -- in May -- on or around May,
23 both Mr. John, Mr. Kortendick took Plaintiff into main ward
24 on the seventh floor, took him down all the way to the first
25 floor, walking to the building where the HR office was

1 located. Once Plaintiff -- when Plaintiff and -- supervisor
2 and Plaintiff got to that area, they start to say, Oh, they
3 have been working here for years and they have never seen any
4 HR office around here.

5 THE COURT: Okay.

6 MR. KEIMBAYE: And had the -- Plaintiff was
7 distanced from them, I believe six or eight feet from
8 Mr. John and Mr. Kortendick, they stopped talking and
9 pointing at the office say, both, This is Mr. Sweaney's
10 office.

11 THE COURT: Okay.

12 MR. KEIMBAYE: And as Plaintiff approached
13 them, they change their story saying, Oh, there's no HR
14 office here, so let's get back to the work floor.

15 THE COURT: But hold on, hold on.

16 Mr. Keimbaye, you're not answering my question. My question
17 was whether you have evidence that Mr. John -- Travis John
18 discriminated against you because of your race, your national
19 origin, or your sex, or anything else that's a protected
20 status?

21 MR. KEIMBAYE: Based on my race, I wouldn't
22 say that. No, Mr. John discriminated against me.

23 THE COURT: Uh-huh.

24 MR. KEIMBAYE: But based on his role as a
25 supervisor, he's the person that represent the employer.

1 THE COURT: Right.

2 MR. KEIMBAYE: And for him to witness all the
3 harassment and sexual harassment --

4 THE COURT: No, no, no. Wait a minute. You
5 didn't tell me he witnessed any harassment. What you told
6 me, and what you said in your pleadings, was that -- in fact,
7 what you just said this morning is you went to him in May and
8 asked him for help because you were being sexually harassed
9 by someone else, and that he didn't help you enough. Isn't
10 that what you just said? But I didn't ask you that. I asked
11 you how, if at all, did he harass you or discriminate against
12 you?

13 MR. KEIMBAYE: He did not harass me.

14 THE COURT: Okay.

15 MR. KEIMBAYE: Directly he did not harass me.
16 But he aid and abet with -- with the two submission and ed --
17 others, you know, that's the word -- harassing Plaintiff.
18 And he should be the one that should say this is, you know,
19 not the way. Stop it. You cannot do this at work. But he
20 was so naïve in, you know, letting others, you know, to
21 harass Plaintiff, you know, just confirming to me of
22 feeling --

23 THE COURT: Uh-huh.

24 MR. KEIMBAYE: -- while working. So he's
25 responsible. He represented the employer.

1 THE COURT: Okay.

2 MR. KEIMBAYE: And for him to call me -- or to
3 call Plaintiff on June 9th -- 11th, I believe that's when he
4 called to put Plaintiff on administrative leave. It -- on
5 that moment, when Plaintiff was begging him numerous times
6 for him to help him with the HR phone number or integrity
7 phone line, to provide to him, he said he doesn't have it, he
8 don't know. But that day, when he called to put Plaintiff on
9 administrative leave, he was able to provide Plaintiff with
10 that phone number, as well Plaintiff called to report for the
11 sexual harassment.

12 THE COURT: Okay.

13 MR. KEIMBAYE: And that is wrong.

14 THE COURT: What's wrong?

15 MR. KEIMBAYE: It is wrong because he knew he
16 had -- he knows the office where Mr. Sweaney was working at.
17 He knows. He's a supervisor. He know all the information
18 regarding, you know, helping employees about a complaint.

19 THE COURT: Okay. I thought you --

20 MR. KEIMBAYE: But he refused to --

21 THE COURT: -- just said he walked you down
22 there? Isn't that what you said a few minutes ago that he
23 walked you down there?

24 MR. KEIMBAYE: Well, he walked there. He knew
25 that's Mr. Sweaney's office. But he refused to tell the

1 truth to the Plaintiff that, Oh, this is the HR office and
2 you need to make an appointment, or go there to report to
3 Mr. Sweaney.

4 THE COURT: Well, you said they took you down
5 there --

6 MR. KEIMBAYE: He was trying to be --

7 THE COURT: Wait a minute. Wait a minute.
8 I'm really confused and I'm sorry. You said that they took
9 you down there and told you this -- after you asked for HR,
10 they took you down there and they told you this is
11 Mr. Sweaney's office. But then they started joking around
12 about how they've never been there or they never had to do
13 there, or something like that, right? But they took you down
14 there, right?

15 MR. KEIMBAYE: Your Honor, I'm sorry you -- I
16 -- you misunderstood me.

17 THE COURT: Yeah.

18 MR. KEIMBAYE: They took me down there.

19 THE COURT: Yeah.

20 MR. KEIMBAYE: I was standing six or eight
21 feet away from them.

22 THE COURT: Right.

23 MR. KEIMBAYE: They knew that office was for
24 Mr. Sweaney.

25 THE COURT: Yeah.

1 MR. KEIMBAYE: After I -- they were talking.
2 I could hear them clearly saying that this office is for
3 Mr. Sweaney --

4 THE COURT: Okay.

5 MR. KEIMBAYE: -- with, you know, HR business
6 department.

7 THE COURT: Okay.

8 MR. KEIMBAYE: The one that, you know,
9 Plaintiff met with on June 18th.

10 THE COURT: Okay.

11 MR. KEIMBAYE: But this a person, you know,
12 they just provide there. All of the sudden, they changed
13 their story saying, Oh, there's no HR office here, so let's
14 go back to the work floor. Then, pretty much disrupting
15 Plaintiff to understand that this is the HR office --
16 proceeded to tell the Plaintiff that this is the HR office.
17 Then, surprisingly, when Plaintiff was putting in a -- in a
18 other suite, and then went on to meet with Mr. Sweaney,
19 Plaintiff find himself where those supervisors took him. But
20 they did not tell him the pathway to office of the --

21 THE COURT: Okay. Okay.

22 MR. KEIMBAYE: -- the HR office is located.

23 THE COURT: Got it. Okay. All right. And
24 what's your evidence that you were terminated because of your
25 race, or your national origin, or your sex, instead of

1 because of your repeated tardies and staying late without
2 authorization?

3 MR. KEIMBAYE: Plaintiff affidavit is the key
4 witness of the ordeals and agony that he had to endure --

5 THE COURT: What?

6 MR. KEIMBAYE: -- at the hands of Defendants.
7 Plaintiff lay out everything regarding official argument --

8 THE COURT: Okay. That's not --

9 MR. KEIMBAYE: -- bullying --

10 THE COURT: Mr. Keimbaye, you're not answering
11 my question. I read those papers. My question is what is
12 the evidence -- point me to the evidence that you weren't
13 fired for your violations of the timekeeping regulations, but
14 instead they used that as a pretext to fire you because of
15 your race, or your national origin, or your sex.

16 MR. KEIMBAYE: I need -- timing of
17 determination is an issue here. And also Plaintiff opened
18 issue to argument in this Christmas regarding Dr. Porterfield
19 because --

20 THE COURT: But she's not a Providence
21 employee and she's not a defendant in this case. So, again,
22 I'm going to ask you what's the evidence that you were fired
23 for an unlawful reason, instead of for the lawful reason that
24 you were repeatedly violating the policies and requirements
25 of about when you were supposed to clock in and when you were

1 supposed to clock out?

2 MR. KEIMBAYE: The evidence is clear.

3 Plaintiff is a -- is part of a protected class.

4 THE COURT: Yeah. But that doesn't mean that
5 you -- that because you're part of a protected class, you get
6 to violate the policies and requirements of your employer.
7 It just means that they can't take adverse action against you
8 because of your protected status.

9 MR. KEIMBAYE: Well, Your Honor, evidence are
10 numerous, you know, Plaintiff lay out all the evidence
11 here --

12 THE COURT: So tell me what it is.

13 MR. KEIMBAYE: -- not only from his affidavit,
14 but also 20 witness memo of the undisputable evidence here.
15 Ms. Husted's declaration in support of Plaintiff has
16 undisputable evidence here because the deposition was
17 undisputable and you won't want more evidence here.

18 THE COURT: Okay. Thank you, sir.

19 Is it okay if we skip rebuttal argument or did
20 you have anything new?

21 MS. ROSEN: I just wanted to note, Your Honor,
22 that he hasn't brought a race claim. It's just a national
23 origin claim.

24 THE COURT: Okay. I'm not sure how to
25 distinguish between those two things, frankly.

1 But, anyway, all right.

2 MS. ROSEN: I could explain it, but if we
3 don't need to, that's fine.

4 THE COURT: Well, no, I mean, in his
5 circumstance, obviously, you can be a Black American and your
6 national origin isn't at issue because you're an American,
7 right, assuming you're a native born American and you're not
8 an immigrant. In Mr. Keimbaye's case, he's African in terms
9 of his national origin, and he's African in terms of his
10 race, so that's why I made that comment. That's the only
11 reason I made that comment.

12 MS. ROSEN: Yeah. No. That's makes sense,
13 Your Honor.

14 COURT'S RULING

15 THE COURT: In any event, all right. The
16 Court finds that taking all of the undisputed facts in the
17 light most favorable to the Plaintiff, as well as all the
18 disputed facts in the light most favorable to the Plaintiff,
19 including reasonable inferences from those facts, there is no
20 evidence that Travis John engaged in discriminatory practices
21 in any way with respect to Mr. Keimbaye and he should be
22 dismissed as a Defendant.

23 The -- it's questionable, frankly, whether the
24 Plaintiff has produced even a prima facie case, that his
25 termination had anything to do with his national origin, his

1 race, or his sex. Given that the parties are in agreement
2 that the people who were supervisors and who made decisions
3 with respect to disciplinary action related to Mr. Keimbaye's
4 failure to abide by Providence's requirements, in terms of
5 clocking in on time, clocking out on time, not staying late
6 without authorization from the employer, that those were --
7 I'm sorry. I'm going to start again.

8 He has not produced any evidence that those
9 decisions leading to his termination had anything whatsoever
10 to do with his protected status as an immigrant, as an
11 immigrant from Africa, or his sex. His requirement would be
12 to put forth a prima facie case that he was fired for
13 discriminatory reasons, after which if he does that, then the
14 onus shifts to the employer to show nondiscriminatory reasons
15 for his termination from employment. The employer clearly
16 has done that.

17 And then the burden shifts back to
18 Mr. Keimbaye to show that the asserted nondiscriminatory
19 reasons for his firing are pretextual. He has not done that
20 and I have asked him repeatedly to please point me to some
21 evidence that these reasons were pretextual. He has not been
22 able to point me to a single alleged fact. So the --

23 Hold on, Mr. Keimbaye, I'm ruling right now.
24 I'm not asking for argument.

25 So the Court has to dismiss the wrongful

1 termination claim. There's no evidence of any retaliatory
2 action that was taken by the employer against Mr. Keimbaye.
3 I mean, there's just no evidence of any retaliation
4 whatsoever.

5 And he -- when he did file his HR complaint,
6 he had already been place on administrative leave. Even his
7 description of this event where just a few weeks, I mean, the
8 previous month, to when he was placed on administrative leave
9 and eventually fired, he says he went to Mr. John and
10 complained he was being sexually harassed, and asked for
11 help, and Mr. John showed him where the HR office was. That
12 doesn't give rise to a claim for retaliation, even assuming
13 everything that Mr. Keimbaye described in his argument
14 actually occurred, and I'm going to assume that for purposes
15 of this hearing. So the retaliation claim must be dismissed.

16 That leaves us with harassment and hostile
17 working conditions claims. And I realize that they weren't
18 specifically set forth in a count in Mr. Keimbaye's
19 complaint. However, we're a notice pleading state, he
20 described in his complaint harassment because of his national
21 origin. He described in his evidence harassment because he
22 was, quote/unquote, too black. That sounds to me like race.

23 And he described sexual harassment by
24 Ms. Lonon, that Mr. Kortendick was well aware of, and
25 allegedly made fun of on a regular basis.

1 To me, again taking all the evidence in the
2 light most favorable to the Plaintiff, including the
3 testimony that Ms. Husted made at her deposition -- and I am
4 not in a position at summary judgment to make credibility
5 findings, and it wouldn't be appropriate if I did so -- that
6 there is still remaining a claim for hostile working
7 conditions and harassment based on race, national origin, and
8 sex. And I cannot dismiss those claims on the record that's
9 before the Court today.

10 DISCUSSIONS RE PRETRIAL CONFERENCE

11 THE COURT: I do want to move to issues on a
12 pretrial conference. You all have a trial date coming up in
13 less than a month. And have you all done any form of
14 alternative dispute resolution? Have you had some kind of a
15 mediation or settlement conference of some sort?

16 MS. ROSEN: We haven't, Your Honor. We are
17 working with Judge Parisien --

18 THE COURT: Okay.

19 MS. ROSEN: -- to get on her calendar. I'm
20 not sure that we will get there by June 6th. And I would
21 like to request a continuance because my cocounsel is in
22 trial in another matter that's expected to last six weeks.
23 And I also, Your Honor, am recovering from COVID --

24 THE COURT: Oh, I'm sorry.

25 MS. ROSEN: -- and having some long-term

1 impacts that I think would impact my ability to get ready for
2 trial right now.

3 THE COURT: Understood. And we're actually
4 transitioning supposedly. The current plan is to transition
5 back to in-person trials versus Zoom trials starting
6 mid-June.

7 Now, that may change depending on what the
8 virus does. Also, that's if anyone objects to a Zoom trial.
9 If people are comfortable with a Zoom trial, we can still do
10 a Zoom trial, including a Zoom jury trial. But I just wanted
11 to give the heads-up that if we continue this, and it sounds
12 pretty reasonable that we should, there may be a prospect for
13 an in-person trial, as opposed to just a Zoom trial.

14 Mr. Keimbaye, do you have any objection to
15 continuing the trial? I don't think you're going to be ready
16 for it by June the 6th.

17 MR. KEIMBAYE: Plaintiff don't have any
18 objection at the moment. But I think, however, another legal
19 issue on June 27th.

20 THE COURT: Oh, well, we won't -- we can
21 continue it at least a few months, if we're going to continue
22 it. We're not just going to continue it a couple of weeks.

23 MR. KEIMBAYE: Okay.

24 THE COURT: Okay.

25 MR. KEIMBAYE: Okay. Thank you, Your Honor.

1 THE COURT: When would you like us to continue
2 the trial to?

3 MS. ROSEN: Are you asking Mr. Keimbaye?

4 THE COURT: I'm asking everybody, but you
5 suggested it first, Ms. Rosen, so I'll check with you first.

6 MS. ROSEN: Sure. I was -- Your Honor, I was
7 looking at September, just based on some other trials that I
8 have that -- and but I don't know what Mr. Keimbaye's
9 preference is.

10 THE COURT: Okay. And I don't know when fall
11 conference is scheduled this year. It happens in September
12 and I think the plan is to do it live, but, again, that's
13 going to kind of depend on what's happening with the
14 pandemic.

15 UNIDENTIFIED SPEAKER: The 19th of September.

16 THE COURT: The 19th is --

17 UNIDENTIFIED SPEAKER: Monday.

18 THE COURT: Well, I'm sorry. Is that -- are
19 you saying that's fall conference, or are you just throwing
20 that out?

21 Okay. September 19th is fall conference,
22 okay, and that runs three days. Let me just take a quick
23 look at my calendar here for September. I'm not even going
24 to look at what other trials might be on, but. All right.
25 Why am I not able to scroll? What is wrong with this thing?

1 Okay. Oh, yeah it is on here. Yay, look at that, it's on
2 the calendar.

3 All right. So 19th, 20th, and 21st are
4 supposed to be fall conference. I'm going to be out Monday
5 the 26th, so it might be safer to do this in October.

6 MS. ROSEN: Okay.

7 THE COURT: Possibly the 10th? How does
8 October 10th strike everybody?

9 MS. ROSEN: That looks fine for me. It's a
10 medical miss day or tradition of peoples day just FYI, so it
11 might have to start on the 11th.

12 THE COURT: Oh.

13 MS. LEHMANN: Your Honor, I'm so sorry to
14 interrupt. I have a trial that starts in Portland, Oregon on
15 the 11th in federal court, so that week -- it's only a
16 one-week trial -- I can't do, but after that would be okay.
17 I'm sorry to interject here.

18 THE COURT: Well, that's all right -- the 17th
19 of October? Does that work for everybody?

20 MS. ROSEN: That works fine for me, Your
21 Honor.

22 THE COURT: Okay. Okay. I'll reset it for
23 the --

24 MR. KEIMBAYE: That works for me, Your Honor.

25 THE COURT: Okay. Good.

1 Yeah, I saw you nodding, Mr. Keimbaye. I
2 should have waited until you said something. I'm sorry.

3 Okay. I will issue an order continuing the
4 trial and amending the case schedule. Please keep working on
5 your ADR. It would be really good to get that done. And I'm
6 not going to send this out to trial until it is done. And
7 I'm not going to fill out an order on --

8 MS. ROSEN: You want me to work with
9 Mr. Keimbaye on an order, Your Honor?

10 THE COURT: On -- oh, an order? That's fine.
11 Sure.

12 MS. ROSEN: Okay.

13 THE COURT: On the summary judgment. That's
14 fine.

15 MS. ROSEN: Yep.

16 THE COURT: And if it's problematic, you all
17 can just send me competing orders. Please send them in Word
18 format. You can email them. And that way I can make
19 appropriate edits, if needed.

20 MS. ROSEN: Okay.

21 THE COURT: All right.

22 Yes, Mr. Keimbaye, do you have a question?

23 MR. KEIMBAYE: Your Honor?

24 THE COURT: Uh-huh.

25 MR. KEIMBAYE: What part of the discussion are

1 | you referring to this?

2 | THE COURT: I'm sorry?

3 | MR. KEIMBAYE: What -- who we need to send it
4 | to your office?

5 | THE COURT: Oh, all right. So I made an oral
6 | ruling on the summary judgment motion. And Ms. Rosen was
7 | proposing that she draft an order that's consistent with the
8 | oral ruling that I made, which does dismiss some of your
9 | claims, but not all of them, and then send that to you. And
10 | if you're comfortable with it, that it's consistent with oral
11 | ruling that I made, you can indicate that, and it can be sent
12 | to me, and I will get that entered.

13 | If you disagree with the form of that order,
14 | then you can propose your own form of order. But this is not
15 | an invitation to reargue the issues that I've ruled on. It's
16 | just, you know, to make sure that the order that gets
17 | entered, and that's presented to me, is consistent with the
18 | oral ruling that I made this morning. Does that make sense
19 | to you?

20 | MR. KEIMBAYE: It makes sense, Your Honor, but
21 | I'm confused because I would prefer that the Court make that
22 | order and that, you know, make us aware of it and, you know,
23 | see what we discussed about it today.

24 | THE COURT: So it's -- the problem,
25 | Mr. Keimbaye, is I have dozens, and dozens, and dozens of

1 cases and I'm trial right now on one of them. So it's
2 customary for the lawyers to draft orders, and then I look at
3 them. And if I feel that changes need to be made, which is
4 why I want it in Word format, so I can edit it, then I make
5 those changes before I enter the order.

6 But if I had to draft all of my orders from
7 scratch, it would be very time-consuming. And so it's very
8 helpful when the parties send me proposed orders, so I don't
9 have to create one from scratch.

10 MR. KEIMBAYE: Thank you, Your Honor. Just to
11 summarize about things that we're taken out today --

12 THE COURT: Let me make it simple --

13 MR. KEIMBAYE: -- on Plaintiff's claim --

14 THE COURT: Let me make it simple for you.
15 The claims that are still alive are your harassment claim,
16 and discrimination claims against Providence and
17 Mr. Kortendick. And everything else is being dismissed. So
18 your wrongful termination --

19 MS. ROSEN: Just the harassment claim right
20 now, not discrimination?

21 THE COURT: Well --

22 MS. ROSEN: Hostile work environment is just
23 corrective. We just consider it harassment. And
24 discrimination is different.

25 THE COURT: Okay. Well, harassment based on

1 race, national origin, and sex. And the only sexual
2 harassment he's alleged was by Ms. Lonon.

3 But, again, the evidence taken in the light
4 most favorable to the Plaintiff is that Mr. Kortendick was
5 aware of that. And that, at least in some respects, he was
6 asked at the -- in the interest of the employer in, loosely
7 termed, supervising, and signing, and dealing with
8 Mr. Keimbaye.

9 So, Mr. Keimbaye, it looks like you have
10 another question?

11 MR. KEIMBAYE: Yes. Right there there's the
12 confusion between, you know, Defendant and your opinion. And
13 that's the reason why I am praying and hoping that, you know,
14 your office draft the order. That is potentially -- it
15 doesn't -- in this case --

16 THE COURT: I will not enter an order just
17 because they drafted it. I mean, the order is going to be my
18 order. Okay. But if you are not in agreement with the order
19 that they are proposing, you can let me know in which ways
20 you disagree with that order and I will make appropriate
21 modifications. I'm not just going to get an order, and then
22 sign it, and that's that. That's not what I do.

23 MR. KEIMBAYE: Will the order go to your
24 office for approval first before --

25 THE COURT: Yes.

1 MR. KEIMBAYE: -- checking in with the
2 Plaintiff or --

3 THE COURT: No. No.

4 MR. KEIMBAYE: -- coming to Plaintiff for --

5 THE COURT: They're going to check in with you
6 first.

7 MR. KEIMBAYE: I would then like, you know,
8 everything that the form your office would want in the Word.
9 For example, a minute ago, Your Honor, you were mentioning
10 harassment discrimination, but the Defendant Counsel is
11 probably confused or, you know, probably attempting to object
12 to some of --

13 THE COURT: Okay. As I said, Mr. Keimbaye,
14 it's helpful to me if parties propose a form of order. It's
15 only a form. And I will make any necessary changes to
16 conform it to the rulings that I made this morning before it
17 gets filed.

18 MR. KEIMBAYE: Okay.

19 THE COURT: Okay. All right.

20 MR. KEIMBAYE: Okay. Thank you.

21 THE COURT: Thanks, everybody, have a good
22 weekend.

23 MR. KEIMBAYE: Thank you.

24 MS. ROSEN: Thank you, Your Honor.

25 MR. KEIMBAYE: Thank you.

1 (Proceedings adjourned at 11:54:14 a.m., to recommence on
2 September 1, 2023.)

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1 SEATTLE, WASHINGTON

2 FRIDAY, SEPTEMBER 1, 2023

3 MORNING SESSION - 9:02:31 A.M.

4 JURY TRIAL:

5 (The following proceedings were held in open court:)

6 THE COURT: Good morning, everyone.

7 MS. ROSEN: Good morning, Your Honor.

8 MR. KEIMBAYE: Good morning.

9 MS. BURNHAM: Good morning.

10 THE COURT: All right. We are on the record
11 in Dominique Keimbye, Plaintiff, versus Providence Regional
12 Medical Center Everett and Christopher Kortendick,
13 Defendants, cause 21-2-07545-9 Seattle designation. We are
14 set for trial to begin with jury selection right after the
15 Labor Day holiday next Tuesday.

16 DISCUSSION RE NUMBER OF TRIAL DAYS

17 THE COURT: Today, I wanted to give you the
18 opportunity to argue any issues over the motions in limine.
19 And I thought it would be helpful to go over procedure for
20 voir dire and for trial.

21 Okay. First of all, I saw your estimate of
22 witness examinations, and that's not happening. That would
23 be 21 trial days. We have six after voir dire. We have to
24 wrap this case up by the end of next week because the
25 following week is fall judicial conference. So I will be

1 | gone the 18th, 19th, and 20th. And our jurors expect to be
2 | in attendance through the end of next week.

3 | So my proposal -- and I'm willing to hear
4 | people out on it, to some degree, but my proposal is, in
5 | theory, we have 30 hours. We have five hours -- maximum of
6 | five hours per trial day. That's because we start at nine.
7 | We go until noon, but we take a 15-minute recess in the
8 | morning. We take a 90-minute recess between 12 and 1:30.
9 | And then we go from 1:30 to four, but we also take a
10 | 15-minute recess midafternoon. The recesses are part of the
11 | contract that the Court has with the lower bench. So those
12 | have to happen.

13 | When I say theoretically, with a jury, there
14 | are sometimes delays: Somebody is in the bathroom and isn't
15 | ready to come into court right after a break ends. Sometimes
16 | a legal issue will arise that will cut into our trial time
17 | while it gets addressed outside the presence of the jury.

18 | So that's a best-case scenario. I'm looking
19 | more like four, four-and-a-half hours a day of trial time,
20 | realistically.

21 | The other thing that you all need to keep in
22 | mind is because this is a jury trial and because it is a
23 | civil case, the jurors can propose written questions to
24 | witnesses when they finish their testimony.

25 | And that realistically means we take a sidebar

1 if there are any jury questions so that we can talk about
2 them and whether or not the Court should ask them and whether
3 or not the Court should rephrase them. That takes up trial
4 time, too.

5 So I think what I'm inclined to do, especially
6 to make sure that there's time for openings and closings, and
7 things like that, is to provide Plaintiff with 16 hours of
8 trial time and to provide the Defense with 12 hours of trial
9 time. I'm giving the Plaintiff a little more time because
10 the Plaintiff is the party with the burden of proof.

11 So, with that in mind, is there anything
12 somebody -- anybody wants to address regarding any of that?

13 MS. ROSEN: Your Honor, I think a lot of that
14 will depend on your ruling on our CR 43 motion, as well as
15 the issue of Mr. Keimbaye wanting to call -- wanting to just
16 use -- I don't know what kind of testimony for a couple of
17 witnesses.

18 THE COURT: Okay. I mean, we'll deal with all
19 of that.

20 MS. ROSEN: Okay.

21 THE COURT: But there is -- there is no way
22 that this is going to be a 21 -- actually, the hours worked
23 out to 21.76 trial days, so almost 22 trial days.
24 That's -- this case --

25 MS. ROSEN: We are in complete agreement with

1 that, Your Honor.

2 THE COURT: Yeah. This case doesn't need
3 that. Okay.

4 Let's talk about jury selection before we move
5 on to voir dire, unless Mr. Keimbaye has any questions about
6 trial timing. Do you have questions, Mr. Keimbaye?

7 MR. KEIMBAYE: Yes. By reducing trial hours
8 per party, I'm not sure if it would help Plaintiff, you know,
9 to cover, you know, witnesses that, you know, he intends to,
10 you know, to examine for questions because some of the
11 Defendants' witnesses, you know, were deeply involved in
12 Plaintiff case, and Plaintiff needs, you know, to examine
13 them, you know, to -- to find out, you know, what --

14 THE COURT: Well, so this isn't discovery.
15 This is trial. Finding things out is typically something
16 that you do in discovery. Trial is where you present
17 evidence to the jury, and the jury will be deciding the case
18 based on the instructions of law that the Court gives and
19 based on the evidence at trial.

20 So, Mr. Keimbaye, what you need to do is
21 figure out what witnesses you need to call and make the
22 appropriate arrangements for them to appear.

23 And I would highly recommend preparing an
24 outline of questions that you feel are important to ask the
25 witness for the jury to hear the answers to. That includes

1 for your own testimony. And that way you can be organized.
2 You cannot -- hopefully, it will minimize repetitiveness and
3 things like that. You want a nice, tight case. You want a
4 case that the jury's going to be able to understand.

5 MR. KEIMBAYE: Yes, Your Honor. I have been
6 working on it by going through exhibit by exhibit and, you
7 know, writing questions but, you know --

8 THE COURT: J., would you grab the exhibit
9 binders for me, please?

10 THE BAILIFF: Yes.

11 THE COURT: Go ahead. I'm sorry. I just left
12 the exhibit binders in chambers, and I asked my bailiff to
13 bring them out to the courtroom. Go ahead, Mr. Keimbaye.

14 MR. KEIMBAYE: And so I have been working on
15 the questions that, you know, I plan to use during trial for
16 each witness that I intend to call.

17 THE COURT: Good.

18 MR. KEIMBAYE: By looking at my exhibits, you
19 know, I assign exhibit to, you know -- you know, each one of
20 the -- the witnesses that I intend to examine. And so I have
21 been preparing questionnaires or questions, you know, that I
22 need to ask.

23 DISCUSSION RE VOIR DIRE

24 THE COURT: Okay. That's good.

25 Let's talk about voir dire, and then let's

1 | come back to the motions in limine and the Defense motions.

2 | So, Mr. Keimbaye, I'm assuming that you haven't done jury
3 | selection before. Am I correct in assuming that?

4 | MR. KEIMBAYE: I believe I have -- I have done
5 | one during my motor vehicle accident trial.

6 | THE COURT: Well, but did you have a lawyer
7 | for that one, or were you representing yourself?

8 | MR. KEIMBAYE: I have been, you know, self,
9 | you know -- representing myself.

10 | THE COURT: Okay. All right. Well, so it
11 | sounds like you may have had a little bit of experience with
12 | it.

13 | Let me describe how we do it in my court. We
14 | will be doing it via Zoom. And we will have a panel. And I
15 | worked late last night. And the bailiff has either already
16 | sent you or will be sending you very shortly the list --

17 | THE BAILIFF: I'll fix it. Keep going.

18 | THE COURT: -- the list of jurors that I
19 | believe should be excused for the hardships that they
20 | described in their questionnaire. I'm not excusing everyone
21 | who asked to be excused for hardship; just the ones that I
22 | thought made a good enough case for it.

23 | And then -- and there's one additional
24 | person -- hold on a second. Well, you'll see it. It's
25 | Ms. Ewe (phonetic). I can't remember her juror number off

1 the top of my head right now. But she indicated that she
2 can't communicate in English, which disqualifies her as a
3 juror. So I'm including her with the hardship excuses --
4 excusals.

5 Then I have arranged a panel of 20 for the
6 morning and 18 for the afternoon. I typically only arrange
7 18. But for the first group -- for the group of jurors who
8 have the lowest juror numbers, there were a number of people
9 who asked to be excused for hardship. And there were also a
10 number of people who expressed that they may have a bias.
11 So -- and I wanted to make for a larger group in case we end
12 up excusing a substantial proportion of those folks for
13 either hardship or for cause. Also, experience indicates
14 that not everyone who is invited to participate in a Zoom
15 panel actually shows up.

16 So I have arranged for a panel of 20 for the
17 morning and a panel for 18 for the afternoon. And those
18 juror numbers and names are being sent to you this morning.

19 MS. ROSEN: Your Honor, may I ask a clarifying
20 question?

21 THE COURT: Yes. Of course.

22 MS. ROSEN: If there's somebody on the
23 questionnaire list who -- you alluded to this -- who it's
24 pretty obvious there's bias in one way or another, what --
25 how do you want us to handle that in advance of voir dire?

1 Do you want us to let you know who we think that is, who
2 should be excused for cause, or do you just want us to let
3 that play out in voir dire?

4 THE COURT: I think -- I think under the
5 rules, unless there's a stipulation between the parties,
6 which seems unlikely, but if there is, then I will consider
7 it. To excuse someone for cause, I think it needs to play
8 out in voir dire.

9 MS. ROSEN: Okay. Thank you.

10 THE COURT: So. The way it'll work
11 procedurally is I will make some introductory remarks,
12 explain to the jury why we're here, make introductions to the
13 parties and Counsel, and sort of explain to them how to
14 behave during the Zoom voir dire process. And then I will
15 inquire about hardships so that we can get somewhat more
16 expansive answers from people who indicated they might have a
17 hardship. Sometimes people kind of abandon their claim for
18 hardship once they're actually engaged in the voir dire
19 process. So I follow up with them.

20 I also follow up with asking whether they're
21 someone who believes that they can't be completely fair and
22 impartial to both sides. And I follow up with, you know, if
23 there's anyone who has any concerns about their ability to
24 follow the instructions of law.

25 And, usually, the people who indicated a

1 potential bias on the questionnaire will raise their hands.
2 But if they don't, I will try to circle back to those people.

3 If it's clear that there's a bias, I will go
4 ahead and excuse those jurors on my own initiative. If it's
5 somewhat more ambiguous, then I will let it go to voir dire
6 by the parties.

7 And, Mr. Keimbaye, you're the Plaintiff, so
8 you get to go first and ask questions of the jurors. It's
9 very important that you ask questions. This is not a time to
10 argue your case. This is not a time for you to impart
11 information about yourself or about your case to the jury.
12 This is a time for you to ask questions that you feel are
13 relevant to a juror's qualifications to serve, to a juror's
14 ability to fairly and impartially decide this case.

15 You'll get 20 minutes. After your 20 minutes,
16 Defense Counsel will get 20 minutes to talk to the panel.
17 And then any remaining time -- and, of course, we'll take the
18 break at the appropriate time. Any remaining time that
19 morning, and we'll split equally between the parties.

20 So you'll each get a second round. It might
21 be 20 minutes. It might be somewhat less than 20 minutes.
22 That really depends on how long colloquies might take with
23 the Court, whether somebody has connectivity issue so they're
24 dropping off and we have to wait for them to rejoin us.
25 There's just a lot of variables at play. But, you know, I

1 will give each side as much time as possible.

2 If you have a challenge for cause, which if
3 you believe that a juror is biased and has indicated in his
4 or her responses to questions that they can't be equally fair
5 to both sides and can't decide the case objectively and
6 impartially, please bring that to my attention at the time
7 that you feel that the challenge for cause has been
8 established.

9 You can say, Your Honor, we believe Juror
10 Number 19 should be excused for cause. I just made up the
11 juror number. But this is what I'm saying. That's all you
12 have to say.

13 If it's clear that the juror should be excused
14 for cause, I'll grant the challenge. If it's not entirely
15 clear, I may ask a few follow-up questions just to see if a
16 juror has been giving answers that I believe are ambivalent
17 in something or ambiguous, I will follow up. I don't try to
18 rehabilitate jurors. I don't try to bully them into saying,
19 oh, yes, I can be fair. I have no more interest in seating a
20 biased juror than the parties do.

21 So that's how I'd like to handle challenges
22 for cause. If I don't hear a challenge for cause against a
23 juror -- or against any juror at the time that we have
24 finished that voir dire panel and I'm about to let them go, I
25 will consider any challenges for cause against those people

1 that remain to be waived. So make sure you bring them to my
2 attention during the voir dire session.

3 We will do peremptory challenges after we have
4 talked to both panels and done voir dire with both panels.
5 And we will do that as part of the Zoom session but outside
6 the presence of the jurors.

7 I will take one screenshot during each voir
8 dire session -- one in the morning, one in the
9 afternoon -- and ask the bailiff to email that to you just so
10 that you have faces that you can match with names and with
11 the responses that you have in your questionnaires.

12 I do take GR 37 seriously. And I do my very
13 best to follow the mandates of our state Supreme Court that
14 they have continued to establish in case law as we go
15 forward, including up to the present time. So bear that in
16 mind, please, if you're planning on making a peremptory
17 challenge against a person who appears to be a member of a
18 community of color.

19 Any questions about voir dire?

20 MS. ROSEN: Not from the Defense, Your Honor.

21 THE COURT: Mr. Keimbaye?

22 MR. KEIMBAYE: No questions, Your Honor.

23 THE COURT: Yes, sir? Did you say --

24 MR. KEIMBAYE: No questions.

25 THE COURT: Oh. No questions. Okay.

1 I will be seating them in order of their juror
2 number, which is on that Excel spreadsheet that you all have.
3 I do have one important question to ask about alternates. I
4 will do my best to seat two alternates. And the question is
5 this: My strong preference is to -- not predesignate the
6 alternates, but to choose them randomly at the conclusion of
7 the trial, assuming we still have all 14 at the conclusion of
8 the trial.

9 We have a spindle on the bench, here, with
10 numbered ping-pong balls in it. And, when we do that,
11 typically the bailiff or the clerk will spin the spindle and
12 select two balls in order. And the first number on the first
13 ball will be our first alternate and the number on the second
14 ball will be our second alternate.

15 I have found, through many years of
16 experience, that jurors really appreciate that procedure.
17 They see it as fair. If you don't want to agree to random
18 selection of our alternates at the end of our trial, then
19 seats 13 and 14 will be our alternates. I will tell them. I
20 will admonish them about the importance of paying close
21 attention and of the likelihood that, given the vagaries of
22 life, one or both of them may very well end up deliberating.
23 But I will tell them. I won't keep it a secret from them.

24 Additionally, you will have to confine your
25 fourth peremptory challenge to someone in one of the

1 alternate seats after you've exercised your first three
2 rather -- if we do it randomly then, of course, you can
3 exercise all four of your peremptory challenges against
4 anyone who is in the box. So if you --

5 MS. ROSEN: Your Honor --

6 THE COURT: Go ahead. I'm sorry, Ms. Rosen.

7 MS. ROSEN: I'm sorry. I didn't mean to speak
8 over you.

9 We're fine doing the random.

10 THE COURT: Okay.

11 Mr. Keimbaye?

12 MR. KEIMBAYE: Yes, Your Honor.

13 THE COURT: Are you comfortable with randomly
14 choosing our alternates at the end of the trial?

15 MR. KEIMBAYE: Yes, Your Honor.

16 THE COURT: Okay. Excellent. I just -- I
17 know jurors really like that. All right.

18 Probably the next order of business is the
19 Defense motion to dismiss. Ms. Rosen, are you arguing this,
20 or is Ms. Burnham?

21 MS. ROSEN: Ms. Burnham will be arguing it.

22 THE COURT: All right. Ms. Burnham? I read
23 your brief.

24 DEFENDANT'S MOTION TO DISMISS

25 MS. BURNHAM: Thank you, Your Honor. Good

1 morning. Good morning, Mr. Keimbaye. And good morning,
2 Bailiff.

3 Thank you for reading our brief. I appreciate
4 that.

5 THE COURT: Part of my job.

6 MS. BURNHAM: Defendants -- yeah.

7 Defendants ask the Court to find the Plaintiff
8 in civil contempt and dismiss Plaintiff's claims for his
9 failure to comply with two of your orders in this litigation.

10 He's been ordered now twice to pay the \$9,291
11 to Defendants. And he's failed to do so or take any steps to
12 satisfy that amount per your order.

13 The Defendants also seek dismissal under
14 CR 41(b) for Plaintiff's continued violation of Court's
15 orders, violations of the Civil Rules, and for his knowing
16 misrepresentations to the Court under penalty of perjury.

17 As a threshold issue, before we even jump into
18 the merits of the motion, if Mr. Keimbaye was opposing this
19 motion, he was to file any opposition per LCR 7(b)(4)(D) by
20 August 28th.

21 No opposition has been filed. And under the
22 case law in Washington State, failure to address an argument
23 is a concession of that argument. That's case *New Meadows*
24 *Holding Co. v. Washington Water Power Co.*, 34 Wn.App 25; *Leen*
25 *v. Demopolis*, 62 Wn.App 473; *In re Cross*, 99 Wn.App 2d 373;

1 *State v. Ward*, 125 Wn.App 138; and *State v. McNair*, 88 Wn.App
2 331.

3 As this Court is well-aware, it must hold pro
4 se parties to the same standards to which it holds attorneys.
5 And, for that reason, as a threshold reason, we ask that the
6 Court grant our motion to dismiss.

7 And I'm happy to take a pause and let you rule
8 on that before I move on to the merits of the motion, if you
9 would like.

10 THE COURT: No. Go ahead.

11 MS. BURNHAM: Okay. So turning to the motion,
12 itself, let's start with just a little bit of background.

13 So on February 3rd, 2022, this Court denied
14 Plaintiff's motion to compel and awarded Defendants their
15 attorney's fees occurred in responding to Plaintiff's motion.
16 The Court found that Plaintiff violated CR 11 and explicitly
17 instructed Mr. Keimbaye to follow the Civil Rules.

18 Defendant submitted their attorney fee award
19 on February 28th, and Plaintiff was order to pay the \$9,291
20 within 30 days.

21 Plaintiff didn't pay the fee. Defendants
22 filed a motion for entry of judgment. And a year later, on
23 May 18th, 2023, again, this Court ordered Plaintiff to pay
24 attorney's fees, this time giving Plaintiff 60 days to pay
25 the fees, or until August 4th.

1 Again, Plaintiff did not play the fees. He
2 has made no effort to pay those fees. And he has not
3 complied with this Court's two orders requiring him to do so.

4 Under RCW 2.28.010, 020, RCW 7.21.030, and
5 050, and RCW 7.16.280, Court has the inherent authority to
6 impose terms, sanctions, or hold a party in contempt, as we
7 ask them to do here, for failure to perform an act that the
8 Court has ordered the party to perform or for disobedience
9 with the Court's process.

10 As Defendants have already met their burden of
11 demonstrating that Mr. Keimbaye has violated your two orders,
12 the burden shifts to Mr. Keimbaye to demonstrate that he was
13 unable to comply. He didn't respond to the motion to dismiss
14 at all, so clearly he did not meet that standard.

15 But regardless of that, he has made no effort
16 to comply with his obligations to follow this Court's orders.
17 He has the burden that he took all -- to show that he took
18 all reasonable steps to comply with this court order, and he
19 has shown none.

20 This Court should dismiss Plaintiff's claims
21 with prejudice because a monetary sanction and several
22 admonishments from Your Honor are apparently not enough to
23 change his behavior.

24 The Court has already fined Mr. Keimbaye
25 \$9,291 and reminded him to follow the Civil Rules and found

1 that he violated CR 11. But, despite your clear directive,
2 Plaintiff has neither complied with the orders or offered any
3 explanation as to why he couldn't do so.

4 And even after receiving the Court's order on
5 the second motion for issuance of subpoena, Defense Counsel
6 reviewed what he filed because they had not been served.

7 Prior to filing his motions for subpoena, this
8 Court explicitly order Plaintiff to become familiar and
9 comply to Civil Rules in at least three of its written
10 orders. And just since we raised this issue in our motion to
11 dismiss, filed just over a week ago, Mr. Keimbaye has
12 continued to violate the Civil Rules. He has failed to file
13 pretrial documents pursuant to the amended case schedule.
14 For example, his jury instructions weren't filed until
15 Wednesday.

16 He also attempted to improperly call witnesses
17 using a CR 43 notice. He just notified us this week that he
18 has no intention of calling witnesses -- witnesses that he
19 has identified testimony time for in his witness estimates,
20 but instead he plans to present the jury with unspecified
21 out-of-court statements and deposition testimony.

22 He's improperly objected to exhibits that he
23 has waived objections to under ER 904. He's failed to
24 specify what his objections are. And he continues, to this
25 day, to argue his dismissed claims -- claims Your Honor

1 dismissed at summary judgment.

2 CR 41 provides this Court with inherent
3 authority to dismiss a plaintiff's claims and the failure of
4 the Plaintiff to comply with these rules for any order of the
5 Court.

6 Plaintiff is not a novice to litigation. He
7 just told you this morning that he has been involved in other
8 trials. Perhaps he has more trial experience than I do. He
9 has no excuse for telling the Court that he served us with
10 motions under penalty of perjury that he never served us,
11 especially in light of the fact that the parties have an
12 eservice agreement that we have been using throughout this
13 litigation.

14 We request dismissal of Plaintiff's remaining
15 claims with prejudice and an order holding Plaintiff in
16 contempt for not complying with the Court's two orders to pay
17 sanctions and an order requiring the payment of the
18 outstanding sanctions.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Mr. Keimbaye?

22 MR. KEIMBAYE: Yes, Your Honor.

23 Your Honor, may I stand, please?

24 THE COURT: I'm sorry?

25 MR. KEIMBAYE: May I stand?

1 THE COURT: If you wish.

2 ORAL ARGUMENT BY THE PLAINTIFF

3 MR. KEIMBAYE: Thank you.

4 Your Honor, with all due respect of this
5 Court, Plaintiff has not been ignoring the court order to pay
6 Defendants or Defense Counsel fees.

7 Defendants should not make no mistake that
8 they are the one who put Plaintiff in this situation in the
9 first place.

10 THE COURT: Well, that hasn't been
11 established. That's what you're claiming, but it hasn't been
12 established.

13 MR. KEIMBAYE: This case involved serious and
14 grave civil right abuse and violation.

15 THE COURT: Uh-huh.

16 MR. KEIMBAYE: And it is in Plaintiff hope
17 that this Court should remain unconvinced of Defendants'
18 eagerness and denial of Plaintiff claims to seize the
19 opportunity and impose him further fees in order to distract
20 pro se Plaintiff from fully preparing and concentrating on
21 his trial.

22 Defendants' actions completely destroyed
23 Plaintiff life. Plaintiff has no relation to -- no
24 relationship whatsoever to his family beside his employment
25 and his home. Plaintiff has no other relationship except to

1 focus on what Plaintiffs have been putting him on. This
2 is -- this is what Plaintiff has been doing beside work and
3 home.

4 THE COURT: But, I'm sorry. I don't
5 understand how that addresses Ms. Burnham's motion in her
6 argument?

7 MR. KEIMBAYE: Well, Plaintiff did not invent
8 to find himself in this position today.

9 THE COURT: But why didn't you respond to
10 her --

11 MR. KEIMBAYE: Defendants --

12 THE COURT: So hold on. Why didn't you
13 respond to her motion? She filed this motion saying, Judge,
14 we're asking you to dismiss this case before we even select a
15 jury. And you didn't respond to that. And she's arguing
16 that your lack of response should be taken by the Court as
17 lack of opposition to the motion.

18 MR. KEIMBAYE: Your Honor, this is not a lack
19 of, you know, response to Defendants', you know, motion.
20 Plaintiff is overwhelmed with the -- with the preparation of
21 this trial. And there's a date for, you know, pretrial,
22 which is today. And Plaintiff should be allowed to -- to
23 express his opposition to the Defendants', you know, motions,
24 even though they -- they filed the motion to distract the
25 Plaintiff from, you know, concentrating on his, you know,

1 trial preparation.

2 Plaintiff is self-represented, you know, party
3 in this case. Again, it is in Plaintiff's hope that this
4 Court should remain unconvinced of Defendants' eagerness and
5 denial of Plaintiff claims to seize the opportunity and
6 impose him further fees in order to distract the Plaintiff
7 from preparing any, you know -- contesting, you know, his
8 claim in front of the jury.

9 THE COURT: So why didn't you pay --

10 MR. KEIMBAYE: In addition --

11 THE COURT: Why didn't you pay the attorney's
12 fees that you were ordered to pay? I think I can guess, but
13 I don't want to guess. I want to hear it from you.

14 MR. KEIMBAYE: It's been over five years, Your
15 Honor. And Plaintiff has been all along dealing with all the
16 costs and, you know -- and fees regarding, you know, his
17 claim. And Plaintiff has no financial, you know, ability
18 to -- to pay Defendants', you know, fees, in order to move
19 on, you know, with his trial.

20 And beside, you know, the Defendants' fee will
21 be paid, whether -- with interest or without interest.

22 Plaintiff is not running away from paying Defendants', you
23 know, legal fees or expenses. And this case -- this case is
24 all about civil right abuse and violation.

25 And Defendants', you know, legal fee is

1 | portion of this -- this case. And this case is not complete
2 | yet. And, yet, Defendants are eagerly, you know, asking for
3 | the legal fees in order to go to trial.

4 | THE COURT: No. They're just asking you to
5 | pay what you've already been ordered to pay a year-and-a-half
6 | ago.

7 | MR. KEIMBAYE: Yes. But, Your Honor, we are
8 | all experiencing, you know, financial crisis. And Plaintiff
9 | is a pro se plaintiff in this case. He's not running away
10 | from his obligation to pay Defendants', you know, legal fees.

11 | THE COURT: All right.

12 | MR. KEIMBAYE: Plaintiff is literally trying
13 | to survive while defending his -- his alleged to make claim
14 | for civil right violation in this case. And Plaintiff should
15 | be allowed to go to trial.

16 | COURT'S RULING

17 | THE COURT: All right. Thank you.

18 | I'm not going to grant the motion to dismiss
19 | at this point. For the Court to find civil contempt, the
20 | Court has to make a finding that Mr. Keimbaye had the ability
21 | to follow the court order and willfully refused to follow it.
22 | It does not appear that he has the financial wherewithal to
23 | obey the court order.

24 | I do realize that he didn't file a brief in
25 | response to the motion. However, most of the cases -- or at

1 | least the first two that I quickly looked at, that
2 | Ms. Burnham cited, have to do with an issue being raised for
3 | the first time on appeal and the Court of Appeals not
4 | entertaining that.

5 | Under these circumstances -- and, yes, the
6 | Court is obligated to hold Mr. Keimbaye to the same standard
7 | as the Court would hold an attorney to -- I don't think the
8 | interest of justice at this point would support entry of an
9 | order dismissing the case. So that motion is denied.

10 | With respect to the fees that Mr. Keimbaye
11 | were ordered to pay at the conclusion of the case, regardless
12 | of what the conclusion might be, if those are not paid, then
13 | the Defense can ask the Court to enter a judgment against
14 | Mr. Keimbaye in that amount, and then, you know, you have
15 | recourse to methodologies for collecting on that judgment.

16 | If there's an award of damages against the
17 | Defendants, then perhaps there could be an offset. If
18 | there's no award of damage against the Defendants, then it
19 | seems appropriate that a judgment be entered in favor of the
20 | Defendants for the amount of the attorneys' fees that
21 | previously were ordered that Mr. Keimbaye pay.

22 | All right.

23 | MS. BURNHAM: Your Honor, may I just state
24 | something for the record?

25 | THE COURT: Yes.

1 MS. BURNHAM: Thank you, Your Honor.

2 Because we weren't provided the opportunity to
3 hear any objection to our motion, we weren't aware that
4 Mr. Keimbaye was going to raise his financial status as a
5 defense to his -- to say it wasn't willful that he couldn't
6 pay the fees. But, respectfully, he has submitted exhibits
7 that show that that just plainly isn't true. And so we would
8 ask that that be considered. But I understand Your Honor's
9 ruling. I just --

10 THE COURT: All right. Well, it ought to make
11 it easier for you to collect on a judgment, in that case. I
12 just don't think it's appropriate to dismiss the case.
13 That's kind of a nuclear remedy.

14 MS. BURNHAM: Thank you.

15 THE COURT: If it were an egregious discovery
16 violation, even then it would be a nuclear remedy, and the
17 Court of Appeals might have something to say about that, so.

18 DISCUSSION RE CR 43

19 THE COURT: Okay. Let's talk about the CR 43
20 because -- and I don't know if it would be helpful if I
21 short-circuit that a little bit.

22 Mr. Keimbaye, I don't know whether you are
23 aware, but the law is quite clear, and Civil Rule 45 is
24 quite -- I'm sorry. Civil Rule 43 is quite clear that you
25 can compel the attendance of specific people who are either

1 Defendants' parties or the managing agent of a Defendant.

2 So Mr. Kortendick, for example, a CR 43 notice
3 for him to attend trial would be effective. But you can't
4 compel the attendance of witnesses who are not either parties
5 or managing agents for Providence, which includes the vast,
6 vast majority of people on your list. I suppose Mr. John
7 might be an exception.

8 But I'm not sure whether this issue is moot,
9 given that you apparently since have said something about not
10 calling any witnesses. So I'm not clear. I have yet to see
11 a subpoena. I tried twice. I'm not allowed to give you
12 legal advice. But I tried twice, as best I could, to provide
13 you with direction on how you can get subpoenas issued for
14 any witnesses you wanted to subpoena. And I still haven't
15 seen any subpoenas. And it -- you know, it's getting very
16 late for that.

17 So I'm not clear what your intentions are.
18 Can you help me understand?

19 MR. KEIMBAYE: Your Honor, like I said
20 earlier, subpoena a witness does involve, you know, taking
21 care of the witness travel times and also their time in
22 court. And the first three Plaintiff witnesses, Mr. [sic]
23 Husted, Mr. Dido, and Mr. Ramos (phonetic), except
24 Mr. Dido -- Mr. Ramos moved to Chicago a year or a
25 year-and-a-half ago.

1 THE COURT: All right. Well, then, we can't
2 subpoena him to court.

3 MR. KEIMBAYE: And, also, Mr. [sic] Husted,
4 the most recent information I heard from, you know, her
5 husband, they moved to Florida.

6 THE COURT: Okay.

7 MR. KEIMBAYE: And so the only person that,
8 you know, left is Mr. Dido. Plaintiff has been trying to
9 connect with Mr. Dido in order to, you know, to come forward
10 and, you know, give testimony to his case. He is still
11 currently employed by Providence at Everett, and so he
12 refused to reply to Plaintiff text message.

13 THE COURT: Well, but being employed by
14 Providence doesn't make him a person that can be compelled to
15 attend via Civil Rule 43 notice to attend trial. If he's not
16 a managing agent, then if you want to compel him to attend
17 trial, he needs to be served with a subpoena in accordance
18 with the law.

19 So he has to be a party or an officer,
20 director, or a managing agent. If he's just an employee,
21 then you can't get him to court with a Civil Rule 43 notice
22 to the Defendants.

23 So what's your intention about calling
24 witnesses? I'm still not clear. You're explaining to me
25 that some of the ones that you wanted to call have moved out

1 of state. But what's your intention for this trial?

2 MR. KEIMBAYE: My intention -- my intention is
3 to present and publish, you know, testimony -- the deposition
4 testimony from Ms. Husted to the jury. And also testimony
5 obtained by, you know, Plaintiff former attorneys that
6 involve Mr. Ramos, Mr. Dido, and Mr. Husted. Those are
7 valid, you know, testimonies, you know, that, you know, they
8 provided to Plaintiff former, you know, attorney.

9 THE COURT: All right. So which -- which
10 witnesses do you want to present via deposition?

11 MR. KEIMBAYE: Mr. Husted.

12 THE COURT: Husted.

13 MR. KEIMBAYE: Yes. And also Plaintiff former
14 attorney witness memo.

15 THE COURT: I'm sorry, what? Former what?
16 I'm trying to find Husted on this list. Where's he on this
17 list? What's his first name?

18 MR. KEIMBAYE: Yulia Husted.

19 THE COURT: Oh, Yulia. Okay. You've been
20 saying Mr., so you confused me. And you said she moved to
21 Florida?

22 MR. KEIMBAYE: Yes.

23 THE COURT: Okay. All right. And who else
24 besides Ms. Husted?

25 MR. KEIMBAYE: Mr. Ramos's testimony.

1 THE COURT: Okay. Hold on. Ramos. What's
2 Ramos's first name?

3 MR. KEIMBAYE: Gustavo Ramos.

4 THE COURT: Is he on the list?

5 MS. ROSEN: Your Honor, he was never deposed.

6 MS. BURNHAM: Yeah. There is no --

7 THE COURT: Oh. Okay.

8 MR. KEIMBAYE: He gave -- he gave his
9 testimony to Plaintiff former attorney when they interviewed
10 him.

11 MS. ROSEN: It's just a little witness memo
12 from his former attorney with notes of what Mr. Ramos
13 supposedly said when she talked to him, and the same is true
14 of Mr. Dido. He was not deposed.

15 THE COURT: Okay.

16 MS. ROSEN: He wants to introduce this hearsay
17 memo.

18 THE COURT: Okay. Yeah. We can't do that,
19 Mr. Keimbaye. You can use the deposition testimony of a
20 nonparty witness if the witness has either died or lives
21 outside the county.

22 MS. ROSEN: That hasn't been established,
23 though, Your Honor. Like, we have no -- I don't know if she
24 lives in Florida or not.

25 THE COURT: I don't, either.

1 MS. ROSEN: Yeah.

2 THE COURT: So, I mean, the Court has to make
3 a finding based on something, Mr. Keimbaye, before you can
4 use these --

5 MR. KEIMBAYE: The only person that --

6 THE COURT: Before you can use these
7 deposition --

8 MR. KEIMBAYE: Sorry, Your Honor.

9 THE COURT: -- transcripts.

10 MR. KEIMBAYE: Plaintiff has reached out to
11 Yulia Husted several times. The only person that, you know,
12 replied back was her husband, talking to Plaintiff that, you
13 know, they have moved to Florida a year or a year-and-a-half
14 ago after, you know, Ms. Husted, you know, quit her job from
15 Swedish Hospital in Seattle.

16 THE COURT: Uh-huh.

17 MR. KEIMBAYE: And that's all that, you know,
18 that's all the information that Plaintiff, you know, got from
19 her -- from her husband.

20 THE COURT: Well, I mean, I need something
21 that's actually evidence. I need a declaration from somebody
22 because I have to make a finding based on evidence that she
23 resides outside of the county.

24 Okay. Anybody else besides Ms. Husted that
25 you would like to use a transcript for? Other than a party.

1 So you can use transcripts for Mr. Kortendick's deposition,
2 for example.

3 MS. ROSEN: He was not deposed, Your Honor.

4 THE COURT: Oh. He wasn't? Well, then, never
5 mind.

6 MS. ROSEN: No. Mr. Keimbaye didn't take any
7 deposition.

8 THE COURT: Oh. Okay. All right. Well,
9 then, we're only talking about Ms. Husted, right?

10 MS. ROSEN: Correct.

11 THE COURT: Okay.

12 MR. KEIMBAYE: Your Honor, Plaintiff intended
13 to -- again, Plaintiff intend to use Ms. Husted, Mr. Ramos,
14 Mr. Dido --

15 THE COURT: If there's -- if there's no
16 deposition of Mr. Ramos or Mr. Dido, there's no deposition,
17 there's no testimony under oath in front of a court reporter,
18 then it's hearsay, and it's not admissible at trial.

19 The reason why these depositions are
20 admissible at trial is because -- because the witness is
21 under oath at the time, and there's a transcript of exactly
22 what they said. And, very importantly, the counsel for the
23 opposing party is there and has an opportunity to
24 cross-examine the witness. That's why it's an exception to
25 the hearsay rule.

1 Okay. Who else was listed? Let me see.

2 There's a bunch of people listed. Is Travis John listed on
3 the Plaintiff's CR 43?

4 MS. BURNHAM: Your Honor, I think we maybe ran
5 two issues at once simultaneously.

6 THE COURT: We did.

7 MS. BURNHAM: So there was the CR 43. And
8 just so we're clear on Defendants' position with that, we are
9 willing to make Travis John and Chris Kortendick available.

10 THE COURT: Okay.

11 MS. BURNHAM: But we move to strike the rest
12 of the notice for all the reasons that Your Honor already
13 stated.

14 THE COURT: Yeah.

15 MS. BURNHAM: And then there's another
16 separate issue of what we found out this week, in terms of
17 Mr. Keimbaye asking to submit testimony of Ms. Husted and
18 what you were just covering. So I just wanted to be clear.
19 Like, those people weren't actually in the CR 43 notice --

20 THE COURT: Right.

21 MS. BURNHAM: -- so we're kind of covering a
22 few things at once.

23 THE COURT: Okay. Fair enough. So the
24 Defense motion to strike the CR 43 notices with the exception
25 of Mr. John and Mr. Kortendick is granted as long as Defense

1 Counsel represents as officers of the Court that none of
2 these other names are officers, directors, or managing agents
3 of Providence Everett.

4 MR. KEIMBAYE: Your Honor --

5 THE COURT: One moment.

6 MS. BURNHAM: So, Your Honor, in our motion to
7 strike, we did mention that Mark Smith could technically be a
8 managing agent, but he's completely irrelevant to this case.
9 The one document he could opine about is a document that
10 happened about six months after Plaintiff's termination. It
11 has no bearing on anything relevant to this case in terms of
12 whether or not Plaintiff faced harassment. He has not been
13 involved in this case. He was not deposed and he has no
14 personal knowledge relevant.

15 THE COURT: Okay. Thank you.

16 Yes, Mr. Keimbaye?

17 MR. KEIMBAYE: Yes, Your Honor. In Plaintiff
18 notice for appearance, Plaintiff named Nicola [sic] Bach, who
19 is in HR and a recruiter who hired Plaintiff, and is still
20 employed by Defendants. Plaintiff also --

21 THE COURT: Dr. Nikolay Usoltsev?

22 MR. KEIMBAYE: Nicola Bach, B-a-c-h.

23 THE COURT: Oh, Nicholas --

24 MS. BURNHAM: It's Nicholas Bach.

25 THE COURT: -- Nicholas Bach. Number 8 --

1 MS. BURNHAM: Yeah.

2 THE COURT: -- in the Defendant motion. All
3 right. So who is Nicholas Bach?

4 MR. KEIMBAYE: He -- he was the first person
5 that, you know, in HR and a recruiter that interview
6 Plaintiff for the position and hire Plaintiff. Plaintiff
7 also has communication with him on the day that, you know,
8 supervisor John make a phone call on June 12th, to put the
9 Plaintiff on administrative leave.

10 THE COURT: Okay. What about that?

11 MS. BURNHAM: May -- sorry. Am I up to speak?

12 THE COURT: Yes, please.

13 MS. BURNHAM: We submitted -- sorry. Sorry.
14 Just didn't want to interrupt. It's always weird on Zoom. I
15 can't tell who's going to talk next.

16 We submitted a declaration, Your Honor, that
17 explained everybody's different job positions, and we signed
18 that and submitted the declaration with our motion.

19 Nicolas Bach is not a managing agent of
20 Providence. He is not a director. He is a rank-and-file
21 recruiter and doesn't fall under the scope of CR 43.

22 MR. KEIMBAYE: He's a Providence recruiter.

23 THE COURT: He's a what?

24 MR. KEIMBAYE: He's a Providence recruiter.

25 THE COURT: Well --

1 MR. KEIMBAYE: Recruiter -- recruitment.

2 THE COURT: -- you know -- I'm sure Providence
3 employs hundreds and hundreds and hundreds of people,
4 including people in HR, that are not officers, directors, or
5 managing agents. The fact that he's a recruiter doesn't make
6 him an officer, director, or a managing agent.

7 MR. KEIMBAYE: Your Honor, in addition,
8 Plaintiff also --

9 THE COURT: Wait a minute. Wait a minute.
10 One moment. So this declaration of Kyline Taylor (phonetic)
11 says that as of June 28th, 2023, the following individuals
12 were not employed by Providence Regional Medical Center
13 Everett, and that appears to include Mr. Bach.

14 MS. ROSEN: Oh. So he was a -- apologies,
15 Your Honor. He was a recruiter, but he's not even currently
16 employed.

17 THE COURT: Yeah.

18 MS. ROSEN: Two reasons it doesn't fall under
19 CR 43. I apologize, Your Honor.

20 THE COURT: Okay. Yeah. So if he's not
21 currently employed, then they can't produce him -- or they
22 have no obligation to produce him, I guess I should say.

23 MR. KEIMBAYE: Your Honor, we are not talking
24 about the present. We are talking about the issue that
25 happened in the past. And, you know, Nicolas Bach is part of

1 it.

2 THE COURT: Well, maybe. But that's not what
3 we're talking --

4 MR. KEIMBAYE: If he isn't working now --

5 THE COURT: We're talking about the obligation
6 of a party to produce its -- its officers, directors, and
7 managing agents, so that's what we're talking about now. And
8 if he doesn't work for them now, then the issue of whether he
9 was a managing agent at the time that -- that the issue
10 surrounding your claims happened isn't relevant. They don't
11 have any obligation to produce ex-employees, just like they
12 don't have any obligation to produce Ms. Husted.

13 All right. Any other names at issue here?

14 MR. KEIMBAYE: Yes. Yes, Your Honor.

15 THE COURT: What?

16 MR. KEIMBAYE: Shanie -- Shanie McLaren.
17 She -- she's the nurse coordinator who communicated with the
18 Plaintiff when Plaintiff, you know, asked her to -- to
19 register him for, you know, the BLS and ACLS courses that,
20 you know, he was taking online. In addition to --

21 THE COURT: I'm sorry. Sonny -- Sonny who?

22 MR. KEIMBAYE: Shanie -- Shanie --
23 S-h-a-n-i-e.

24 THE COURT: Last name?

25 MR. KEIMBAYE: McLaren.

1 THE COURT: McLaren?

2 MR. KEIMBAYE: Yes.

3 THE COURT: Is she on the list?

4 MR. KEIMBAYE: Yes, Your Honor.

5 THE COURT: Oh, yeah. Here she is. Shane.

6 It might be Shanie, but it's spelled Shane McLaren. All
7 right. So what's her status?

8 MS. BURNHAM: She's not employed.

9 THE COURT: She's not an employee?

10 MS. BURNHAM: She's not currently employed
11 with us.

12 THE COURT: You guys -- you guys really go
13 through a lot of employees over time.

14 MS. BURNHAM: It was the pandemic. You know.

15 THE COURT: All right. Well, yeah. That
16 really shook up the healthcare industry even more than it
17 shook up the rest of us, I think. All right.

18 MR. KEIMBAYE: How would we prove that, you
19 know, the person is no longer working there?

20 THE COURT: I have a declaration under penalty
21 of perjury. That's how.

22 MR. KEIMBAYE: Again, Plaintiff also name
23 Karla Bruner. She is a nurse educator. She was the first
24 one that, you know, Plaintiff reached out, you know, when
25 Plaintiff saw the sign for the BLS and ACLS in the hallway

1 going through the main cafeteria at Everett.

2 THE COURT: Okay. But if she --

3 MS. BURNHAM: She's also not employed, Your
4 Honor.

5 THE COURT: All right. What's her status?

6 MS. BURNHAM: Not employed, Your Honor. If it
7 would be quick, I can just list who's not -- I can tell you
8 everybody's status, if you'd like.

9 THE COURT: Well, it's in this declaration,
10 here. So --

11 MS. BURNHAM: Yeah.

12 THE COURT: -- Rebecca Carbajal, Kathleen
13 Growan (phonetic), Colin Handerson (phonetic), Dan Roehrich,
14 Nicholas Bach, Marilyn Rice, Toni Booker, Opal Lonon, Amy
15 Fletcher, Shanie McLaren, and Karla Bruner are not employed
16 by Providence.

17 Nikolay Usoltsev, Sobia Mansoor and Kim
18 Porterfield never were employed by Providence.

19 And then the current employees are Kyle
20 Cramer, Christina Maddy, and quote/unquote Rosalin
21 (phonetic), no last name.

22 I don't know how they can produce someone that
23 you can't even identify by full name, Mr. Keimbaye.

24 MR. KEIMBAYE: Okay. That's the -- that's the
25 only name that, you know -- you know, Plaintiff know about

1 the person that he was -- interact with on June 6, 2018.

2 THE COURT: Okay. But a charge nurse is not a
3 managing agent, so.

4 MR. KEIMBAYE: Well, Your Honor, she managed
5 the night shift, you know, surgery cases. And she was the
6 person that, you know, Plaintiff approached, you know, to ask
7 that, you know, since he's already here, is it okay for
8 him -- for him to stay and help with the -- the last
9 open-heart cases --

10 THE COURT: Okay. That's -- I understand
11 that. That doesn't make her a managing agent of a corporate
12 entity.

13 All right. We need to move on to something
14 else because it's already ten o'clock. The CR 43 -- the
15 Defense motion to strike the CR 43 notice is granted except
16 with regard to Mr. Kortendick, Ms. -- I can't remember if
17 it's Ms. or Mr. Bach, now, and Mr. John.

18 MS. BURNHAM: Your Honor, Mr. Bach doesn't
19 work for us.

20 THE COURT: Oh. He doesn't? Okay. Well,
21 then, Mr. Kortendick and Mr. John, then. You're right. Bach
22 is on the list of people that don't work there anymore. Yep.
23 You're right.

24 MR. KEIMBAYE: Your Honor, Mr. Cramer --
25 Mr. Cramer is a nurse -- is a shift nurse manager in the OR.

1 THE COURT: Yeah. But -- all right. What
2 about --

3 MR. KEIMBAYE: And he is currently still, you
4 know, working for Providence Everett.

5 THE COURT: Yeah. I know. I know. He's on
6 the list of people who are still working there. So is
7 Mr. Cramer a managing agent or --

8 MS. BURNHAM: An assistant --

9 THE COURT: -- assistant nurse manager,
10 whatever that means?

11 MR. KEIMBAYE: Yes.

12 MS. BURNHAM: She's an assistant nurse manager
13 and not a managing agent.

14 THE COURT: Oh, good. Thank you, J.

15 Yeah. I mean, I think if you want these
16 people, you need to make sure they get subpoenaed,
17 Mr. Keimbaye. I mean, managing agents are typically, you
18 know, people with corporate type titles. Not people who are
19 supervising people who are doing their jobs at the hospital.

20 Okay. Should we move on to the motions in
21 limine?

22 PLAINTIFF'S MOTIONS IN LIMINE

23 THE COURT: Let's start with Plaintiff's. And
24 what I'm going to do is -- I try to do things electronically
25 insofar as I can. So I didn't print the Defense response. I

1 did read it. And I'm going to just pull it up on my screen,
2 here. There was no reply filed.

3 Okay. So a number of these motions,
4 Mr. Keimbaye -- and actually it helps now that I know that
5 you apparently represented yourself in an automobile accident
6 trial because an awful lot -- well not an awful lot -- but a
7 number of your motions in limine seem to really not have
8 anything to do with this case, but are ones that I do
9 typically see in motor vehicle tort cases.

10 So I don't understand your collateral source
11 motion, which is your motion in limine number 1. What is it
12 you are seeking to not -- what is it that you're seeking the
13 Court to order that the jury not hear about?

14 MR. KEIMBAYE: Your Honor, I -- I don't
15 understand what you mean by that.

16 THE COURT: Okay. So you made a motion in
17 limine -- I'll pull up your motion, too. One sec. I've got
18 the order in front of me. Let me pull up the motion. All
19 right.

20 Evidence that a plaintiff has received or is
21 entitled to receive benefits of any kind or character from a
22 collateral source. Tell me what -- so the purpose of a
23 motion in limine -- and you briefed this in your brief -- the
24 purpose of a motion in limine is for the Court to make a
25 determination about whether the jury should be allowed to

1 hear or see certain kinds of information.

2 MR. KEIMBAYE: Yes.

3 THE COURT: So you made a motion that the jury
4 should not have any information about collateral source. But
5 I don't know what exactly it is that you're asking me to
6 rule. And it's your motion. So I'm asking you, what is it
7 that you're asking me to rule?

8 MR. KEIMBAYE: Well, Your Honor, what
9 Plaintiff meant by that is because his motor vehicle accident
10 is tied up, you know, to his current claim against the
11 Defendants.

12 THE COURT: So you want the Court to rule that
13 the jury should not be allowed to hear about your motor
14 vehicle accident and your injuries from that? Is that what
15 you're asking?

16 MR. KEIMBAYE: Yeah. Including -- including,
17 you know, any compensation, yes.

18 THE COURT: Well, okay. Are you asking the
19 Court to keep out compensation you received for that accident
20 or the fact that you had the accident and that you had
21 injuries and that you were not able to work for a period of
22 time because of those injuries? Because those are --

23 MR. KEIMBAYE: All together. Yes.

24 THE COURT: Okay. Well, the problem is that
25 the Defense says you testified that you were not able to work

1 from the date of your termination until you were hired at
2 Kaiser Permanente on October 7th of 2019. But you claimed in
3 your auto accident that you were unable to work because of
4 your auto accident, what was the same day that you were
5 terminated from Providence.

6 So that's why it would be relevant because the
7 Defense wants to be able to argue that, hey, it wasn't your
8 emotional distress from your termination that was -- or, I'm
9 sorry, but the termination is not even an issue before the
10 jury right now. So they want to argue that it's not your
11 emotional distress from this alleged harassment and hostile
12 workplace that prevented you from working. It was your
13 injuries from this auto accident.

14 MR. KEIMBAYE: May I answer to that, Your
15 Honor?

16 THE COURT: I'm sorry?

17 MR. KEIMBAYE: May I answer to that, Your
18 Honor?

19 THE COURT: May you also what?

20 MR. KEIMBAYE: May I answer to that?

21 THE COURT: Yes, of course. I'm asking you a
22 question. Yes, of course.

23 MR. KEIMBAYE: Yes. Yes. If Plaintiff was
24 not putting the situation he is in today, on the day that,
25 you know, he had the motor vehicle accident, he would never

1 experience that motor vehicle accident. Plaintiff was on his
2 way to Defendants' first meeting for after -- after the
3 administrative leave. So Plaintiff was on the road going to
4 that meeting. That's where he experienced motor vehicle
5 accident. And it's --

6 THE COURT: That's not a reason -- that's not
7 a reason to keep that out, Mr. Keimbaye. I'm sorry. That's
8 not a reason to keep that out.

9 That's like saying, I got in a motor vehicle
10 accident because, you know, I had a fight with my spouse, and
11 so it's my spouse's fault. No.

12 MR. KEIMBAYE: The reason -- the reason
13 Plaintiff was on the road --

14 THE COURT: I understand.

15 MR. KEIMBAYE: Was because -- what --

16 THE COURT: -- but that's -- it's not
17 relevant.

18 Is the Defense trying to keep out any
19 compensation that Mr. Keimbaye received as a result of his
20 tort claim from the accident?

21 MS. BURNHAM: Is the Defense trying to keep it
22 out? No, Your Honor.

23 THE COURT: No. Okay. So you just -- so you
24 just want to be able to present evidence that Mr. Keimbaye
25 made claims under oath that were inconsistent -- in

1 connection with that accident that were inconsistent with the
2 claims he's making in this case. Do I have that right?

3 MS. BURNHAM: Yes. Somewhat, Your Honor.
4 Some of this kind of depends on other rulings on motions in
5 limine in terms of whether or not he's permitted to argue
6 economic damages as well, so.

7 THE COURT: All right. So I'm going to grant
8 this one, in part. Evidence of compensation received from
9 collateral sources.

10 MS. BURNHAM: Sorry, Your Honor. I think I
11 misunderstood your question. You asked if Defendants were
12 trying to keep out the amount that -- sorry, maybe I
13 misunderstood.

14 THE COURT: Yes.

15 MS. BURNHAM: I heard you say, is Defendant
16 trying to keep out the amount of compensation.

17 THE COURT: Yes.

18 MS. BURNHAM: We are not trying to keep out
19 the amount of compensation. I just wanted to make sure I was
20 clear in your statement.

21 THE COURT: So, wait a minute. The amount of
22 compensation he got for the auto accident, why is that
23 relevant?

24 MS. BURNHAM: Well, certainly, if he's going
25 to argue that he's been unable to work and faced financial

1 hardships because he's been unable to work and everything
2 else, we need to be able to talk about whether or not he
3 received financial compensation from another source and was
4 able -- I mean, we've already discussed his financial status
5 today, and it's certainly relevant to his claims of emotional
6 distress following his termination from Providence.

7 THE COURT: All right. Do you have
8 information about that?

9 MS. BURNHAM: About the amount?

10 THE COURT: About the amount specifically for
11 lost wages or inability to work.

12 MS. BURNHAM: We may elicit it in testimony,
13 Your Honor.

14 THE COURT: All right. I'm going to allow
15 that part. All right. Any insurance proceeds aside from a
16 third party claim or a UIM claim are --

17 MS. BURNHAM: And I think that's another
18 motion in limine somewhere in here as well. Yeah. There's
19 no -- we're not trying to bring in insurance.

20 THE COURT: All right. The second one -- and
21 I'll issue a written order. But the second one is the
22 alleged lack of similar incidents by Defendants prior to
23 Plaintiff's injury. What on Earth are you trying to keep out
24 here, Mr. Keimbaye, in your second -- in your motion in
25 limine number 2? Mr. Keimbaye?

1 MR. KEIMBAYE: Yes, Your Honor. Would you
2 repeat one more time your question?

3 THE COURT: What evidence are you asking the
4 Court to order be kept away from the jury in your motion in
5 limine number 2? Or is this just something you came up with
6 from some brief you saw in some different kind of a case?

7 MR. KEIMBAYE: I -- I guess Plaintiff
8 misunderstood, you know, the motion in limine in the list
9 that without, you know, noticing that it's about Defendants.

10 THE COURT: Are you withdrawing this?

11 MR. KEIMBAYE: From what I can read from the
12 motion in limine, it says the alleged lack of similar
13 incident by Defendants prior to --

14 THE COURT: That's your motion in limine.

15 MR. KEIMBAYE: Yes.

16 THE COURT: This is something you're asking
17 the Court to do. I'm asking you what exactly, what
18 information, what evidence are you trying to keep out that
19 relates to this motion in limine?

20 MR. KEIMBAYE: Well, Your Honor, like I just
21 said, you know, Plaintiff misunderstood thoroughly, you know,
22 the question in the list that, you know, without knowing that
23 it's about, you know, Defendants.

24 THE COURT: Okay. It's denied. I still don't
25 understand what this is about.

1 Number 3, evidence of Defendants' habit or
2 routine practice. Again, what are you trying to keep out?

3 MR. KEIMBAYE: Nothing, Your Honor.

4 THE COURT: All right. That's denied and
5 withdrawn.

6 How about number 4, other lawsuits or claims?

7 MR. KEIMBAYE: This is based on Plaintiff's
8 other claims, such as motor vehicle accidents.

9 THE COURT: Did you try that motor vehicle
10 accident case to a verdict?

11 MR. KEIMBAYE: Yes, Your Honor.

12 THE COURT: So you didn't settle it; is that
13 correct?

14 MR. KEIMBAYE: No.

15 THE COURT: No, it's not correct, or no, you
16 didn't settle it?

17 MR. KEIMBAYE: No, I did not.

18 THE COURT: You did not what?

19 MR. KEIMBAYE: Settle it.

20 THE COURT: Okay. So you got a verdict from a
21 jury?

22 MR. KEIMBAYE: Yes, Your Honor. And Plaintiff
23 submitted a review for -- for the -- for the final jury
24 decision on the --

25 THE COURT: I'm sorry. I don't understand.

1 You mean you --

2 MR. KEIMBAYE: I -- I am --

3 THE COURT: -- you appealed it?

4 MR. KEIMBAYE: I am saying the Plaintiff filed
5 a review with the appeal court, so it's in the appeal court.

6 THE COURT: Okay. So you got a jury verdict.
7 When did that happen?

8 MR. KEIMBAYE: I believe the trial start on
9 July 5th, 2022, and it ended on July 14, 2022.

10 THE COURT: All right. So you got a jury
11 verdict, and then you appealed it?

12 MR. KEIMBAYE: Yes, Your Honor.

13 THE COURT: Okay. And what happened with that
14 appeal? Is it ongoing?

15 MR. KEIMBAYE: It is ongoing, Your Honor.

16 THE COURT: Okay. All right. So did the jury
17 award you money for lost wages or lost ability to work?

18 MR. KEIMBAYE: Only \$20,000.

19 THE COURT: Okay. All right. Well, do you
20 understand that what the Defendants are claiming in this case
21 is that -- is that you made a claim in your auto accident
22 case that you couldn't work because of the accident. And, in
23 this case, you're claiming that you couldn't work because of
24 the workplace harassment and hostile work environment, and
25 that those two claims may be inconsistent with one another.

1 Do you understand that?

2 MR. KEIMBAYE: No, Your Honor. What I meant
3 by, you know, not being able to perform work after the motor
4 vehicle accident is -- was because, you know, Plaintiff has a
5 broken bone on his fifth metatarsal on the right foot.

6 THE COURT: Yeah.

7 MR. KEIMBAYE: And the pain at that time was
8 unbearable.

9 THE COURT: Sure. No. That sounds very
10 serious. No one's questioning that. They're just saying, if
11 you were unable to work because you were injured, then they
12 want to argue that that was the reason you couldn't work and
13 not because of any emotional distress from the alleged
14 workplace harassment at Providence.

15 MR. KEIMBAYE: Concerning the -- the workplace
16 harassment, there is -- there is, indeed, emotional, you
17 know, distress, because, you know, everywhere in the -- in
18 the Seattle metro area where, you know, would apply
19 for -- for a job at medical facilities, you know, Plaintiff
20 has an interview at Evergreen Medical Center, Plaintiff has
21 an interview at the Overlake Medical Center, Plaintiff has an
22 interview at Northgate Hospital.

23 THE COURT: Yeah.

24 MR. KEIMBAYE: And, also, Plaintiff has an
25 interview at the --

1 THE COURT: All right. We don't have to go
2 through all the interviews. What about them?

3 MR. KEIMBAYE: Well, each time when, you know,
4 they interview Plaintiff and Plaintiff, you know, you know,
5 in person --

6 THE COURT: Yeah.

7 MR. KEIMBAYE: And then Plaintiff will reach
8 out -- reach out back, you know, to the -- to get the, you
9 know, the update of his start date, they bring out that, you
10 know, Plaintiff should, you know, tell them a little bit
11 about, you know -- you know, his situation at Providence
12 Everett.

13 How did they -- how did they get the
14 information about Plaintiff, you know, case from Providence,
15 you know, Everett, you know, to question Plaintiff? Oh, tell
16 us, you know, about, you know, what happened to you, you
17 know, at the Providence Everett.

18 THE COURT: Yeah.

19 MR. KEIMBAYE: So even brought up, you know,
20 Mr. Kortendick and Mr. John's names. So -- so they pretty
21 much have been, you know, like, you know -- you know,
22 sabotaging, you know, Plaintiff from, you know, getting, you
23 know, any job anywhere, you know -- you know, at the -- at
24 the medical facilities because of their, you know, networking
25 and, you know, connection with, you know, other, you know,

1 hospitals -- local hospitals.

2 THE COURT: Okay. Let me turn to Defense
3 Counsel. Is -- the Court's understanding, and I think the
4 information must have come from Defense at some point or
5 another -- is that Mr. Keimbye has litigated other claims
6 against former employers. Is the Defense opposing keeping
7 that information out on the motion in limine?

8 MS. BURNHAM: Yes, Your Honor. Not on this
9 specific motion in limine, although that's what this specific
10 motion in limine is titled. In the actual motion itself,
11 he's arguing about a settlement that we don't know what
12 he -- what exactly he's referencing. So certainly --

13 THE COURT: I think this is -- I think this is
14 just language that came from some other brief somewhere.

15 MS. BURNHAM: Okay. Okay. Yeah. So, in
16 terms of this particular motion in and of itself, we don't
17 know what he's talking about. But in terms of your question
18 about previous litigation --

19 THE COURT: Yeah.

20 MS. BURNHAM: -- yes, we are seeking to
21 introduce that into evidence. It was part of our ER 904s,
22 which Plaintiff did not object to within 15 days. And I
23 believe it's under the *Miller* case, those -- those exhibits
24 should be --

25 THE COURT: I'm aware of that. Yeah.

1 MS. BURNHAM: Sorry, Your Honor.

2 THE COURT: All right. Do you want to address
3 that, Mr. Keimbaye? Defense Counsel is saying they had --
4 can you give me the exhibit numbers just so I can see what
5 we're talking about here? Because I don't have ER 904.

6 MS. BURNHAM: Oh. Sorry. Oh, sorry about
7 that, Your Honor. It's Exhibit 152 through 158, I believe.

8 THE COURT: Okay. Is this Defense or --

9 MS. BURNHAM: Defense Exhibit 158 --

10 THE COURT: I know. I'm trying to figure out
11 which of these binders is which.

12 MS. BURNHAM: Oh. Sorry. I thought you were
13 asking me.

14 THE BAILIFF: That's Mr. -- that's the
15 Plaintiff's.

16 THE COURT: Green is Plaintiff? Okay. Green
17 is Plaintiff. So the white must be the Defense, since I only
18 have two binders. And give me the numbers again. 163?

19 MS. BURNHAM: 152 through 158, Your Honor.

20 THE COURT: 152, 158?

21 MS. BURNHAM: 152 through 158.

22 THE COURT: Yeah. Zoom sometimes garbles what
23 people are saying. All right. So 152 is a complaint against
24 Group Health. 153 is an order dismissing that. 154 is
25 another complaint against Kaiser Permanente of Bellevue. 155

1 is an order of summary judgment on that case. 156 is
2 Mr. Keimbaye suing Safeco and Liberty Mutual and an
3 individual. 157 is a complaint for -- I'm just reading the
4 caption -- racial and hateful assault on Plaintiff on the
5 basis of his race, color, or national origin. And that's
6 against an individual. 158 is a CourtTrax document from
7 Oregon circuit court.

8 MS. BURNHAM: Oh. And I'm sorry, Your Honor.
9 We're withdrawing that exhibit. I apologize, Your Honor.
10 We're withdrawing that exhibit.

11 THE COURT: Okay. All right. So that one's
12 withdrawn.

13 So my understanding of the effects of ER 904
14 is that if not objected to within 14 days, then all
15 objections except as to relevance are waived. So what's the
16 relevance of these? Because it strikes me that they're
17 extremely relevant if what you're seeking to show is that
18 Mr. Keimbaye is a really litigious guy. But -- but ER 404
19 has something to say about that.

20 MS. BURNHAM: Yeah. And, Your Honor, we
21 address that in our opposition to Plaintiff's motion in
22 limine. That is not our purpose in submitting -- admitting
23 these exhibits or asking that they be admitted. The purpose
24 of these exhibits is directly to what you were referencing
25 earlier, in terms of his emotional distress damages and his

1 emotional state.

2 He's claiming extensive emotional distress
3 allegedly from the harassment that he faced while working for
4 my client. And so the extent that he is alleging emotional
5 distress that he faced from other situations, or had other
6 situations in his life impacting his emotional distress, we
7 need to get that information to the jury so they can weigh it
8 a proper allotment if any to be placed on my client.

9 THE COURT: Okay. Mr. Keimbaye, would you
10 like to address that argument?

11 MR. KEIMBAYE: Yes, Your Honor. The severity
12 of what Defendants has done to Plaintiff is not comparable to
13 what Plaintiff experienced from the previous cases. And,
14 again, Plaintiff is not litigious individuals. Plaintiff is
15 literally taking action to prevent future abuse because of
16 his submissive and respectful personality. Employers or
17 individuals managing, you know, workplace -- keep on, you
18 know, abusing Plaintiff.

19 Let's take an example of Defendants in Exhibit
20 152 -- I believe, from 152 to 155. They are not two cases.
21 It's only one case.

22 THE COURT: What?

23 MR. KEIMBAYE: Group Health was -- Group
24 Health is -- is Kaiser Permanent.

25 THE COURT: Okay. So?

1 MR. KEIMBAYE: At that time that, you know,
2 Plaintiff, you know -- you know, brought up, you know, his
3 complaint, the name hasn't changed yet. And back then, you
4 know, Defendants -- Plaintiff literally was -- was trying,
5 you know -- you know, to -- to fight his right, and he made
6 the big mistake, you know, to take his case to the federal
7 court. And -- and also, Plaintiff made a big mistake by, you
8 know, serving the Defendants, you know, by himself.

9 But what -- what, you know, they have done to
10 Plaintiff is very serious because Plaintiff was cornered in
11 the -- in the OR manager office and being forced, you know,
12 to sign a resignation letter when he was complaining about
13 one of the anesthesiologists that, you know, literally
14 emailing all of -- OR, you know -- you know OR staff that,
15 you know, if they -- if they take -- they did not take
16 Plaintiff out of the OR, he would -- he would cause sentinel
17 event, meaning he would cause someone to die. That's a
18 serious accusation for the court -- employee --

19 THE COURT: I'm not asking you to describe
20 what lead you to file that lawsuit. The argument that
21 Defense Counsel has made is that the existence of that
22 lawsuit is evidence that you were already suffering from
23 emotional distress because of what happened at a previous
24 workplace, and that that's relevant to the emotional distress
25 that you're alleging from your claims against Providence

1 Everett.

2 MS. ROSEN: And, Your Honor, if I may, just a
3 point of clarification. The lawsuit against the individual,
4 that was a bar fight that happened in October of 2018, and
5 that was another time that he claimed he couldn't work
6 because of injuries from that -- that lawsuit. So that's
7 also directly relevant to our claims in this case because he
8 was -- he claims he was assaulted based on his race right,
9 like, three months after he left Providence.

10 THE COURT: When did --

11 MS. ROSEN: And he claims he couldn't work
12 because of that.

13 THE COURT: When did he leave Providence?

14 MS. ROSEN: June of 2018.

15 THE COURT: Okay. Well, this says -- I'm
16 looking at it now. This is Exhibit 156. This says that it
17 was on June 18th that he was brutally injured by a Safeco
18 insured driver.

19 MS. ROSEN: Right. And then the next lawsuit
20 is October 2018 involving a bar fight.

21 MS. BURNHAM: And that's 157, Your Honor.

22 MS. ROSEN: Yeah.

23 THE COURT: Oh.

24 MR. KEIMBAYE: There was no bar fight.

25 THE COURT: I see. October 7th.

1 MR. KEIMBAYE: There was no bar fight.

2 THE COURT: All right. You're saying that on
3 October 7th of 2018, you were violently assaulted and knocked
4 unconscious by a Garibag Dorisov (phonetic) inside a Hyatt
5 hotel in Bellevue.

6 MR. KEIMBAYE: Again, Your Honor, going back
7 to 52 to -- 152 to 55, what Plaintiff experienced at Kaiser
8 Permanente or Group Health/Kaiser Permanente is not
9 comparable to what Plaintiff has experienced at Providence
10 Everett.

11 THE COURT: Why not?

12 MR. KEIMBAYE: The hostility that Plaintiff
13 went through at the Providence is unbearable. Sexual
14 harassment, insult, physical assault to Plaintiff. Putting
15 all together, can you imagine, when Dr. Usoltsev assault
16 Plaintiff while Plaintiff dutifully and respectfully was
17 assisting him and the poor patient on the table that was
18 having surgery already -- can you imagine if the Plaintiff
19 retaliates by hitting Dr. Usoltsev back when he assaulted
20 him? Plaintiff would not be sitting here talking to you
21 right now. Plaintiff would be in jail that day to this day.

22 THE COURT: All right. What I'm going to do,
23 just to --

24 MR. KEIMBAYE: Plaintiff --

25 THE COURT: -- just to -- I think I understand

1 the point. I'm going to reserve on these. Let's kind of see
2 how the evidence comes out. I'm not positive this overlaps,
3 but I'm not going to preclude the Defense from, you know,
4 potentially exploring that issue. But for now --

5 MS. BURNHAM: Your Honor?

6 THE COURT: No, go --

7 MS. BURNHAM: May I just add one thing?

8 THE COURT: Yeah. You can add one thing.

9 MS. BURNHAM: Okay. Sorry. I didn't want to
10 interrupt everyone. In terms of the -- the case information
11 that's contained in those exhibits, I just want to be clear
12 that we were careful to temporally limit the cases so that
13 they are solely relevant to his claim for emotional distress.
14 That's why we withdrew Exhibit 158, because it did go back a
15 lot further than we thought was relevant to anything for
16 emotional distress.

17 So, for example, the Kaiser information, he
18 was terminated from Kaiser six months prior to working for
19 us. So he was still processing all of that while (inaudible-
20 audio break) be our burden to --

21 THE COURT: Yeah. I'm going to give that some
22 thought.

23 One quick question. Mr. Keimbaye, when they
24 provided you these documents under Evidence Rule 904, why
25 didn't you object to the ones that you want to object to now?

1 I mean, the Rule requires that you do that within two weeks.

2 MR. KEIMBAYE: Well, Your Honor, in Plaintiff
3 motion in limines, Plaintiff, you know --

4 THE COURT: I'm not talking -- I'm not talking
5 about the motions in limine. I'm talking about your response
6 to the Defense ER 904.

7 MR. KEIMBAYE: I believe Plaintiff objected to
8 their ER documentation.

9 THE COURT: They say you didn't. Is there
10 something in the court file that I can look at to show that
11 you did? I'll tell you what --

12 MR. KEIMBAYE: I mean, based on -- based on
13 Plaintiff ER 904, I believe Plaintiff mentioned that, you
14 know, they -- they shouldn't brought up, you know, his claim
15 against, you know, Group Health or Kaiser Permanente.

16 Either way, you know, Plaintiff is saying now
17 that, you know, it has nothing to do with, you know, his
18 emotional stress, because Plaintiff --

19 THE COURT: No. No. No. I understand that
20 argument. But my question to you is why you didn't file an
21 objection within 14 days of when they gave you these
22 documents and said, we're going to seek to have these
23 admitted as exhibits at trial?

24 MR. KEIMBAYE: Well, Your Honor, to be honest
25 with you, Plaintiff was -- was overwhelmed with all the, you

1 know, legal documents that, you know, he was working on. And
2 so it's one individual against, you know, four, you know --

3 THE COURT: I know. But the rules apply to
4 you just as much as they would apply if you were a lawyer in
5 a firm of 100 lawyers. That's -- the law doesn't change and
6 the rules don't change based on the fact that you're just an
7 individual person.

8 Anyway, we need to take our break. So we will
9 be at recess. And we will resume at ten minutes to 11.
10 We'll see you then.

11 MS. BURNHAM: Thank you, Your Honor.

12 MS. ROSEN: Thank you, Your Honor.

13 MR. KEIMBAYE: Thank you.

14 THE COURT: And I muted the courtroom.
15 (Recess at 10:35:38 a.m., recommencing at 10:50:01 a.m.)
16 (The following proceedings were held outside the presence of
17 the prospective jury:)

18 THE COURT: Welcome back, everybody, I hope.
19 All right. Well, I see Mr. Keimbaye and Ms. Burnham.

20 MS. BURNHAM: Ms. Rosen just ran to use the
21 facilities. She'll be back. Sorry. And we can get started.
22 I'm arguing the motions.

23 THE COURT: All right. Number 6, I think, was
24 unopposed; is that correct?

25 MS. BURNHAM: Sorry. Correct, Your Honor. So

1 long as it's mutual and there's no expressed or implied
2 reference from any party about Defendant's financial status
3 or liability insurance.

4 THE COURT: Yeah. That would be improper.
5 It's granted.

6 MS. BURNHAM: Thank you. Really quickly, Your
7 Honor, can I just -- I want to make sure that I understood
8 your ruling that you made right before we jumped on the
9 break, if you made a ruling. I didn't -- it sounded like you
10 are going to allow testimony about the amount Plaintiff
11 received for lost wages and the fact of the collision. I
12 thought that's what you said, but I just wanted to ask for
13 clarification on what your ruling was.

14 THE COURT: Yes.

15 MS. BURNHAM: And what were you reserving
16 ruling on?

17 THE COURT: All the other stuff about lawsuits
18 for either bad treatment at workplaces or the -- the assault.
19 Although, when was the assault again?

20 MS. BURNHAM: The assault was after -- like
21 five months after the termination.

22 THE COURT: It was in 2018. I'm going to
23 reserve on that.

24 MS. BURNHAM: Okay.

25 MS. ROSEN: Your Honor, he directly claimed

1 | lost wages from that assault.

2 | THE COURT: Oh. All right.

3 | MR. KEIMBAYE: Your Honor?

4 | THE COURT: Yes, Mr. Keimbaye?

5 | MR. KEIMBAYE: Yes. Plaintiff would like to
6 | address, also, the emotional stress from Defendants' actions
7 | because of everything that, you know, Plaintiff has been
8 | going through. Plaintiff end up losing his six-year --
9 | six-years relationship. Since last August of 2022, it's been
10 | a year now. The Plaintiff has lost his six-years
11 | relationship to a very kind, wonderful woman that they
12 | planned to get married together. And because of everything
13 | that Plaintiff went through, Plaintiff did not have enough
14 | time to spend with her, you know, his ex-girlfriend.

15 | And eventually - eventually, that relationship
16 | was weakened due to the action of the Defendants. And, on
17 | top of that, the Plaintiff has lost an innocent and unborn
18 | baby through the process. This is how they treated -- they
19 | treated Plaintiff --

20 | THE COURT: I'm sorry. What --

21 | MR. KEIMBAYE: -- this is what Plaintiff is
22 | going through emotionally right now.

23 | THE COURT: I'm very sorry this happened to
24 | you, Mr. Keimbaye. But I'm not -- first of all, it's not
25 | what we were talking about in connection with your motions in

1 | limine. And, second, I don't see the connection, but it's
2 | really not what we're talking about right now anyway.

3 | We're talking about what evidence should go to
4 | the jury that, you know, you were asking the Court to not
5 | allow. That's what a motion in limine is. And we were
6 | talking about your motions in limine.

7 | MR. KEIMBAYE: Well, Your Honor, in my
8 | understanding, pretty much what they are doing right now is
9 | try to wash their hands off from the emotional distress that,
10 | you know, Plaintiff has been going through.

11 | THE COURT: No. No. That's not what they're
12 | doing. They just want to be able to introduce evidence of
13 | alternative explanations for the emotional distress that
14 | you're claiming and the inability to work that you're
15 | claiming. That's what they're trying to do.

16 | Let's move on to number 7, which I think is
17 | also not opposed, effect on insurance rates. So that's
18 | granted.

19 | Number 8, so Mr. Keimbaye, you moved that --
20 | let me find it on yours. You moved that there be no mention
21 | or reference to the financial status of the Defendant or
22 | Defendant personally having to pay the judgment.

23 | But orders in limine usually go both ways. So
24 | if I grant this, and the Defense is saying they don't object
25 | to this, but they want me to make it reciprocal, that it

1 applies to you as well.

2 That doesn't prevent you from arguing that you
3 lost earnings because of emotional distress that came about
4 because of the alleged workplace harassment. You can still
5 argue that. But you can't argue to the jury that you're poor
6 right now. You understand the difference?

7 MR. KEIMBAYE: Yes, Your Honor.

8 THE COURT: All right. That's granted.

9 Number 9 is apparently agreed as well, which
10 is no one is to comment on a failure to call expert
11 witnesses.

12 Number 10 is failure to call witnesses. And,
13 as I understand, this one is agreed as well, as long as it's
14 reciprocal.

15 MS. BURNHAM: So -- may I, Your Honor?

16 THE COURT: Yes, of course.

17 MS. BURNHAM: So we don't oppose the motion to
18 the extent that it seeks to exclude any comments about not
19 calling a witness. I think that should be equally applied.
20 But if Plaintiff also seeks an instruction in this motion in
21 limine that any ex-parte statement or report of any person
22 not then and there present in court to testify should be
23 excluded -- so I think that speaks to the Yulia Husted.

24 We're just confused by this motion. He's
25 saying that anything outside of court should not be entered

1 into court if a person is not there present to testify. But
2 then he's also moving to exclude out of state -- or
3 out-of-court statements in court.

4 THE COURT: Well, you know, I read that motion
5 to essentially be the Court should enforce the Rules of
6 Evidence. I get those motions sometimes. I'm not sure why.
7 But --

8 MS. BURNHAM: Okay. Okay. Sorry.

9 THE COURT: Yeah. So Court will be --

10 MS. BURNHAM: Just wanted to clarify. Okay.

11 THE COURT: The Court will be enforcing the
12 Rules of Evidence. So this is granted. That does not
13 preclude a party -- that does prevent a party from arguing,
14 well, you know, why didn't the Plaintiff call, you know, Joe
15 Blow, or why didn't the Defendant call Joe Blow. But it does
16 not prevent a party from -- well, it does not prevent the
17 Defense, because Plaintiff has the burden of proof, from
18 arguing that Plaintiff hasn't met the burden of proof because
19 he has not produced sufficient evidence to support his
20 claims.

21 All right. Circumstances of hiring counsel.
22 That's granted.

23 Conviction of a crime. So, Mr. Keimbaye, I
24 think -- let me take another look at the Defense response.
25 So you made a motion that -- that any criminal convictions

1 that you might have should not be shared with the jury.

2 And I don't think the Defense is arguing that
3 your DUI conviction is admissible to show bad character or
4 anything along those lines. But they're saying that you
5 testified at your deposition that you had never been charged
6 with a crime, and that that testimony was not accurate
7 because you had been charged with a crime. And so they want
8 to admit that testimony to show as being relevant to your
9 credibility.

10 MR. KEIMBAYE: Your Honor?

11 THE COURT: Yes. I want to give you a chance
12 to address that.

13 MR. KEIMBAYE: Did they say I have been
14 accused of a crime? What kind of crime?

15 THE COURT: They say that you were charged and
16 convicted of Driving Under the Influence.

17 MS. BURNHAM: Your Honor, just for clarity,
18 that was --

19 MR. KEIMBAYE: I have no DUI in my life since
20 I've been here in US.

21 THE COURT: So -- I'm sorry.

22 MR. KEIMBAYE: I have --

23 THE COURT: Just -- hold on. Hold on. Just
24 for clarity, what?

25 MS. BURNHAM: That was his motion. He said

1 that he had a DUI that he wanted to keep out. So we were
2 shocked to see that on the basis of his testimony, that he
3 had not been convicted.

4 THE COURT: Okay. I'm confused. Hold on.

5 MS. BURNHAM: That was his motion. He was
6 trying to keep that information out.

7 THE COURT: So it says --

8 MS. BURNHAM: And then we --

9 THE COURT: Evidence of a --

10 MR. KEIMBAYE: All the --

11 THE COURT: -- prior DUI conviction is subject
12 to exclusion at -- you know, this is the problem with cutting
13 and pasting stuff into your briefs that come from other
14 briefs. Is this a nonissue?

15 MR. KEIMBAYE: Your Honor, what Plaintiff is
16 referencing here --

17 THE COURT: What are you referencing here?

18 MR. KEIMBAYE: Plaintiff is stating that, you
19 know, any evidence of DUI, meaning --

20 THE COURT: But why did you bring up DUI if
21 you've never had a DUI?

22 MR. KEIMBAYE: Well -- well, this is in regard
23 to, you know, any criminal record or anything.

24 THE COURT: Sure. But you didn't bring up
25 murder or rape or robbery. So why did you bring up DUI?

1 Never mind. If this is a nonissue, then it's granted, and
2 let's move on.

3 MR. KEIMBAYE: All the --

4 THE COURT: 13 --

5 MS. BURNHAM: We withdraw that exhibit, Your
6 Honor.

7 THE COURT: Okay. So no objection to 13?

8 MS. BURNHAM: Correct, Your Honor.

9 THE COURT: Okay. That's granted.

10 14. Exclusion of names of prescribed
11 medications and drugs. Hold on. No objection. Okay. All
12 right. So that's granted and applies to all parties and
13 witnesses, right?

14 MS. BURNHAM: Yeah. I mean, unless, Your
15 Honor, again, just to the extent we put in some deposition
16 testimony there, talking about what he was asked about at his
17 deposition. So if he counters that at time of trial or says
18 anything about other medication -- he mentioned in his motion
19 something about medication having baggage. And, again, I'm
20 not sure if that was just because of the cut and paste or for
21 some other reason. So if there's some other medication that
22 we're unaware of, we certainly would reserve the right to
23 impeach him.

24 THE COURT: Okay. So, Mr. Keimbaye, just so
25 you're not confused about this, you made a motion that the

1 jury not hear about any medication that you might be taking.

2 I am granting that motion.

3 However, if you -- the lawyers call it opening
4 the door. If you, yourself, introduce evidence about any
5 medication that you might be taking, then the Defense is free
6 to talk about that or ask you about that in front of the
7 jury. Okay? As long as you don't bring it up, they're not
8 allowed to bring it up. Okay?

9 MR. KEIMBAYE: Your Honor?

10 THE COURT: Yes.

11 MR. KEIMBAYE: I don't mean to cut you off,
12 but I am -- I'm a survivor. I don't care what kind of
13 evidence they want to put out there, expose, whatever. I am
14 a survivor. I can even lay down about all about myself. The
15 only medication that, you know, I believe I took, it's, you
16 know, lisinopril for, you know, high blood pressure. That's
17 the -- that's --

18 THE COURT: Okay.

19 MR. KEIMBAYE: -- that's one major medication
20 that, you know, Plaintiff has taken.

21 THE COURT: Okay. Well, we're -- this is only
22 coming up because you made a motion to keep out evidence
23 about it. Otherwise, we wouldn't be bringing it up. And I'm
24 granting your motion. Okay?

25 MR. KEIMBAYE: Thank you.

1 THE COURT: Yeah. Effective income tax and
2 taxability of recovery is granted.

3 Prior settlement negotiations, that's granted.
4 That's not allowed.

5 I don't understand your motion in limine
6 number 17. What do you mean by hypothetical medical
7 conditions?

8 MR. KEIMBAYE: I now believe that, you know,
9 all the stresses that, you know, Plaintiff has been going
10 through --

11 THE COURT: Yeah.

12 MR. KEIMBAYE: -- after -- after --

13 THE COURT: What are you asking me to -- what
14 are you asking me to keep out of evidence?

15 MR. KEIMBAYE: Because of the monumental
16 emotional distress that Plaintiff has been going through from
17 the Defendants' actions, Plaintiff was diagnosed with, you
18 know, a tumor in his left lungs -- tumor.

19 THE COURT: So we're not communicating very
20 well, Mr. Keimbaye. I'm sorry. Let me ask it again. You
21 made a motion in limine --

22 MR. KEIMBAYE: Yes.

23 THE COURT: -- that -- I'm going to find your
24 exact language that you're using here -- that the Defendants
25 should not testify or comment about whether you were

1 suffering from a hypothetical medical condition at the time
2 of the incident.

3 So my question is, you're asking me to keep
4 out some kind of evidence. What kind of evidence are you
5 asking me to keep out?

6 MR. KEIMBAYE: Any medical conditions.

7 THE COURT: Any medical condition?

8 MR. KEIMBAYE: I mean by that -- by that
9 because if they want to bring up, you know, any of my medical
10 record, you know, it should be, you know, presented, you
11 know, to the --

12 THE COURT: Okay. They're not objecting to
13 that. So I will grant the motion.

14 MR. KEIMBAYE: Thank you.

15 THE COURT: All right. So none of -- none of
16 Mr. Keimbaye's medical conditions are going to come into
17 evidence. But those wouldn't be hypothetical. Those would
18 be real. So I'm confused by the reference to hypothetical.

19 Hypothetical mechanics of injury doesn't make
20 any sense to me, either. What is it you're trying to keep
21 out there or is this just not applicable? This is something
22 from an automobile accident case?

23 MR. KEIMBAYE: It could be anything from motor
24 vehicle accident, yes.

25 THE COURT: No. No. No. No. No. You're

1 asking the Court to not offer testimony on impact forces,
2 biomechanics, or other aspects of the mechanism of injury.
3 But you're not alleging a physical injury in this case.
4 You're alleging mental and emotional injuries in this case,
5 right?

6 MR. KEIMBAYE: Yes, Your Honor. Yes.

7 THE COURT: All right. So it doesn't sound
8 like this is relevant. So this is denied as not relevant.

9 Okay. 19, unsubstantiated injuries and/or
10 medical treatment. Again, I don't understand what you're
11 trying to keep out here. Do you understand what you're
12 trying to keep out here?

13 MR. KEIMBAYE: I mean, Your Honor, to be
14 honest with you, I am self-representing myself, and, you
15 know, some of the language -- I read through and, you know,
16 feel like, you know, I should, you know, use it, you know, to
17 kind of, like, you know, help myself out in preventing
18 any -- any of my -- my medical history or records, you know,
19 to be exposed. And that's what I do. But I'm not a trained
20 lawyer to understand that --

21 THE COURT: I know that.

22 MR. KEIMBAYE: -- thoroughly.

23 THE COURT: But you're asking the Court to
24 make certain rulings about evidence. And so it's your
25 responsibility to tell the Court what evidence you're trying

1 to exclude here. This is denied because I don't understand
2 what it means. If something comes up during the trial that
3 you think is not allowed by the rules of evidence, then, you
4 know, make an objection, and I'll rule on it then.

5 MR. KEIMBAYE: Thank you.

6 THE COURT: 20, reference to apologies or
7 remorse. I think that's unopposed. Is that correct?

8 MS. BURNHAM: Correct, Your Honor.

9 THE COURT: Yeah.

10 MS. BURNHAM: So long as there's also no
11 reference to the absence.

12 THE COURT: Right. So that's granted. So
13 that means, Mr. Keimbaye, that you can't argue that they
14 didn't apologize to you or tell you they were sorry about
15 something. And they can't -- you know, they can't bring up
16 that they did that or didn't do that.

17 Opinions of medical experts. That's not
18 relevant. So I guess that's granted.

19 And 22. Again, there's no experts. What are
20 you -- what are you trying to keep out in number 22,
21 Mr. Keimbaye? It sounds like experts' opinions, but there
22 won't be any experts testifying in this case.

23 MR. KEIMBAYE: Your Honor, you can make a
24 judgment on that.

25 THE COURT: I'm sorry. What do you mean by

1 that?

2 MR. KEIMBAYE: What Plaintiff is trying to say
3 here, it's again in regard to his motor vehicle accident.

4 THE COURT: All right. Well, I'm allowing
5 them to present evidence about the motor vehicle accident and
6 the fact that you were claiming that because of the injuries
7 from that accident, you were unable to work. I am going to
8 let them do that. The remainder is reserved.

9 MS. ROSEN: So, Your Honor, just to clarify.
10 Even though he was claiming he couldn't work because of the
11 assault, and the assault happened right after he left
12 Providence, that one's still reserved?

13 THE COURT: I thought the assault happened
14 like months later? Didn't you say it was October?

15 MS. ROSEN: Well, it happened in October.

16 THE COURT: Yeah.

17 MS. ROSEN: Yeah.

18 THE COURT: So, well, to the extent that it
19 overlaps with the inability to work claim from this case, it
20 will be allowed.

21 MS. ROSEN: Okay. Thank you. I just wanted
22 to clarify that.

23 MR. KEIMBAYE: Still -- still Plaintiff, at
24 that time -- Plaintiff was still, you know, looking for job,
25 applying for jobs, you know, to get back in the work force --

1 THE COURT: Okay. Okay. Good.

2 23 is, again, expert testimony. There's no
3 expert. So that's not applicable.

4 24 is not applicable; refers to experts again.

5 25 is not applicable. It refers to experts.

6 No references to how the Plaintiff might use
7 the proceeds. I think that was not opposed. Let me
8 double-check.

9 MS. BURNHAM: Your Honor, we did oppose that.

10 THE COURT: Oh. Yeah. Yeah. Yeah. The
11 issue of as to whether he said, I don't remember -- well, as
12 to whether he promised Ms. Husted. So all right. I'm going
13 to allow evidence of the question and answer by -- question
14 to and answer from Mr. Keimbaye indicating he doesn't
15 remember if he had committed to providing Ms. Husted with a
16 reward if the case resolves.

17 I'm trying to remember what the exact
18 testimony was. Was it whether he told her he would do that?

19 MS. BURNHAM: He said that -- the question was
20 about -- he said it was something about a reward. And he
21 said, I don't know. He was going to share his reward.

22 MR. KEIMBAYE: Your Honor, I can say --

23 MS. BURNHAM: Oh, I can find it --

24 THE COURT: Did you tell her? Yeah. That was
25 the question was, Did you tell her? That's relevant.

1 MR. KEIMBAYE: I did not.

2 THE COURT: Okay.

3 MR. KEIMBAYE: I did not --

4 THE COURT: But if you -- but you gave a
5 different answer at your deposition. You said, I don't
6 remember. So that's admissible.

7 Okay. Noneconomic damages not being
8 discounted to present value is not opposed. It's granted.

9 Exclusion of witnesses is granted.

10 29, I'm sorry, I have to scroll back up here
11 because I scrolled down to look at the deposition.

12 MR. KEIMBAYE: Your Honor, going back to your
13 previous question, I did not remember saying that I would
14 share the proceed with Ms. Husted.

15 THE COURT: I understand that. But what you
16 testified to at your deposition is admissible.

17 29. It looks like it's unopposed, but should
18 apply to both parties. So that's granted.

19 30 --

20 MS. BURNHAM: Your Honor?

21 THE COURT: Yes.

22 MS. BURNHAM: I'm really sorry to stop your
23 flow.

24 THE COURT: No. That's all right.

25 MS. BURNHAM: I was just -- motion in limine

1 number 29, in terms of it being -- I assume it was granted
2 mutually --

3 THE COURT: Yes.

4 MS. BURNHAM: -- for both parties?

5 THE COURT: Yes.

6 MS. BURNHAM: Okay. Thank you. In terms of
7 that, there are exhibits that Plaintiff has sought to admit
8 that were not produced during discovery. We listed those in
9 our opposition. Would you like me to talk about that when we
10 talk about exhibits, and we can address it then --

11 THE COURT: We -- we can --

12 MS. BURNHAM: -- or I just want to make sure
13 that I'm --

14 THE COURT: Is that covered in your motions in
15 limine?

16 MS. BURNHAM: It is not. It was covered in
17 our -- I don't think so.

18 THE COURT: Okay.

19 MS. BURNHAM: It's covered in our opposition,
20 here, and it was covered in the actual objections to the
21 exhibits, themselves, and our ER 904 objections.

22 THE COURT: All right. Well, if they're
23 offered, then we can just deal with them then.

24 MS. BURNHAM: Okay. Thank you, Your Honor.

25 THE COURT: But not having them come into

1 evidence because they weren't properly disclosed would
2 certainly be a basis for an objection.

3 MS. BURNHAM: Thank you, Your Honor.

4 THE COURT: All right. 30 --

5 MR. KEIMBAYE: Your Honor. Your Honor.

6 THE COURT: Yeah?

7 MR. KEIMBAYE: I would like to mention, in
8 regard to what the Counsel is -- Ms. Burnham is saying,
9 Defendants continue providing supplementary ER 909 --

10 THE COURT: 904.

11 MR. KEIMBAYE: 904. My mistake.

12 THE COURT: That's all right.

13 MR. KEIMBAYE: And while they're doing that,
14 Plaintiff also, you know, tried to his best, you know, to
15 provide supplementary ER 904, you know, to, you know --
16 additional, you know, exhibits. In regard to his, you know,
17 wages and the, you know, W2s. And while they are
18 supplementing, you know, additional ER 904, they don't want
19 Plaintiff to provide the same thing, you know, to support,
20 you know, his case.

21 How does that work? You know, that they
22 should -- they should have provided, you know, supplementary
23 ER 904 and prevented Plaintiff from, you know, providing, you
24 know, same thing.

25 THE COURT: So ER 904 documents, the latest

1 those can be proposed is 30 days before trial. And they can
2 be produced earlier than that. But that's the latest they
3 can be produced. And then the opposing party has 14 days
4 after that to object. That's what the rule says.

5 MR. KEIMBAYE: But, Your Honor, when you look
6 at the most recent, you know, Defendants', you know,
7 supplementary, you know, ER 904, it was probably six or seven
8 days after they supplemented, you know -- you know, ER 904,
9 that Plaintiff end up also, you know, supplementing, you
10 know, his, you know, ER 904.

11 THE COURT: All right. We're going to deal
12 with that -- you know, if you did it too late, then you did
13 it too late. But if there's objections to exhibits that you
14 were seeking to admit into evidence, we'll deal with them at
15 that time.

16 MR. KEIMBAYE: Thank you.

17 THE COURT: 30 sounds like it's not opposed.

18 MS. BURNHAM: The only thing I would ask for
19 that, Your Honor, is if we could get some clarification on
20 when demonstrative or illustrative exhibits would be
21 disclosed prior.

22 THE COURT: Well, they --

23 MS. BURNHAM: So 24 hours, 48 hours -- sorry.

24 THE COURT: They need to be brought up outside
25 the presence of the jury, before they're brought up within

1 the presence of the jury. So, I mean, as early as possible.

2 MS. BURNHAM: And just -- just to make sure
3 that things go smoothly, we were just hoping that you can
4 make a ruling on when those would -- you know, so that all
5 the parties are on the same page, in terms of when those
6 would be exchanged and what the cutoff would be before they
7 wouldn't be allowed into evidence.

8 THE COURT: Mr. Keimbaye, what did you have in
9 mind regarding disclosure of illustrative or demonstrative
10 exhibits? Or are you going to have any?

11 MR. KEIMBAYE: You know, would you rephrase
12 again one more time?

13 THE COURT: I'm looking at your motion in
14 limine number 30.

15 MR. KEIMBAYE: Yes.

16 THE COURT: You're asking for adequate notice
17 and an opportunity to review and verify accuracy of exhibits
18 Defendants will use at trial for illustrative or
19 demonstrative purposes. So my question is, what did you have
20 in mind, in terms of time? How much notice you're asking
21 for?

22 MR. KEIMBAYE: How much time? Is that what
23 you're saying, Your Honor?

24 THE COURT: So I'm asking you what you're
25 asking for. This is your motion in limine, Mr. Keimbaye.

1 Tell me what you're asking me to order.

2 MR. KEIMBAYE: Any illustrative or
3 demonstrative, you know, exhibit that, you know, there would
4 be presenting to the jury --

5 THE COURT: I understand what. I'm asking
6 when.

7 MR. KEIMBAYE: Well, before -- before the jury
8 comes into the room.

9 THE COURT: Are you asking for the day before?
10 Are you -- I mean, what are you asking for?

11 MR. KEIMBAYE: I am asking if they can
12 share -- share with the Plaintiff any illustrative that, you
13 know, they want, you know, to present it.

14 THE COURT: Right. Are you asking for them to
15 share that with you the day before they would like to present
16 it or ten minutes --

17 MR. KEIMBAYE: Yes, Your Honor.

18 THE COURT: -- before or, I mean, what are you
19 asking for?

20 MR. KEIMBAYE: Yes. The day before. Yes.

21 THE COURT: Day before. Okay.

22 Is Defense comfortable with that?

23 MS. BURNHAM: So long as it's mutual, Your
24 Honor.

25 THE COURT: All right.

1 MS. BURNHAM: Oh, sorry, Katie. You're --

2 MS. ROSEN: And as long as it includes, like,
3 noncourt days. So, for example, like if next Monday we're
4 going to put something on, we have to give it to him on
5 Sunday.

6 THE COURT: All right. I mean, if everybody's
7 going to be checking their emails, that's fine. All right.
8 Court, day before. So that means that if you want to use
9 something as an illustrative or demonstrative exhibit,
10 Mr. Keimbaye, you need to share that with Defense Counsel the
11 day before and they need to do the same thing. Okay?

12 MR. KEIMBAYE: Your Honor, does it include any
13 the deposition excerpt?

14 THE COURT: No. Those are -- those are not
15 demonstrative or illustrative. Those are in a completely
16 separate category.

17 Residence of counsel and experts. Well,
18 there's no experts. But residence of counsel is granted.

19 Filing a ruling on the motion. That's
20 granted.

21 No speaking objections is granted.

22 Anything we need to talk about?

23 MS. BURNHAM: Your Honor?

24 THE COURT: Yes.

25 MS. BURNHAM: I'm sorry. I'm sorry to ruin

1 your flow. 32 -- or 31, I just wanted to ask, you say it's
2 granted. For purposes of Plaintiff representing himself, I
3 assume we can still talk about the fact that he is originally
4 from Chad, Africa, as he has brought national origin --

5 THE COURT: Oh. I thought residence was
6 residence. Where you guys are living now.

7 MS. BURNHAM: Okay. So -- and then. Okay.
8 So to the extent that we're talking about where he's from,
9 not still --

10 THE COURT: Oh. Comes from another city or
11 state. No. I mean, part of his claim is that -- is based on
12 national origin. So, of course, you can talk about that.

13 MS. BURNHAM: Okay.

14 THE COURT: And I imagine Mr. Keimbaye is
15 going to be talking about that, too. Yes.

16 MS. BURNHAM: For clarity purposes --

17 THE COURT: That's part of his --

18 MS. BURNHAM: -- thank you very much.

19 THE COURT: -- claim. Yeah. Okay. And I'll
20 indicate that on here. And, of course, that's not to be
21 brought up in any kind of pejorative sense. But I'm sure
22 Defense Counsel will not be doing that.

23 MS. BURNHAM: Right. And for your ruling on
24 33 -- I'm not sure if you already made a ruling on that. But
25 could we get clarity on -- perhaps it would be helpful for

1 everyone if you explain what you mean when you say no
2 speaking objections?

3 THE COURT: By speaking objections. So if
4 there's an objection to something, then I expect to hear,
5 objection. And then I expect to hear, very succinctly, like,
6 objection, hearsay; objection, order in limine. You know,
7 something along those lines. And then I'll either rule on
8 it, or if I need more information, I'll excuse the jury, and
9 we'll deal with it in open court outside the presence of the
10 jury.

11 But I don't want anyone to be arguing or, you
12 know, sort of explaining in detail the basis of their
13 objection in front of the jury, or their response to the
14 objection in front of the jury. Okay?

15 MS. BURNHAM: And we ask Your Honor for the
16 order on that, in terms of what you just said, that you
17 simply say, objection, and then cite to the evidentiary rule,
18 or the evidence -- the basis of the objection --

19 THE COURT: Right.

20 MS. BURNHAM: -- and then a short, succinct --

21 THE COURT: Right. Right.

22 MS. BURNHAM: Thank you.

23 THE COURT: Yeah. Positive character
24 reputation of the Defendants. Sorry about that. I have to
25 switch back and forth between these documents. For some

1 reason, my computer will not allow me to look at both at the
2 same time.

3 So what is it you're trying to have excluded
4 here in your motion in limine number 34, Mr. Keimbaye?

5 MR. KEIMBAYE: What Plaintiff was trying to
6 say here, is to -- preventing Defendants from portraying
7 themselves that, you know, they are good employers.

8 THE COURT: Well, can you give me a for
9 instance? I don't know what --

10 MR. KEIMBAYE: For example --

11 THE COURT: -- what that encompasses.

12 MR. KEIMBAYE: They shouldn't declare that,
13 you know, they are good employers and they -- they treat, you
14 know, Plaintiff fairly.

15 THE COURT: Well, it sounds like you're
16 arguing that they shouldn't be able to defend against your
17 claim, and that can't be right.

18 I thought maybe you had something in mind,
19 like, well, you know, we don't want them getting up saying,
20 you know, Providence Hospital performs all this charity work
21 and, you know, are essential to the health and safety of the
22 community, blah, blah, blah. I mean, stuff that has nothing
23 to do specifically with your claims.

24 But saying they're a good employer and that
25 they have policies and procedures in place and that, you

1 know, they investigated your allegations and all that kind of
2 stuff, of course they should be allowed to do that.
3 Otherwise, how could they defend themselves?

4 MR. KEIMBAYE: Surely, Your Honor, you know, a
5 good employer meaning, like, you know, everything that you
6 just, you know, described, you know, by, you know, portraying
7 themselves to be a good charity, you know, to provide to the
8 community --

9 THE COURT: That's different because it has
10 nothing to do with your claims.

11 All right. I'm going to reserve on this,
12 because it's really kind of unclear.

13 35 is, hold on, Medicaid and --

14 MS. BURNHAM: Your Honor, can I seek some
15 clarity for 34? I apologize.

16 THE COURT: I'm sorry. Which one you want to
17 talk about?

18 MS. BURNHAM: (Inaudible-audio break) number
19 34. Can I just seek some clarity? I know you reserved
20 ruling. But for purposes of opening --

21 THE COURT: Yeah.

22 MS. BURNHAM: -- we certainly need to be able
23 to say what Providence is and, you know, introduce our client
24 to the jury. And so --

25 THE COURT: You can certainly do that. But if

1 | you start expounding about, you know, what a wonderful
2 | organization they are, that's not allowed. But you can
3 | certainly talk about who they are and what they do.

4 | MS. BURNHAM: Okay. Okay. Okay. I
5 | understand.

6 | THE COURT: Okay. So I'm not sure that this
7 | is really applicable to your case, number 35, Mr. Keimbaye.
8 | The Defense is saying that they -- they don't intend to try
9 | to introduce any evidence of anything you might have gotten
10 | from Medicare or Medicaid or health insurance. But they want
11 | to be able to talk about compensation you may have received
12 | for lost wages or lost earnings because of the emotional
13 | distress that you're claiming in this case.

14 | So what exactly are you seeking to do in
15 | motion in limine number 35?

16 | MR. KEIMBAYE: That is basically related to
17 | any compensation, including motor vehicle accident or any
18 | payment that Plaintiff receive previously for --

19 | THE COURT: All right. This is granted as to
20 | medical insurance or public benefits and denied as to
21 | compensation for lost earnings. Does that take care of it,
22 | or is there more that we need to talk about with respect to
23 | this?

24 | MS. BURNHAM: It takes care of it for us, Your
25 | Honor.

1 THE COURT: Okay. Thank you.

2 36 --

3 MR. KEIMBAYE: Your Honor --

4 THE COURT: No --

5 MR. KEIMBAYE: -- may I say something?

6 THE COURT: Yeah. You can -- sure. Go ahead,
7 Mr. Keimbaye.

8 MR. KEIMBAYE: Deny loss of earning, do you
9 mean that, you know, Plaintiff should not claim any loss of
10 earnings, though, from Defendants?

11 THE COURT: No. I didn't rule that. I'm just
12 saying that to the extent that you were claiming the same
13 loss of earnings from an accident that you had the same day
14 that you left your employment at Providence, and that you
15 received compensation for it, that the jury's allowed to hear
16 that evidence.

17 All right. No golden rule argument. That's
18 granted. That applies to both sides, obviously.

19 Empty chair. Yeah. It sounds like the
20 Defense is not opposing this, other than wanting to be able
21 to argue that there were other events that were responsible
22 for either the lost earnings or the emotional distress that
23 Mr. Keimbaye is claiming in this case.

24 MS. BURNHAM: Correct, Your Honor.

25 THE COURT: Okay. 38. All right. 38, you're

1 asking for the Court to prohibit the Defense from arguing or
2 producing evidence that they complied with federal or state
3 regulations. I don't understand how this has any
4 relationship to the case. But what did you have in mind,
5 Mr. Keimbaye?

6 MR. KEIMBAYE: I mean by the fact that
7 Defendant may tell the jury that, you know, they properly
8 instruct, you know, employees, including Plaintiff, to
9 reference -- or to relate to, you know -- let's give an
10 example of the, you know, racial discrimination fliers, you
11 know, posting in the cafeteria room or break room.

12 THE COURT: You don't want that -- you think
13 that the Court should prohibit them from mentioning that?

14 MR. KEIMBAYE: I mean, the Defendant may use
15 that, you know, oh, you know, Plaintiff should -- should be
16 able, you know, to -- to relate to that information, you
17 know, to file, you know, or report in his complaint.

18 THE COURT: All right. That's denied. That's
19 denied. They can argue that what they did was lawful and
20 that they didn't violate the Washington law against
21 discrimination, as you're alleging that they did, and so
22 forth. They have to be able to do that.

23 40, marital privilege. How does that apply to
24 this case? You weren't married at any point during this
25 case, were you, Mr. Keimbaye?

1 MR. KEIMBAYE: No. I'm not married.

2 THE COURT: All right.

3 MR. KEIMBAYE: I haven't been married.

4 THE COURT: That's not applicable then. Okay.

5 By the way, am I calling you correctly? Is it

6 Keimbai or Keimbaye or something else? I don't want to

7 mispronounce your name. I'm sorry about that if I have been.

8 MR. KEIMBAYE: Your Honor, I am okay with it,

9 but the E at the end is silent, so it's Keimbaye.

10 THE COURT: Keimbaye.

11 MR. KEIMBAYE: Yes.

12 THE COURT: Not Keimbai or Keimbay, but

13 Keimbaye?

14 MR. KEIMBAYE: I heard often people calling me

15 Keimbaie, but the E is silent, so it's Keimbaye.

16 THE COURT: Keimbaye.

17 MR. KEIMBAYE: I am planning on, you know,

18 going to court to change that and not put an E at the end.

19 THE COURT: Whatever you want to do is fine.

20 I'm just going to do my very best, because I want to be

21 respectful of you, to call you correctly and to pronounce

22 your name correctly to the best of my ability. Okay.

23 MR. KEIMBAYE: Your Honor, no worries. I'm

24 not offended. Thank you.

25 THE COURT: All right. So number 41, I think,

1 has to be reserved. I mean, once a witness is established as
2 adverse or if it is an opposing party, then leading questions
3 are, of course, permitted.

4 I don't understand number 42. What are you
5 asking the Court to rule in number 42? That you don't have
6 comparators to prove the case. What does that mean?

7 MR. KEIMBAYE: Your Honor, you should
8 be -- you should rule on that. I have no objection.

9 THE COURT: So are you withdrawing that one?

10 MR. KEIMBAYE: Yes, Your Honor.

11 THE COURT: Okay. All right. So that one's
12 withdrawn.

13 43, evidence of habit. What do we -- hold on
14 a second. So 43 is talking about Defendants' ER 904
15 exhibits. But his motion in limine -- oh, I see, one through
16 four. Oh. This isn't really habit evidence. This has to do
17 with -- and it's -- it's not one through four -- is it 101 --

18 MS. BURNHAM: It's 101 through 104 of the now
19 exhibits, but at the time when they were ER 904s, it was one
20 through four.

21 THE COURT: Got it. Got it. Got it. Okay.
22 So these -- well, you didn't object to them. And this isn't
23 habit stuff, anyway.

24 So I think the question is whether this stuff
25 is relevant because it has to do with the tardiness and the

1 time-clocking policy violations that were found by the
2 employer. But those relate to the wrongful termination
3 claim, which is not going to be at issue in this trial.

4 MR. KEIMBAYE: Your Honor --

5 THE COURT: So why would -- hold on one
6 second. Why would these be relevant?

7 MS. BURNHAM: I assuming you're asking --

8 THE COURT: Yeah. I'm asking Defense Counsel.
9 Yes.

10 MS. BURNHAM: Okay. I just wanted to make
11 sure.

12 THE COURT: Sure.

13 MS. BURNHAM: So, Your Honor, one of
14 Plaintiff's allegations was that part of -- I think, my
15 understanding is that part of the harassment he thinks he
16 faced was that he was -- he was disciplined for timekeeping,
17 as part of this pattern of harassment. That was my
18 understanding. And so --

19 THE COURT: Is that one of your -- is that one
20 of your claims, Mr. Keimbaye?

21 MR. KEIMBAYE: I would like Ms. Burnham to
22 clarify or rephrase what she's trying to say here because I
23 still --

24 THE COURT: So I will ask you the question.
25 Are you claiming that the discipline that was imposed on you

1 by Providence because of your violations of their clocking
2 and clocking-out policies and your tardiness were part of
3 this pattern of harassment and hostile work environment? Are
4 you making that claim?

5 MR. KEIMBAYE: Defendants pretty much are
6 using tardiness clock time as a pretext to ignore Plaintiff
7 claims for hostile work environment.

8 THE COURT: Okay. Understood.

9 MR. KEIMBAYE: And the sexual harassment.

10 THE COURT: Understood. In that case, this
11 motion is denied.

12 44, I think, you know, were you aware. So,
13 I'm sorry. Are we talking this motion, number 44 and 45,
14 Mr. Keimbaye, are you -- are you talking about your
15 deposition -- questions that were posed to you during your
16 deposition? Again, I'm trying to understand what you're
17 asking me to --

18 MR. KEIMBAYE: Yes. Yes, Your Honor.

19 THE COURT: -- to --

20 MR. KEIMBAYE: Yes, Your Honor.

21 THE COURT: Okay. Those objections were
22 waived. So those are denied. Okay.

23 Mr. Keimbaye, you didn't -- Keimbaye, I'm
24 working on it. Mr. Keimbaye, you didn't respond to any of
25 the Defendants' motions in limine. Are there any of

1 | these -- and I'm not going to go through them one by one. I
2 | don't have time. Are there any of these that you object to
3 | and you want to talk about? I'm going to give you the
4 | opportunity to do that. But, you know, choose -- choose the
5 | ones that you really think we need to talk about.

6 | DEFENDANTS' MOTIONS IN LIMINE

7 | MR. KEIMBAYE: One moment, Your Honor.
8 | Number 1 should be -- should be denied because Christopher
9 | Kortendick is a major player in this case that, you know,
10 | costing Plaintiff dearly. And so Plaintiff has the right to
11 | mention in length, you know, anything that, you know -- you
12 | know, Mr. Kortendick has done to him.

13 | THE COURT: That's not what this motion is
14 | about. This motion is to prevent you from discussing or
15 | eliciting testimony about rumors, innuendo, or general
16 | opinion regarding Mr. Kortendick.

17 | In other words, as an example, you know, you
18 | wouldn't be allowed to ask a witness, well, have you heard
19 | bad things about Mr. Kortendick?

20 | MR. KEIMBAYE: Plaintiff should be able
21 | to -- should be allowed, you know, to -- even, like,
22 | questioning -- questioning, you know, Mr. Kortendick about
23 | his own behavior or any -- any claims against him.

24 | THE COURT: That's not what this motion is
25 | addressing.

1 MR. KEIMBAYE: I mean, why wouldn't Plaintiff
2 be allowed to question other witnesses about Mr. Kortendick's
3 behavior?

4 THE COURT: For behavior that they actually
5 witnessed?

6 MR. KEIMBAYE: Yes.

7 THE COURT: They're not -- they're not asking
8 me to bar that. That would be relevant. And that would not
9 be hearsay, because they actually witnessed it. What they're
10 asking is for the Court to exclude rumors, or innuendo, or
11 general opinion evidence.

12 MR. KEIMBAYE: Well, general opinion evidence
13 about Mr. Kortendick, he's a -- he's a rude and very mean,
14 you know, coworker to work with.

15 THE COURT: So that wouldn't be allowed. But
16 what would be allowed is you can describe incidents where he
17 acted in a way toward you or that you observed him act toward
18 someone else that was rude or angry. Do you understand the
19 difference? Okay.

20 MR. KEIMBAYE: Thank you.

21 THE COURT: All right. Are there any others?
22 We only have about 15 minutes left. And that's only because
23 my restitution hearing at 11:30 ended up with an agreed
24 order.

25 MS. ROSEN: Your Honor, we have a number of

1 housekeeping questions. Should we just put those over email?

2 THE COURT: Maybe.

3 Yes, Mr. Kortendick -- I'm sorry,
4 Mr. Keimbaye?

5 MR. KEIMBAYE: Yes. Defendants' motion in
6 limine number 3, why -- why would they preventing Plaintiff
7 from mentioning, you know, the most outrageous, you know,
8 attack and assault on Plaintiff --

9 THE COURT: Because -- because none of these
10 people were under the Defendants' control. These are all
11 doctors who you claim mistreated you. But their actions are
12 not imputed to Providence, and Providence isn't responsible
13 for them.

14 You know, if some doctor punched you, you'd
15 have to sue that doctor, right, because the doctors don't
16 work -- they work at Providence, but they don't work for
17 Providence.

18 MR. KEIMBAYE: Your Honor, I -- I understood
19 your explanation, but at that time when Plaintiff was working
20 for -- for Providence --

21 THE COURT: Yes?

22 MR. KEIMBAYE: -- in his building, everybody
23 that works there, you know, works for Providence.

24 THE COURT: No.

25 MR. KEIMBAYE: Plaintiff has no --

1 THE COURT: No. It doesn't work that way.

2 Doctors --

3 MR. KEIMBAYE: No obligation to verify --

4 THE COURT: Doctors --

5 MR. KEIMBAYE: -- each employee that, you

6 know, they are -- they are not part of the Providence.

7 THE COURT: Yeah. If the doctors were not
8 employees of Providence, then Providence is not liable to you
9 for their misbehavior toward you. If there were employees of
10 Providence, and especially supervisors and managers there
11 that witnessed the doctors abusing you, that's a different
12 story. And that evidence can come in. But unless --

13 MR. KEIMBAYE: But --

14 THE COURT: -- unless there is evidence that
15 Providence, as an entity, was aware of your being abused by
16 some of these doctors, then they're not responsible for it.

17 Yeah?

18 MR. KEIMBAYE: And -- and thank you for
19 allowing me to explain again. The reason why Plaintiff
20 should be allowed, you know, to talk about Dr. Usoltsev or
21 Dr., you know, Porterfield --

22 THE COURT: Yeah?

23 MR. KEIMBAYE: -- is because Plaintiff brought
24 those two incidents to his manager, Mr. John.

25 THE COURT: Okay.

1 MR. KEIMBAYE: Travis John.

2 THE COURT: Well, you can testify that you
3 talked to Mr. John about that. That you --

4 MR. KEIMBAYE: But in order for Plaintiff to
5 talk about it --

6 THE COURT: That you can do.

7 MR. KEIMBAYE: In order for Plaintiff to talk
8 about that, you know, in regard to his communication with his
9 supervisor, Mr. John --

10 THE COURT: Yep.

11 MR. KEIMBAYE: -- regarding the incidents,
12 Plaintiff has the right to explain, you know, how the action
13 happened.

14 THE COURT: Okay. So, again, if it's
15 something that you brought to management as a problem that
16 you were having at work, or an abusive situation that you
17 were suffering from at work, you can testify about that.

18 MR. KEIMBAYE: I hope they -- they are not
19 going to kind of, like, deny under oath. I hope not.

20 THE COURT: I don't know what they're going to
21 say. There's no discovery from them. And, so, I mean,
22 there's no depositions or anything like that.

23 MS. BURNHAM: They have not been called as
24 witnesses.

25 THE COURT: I'm sorry? What?

1 MS. BURNHAM: They have not been submitted or
2 called as witnesses.

3 THE COURT: Right. Right.

4 MR. KEIMBAYE: Mr. John is.

5 THE COURT: Right. Mr. John is. So, you
6 know, he can testify about whether Mr. Keimbaye brought these
7 things to his attention and when, if so.

8 All right. We're just -- we're getting really
9 close to the end. What are the housekeeping issue?

10 I'm just going to rule on the rest of these
11 without oral argument. What are the housekeeping issues that
12 we need to talk about?

13 HOUSEKEEPING ISSUES

14 MS. ROSEN: Well, we need to talk about jury
15 instructions and the verdict form. I don't know if you want
16 to argue that some other day.

17 THE COURT: Yeah. I think it's a little bit
18 premature. I haven't even looked at the proposed jury
19 instructions yet, to be honest with you, since that's not
20 going to happen next week, anyway.

21 MS. ROSEN: Yeah. And we need some access to
22 the courtroom to bring some stuff. And we're just wondering
23 when we could do that. That's one.

24 The other is, can we use an ELMO if
25 Mr. Keimbaye can use the ELMO that we bring, as well?

1 THE COURT: I'm not sure how that would work,
2 given the courtroom. And once you come to the courtroom,
3 you'll see. We're open all afternoon. I have a sentencing
4 calendar.

5 MS. ROSEN: Okay.

6 THE COURT: As long as you're unobtrusive
7 about it, you can certainly bring stuff in.

8 MS. ROSEN: Okay.

9 THE COURT: And it's not a super, super long
10 sentencing calendar, either.

11 With respect to the ELMO, the way that the
12 courtroom is set up, it's not a huge courtroom, and counsel
13 table is in an L-shape. And there are monitors -- there's a
14 monitor at each counsel table. And there are really big LCD
15 screens across from the jury box that are within view of
16 everyone in the courtroom. And there's also a monitor
17 available at the witness stand.

18 And, typically, the way exhibits are
19 shared -- and you would have to have those scanned in as PDFs
20 -- is you bring with you, you know, a laptop computer, which
21 I'm sure you will, and an HDMI cable. And you can plug into
22 the system here in the courtroom --

23 MS. ROSEN: Okay.

24 THE COURT: -- and pull up your documents to
25 display on the big screens once they're admitted into

1 evidence.

2 MS. ROSEN: That sounds great, Your Honor.

3 THE COURT: Yeah. And that's going to be --
4 because the problem with the ELMO is I don't know where you
5 would put the screen. There's really no good place in the
6 courtroom to put the screen, because if you want the jury to
7 see it, then the screen -- you -- everyone at counsel table
8 is going to be looking at the back of the screen if you did
9 it that way.

10 MS. ROSEN: Yeah.

11 THE COURT: There's no room for a screen
12 behind counsel table.

13 MS. ROSEN: Understood. That makes perfect
14 sense, and that'll be fine.

15 THE COURT: Okay.

16 MS. ROSEN: The only other thing I wanted to
17 raise with you, Your Honor, is that we're very concerned
18 about Mr. Keimbaye staying within the rulings on the motions
19 in limine and --

20 THE COURT: Yeah.

21 MS. ROSEN: -- that type of thing. We're very
22 concerned about a mistrial. We don't think he understands
23 what hearsay means. He's refused to acknowledge that a lot
24 of his claims still aren't alive anymore.

25 Would it be possible for you to do an

1 in-camera review of his opening and voir dire?

2 THE COURT: All right. Mr. Keimbaye --

3 MS. ROSEN: Really want to avoid a mistrial.

4 THE COURT: Mr. Keimbaye, you had your hand
5 up. Was there a question that you had or a comment?

6 MR. KEIMBAYE: Yes. I do have a question
7 regarding presentation of the exhibit through the laptop. I
8 believe from previous pretrial conference, we were told to
9 hand up the physical exhibit?

10 THE COURT: Yeah.

11 MR. KEIMBAYE: And so, in addition, we have to
12 do the screen presentation from our laptop as well?

13 THE COURT: You don't have to. You have the
14 option. If you want an exhibit that has been admitted into
15 evidence, the jury's allowed to see it if you want it
16 displayed on a large screen. Otherwise, an exhibit that's
17 been, you know, that you want to ask a witness about, you can
18 take it to the witness, ask the witness to identify it. And
19 once it's been admitted into evidence, if you want to -- want
20 the jury to see, to see it then and there, you can have --
21 have it passed around among the jury panel.

22 But any exhibit that's admitted into evidence,
23 the jury will have in the jury deliberation room when they
24 deliberate.

25 So not every admitted exhibit needs to be

1 passed around to the jurors. That would take way too much
2 time. And, remember, your trial time is limited. But if
3 there's something that's, like, super important that you
4 think the jury needs to see right away, you have the option
5 of having a PDF of that that you can show on the screen, or
6 having it passed around amongst the jurors once it's been
7 admitted into evidence.

8 But you're certainly not required to do the
9 electronic thing. And the main reason why I required
10 hardcopy exhibits was because I was anticipating that for
11 Mr. Keimbaye, as a self-represented litigant, it might pose
12 some barriers. And I wanted to minimize those barriers.

13 MR. KEIMBAYE: And so only after, Your Honor,
14 you rule on that exhibit that, you know, parties can show it
15 to the -- to the jury?

16 THE COURT: Nothing is to be shown to the jury
17 unless I admit it into evidence. The exception would be
18 illustrative or demonstrative exhibits, and those are not to
19 be shown to the jury unless one of two things happen -- until
20 the Court says it's okay.

21 If both sides agree on it, I will say it's
22 okay. If one side objects, then I'll listen to the
23 arguments, and I'll make a ruling. And if I say it's okay to
24 show it to the jury, then it's okay to show it to the jury,
25 even though it's not an admitted exhibit.

1 But nothing is to be shown to the jury without
2 the permission of the Court, unless it's already been
3 admitted as an exhibit.

4 Now, with respect to what Ms. Burnham
5 mentioned, Mr. Keimbaye, it's really important for your
6 opening statement, or for the remarks that you make to the
7 jurors, that you only talk about your claims for workplace
8 harassment and hostile work environment.

9 So your claim for wrongful termination for
10 Providence firing you has been dismissed. That's something
11 you can appeal. But it's not going to be at issue for trial
12 before the jury.

13 And Defense Counsel raised this now because
14 your trail brief has a lot of allegations in it that don't
15 relate to your hostile work environment and harassment
16 claims, but that relate to your wrongful termination claims.

17 So you shouldn't bring up your wrongful
18 termination claim in front of the jury because that's not at
19 issue in this trial. Do you understand that?

20 MR. KEIMBAYE: Your Honor, can I explain
21 before I agree to your question?

22 THE COURT: If you have a question, you can
23 ask me a question. But there's really nothing for you to
24 explain.

25 MR. KEIMBAYE: Yes, I -- okay. I can ask you

1 a question?

2 THE COURT: You can ask me a question. Yeah.

3 MR. KEIMBAYE: Plaintiff claim does have
4 retaliation related to it because Plaintiff communicate with
5 his supervisor, Mr. John and Kortendick. They personally
6 took Plaintiff to -- from the second floor in the main OR
7 surgery to the first floor to introduce Plaintiff to the HR
8 office, where Mr. Sweaney was -- is working at to report his
9 claim.

10 When they realized that, you know, if they
11 allowed the Plaintiff, you know, to report his harassment and
12 hostile environment claim, it would, you know, backfire on
13 them. So, all the sudden, they panic and distance themselves
14 and talk about it, and then came back to Plaintiff and say
15 that, oh, since they have been working here at Providence,
16 they haven't seen any HR office in the building and refused
17 to -- refused to help Plaintiff to report, you know, his
18 complaint. And all the sudden --

19 MS. ROSEN: This is an example of what I'm
20 talking about.

21 MR. KEIMBAYE: -- the week after --

22 THE COURT: Yeah.

23 MR. KEIMBAYE: -- the week after --

24 THE COURT: I don't -- what are we talking
25 about here? I don't understand, and it's noon, and we only

1 get an hour on Fridays because their sentencing calendar
2 starts at one. So I can't go very much into the --
3 where's -- do you all remember what the docket number was for
4 the summary judgment order? Or the days?

5 MS. ROSEN: Also raising the retaliation
6 claim, which was dismissed.

7 THE COURT: Well, that was what I was
8 double-checking.

9 MS. ROSEN: Yeah. That claim was dismissed,
10 Your Honor. But we'll find the docket number for you.

11 THE COURT: Thanks. It's a little --

12 MS. ROSEN: I mean, I'm very concerned. I'm
13 very, very concerned that I'm going to have to object to
14 every question that he asks himself.

15 THE COURT: Let me find -- let me find the
16 order so I can refresh my memory on exactly what it said.

17 MS. ROSEN: Okay.

18 THE COURT: Do you remember the date?

19 MS. BURNHAM: Like May of 2022?

20 THE COURT: Yeah. That's a long year.

21 MS. BURNHAM: Sorry. I said May of 2022.

22 THE COURT: Oh. May of 2022. I'm sorry.

23 MS. BURNHAM: I'm sorry.

24 THE COURT: Okay.

25 MS. BURNHAM: I think.

1 THE COURT: Declaration, declaration, order.

2 MS. BURNHAM: That seems to come to mind, but
3 I could be totally wrong. I think it's 86 or 87.

4 THE COURT: Order granting partial summary
5 judgment. I think you found it. I've got docket 111. Okay.
6 So the order says, granted in part. Okay. The wrongful
7 discharge claim is granted. The claim for retaliation is
8 granted because Mr. Keimbaye didn't present any evidence to
9 establish a *prima facie* case that he was the subject of any
10 adverse employment action because of any protected activity.
11 His claims for harassment and hostile work environment based
12 on race, national origin, and sex are denied.

13 Okay. So that's what's going to the jury.

14 All right. We need to break. I'll see
15 everybody on Tuesday. I'll ask you to log in about ten
16 minutes to nine. We're going to leave you in the waiting
17 room until J. makes sure she has all the jurors, she has them
18 in proper numerical order, and their names and their juror
19 numbers are displayed. So you'll see those.

20 I am going to ask everyone to please call on
21 the jurors by number rather than by name. It prevents
22 mispronouncement, and it's much clearer if a transcript
23 becomes necessary at some later point. It becomes much
24 clearer who's being called on when, since certain names get
25 pronounced differently by different people, as Mr. Keimbaye

1 very well knows.

2 Yes. Mr. Keimbaye, if it's really brief. If
3 not, it's going to have to wait until Tuesday.

4 MR. KEIMBAYE: It's for clarification of the
5 certain motions that the Defendants, you know, brought in
6 earlier.

7 Regarding their motion for, you know, CR 43,
8 what witnesses are left for Plaintiff to call in besides
9 Mr. John and Mr. Kortendick?

10 THE COURT: Mr. John and Mr. Kortendick.
11 That's it. Because the other person who was a managing agent
12 doesn't work for them anymore.

13 MR. KEIMBAYE: I believe Mr. Sweaney is.

14 THE COURT: Was he on the list?

15 MS. BURNHAM: He's not a managing agent, Your
16 Honor.

17 THE COURT: All right.

18 All right, folks. We're at recess.

19 MR. KEIMBAYE: And -- and --

20 THE COURT: No. I'm sorry. I have to end
21 this, Mr. Keimbaye. I'm very sorry. But it's after
22 12 o'clock, and I need to recess. We have contractual
23 obligations to our staff.

24 So we'll see you on Tuesday morning via Zoom.
25 Same Zoom link.

1 MR. KEIMBAYE: Nine o'clock?

2 THE COURT: Please log into Zoom earlier than
3 nine o'clock so that you make sure that we're going. And we
4 will start at nine, or as close to nine as we possibly can,
5 once we have all the jurors ready to go. Okay?

6 MS. BURNHAM: Thank you, Your Honor.

7 MS. ROSEN: Thank you, Your Honor.

8 THE COURT: Thanks, everybody. We're at
9 recess.

10 MR. KEIMBAYE: Thank you.

11 (Proceedings adjourned at 12:03:45 p.m., to recommence on
12 September 5, 2023.)

13

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1 SEATTLE, WASHINGTON

2 TUESDAY, SEPTEMBER 5, 2023

3 MORNING SESSION - 9:08:41 A.M.

4 JURY TRIAL:

5 (The following proceedings were held inside the presence of
6 the prospective jury:)

7 THE COURT: Thank you very much. Please be
8 seated, everybody here who's standing. Good morning,
9 everyone. I'm going to move myself down to the bottom of the
10 screen because I don't want to stare at my own face.

11 Good morning. I'm Judge Andrea Darvas. And
12 we -- we being myself, the bailiff, and the clerks, are here
13 in Department 23 in the King County Courthouse in Seattle, in
14 room West 728. I'd like to welcome you all to the jury
15 selection process.

16 Our courtroom door is unlocked, which means
17 members of the public are free to come in and observe these
18 proceedings. The proceedings are being recorded by an
19 electronic recording system that takes down what everybody
20 says to create the formal court record. So it's important
21 that everyone speak clearly, that we avoid talking at the
22 same time, so that we can have an accurate record.

23 I'm hearing some static from somewhere.
24 Hopefully, that will go away. All right.

25 I'd like to introduce the case, the parties,

1 and Counsel to you at this time.

2 The Plaintiff in this case is Dominique
3 Keimbaye. Mr. Keimbaye is representing himself, and,
4 Mr. Keimbaye, I'd like to invite you to introduce yourself to
5 the jury panel. Mr. Keimbaye?

6 Is he not here? J.?

7 THE BAILIFF: Yes?

8 THE COURT: I don't see Mr. Keimbaye. And I
9 don't hear Mr. Keimbaye.

10 THE BAILIFF: You have two pages.

11 THE COURT: Well, I know. But I just called
12 on him, and he hasn't responded.

13 THE BAILIFF: He was here. He's right here.

14 THE COURT: Oh. Mr. Keimbaye, do you want to
15 introduce -- you're muted. You need to unmute before you do
16 that. There you go. Okay. Would you like to introduce
17 yourself, sir?

18 MR. KEIMBAYE: Yes, Your Honor.

19 Members of the jury, my name is Dominique
20 Keimbaye. I am -- I was born in Central Africa --

21 THE COURT: No. No. No. This isn't -- I'm
22 so sorry, Mr. Keimbaye. This isn't the time to make a
23 speech. Just introduce yourself.

24 MR. KEIMBAYE: Okay. Okay. Thank you.

25 THE COURT: All right. Thank you, sir.

1 The Defendants in this case are Providence
2 Regional Medical Center of Everett and Christopher
3 Kortendick. The Defendants are represented by several
4 attorneys, Kathryn Rosen, Paula Lee Lehmann, Rachel Garner
5 Marshall, and Margaret Burnham.

6 Counsel, if you'd like to introduce yourself,
7 and your colleagues, and your clients.

8 MS. ROSEN: Thank you, Your Honor. My name is
9 Katie Rosen, and I represent Providence Regional Medical
10 Center Everett, as well as Chris Kortendick. And I have --
11 my colleague is Meg Burnham, who will be trying this case
12 with me. Thank you.

13 PRELIMINARY INSTRUCTIONS

14 THE COURT: All right. Thank you.

15 All right. First of all, members of the
16 jury -- or at least members of the jury panel -- I want to
17 thank you for filling out that online questionnaire. I know
18 that took some time for you to do. It was incredibly helpful
19 for the Court, and for Mr. Keimbaye, and for Counsel for the
20 Defense to find out a little bit more about you and to help
21 to target any follow-up questions to some of the things that
22 you brought up.

23 As you did see in the -- oh, you know what,
24 let me finish -- no. I won't do the introductions, because
25 those of you who are serving as jurors, I'll introduce the

1 clerk to you at that time. She's not on video, anyway. And
2 you've already met my bailiff, Jacqueline Ware.

3 So, as you saw in the questionnaire, this is a
4 civil lawsuit that Mr. Keimbaye brought against the
5 Defendants, Providence Regional Medical Center of Everett and
6 Christopher Kortendick.

7 Mr. Keimbaye claims that during his
8 employment, as an anesthesia technician between December 27
9 of 2017 and June 22nd of 2018, he was subjected to harassment
10 and a hostile work environment based upon his race, national
11 origin, and sex, by Mr. Kortendick and by others.

12 Mr. Keimbaye alleges that the Defendant,
13 Providence, knew of the harassment and that it failed to take
14 prompt remedial action to correct it.

15 Mr. Keimbaye also claims that he suffered
16 injuries and damages as a result of the Defendants' actions.
17 The Defendants deny these claims.

18 If you are selected to serve as a juror in
19 this case, it will be your duty to determine, based on the
20 evidence presented at trial, whether Mr. Keimbaye was injured
21 as a result of harassment or a hostile work environment,
22 whether any of the named Defendants are liable for such
23 injuries. And, if so, what reasonable compensation should be
24 paid to Mr. Keimbaye for such injuries.

25 It's very important that you discharge your

1 duties without discrimination, meaning that bias regarding
2 race, religious beliefs, national origin, disability, sexual
3 orientation, gender, or gender identity of any party, any
4 witness, and any lawyer should play no part in the exercise
5 of your judgment throughout this trial.

6 The lawyers and parties have the right and the
7 duty to challenge any jurors for cause. And I want to take a
8 moment to talk about what we mean when we talk about a
9 challenge for cause.

10 The law defines a challenge for cause as a
11 challenge for a bias. And the word bias in court has some
12 special meanings. I think in our culture today, many of us,
13 when we hear the word bias, we immediately associate that
14 with some fairly ugly things, racism, sexism, discrimination
15 on the basis of sexual orientation or national origin or
16 religion. And, indeed, the word bias includes all of those
17 things.

18 But in a court of law, the word bias is
19 actually broader than that. It includes anything about a
20 juror's background or core beliefs that would make it
21 difficult or impossible for you to be objective and equally
22 fair to both sides when you weigh the evidence in this case
23 and when you apply the instructions of law that the Court
24 will be giving to the jury.

25 And I will give you an example that has

1 absolutely nothing to do with this case, but is just an
2 example about what I mean by how broadly we construe bias.
3 Sometimes in this courthouse, and sometimes in my courtroom,
4 we have criminal trials where a defendant is accused of
5 having sexually abused or molested a child.

6 And over the years, it has become very clear
7 to me that whenever we get a large group of potential jurors
8 called in on a case like that, and we start talking to them
9 about their backgrounds and about their qualifications as
10 jurors, inevitably, there will be some people on that panel
11 who either themselves have been victims of sexual assault or
12 sexual abuse, or someone very close to them, that they care
13 about very deeply, has been a victim of sexual assault or
14 sexual abuse. Or, perhaps, someone they care about very
15 deeply has been accused of having sexually assaulted or
16 abused a child or an adult -- perhaps wrongfully accused.

17 And for many of those people with those
18 backgrounds and experiences, that subject matter, sexual
19 abuse of a child, carries with it a lot of emotion. And
20 that's completely understandable.

21 And some people are able to set those motions
22 aside and say, you know what, that's fine. That's a
23 different situation. And I'm going to be able to be
24 completely fair in a case where a criminal defendant is
25 charged with that kind of a crime.

1 But for some of those people, those emotions
2 are so powerful and so upsetting that even the subject matter
3 of someone being accused of having sexually abused a child
4 makes it impossible for them to be objective and impartial in
5 that type of a case. And that doesn't make them unfair or
6 bad people at all. They might be very fine jurors in a
7 completely different case -- a case like this one, for
8 example, or a case where someone's accused of robbery, let's
9 say.

10 So that is one example of what we mean by
11 bias. It's just anything about a juror's core beliefs or
12 background or experiences that would interfere with your
13 ability to be equally fair to both sides in this case, to
14 weigh the evidence impartially and objectively, and to come
15 to a fair and impartial decision once you've heard all the
16 evidence in the case.

17 So, again, thank you for filling out that
18 questionnaire. Your responses to the questionnaire have been
19 provided to Mr. Keimbaye and to the lawyers for the Defense
20 minus your contact information. And based on answers to the
21 questionnaire, some of the prospective jurors have already
22 been released. And today, I -- and then a little bit later,
23 Mr. Keimbaye and the lawyers will follow up with you on your
24 answers to the questionnaire and they might ask you some
25 additional questions as well.

1 The purpose of this jury selection process is
2 to make sure that we select a jury that's free from any
3 outside or preexisting biases that might interfere with your
4 ability to fairly decide the case impartially and objectively
5 based upon the evidence and the law that you will receive in
6 the courtroom.

7 As you answer the questions during the jury
8 selection process, we do ask that you look within yourselves
9 and see if there's something in your life experiences or your
10 personal beliefs that might be such a strong influence that
11 it would overcome your ability to serve as a fair and
12 impartial juror.

13 If a subject touches on something that you
14 feel is really extraordinarily personal and you would prefer
15 to answer questions on that topic outside the presence of the
16 rest of the jury panel, please bring that to my attention,
17 and we'll arrange to have that happen.

18 The best way to get my attention is to wave in
19 front of your camera. You can use the Zoom hand raise
20 function if you feel more comfort with that, but it might
21 take me a few more seconds to notice that than to notice a
22 moving target.

23 And I'm trying to figure out what to do,
24 because I'd really rather only have one screen. So I'm going
25 to hide the nonvideo participants. And that means,

1 unfortunately, that Juror 15 is going to be nonvisible to me
2 as well, but I think that's going to be better. At least
3 I'll be able to see all the faces at the same time. Hold on
4 one second. Okay. I think that's going to work out a little
5 bit better.

6 All right. So why are we on Zoom? Well, we
7 never used to do that pre-pandemic. Before about March of
8 2020, when we had a trial beginning and we needed to select a
9 jury, we'd ask, I don't know, 100 to 150 folks to come into
10 the courthouse, usually because more than one courtroom would
11 be starting a trial on that particular day.

12 You'd all assemble in a large room. You'd
13 have an orientation session where you'd be given a little bit
14 of information about jury service. And then somewhere
15 between 40 and 50 of you would be called into my courtroom
16 and we'd ask you a bunch of questions as a group. And that
17 process would usually take most of a day, if not an entire
18 day. And that's the way we used to do it.

19 Then, when COVID hit, we -- a lot of courts
20 throughout the country just closed entirely and didn't do
21 much of anything. We, because of some really talented people
22 in my bench -- which, I am not among them -- but they were
23 very tech savvy and were able to find a way for us to
24 continue much of our work via Zoom and taught the rest of us.

25 And so we started doing jury selection. And

1 then in civil cases, we started doing trials and bench trials
2 via Zoom so that we could keep the figurative courthouse
3 doors open, keep providing justice for everyone, keep
4 providing trial dates for people, but try to keep people as
5 safe as possible during the public health emergency.

6 Now that we are, God willing, past that, we
7 have continued to do jury selection via Zoom because we find
8 it's much more convenient for you to be participating from
9 where you work or where you live. And since we were able to
10 develop an electronic way of administering this questionnaire
11 to you and getting your answers to that, we found that we
12 could shorten the amount of time it takes to pick a jury
13 because we already have a fair amount information about you
14 before we even begin the process in open court.

15 So that's why we're on Zoom. Your identities
16 are the juror numbers that were assigned to you during -- for
17 the trial, which is on the screen below you next to your
18 names. Please don't change those.

19 Experience has shown that sometimes there are
20 bandwidth issues for people. So I'm going to ask that, if
21 possible, you're the only one in your household who's using
22 the internet during this time. Sometimes that's not
23 possible. But we'll try to do our best. I don't see anyone
24 using a virtual background, which is good, because those tend
25 to eat up a lot of bandwidth.

1 Again, if you want to answer a question or
2 have a thought, or want to say something or you have a
3 question, please go ahead and wave at your camera. Please
4 don't communicate or interact with anyone else while you are
5 on this Zoom session with us. We need you to remain focused
6 on what's happening.

7 The best advice I can give you to kind of
8 shorten things up a little bit is please behave the way that
9 you would expect to behave if you were physically here in the
10 courtroom. If you're physically here in the courtroom,
11 you're not going to be looking at your phone, you're not
12 going to be communicating with other people electronically or
13 in any other fashion, you're not going to be reading
14 anything, you're not going to be getting up and wandering
15 away. So please just behave the way that you would expect to
16 behave if you were here in the courtroom.

17 We will take a break around 10:30 or so for
18 about 15 minutes. So then if you want to get up and use the
19 facilities or get something to drink or something like that,
20 you'll be able to do it at that time.

21 If some kind of an emergency comes up and you
22 do need to get up for some reason, please bring that to my
23 attention because what we will have to do is stop the
24 proceedings and wait for you to get back with us, because we
25 want all of you to have the benefit of the thoughts and

1 | experiences of all of the rest of you.

2 | All right. So please remain connected to Zoom
3 | during the entirety of the jury selection process. Let's
4 | see. Make sure your microphones are muted unless you're
5 | called on to speak or unless I ask you to unmute. Please
6 | leave your speakers and video on during the entirety of the
7 | jury selection process so you can see and hear us and we can
8 | see and hear you. Please do not record or screenshot this
9 | Zoom call.

10 | I will take one screenshot at some point this
11 | morning for the sole purpose of allowing Mr. Keimbaye and
12 | Counsel to remember you at the end of this process by juror
13 | number. And, again, a reminder that all of our court
14 | proceedings are audio recorded, so it's important that you
15 | give verbal response to questions. In other words, you can
16 | nod your head or shrug or shake your head, and we can see
17 | that. But the record won't be picking that up. So please
18 | use verbal responses. You can shake your head no, but please
19 | also say, no, if that's your answer. Does that make sense to
20 | everybody? Okay. Thank you very much.

21 | If you become disconnected, please try to
22 | reconnect right away. If you can't reconnect and you're
23 | experiencing problems, please call or email Jacqueline Ware.
24 | You probably already have this information, but the phone
25 | number is (206) 477-1465, or Darvas.Court@kingcounty.gov.

1 And I think all that information was in the email that J.
2 sent to you when you were invited to this jury selection
3 session.

4 All right. Let me see. Just circling back a
5 little bit to what you need to do. Please be alone in the
6 room with no distractions. Do not use any apps or programs
7 other than what you need for this Zoom session. Again, no
8 communication. Don't use your phones. Best if your phones
9 are turned off. But, at the very least, they should be
10 silenced. This hearing should have your complete attention.

11 Now, a couple of other things that are maybe
12 not immediately obvious, but are really important. One is,
13 don't attempt to do any research or look anything up that
14 might relate to this case, to the parties, the location, the
15 issues, or the lawyers. That includes looking anything up
16 through any internet source, including any search engine, and
17 including social media.

18 Let me explain to you why that is so
19 important. This case has a 21 cause number, which means it's
20 been pending for a couple of years now. And the parties have
21 had the opportunity to do their due diligence, to engage in
22 discovery from one another, to interview any witnesses that
23 they feel might have relevant information, to review
24 documents and records that they feel might be relevant to the
25 case. And they are fully prepared to challenge any evidence

1 that they don't agree with.

2 But what's not possible for them to do is to
3 challenge information that a juror might bring into the
4 decision-making process from outside. There's no way, for
5 instance, for Mr. Keimbye or one of the lawyers to
6 cross-examine something that you read on the internet or
7 something that another person told you.

8 So in order for both sides to have a fair
9 trial, it's really essential that those of you who serve as
10 jurors in this case and decide this case base your decision
11 on only two things: The testimony of witnesses under oath in
12 this courtroom, or occasionally there might be some preserved
13 testimony by deposition as well. But that will be sworn
14 testimony as well. So that's one category. And the second
15 category is the exhibits that are admitted into evidence,
16 which would be records or documents or photographs that I
17 admit into evidence.

18 So those are the only two sources of
19 information that you should be using to make a decision in
20 this case. And then the third thing would be the
21 instructions of law that I will be giving to the jury, mostly
22 at the conclusion of this case. You will get those in
23 writing, so I don't want anyone to be feeling anxious that,
24 well, you have to memorize a bunch of legal stuff because we
25 will give those to you in hardcopy.

1 Charles' iPhone entered the waiting room. Is
2 he with a party, or is he a juror, perhaps? J., do you know?

3 THE BAILIFF: Not a juror.

4 THE COURT: Okay. I'm going to leave it
5 alone, then, for now.

6 All right. The second thing, besides not
7 looking anything up or not exposing yourself to any
8 information that might relate to this case outside of court,
9 it's very important that you not discuss this case with
10 anyone. That includes your friends, your family, members of
11 your household, or anyone else. And no communication means
12 no communication in any form.

13 So that would include text messages, email,
14 chats, blogs, tweets -- are we still calling them tweets?
15 What are we calling them now that it's X? Who knows.
16 Anyway, blogs or any postings on social media.

17 I would urge those of you who use social media
18 to refrain from even mentioning that you're involved in jury
19 selection or that, perhaps, you're selected as a juror at the
20 end of this process.

21 And the reason for that is if you share that
22 information, you're going to get a bunch of responses that
23 will either be asking you questions that you cannot answer
24 because you're not permitted to say anything to anyone about
25 this case until the case is over and the jury has reached a

1 verdict. Or you'll be inundated with a bunch of folks who
2 want to share their experiences as jurors, which, at best, is
3 going to be distracting and, at worst, again, might inject
4 some information that you probably should not be bringing
5 into the decision-making process.

6 So that's why we do that. You can throw me
7 under the bus. If people ask you about your experience as a
8 juror in this case, you can tell them that the mean trial
9 judge has told you that you're not allowed to discuss it,
10 with one exception. And that is -- and I'll get to the
11 schedule in a moment -- you can share the schedule for the
12 trial with people in your life that you feel need to know
13 that whether it's household members, employers, those kinds
14 of things.

15 It's only a temporary vow of silence. If
16 you're excused as a juror, then you're free to talk about
17 anything you like with anyone you like. And if you're not
18 excused and you're actually empaneled as a juror, then this
19 instruction will continue to apply until you have deliberated
20 and the jury has reached a verdict. And, once that happens,
21 then I will discharge you, and you'll be free to talk about
22 any aspect of the case you like with anyone you like.

23 Does anybody have any questions about those
24 two really important rules? All right. I don't see any
25 hands.

1 And Juror 15, I'm just going to have to ask
2 you to speak up since I won't be able to see you -- I guess
3 you can use the Zoom hand raise. But, actually, that might
4 not work, either, because I don't see you on my screen. So I
5 think it's best if you just speak up if you have a question.

6 All right. If you are actually chosen as a
7 juror for this trial, we will need you in person at the King
8 County Courthouse in my courtroom, which is West 728 in
9 downtown Seattle for the rest of this trial.

10 The in-person sessions will begin tomorrow on
11 Wednesday. So we'll be in session on Wednesday and Thursday
12 9:00 a.m. to 4:00 p.m. Mid-morning, we will take a 15-minute
13 recess. At noon, we typically recess for 90 minutes, but
14 occasionally it might be 60, between 12 and one or 12 and
15 1:30. And then in the afternoon, we take a 15-minute recess
16 around 2:30 or so. And we recess court for the day at four.

17 We may go very slightly past the four o'clock
18 hour if there's a witness on the stand who's almost finished,
19 and another five or ten minutes will wrap up their testimony.
20 Rather than make them come all the way back the next morning,
21 we may go a little past four. But we will very reliably have
22 you out of here by 4:15 or so on a daily basis.

23 So we are not in session on Fridays unless the
24 jury is deliberating. So we will not need you this Friday.
25 We will resume the trial next Monday. And we will go through

1 Thursday. And I'm not sure exactly when both sides will
2 rest. And you'll get the jury instructions and be able to
3 start deliberating. Might be potentially even on Wednesday,
4 might be on Thursday. Might not be until the tail end of the
5 day on Thursday. And if that's the case, or you're
6 deliberating on Thursday, but you haven't had enough time to
7 reach a verdict yet, then we will ask you to come in next
8 Friday, which would be the 15th, so that you can continue
9 your deliberations and reach a verdict in this case.

10 Before we ask you any questions, there is an
11 oath or affirmation that's required. So I'm going to ask all
12 of the jurors to please unmute yourselves, including Juror
13 15.

14 THE BAILIFF: 15's video is working now.

15 THE COURT: Oh. Is she on the screen?

16 THE BAILIFF: We need to put her in order.

17 PROSPECTIVE JUROR NUMBER 15: I'm here.

18 THE COURT: Hi. Oh, there you are.
19 Wonderful. I'm so glad you got your video going. That's so
20 much better.

21 All right. Yeah. I'm going to move you to
22 the right spot on my screen, here.

23 All right. So I'm going to ask all my jurors
24 to please raise your right hands. Do you and each of you
25 solemnly swear or affirm that you will truthfully answer such

1 as questions as may be asked of you by the Court, or the
2 parties and lawyers, concerning your qualifications to act as
3 jurors in this case? If yes, please say, I do.

4 PROSPECTIVE JURY SWORN

5 THE PROSPECTIVE JURY COLLECTIVELY: I do.

6 VOIR DIRE BY THE COURT

7 THE COURT: Thank you very much. You can
8 lower your hands, and you can remute at this time.

9 I haven't mentioned that we're going to
10 be -- I'm going to be calling on you, and I'm going to be
11 asking Mr. Keimbaye and the lawyers to call on you by your
12 numbers rather than by your names. And that might strike
13 some people as kind of strange. So I want to explain the
14 reason for that.

15 It is certainly not out of any disrespect. We
16 are so grateful that you are sharing your time with us. The
17 reason why we do that -- actually, there's several reasons.
18 One is it will prevent me from horribly mispronouncing your
19 name.

20 Two is it is a little bit more protective of
21 your privacy, because if a transcript of this proceeding
22 becomes necessary someone is going to be charged with
23 listening to the recording and typing up a transcript, and
24 you'll be identified by number rather than by name. So it's
25 a little more protective of your privacy.

1 The third reason is it makes for a much
2 cleaner record. Some names are very short and clear and
3 everybody pronounces them the same way, but some names get
4 pronounced differently by different people. And sometimes
5 they can go by very quickly. And the person who is
6 transcribing this, if that happens, won't necessarily have
7 access to the official list of your names.

8 Numbers are much cleaner and harder to
9 misunderstand, and so it just makes for a clearer record. So
10 I'm very much hoping that nobody feels disrespected in any
11 way if we call on you by number rather than by name.

12 All right. So, first question. You were
13 instructed in that invitation to the -- when you were sent
14 the invitation to fill out the questionnaire, there was a
15 link to a couple of juror instruction -- I'm sorry, juror
16 orientation videos. How many folks had the opportunity to
17 watch those? Just by show of hands. Looks like most of you.
18 That's really good.

19 For those of you who didn't watch them, I can
20 tell you a couple things. One is I've seen them, they're not
21 boring, and they're not very long. Can I get a commitment
22 from the folks who didn't take the opportunity to watch them,
23 unless you're excused and you find out you're excused, to
24 watch those before you come in tomorrow? They are quite
25 helpful. There's information about unconscious bias and some

1 other stuff that I think is really, really helpful. And, in
2 fact, I refresh myself on those from time to time as well.

3 All right. Let me say a word about how
4 important it is that you are here. Everybody knows that
5 anybody who is accused of a crime has the right to be tried
6 by a jury. What some people know, but some people are not
7 aware of, is that the Constitution, both of our United States
8 as well as the Constitution of our State of Washington,
9 guarantees the right to jury trial to a person bringing a
10 civil claim or defending against a civil claim.

11 So it's so important that it was written into
12 both of our Constitutions. And that right is only meaningful
13 when we have folks like you who are willing to take time away
14 from your busy lives, respond to that summons that you got,
15 listen to the evidence with an open mind, follow the
16 instructions of law, and reach a verdict that is just, fair,
17 consistent with the evidence and the law.

18 It's a huge ask, and it's a huge
19 responsibility. It is the most difficult thing that I think
20 we ask of our citizens short of military service. And for
21 that incredibly important service, we pay you the princely
22 sum of \$10 a day. I wish I had the power to change that.
23 That fee was set in 1957 by the State legislature. And back
24 then, a dollar an hour was the minimum wage. So it was
25 actually more than the minimum wage back then.

1 Now, it won't even really buy you lunch unless
2 you like really cheap lunches. And I'm sorry about that.
3 But I literally can't do my job without you. It's that
4 important that you're here. And we really appreciate that.

5 We do recognize, however --

6 THE BAILIFF: Juror Number 30's hand is
7 raised.

8 THE COURT: Yeah. I see her. Thank you.

9 I'll call on you in just one moment.

10 We do recognize that for some people serving
11 as a juror is more than an inconvenience; but, really, a very
12 extraordinary hardship. You know, maybe, someone in your
13 household is scheduled to have surgery during the course of
14 this trial, or you have nonrefundable tickets somewhere, or
15 there's some important life event that can't be rescheduled
16 that would interfere with your ability to serve as a juror.

17 So we want to be able to consider that.
18 Juror 30, is that what you were raising your hand about, or
19 did you have a question?

20 PROSPECTIVE JUROR NUMBER 30: No, ma'am. I
21 just had a question.

22 THE COURT: Yes, sir?

23 PROSPECTIVE JUROR NUMBER 30: I was going to
24 try to -- I was going to try to adjust the lighting here.
25 The sun seems to be coming in the window where I'm at, and I

1 wanted to cover it, if I may?

2 THE COURT: Sure. Go ahead.

3 THE BAILIFF: I'm sorry, Your Honor, but 30 is
4 out of order from some shifting. Thank you, Judge.

5 JURY HARDSHIPS

6 THE COURT: Oh. Goodness. I didn't realize
7 it was that involved. All right.

8 All right. So is there anyone who believes
9 that serving as a juror in this case, given the schedule that
10 I outlined for you, would be a very substantial or
11 extraordinary hardship? If so, could you please raise your
12 hand for me, and I'll talk to you about that?

13 So I've got 21. Anybody else? 18, 21, 5.
14 Anybody else? Okay. So I'm going to go in order.

15 Juror Number 5, can you tell us about your
16 hardship?

17 PROSPECTIVE JUROR NUMBER 5: Yeah. So
18 I -- it's where I work. And I'm concerned because my job, by
19 not being here, is going to put my clients behind by a week
20 or whatever it is. And then that affects many other people
21 who I work with. So that's my concern.

22 THE COURT: Yeah. I understand. And I guess
23 I should give a slightly more detailed explanation about
24 hardships.

25 I'm only permitted to consider excusing a

1 juror for hardship if the hardship is personal to the juror
2 or to their immediate family. And we typically cannot excuse
3 people because absence from their job is going to be a
4 hardship for their clients or their customers or their
5 employer or their coworkers.

6 And if you think about that, it kind of makes
7 sense because all of you who work for other people are
8 presumably doing something really important for your
9 employer. You're part of a team. And you're doing important
10 work. And you're getting compensated for that work, which
11 means, yeah, it's going to be a hardship if -- so I see your
12 hand, 8. Thank you. I'll call on you in a second.

13 It's going to be a hardship if you're sort of
14 drafted for jury service. But if we excused people because
15 of that, then we'd have jurors that were made up of nobody
16 other than folks who are retired or folks who are unemployed.
17 And that's really not representative of the community.

18 For what it's worth, I will tell you that this
19 is a relatively short trail, as Superior Court trials go.

20 Let me ask you one other question, Juror 5.
21 If you were drafted in this case as a juror, would you be so
22 distracted by, you know, worrying about what's happening at
23 work that you wouldn't really be able to pay proper attention
24 to the evidence?

25 PROSPECTIVE JUROR NUMBER 5: I would say

1 that's in my nature. Yes. But I'd do my best.

2 THE COURT: Okay. Fair enough. And maybe we
3 circle back to you on that a little bit later. But thank you
4 very much.

5 Juror Number 8, I saw your hand up. Ms. Pines
6 (phonetic)?

7 PROSPECTIVE JUROR NUMBER 8: Yeah. Can I tell
8 you the hardship?

9 THE COURT: Yes.

10 PROSPECTIVE JUROR NUMBER 8: So that - doing
11 work -

12 THE COURT: Yeah.

13 PROSPECTIVE JUROR NUMBER 8: I'm currently a
14 student. And --

15 THE COURT: I'm sorry. Did you say you're
16 pregnant?

17 PROSPECTIVE JUROR NUMBER 8: No. I'm a
18 student.

19 THE COURT: Oh. You're a student.

20 PROSPECTIVE JUROR NUMBER 8: Like, I'm a
21 student and I work at 5:00 p.m. So doing jury duty and doing
22 my work, it wouldn't give me time to do my classes.

23 THE COURT: Yeah.

24 PROSPECTIVE JUROR NUMBER 8: And I don't want
25 to --

1 THE COURT: Where are you a student?

2 PROSPECTIVE JUROR NUMBER 8: Bellevue College.

3 THE COURT: Okay.

4 PROSPECTIVE JUROR NUMBER 8: I'm doing online
5 classes right now.

6 THE COURT: So you didn't bring that up on
7 your questionnaire. How come?

8 PROSPECTIVE JUROR NUMBER 8: I forgot that I
9 had these classes.

10 THE COURT: Okay.

11 PROSPECTIVE JUROR NUMBER 8: Because they
12 start next week. On Thursday.

13 THE COURT: They start next week?

14 PROSPECTIVE JUROR NUMBER 8: Yeah. So if I
15 were in session, then I wouldn't be able to start doing
16 those.

17 THE COURT: Yeah. Have you checked whether
18 there's some way you can make up those four or five days of
19 classes?

20 PROSPECTIVE JUROR NUMBER 8: I mean, I can
21 see. But it would just put a -- I have very bad, like, ADHD,
22 and stuff, and being in the courtroom, going to work, I know
23 that I wouldn't be doing my best in classes. And I'm
24 currently trying to transfer --

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NUMBER 8: -- to the
2 University of Washington. So if I don't do well, then I will
3 get rejected. And that puts a strain on the rest of my life.

4 THE COURT: Okay. Okay. All right. Thanks.
5 Juror 18, I think you had your hand up as
6 well?

7 PROSPECTIVE JUROR NUMBER 18: Yes, ma'am.

8 THE COURT: Yeah.

9 PROSPECTIVE JUROR NUMBER 18: Can you hear me?

10 THE COURT: I can.

11 PROSPECTIVE JUROR NUMBER 18: I feel unsafe.
12 I'm afraid to come downtown. I live in Ballard, and I don't
13 like going down there at all. I don't like riding the bus.
14 And I feel unsafe and threatened on Third Avenue.

15 THE COURT: When was the last time you were
16 down here?

17 PROSPECTIVE JUROR NUMBER 18: I think I was up
18 for jury selection a while back. I don't know, two years ago
19 or something like that. I was there for two days, but I
20 wasn't selected.

21 THE COURT: Okay. Okay. So was that
22 pre-COVID?

23 PROSPECTIVE JUROR NUMBER 18: I think so, or
24 maybe during COVID. I don't know.

25 THE COURT: Okay.

1 PROSPECTIVE JUROR NUMBER 18: I can't
2 remember.

3 THE COURT: It's better than it was. The
4 courthouse entrance is much better than it was. It's much
5 better patrolled.

6 PROSPECTIVE JUROR NUMBER 18: That's what they
7 told me -- that's what they told me then, too, but --

8 THE COURT: Yeah.

9 PROSPECTIVE JUROR NUMBER 18: -- I'm
10 uncomfortable and don't like it.

11 THE COURT: Yeah.

12 PROSPECTIVE JUROR NUMBER 18: That's all.

13 THE COURT: Would you be willing to come if
14 you got drafted?

15 PROSPECTIVE JUROR NUMBER 18: I would rather
16 not. I mean, that's my feelings. You know, I'm afraid down
17 there. Someone's getting shot every single day, you know, on
18 the news. I don't like it. I'm afraid down there. I don't
19 go there.

20 THE COURT: All right. All right, thank you.

21 PROSPECTIVE JUROR NUMBER 18: That's all.

22 THE COURT: Got it.

23 And Juror 21?

24 PROSPECTIVE JUROR NUMBER 21: So I'm not sure
25 if you're able to see my file, but my birthday is on the 8th

1 of this month, so in a couple days. And my family has
2 planned some nonrefundable things on that day.

3 THE COURT: That's not a problem.

4 PROSPECTIVE JUROR NUMBER 21: That I can't --

5 THE COURT: We won't be -- we won't be in
6 session on the 8th. That's Friday, and we won't be in
7 session on Friday.

8 PROSPECTIVE JUROR NUMBER 21: We won't?

9 THE COURT: Nope.

10 PROSPECTIVE JUROR NUMBER 21: Oh. Then we're
11 fine.

12 THE COURT: Okay. All right.

13 And, Juror 30, I think I saw your hand.

14 PROSPECTIVE JUROR NUMBER 30: Yes. Yes,
15 ma'am. I have been recently diagnosed with a degenerative
16 disc disease, and continually sitting long periods of time --

17 THE COURT: Yeah.

18 PROSPECTIVE JUROR NUMBER 30: -- and it
19 creates massive headaches. And I have a very hard time with
20 concentration, even at home and stuff like that.

21 THE COURT: Okay.

22 PROSPECTIVE JUROR NUMBER 30: It is
23 debilitating. So --

24 THE COURT: I'm sorry about that. Let me ask
25 you, how long can you sit comfortably before you have to

1 move?

2 PROSPECTIVE JUROR NUMBER 30: Oh. Well, that
3 actually depends on the kind of day that I'm having. I've
4 been getting, like, two hours of sleep at a time every single
5 night for the last, oh, month or so. And I wake up, and I'm
6 up for an hour, and then I go back to sleep, and then I'm
7 back up in two hours. And then -- so -- and then I take,
8 like, two naps during the day just to kind of balance that
9 out. And sometimes the headaches are continuous through the
10 whole day. No matter what I do, it seems like they just
11 never go away.

12 THE COURT: Okay. So we wouldn't be able
13 to --

14 PROSPECTIVE JUROR NUMBER 30: It does put
15 me --

16 THE COURT: We wouldn't be able to accommodate
17 you --

18 PROSPECTIVE JUROR NUMBER 30: I'm sorry.

19 THE COURT: -- by letting you stand whenever
20 you needed to? It sounds like, you know, it may be --

21 PROSPECTIVE JUROR NUMBER 30: Possibly. Yes.
22 That might work. But if a headache is actually in there and
23 I have a bad day during this trial --

24 THE COURT: Yeah.

25 PROSPECTIVE JUROR NUMBER 30: -- I might lose

1 my concentration or miss a specific thing that either side is
2 presenting. And be able to retain that knowledge, too, is
3 another thing because my neck is excruciatingly tight because
4 of this. I will be starting physical therapy as soon as I
5 find a general practitioner, which, since I'm new to the
6 area, I have not acquired at this time.

7 THE COURT: Okay. All right. Thank you.

8 All right. Let me ask another question. As
9 you heard me say, we need jurors who can be fair and
10 impartial to both sides -- toward both sides.

11 Is there anyone, just knowing what you know
12 about the case, which I realize is very little at this
13 point -- is there anyone who has any concerns, at all, about
14 your ability to be a fair and impartial juror in this case?

15 Okay. I see Juror 1, Juror 8, Juror 4,
16 Juror 5, Juror 21. Okay. Did I miss anybody? All right.

17 Juror 1, what's your concern about fairness
18 and impartiality?

19 PROSPECTIVE JUROR NUMBER 1: Yeah. This is
20 something that I wrote about in the jury questionnaire.

21 THE COURT: Yes.

22 PROSPECTIVE JUROR NUMBER 1: But my -- kind of
23 my opinions about Providence, the corporation, are really
24 negative. And I just wanted to be really honest about that.
25 I have a lot of problems with their policies. And I've heard

1 a lot about labor issues within the company. And I'd say I
2 have kind of a preconceived notion about sort of how they
3 operate and it's a very negative opinion.

4 THE COURT: When you say waiver issues, did I
5 hear you correctly?

6 PROSPECTIVE JUROR NUMBER 1: Labor.

7 THE COURT: Oh. Labor.

8 PROSPECTIVE JUROR NUMBER 1: Labor issues.

9 THE COURT: Labor issues. Got it.

10 PROSPECTIVE JUROR NUMBER 1: The way they
11 treat their employees.

12 THE COURT: Yeah.

13 PROSPECTIVE JUROR NUMBER 1: Yes.

14 THE COURT: Okay. And how do you think that
15 that would affect you if you were serving as a juror in this
16 case?

17 PROSPECTIVE JUROR NUMBER 1: I am inclined to
18 believe any suit that's brought against them by their
19 employees. I mean, I do not trust them to do the right
20 thing.

21 THE COURT: Right. Okay. And is that
22 something that you can put aside, or is that something you
23 hold pretty firmly?

24 PROSPECTIVE JUROR NUMBER 1: I hold it really
25 firmly. I mean, I would say as -- you were talking earlier

1 about kind of core beliefs.

2 THE COURT: Yeah.

3 PROSPECTIVE JUROR NUMBER 1: I fundamentally
4 don't believe anybody can be truly objective. And I know
5 that my -- sort of these beliefs are going to color my
6 perception of this case. I don't think it's something I
7 would set aside.

8 THE COURT: Okay. Thank you. And I really
9 appreciate your candor. That was something else I wanted to
10 bring up.

11 There are no right-or-wrong answers to
12 questions that are asked during jury selection as long as
13 they are what's really going on in your head and/or what's
14 really going on in your heart. And we're not going to judge
15 you for telling us truthfully what's going on in your heads
16 and/or your hearts. We really want to know.

17 So thank you very much for your candor about
18 that, Juror Number 1.

19 Juror Number 5?

20 PROSPECTIVE JUROR NUMBER 5: Hi. Yes. I
21 didn't know how to write about this, and so I couldn't really
22 put it into words. But it's been on my mind a lot.

23 THE COURT: Yeah.

24 PROSPECTIVE JUROR NUMBER 5: Since the
25 questionnaire.

1 THE COURT: Yeah.

2 PROSPECTIVE JUROR NUMBER 5: My daughter just
3 had a baby three months ago, and I was with her in the
4 extremely long delivery that she had. And she had a
5 messed-up anesthesiologist. And so I really have quite
6 negative opinions, I'm going to say, of anesthesiologists.

7 THE COURT: Okay. So you think that you're
8 likely to sort of transfer that negative experience onto
9 other anesthesiologists, including Mr. Keimbaye, who wasn't
10 an anesthesiologist, but he was an anesthesia tech?

11 PROSPECTIVE JUROR NUMBER 5: Okay. Don't
12 know. Just -- I just want you to know that. And, then,
13 also, kind of an interesting piece to it, too, was it was the
14 male anesthesiologist who kind of screwed it up, and it was
15 then later -- like half-a-day later -- that the female
16 anesthesiologist came and did a better job.

17 So I have that -- I'm just saying those are my
18 biases that I have that are very recent and very --

19 THE COURT: Yeah.

20 PROSPECTIVE JUROR NUMBER 5: -- strong because
21 it was such a very, really difficult birth. So.

22 THE COURT: Yeah. Okay. I've got to ask.
23 How is your daughter and your granddaughter?

24 PROSPECTIVE JUROR NUMBER 5: Great. I have a
25 grandson.

1 THE COURT: Oh. Grandson. Sorry.

2 PROSPECTIVE JUROR NUMBER 5: That's the first.
3 Yeah. Nope. Anyway. So, in the end, everything worked out.

4 THE COURT: Thanks goodness. Thank goodness.

5 PROSPECTIVE JUROR NUMBER 5: Yeah.

6 THE COURT: Okay. So do you think that you'd
7 hold that experience against Mr. Keimbaye?

8 PROSPECTIVE JUROR NUMBER 5: I think it is
9 there. I don't know. I just -- I want you to know that. I
10 didn't know how to write it down in that questionnaire.

11 THE COURT: Yeah.

12 PROSPECTIVE JUROR NUMBER 5: But that's there.

13 THE COURT: Okay. Okay. Well, give it a
14 little more thought. And we're going to circle back on that,
15 okay? Because it's important.

16 All right. And Juror Number 4, I apologize
17 for skipping over you.

18 PROSPECTIVE JUROR NUMBER 4: No problem. I
19 also wrote a little bit about this in my survey. I have
20 worked in places where colleagues have voiced grievances
21 against employers, talked, you know, feeling like they were
22 gaslighted, they were taken advantage of. They were treated
23 improperly and gone through an appropriate chain of command
24 within the organization in HR, and were ignored. And most of
25 them have left, or many of us have left.

1 I also have worked in HR and had the same
2 situation where I've received grievances from employees and
3 then tried to elevate them. And they didn't really go
4 anywhere, despite sort of having all the details. So I just
5 kind of would say that, in general, I'm inclined to side or
6 sort of relate with the employee versus the employer in these
7 situations, given my experience.

8 THE COURT: Okay. So, unfair, but important
9 question. Do you think you could put that aside and decide
10 this case only on the evidence that's presented, or do you
11 feel like the Defense is not going to be starting on a level
12 playing field with you?

13 PROSPECTIVE JUROR NUMBER 4: Totally honest, I
14 don't think they're going to be starting on a level playing
15 field.

16 THE COURT: Okay. I asked you to be honest.
17 So I appreciate your answer. Thank you.

18 Okay. Let's see. I think I next have Juror
19 Number 8.

20 PROSPECTIVE JUROR NUMBER 8: This is going to
21 sound really bad.

22 THE COURT: Uh-oh.

23 PROSPECTIVE JUROR NUMBER 8: But I don't think
24 I can really keep a secret. I don't think I'd be able to not
25 tell anyone about the court case because I've already told

1 all my friends that I had jury duty, and I know they're about
2 to ask what the court case was about. And I don't think I
3 have the strength to not tell them.

4 THE COURT: So you wouldn't be able to --

5 PROSPECTIVE JUROR NUMBER 8: So --

6 THE COURT: You wouldn't be able to say, Hey,
7 the Judge has instructed me I'm not allowed to talk about it
8 until after I'm either excused or the jury's reached a
9 verdict?

10 PROSPECTIVE JUROR NUMBER 8: I don't --
11 honestly, I don't think I'd be able to even say that. I talk
12 a lot to my friends. And I'm a very big talker. And I think
13 it's going to come out one way or another today.

14 THE COURT: Okay.

15 PROSPECTIVE JUROR NUMBER 8: But if asked
16 about it, I'm probably going to say. So it sounds really
17 bad. I promise you, I'm not a bad person. But I just talk a
18 lot, and sometimes --

19 THE COURT: Yep. We're not going to judge you
20 for your answer -- for your honest answers. So don't feel
21 bad about that. That's fine.

22 PROSPECTIVE JUROR NUMBER 8: That's my honest
23 answer.

24 THE COURT: Okay. If it's honest, then I
25 really appreciate it, and I respect it. Thank you.

1 PROSPECTIVE JUROR NUMBER 8: You're welcome.

2 THE COURT: And Juror 21? Yes?

3 Oh, wait, Juror 2 has your hand up, too?

4 Okay. Let me go to 21, and then I'll circle back to 2.

5 Where's 21? 22, 21 -- yeah, 21. You had your hand up for
6 potential bias? Yeah?

7 PROSPECTIVE JUROR NUMBER 21: Yes. So my
8 mother is a Hispanic woman working in STEM and has brought
9 forward many workplace discrimination suits. And I've been
10 witness to a few of them and had to go through the process of
11 watching things go around and around and eventually reach a
12 settlement. And so I have very passionate feelings about
13 workplace discrimination in regarding to race, specifically,
14 and a little bit in regarding to gender. But that's not
15 relevant to this case. And I feel like I may have a hard
16 time putting that aside for the sake of this court case.

17 THE COURT: Okay. So I guess I'll ask you the
18 question that I asked Juror Number 4. Do you feel that the
19 Defense would not be starting with a level playing field with
20 you, given those experiences?

21 PROSPECTIVE JUROR NUMBER 21: I do believe
22 that would be the case.

23 THE COURT: Okay. Thank you for that. And
24 I'm sorry your mother keeps having to go through this. It's
25 got to be a very frustrating thing.

1 Juror Number 16, you had your virtual hand up.

2 PROSPECTIVE JUROR NUMBER 16: Hi. Yes. I
3 wrote about this a little bit in my information I submitted
4 to you, but I wanted to also talk about it. But I think I
5 may be fairly biased in this case. I worked in healthcare in
6 the Seattle area for, like, 12 years now, at, like, various
7 different facilities in the area. And I, myself, have faced
8 a lot of harassment. And most of my friends are also
9 healthcare workers in the Seattle area and also have faced a
10 lot of issues.

11 And I have a pretty poor outlook when it comes
12 to leadership in the healthcare field, and so I strongly feel
13 like if Mr. Keimbaye is bringing a case against Providence,
14 then he probably has a reason to do so. I don't think I'd be
15 able to be really neutral.

16 THE COURT: Okay. And that's not something --
17 well, I don't want to ask in the negative. Is something you
18 would be able to put aside for this case, or do you think,
19 again, that the parties are not going to be starting out with
20 a level playing field?

21 PROSPECTIVE JUROR NUMBER 16: I would try to
22 put it aside. But I think that they'd have to do a really
23 good job at convincing me otherwise.

24 THE COURT: Right. And, of course, one of the
25 things that is going to be an instruction that the Court will

1 be giving the jury in this case is that the Plaintiff has the
2 burden of proof. And the burden of proof is by a
3 preponderance of the evidence, which just means that a fact
4 is -- or a proposition is more likely true than not true.
5 More than 50 percent.

6 So the Defense doesn't actually have a burden
7 to prove anything. And I thought what I heard you saying,
8 Juror 16, was that, well, you know, you'd kind of hold the
9 Defense to the burden of proving to you that Mr. Keimbaye was
10 not someone who was subjected to workplace harassment or a
11 hostile work environment. Do I understand that correctly?

12 PROSPECTIVE JUROR NUMBER 16: Yeah. I just
13 strongly already believe that if this case has been brought
14 up and it's gone on for this many years, then there probably
15 is a reason for that. I can try to be as neutral as I can in
16 this case. But I think I'm already coming into it with a lot
17 of strong experiences on my side.

18 THE COURT: So you said you can try. You know
19 yourself better than we can get to know you in the brief time
20 that we have this morning. Are you pretty confident that
21 both sides are going to get a fair trial in front of you?
22 And if the answer's no, that's fine. We just need to know.

23 PROSPECTIVE JUROR NUMBER 16: I want to say
24 no.

25 THE COURT: Okay. All right. I respect that.

1 Thank you.

2 Anybody else have any concerns about your
3 ability to be a fair and impartial juror that we haven't
4 talked to about this already? All right.

5 I have, actually, one more question for the
6 panel. And that is, members of the jury are going to have a
7 duty to follow the instructions of law that will be given by
8 the Court. They will describe things like the burden of
9 proof and what the elements are of the claims that the
10 Plaintiff is making, and, you know, those types of things;
11 how to determine damages, if you find that he has met his
12 burden of proof on liability. Those kinds of things.

13 Is there anyone who has any concerns about
14 your ability to follow the instructions of law? All right.
15 I don't see anyone waving at me on that one.

16 All right. So, at this time, if you've asked
17 to be excused, and I'm not excusing you right this second,
18 don't despair. But -- actually, let me mark this on my sheet
19 so that I can do this in order.

20 All right. I would like, at this time, if I
21 excuse you, you can just go ahead and leave the Zoom meeting.
22 And thank you very much for your participation. Really
23 appreciate that.

24 So I'd like to thank and excuse the following
25 jurors: Number 1, Mr. Wayland (phonetic); Number 4,

1 Mr. -- no, I'm sorry, Ms. Sinovirnay (phonetic) -- and,
2 again, I apologize for massacring your name -- Number 8,
3 Ms. Pines (phonetic); Number 16, Ms. Bone (phonetic); Number
4 18, Mr. Fragan (phonetic); Number 21, Mr. Havas (phonetic);
5 and Number 30, Mr. Ryan (phonetic). Thank you all very much.
6 (Prospective Jurors 1, 4, 8, 16, 18, 21, 30 excused.)

7 THE COURT: All right. At this time, I am
8 going to turn over the questioning to the parties. So, at
9 this time, I'll ask members of the jury to please give your
10 attention to Mr. Keimbaye for his first round of questions on
11 his own behalf.

12 Mr. Keimbaye?

13 MR. KEIMBAYE: Your Honor, Panel Number 18 is
14 waving.

15 THE COURT: Yeah. Mr. Fragan. He was
16 excused. Did you have a question, sir? I'm not hearing a
17 question. He may be having a difficult time exiting, so I
18 will assist.

19 PROSPECTIVE JUROR NUMBER 18: Did you say I
20 was excused, ma'am?

21 THE COURT: Yes, sir.

22 PROSPECTIVE JUROR NUMBER 18: Okay.

23 THE COURT: Thank you.

24 PROSPECTIVE JUROR NUMBER 18: Have a good day.

25 THE COURT: Okay. Mr. Keimbaye?

1 VOIR DIRE BY THE PLAINTIFF

2 MR. KEIMBAYE: Members of the jury, these
3 questions address every members of you. And you are welcome
4 and please, too, raise your hand and answer the following
5 questions.

6 I have a thick accent as an African, and
7 so -- and French is my first language. So please pay
8 attention to my pronunciation because I might say things that
9 sounds like French.

10 Question number one: What fascinates and
11 qualifies you to get involved in the jury duty? I can repeat
12 again if anybody didn't catch it. What fascinates and
13 qualifies you to get involved in the jury duty?

14 Go ahead, Panel Number 3.

15 PROSPECTIVE JUROR NUMBER 3: I was just going
16 to ask, should we each individually answer, or how do
17 you -- should we start and just go in numeric order? How do
18 you want us to answer? Sorry about that.

19 MR. KEIMBAYE: Yes. As long as you raise your
20 hands, you can go ahead and answer to that question.

21 PROSPECTIVE JUROR NUMBER 3: Thank you. I'm
22 here because it's my civic duty, and I was called. And I
23 have been eligible for a long time and have never been
24 called. And so as I am called, I'm going to do it. And
25 that's why I'm here. And I'm glad to do it as, again, it's

1 my duty. So thank you.

2 MR. KEIMBAYE: Thank you.

3 Go ahead, Panel Number 7.

4 PROSPECTIVE JUROR NUMBER 7: I just am going
5 to piggyback on that and say it's the same for me. I feel
6 like it's my civic duty as a citizen to participate in trials
7 like this, to make sure that both parties have a fair trial.

8 MR. KEIMBAYE: Thank you.

9 Go ahead, Panel Number 28.

10 PROSPECTIVE JUROR NUMBER 28: Hi. So I'm here
11 because of similar reasons, as it's part of my civic duty as
12 a citizen of this country to serve in jury duty when called
13 upon, as well as it's an obligation, and I'm able to
14 accommodate the schedule, and work was accommodating for this
15 trial.

16 MR. KEIMBAYE: Thank you.

17 Yes, go ahead, Panel Number 15. Can you hear
18 me --

19 PROSPECTIVE JUROR NUMBER 15: Thank you.

20 MR. KEIMBAYE: -- Panel Number 15?

21 THE COURT: You need to unmute, ma'am.

22 PROSPECTIVE JUROR NUMBER 15: Apologies.

23 THE COURT: Much better.

24 PROSPECTIVE JUROR NUMBER 15: I'm having
25 technical difficulties with my phone here.

1 THE COURT: You're doing great. We can hear
2 you now.

3 PROSPECTIVE JUROR NUMBER 15: I agree. I want
4 to do my civic duty. And I would also like to participate in
5 the process. I've never done this before, so I'm actually
6 really fascinated to be part of the process.

7 MR. KEIMBAYE: Thank you.

8 Go ahead, Panel Number 22.

9 PROSPECTIVE JUROR NUMBER 22: Yeah. I'm going
10 to just echo the other four opinions and agree with those. I
11 think we're lucky to live in a place that has this kind of a
12 system. And everybody's busy, and nobody really has time for
13 something like this, but it's important to give it your best
14 shot when -- when you're asked.

15 MR. KEIMBAYE: Thank you.

16 Go ahead, Panel Number 25.

17 PROSPECTIVE JUROR NUMBER 25: I think my
18 answer is very similar to everyone else, and seeing this jury
19 selection process shows me that it's very difficult to find
20 people who have both the time and not a preexisting reason
21 why they can't do it. And so, if I can be helpful, that's
22 why I'm here.

23 MR. KEIMBAYE: Thank you.

24 I have question number two here: How long
25 have you been practicing the jury duty if you have done

1 | it -- done it already? Go ahead, Number 3.

2 | PROSPECTIVE JUROR NUMBER 3: I have never -- I
3 | have never done this before.

4 | MR. KEIMBAYE: Okay.

5 | Go ahead, Panel Number 28.

6 | PROSPECTIVE JUROR NUMBER 28: So I was
7 | selected for jury duty almost 15 years ago, but never put on
8 | a jury at the end. I wasn't selected as a juror.

9 | MR. KEIMBAYE: Thank you.

10 | Go ahead, Panel Number 31.

11 | PROSPECTIVE JUROR NUMBER 31: Yeah. This is
12 | the first time for me in my life. I've never gotten a
13 | summons before, so here I am.

14 | MR. KEIMBAYE: Thank you.

15 | I have a few hands, here. Next one would be
16 | Panel Number 5, 26, and then 2, in order, please.

17 | PROSPECTIVE JUROR NUMBER 5: Thank you. This
18 | is my first time doing this. I'm surprised that I have never
19 | been summonsed before.

20 | MR. KEIMBAYE: Thank you.

21 | I believe I said 26.

22 | PROSPECTIVE JUROR NUMBER 26: This is my first
23 | experience on jury duty.

24 | MR. KEIMBAYE: Okay.

25 | 2?

1 PROSPECTIVE JUROR NUMBER 2: Hearing other
2 people say that they've just gotten their summons is
3 surprising to me. I just turned 19, and I've gotten two
4 summons so far. So I guess I'm just lucky.

5 MR. KEIMBAYE: Thank you.

6 25, yes?

7 PROSPECTIVE JUROR NUMBER 25: Also first time.
8 I was summoned once before, but had recently moved, so I
9 wasn't able to do it.

10 MR. KEIMBAYE: All right.

11 Number 22, yes.

12 PROSPECTIVE JUROR NUMBER 22: First time as
13 well. First time as well.

14 MR. KEIMBAYE: Okay.

15 Go ahead, 7.

16 PROSPECTIVE JUROR NUMBER 7: This is my first
17 time as well.

18 MR. KEIMBAYE: Okay.

19 Number 10, yes?

20 PROSPECTIVE JUROR NUMBER 10: Same. My first
21 time being summoned.

22 MR. KEIMBAYE: Thank you.

23 Question number 10, do you have to travel from
24 outside of Seattle metro area and stay to take part in this
25 jury duty selection?

1 Go ahead, Number 28, and then 7 next. 26
2 instead.

3 PROSPECTIVE JUROR NUMBER 26: No.

4 MR. KEIMBAYE: Okay.

5 PROSPECTIVE JUROR NUMBER 7: I'll be coming
6 from the east side.

7 MR. KEIMBAYE: Thank you.

8 Number 3.

9 PROSPECTIVE JUROR NUMBER 3: No.

10 MR. KEIMBAYE: Okay.

11 PROSPECTIVE JUROR NUMBER 3: I live in
12 Seattle.

13 MR. KEIMBAYE: Okay.

14 Number 5?

15 PROSPECTIVE JUROR NUMBER 5: I also live in
16 Seattle, but I am concerned about the courthouse area.

17 MR. KEIMBAYE: Thank you.

18 Okay. Number 28, and then 31 next.

19 PROSPECTIVE JUROR NUMBER 28: No concerns,
20 coming from the East Side.

21 MR. KEIMBAYE: Thank you.

22 PROSPECTIVE JUROR NUMBER 31: And, yes, I'm
23 also on the East Side, probably about 30 minutes away from
24 downtown. But I got a bus pass for this just in case. I've
25 heard there's no parking down there, whatsoever.

1 THE COURT: There's parking, but it's not
2 cheap.

3 MR. KEIMBAYE: My next question -- question
4 number 4, how long has any one of you been living in this
5 state?

6 Go ahead, Number 3.

7 PROSPECTIVE JUROR NUMBER 3: I have lived here
8 since February 2021. Before that, I lived in San Antonio,
9 Texas for 14 years, I believe -- 15 years.

10 MR. KEIMBAYE: 25, yes?

11 PROSPECTIVE JUROR NUMBER 25: I've lived here
12 since 2019.

13 MR. KEIMBAYE: Thank you.

14 7?

15 PROSPECTIVE JUROR NUMBER 7: Since 2008.

16 MR. KEIMBAYE: Very well.

17 Okay. Number 26?

18 PROSPECTIVE JUROR NUMBER 26: 32 years.

19 MR. KEIMBAYE: 32 years? Okay. Thank you.

20 Number 10, and then 28.

21 PROSPECTIVE JUROR NUMBER 10: I've been here
22 for 12 years now.

23 MR. KEIMBAYE: 12 years. Okay.

24 PROSPECTIVE JUROR NUMBER 28: I've been here
25 for 22 years.

1 MR. KEIMBAYE: Okay. Thank you.

2 Number 22?

3 PROSPECTIVE JUROR NUMBER 22: 25 years.

4 MR. KEIMBAYE: 25 years. Okay.

5 Okay. My next question, question number 5, is
6 it morally okay to take part in the jury duty in order to
7 jeopardize a plaintiff's claims?

8 UNIDENTIFIED PROSPECTIVE JUROR: Sorry. Could
9 you say that one more time?

10 MR. KEIMBAYE: Yes. Is it morally okay to
11 take part in the jury duty in order to jeopardize a
12 plaintiff's claim?

13 Go ahead Number 3, and then 25.

14 PROSPECTIVE JUROR NUMBER 3: I think what
15 you're asking me is am I okay making a judgment, and I am. I
16 do not have an ethical or moral problem with that.

17 MR. KEIMBAYE: 25?

18 PROSPECTIVE JUROR NUMBER 25: Yeah. I'm not
19 sure if I've interpreted the question correctly, but I don't
20 think it would be ethical to participate in a jury if you
21 have any preexisting agenda or goals.

22 MR. KEIMBAYE: Thank you.

23 Number 28. Yes, go ahead.

24 PROSPECTIVE JUROR NUMBER 28: I believe my
25 interpretation of your question is aligned with what Juror 25

1 said, and that you should not have a bias or intent against
2 someone -- either side, specifically.

3 MR. KEIMBAYE: Yes. Thank you.

4 That's all I have to ask you guys. And thank
5 you for your -- your answers.

6 THE COURT: You don't have any further
7 questions for the jury panel, Mr. Keimbaye?

8 MR. KEIMBAYE: No, Your Honor.

9 THE COURT: Okay. That's fair.

10 MR. KEIMBAYE: Thank you.

11 THE COURT: In that case, ladies and
12 gentlemen, please give your attention to Ms. Rosen for her
13 first round of questions on behalf of the Defendants in this
14 case.

15 VOIR DIRE BY THE DEFENDANTS

16 MS. ROSEN: Thank you, Your Honor. I really
17 appreciate that.

18 And, members of the panel, I really appreciate
19 your willingness to serve, as well as your willingness to be
20 honest and forthright about your feelings here because it's
21 very important, as you all acknowledged, that both
22 Mr. Keimbaye and the Defendants have a jury that starts out
23 impartial in this case.

24 And so I want to, again, really just say I'm
25 very grateful for your service and very grateful for the

1 candor that you are showing in answering these questions.

2 Just -- just kind of -- just to do a little
3 bit of a housekeeping after what the Judge has said, is there
4 anyone who is sitting here right now who feels like, based on
5 what you've heard so far, that you cannot be impartial? And
6 if you'd raise your hand if you -- if that describes you.
7 Okay. I don't see any hands. Thank you very much.

8 Is there anyone here -- and I know we touched
9 on this a little bit, but I want to ask it again. Is there
10 anyone here who has a negative view of Providence? Okay.

11 Is there anyone here who, knowing yourself, in
12 a dispute between an employee and an employer that the
13 employee tends to start out a little bit ahead of the
14 employer?

15 Okay. Juror Number 2, why don't you tell me a
16 little bit more about that?

17 PROSPECTIVE JUROR NUMBER 2: I, myself,
18 haven't had any -- at least not any extreme -- what would it
19 be -- things happen to me from an employer. But I just have
20 a preconceived notion from what I have experienced and what I
21 hear that there can be -- I'm more likely to -- I guess I'm
22 more likely to side with the employee. I think I can be
23 objective and impartial. But I'd be just, like,
24 subconsciously more likely to side with the employee, just
25 based on things I hear and, like, kind of unideal working

1 conditions and stuff that gets pushed under the rug. That
2 kind of stuff.

3 MS. ROSEN: So, Juror Number 2, are you saying
4 that Mr. Keimbaye would start out ahead of Providence in your
5 deliberations on this case?

6 PROSPECTIVE JUROR NUMBER 2: I wouldn't
7 necessarily say he'd start out ahead. But I think I
8 would -- I would potentially weigh the things that he says
9 maybe a little bit higher. Like, if he says something, it
10 might be more convincing to me. Or, like, I might -- I might
11 weigh it more than something coming from the -- the
12 Defendants' side.

13 MS. ROSEN: And would you say this is a strong
14 opinion for you?

15 PROSPECTIVE JUROR NUMBER 2: Not necessarily.

16 MS. ROSEN: And is this an opinion you've held
17 for a long period of time?

18 PROSPECTIVE JUROR NUMBER 2: I haven't been
19 working for too long of a time, so -- because I'm still
20 fairly young. But it's definitely something I've -- yeah, I
21 guess recently.

22 MS. ROSEN: And, then, I saw Number 5, you
23 raised your hand. Could you explain to us a little bit about
24 what you were referring to there?

25 PROSPECTIVE JUROR NUMBER 5: Sure. I'm glad I

1 had that moment to think, because I probably would take my
2 hand back down. I feel like, yes, I'm kind of the same way
3 Juror Number 2 was talking about the initial bias, or
4 whatever you want to call it, would be towards Mr. Keimbaye.
5 But the more I think about it, I was like, I don't know. I'm
6 a little back and forth. So I kind of, like, maybe it was a
7 hand-jerk reaction, there.

8 MS. ROSEN: So you said your bias would be
9 toward Mr. Keimbaye or against him?

10 PROSPECTIVE JUROR NUMBER 5: I'm sorry.
11 Helping him.

12 MS. ROSEN: Okay. Thank you.

13 And, then, Juror Number 26, I think you raised
14 your hand for that?

15 PROSPECTIVE JUROR NUMBER 26: Yeah. Hi. So,
16 as I, off the top, think about my initial response to your
17 question, I think that knowing that a lot of
18 systems -- healthcare systems have routes to address whatever
19 Mr. -- I don't know what Mr. Keimbaye's complaint is
20 about -- complaint or suit is about, but knowing that there
21 are HR lines, that there are -- sometimes there's Unions.
22 There's all kinds of avenues to address workplace
23 differences. The fact that it got to a civil trial has my
24 attention, that there must be something that occurred that
25 really couldn't have been resolved through the usual lines.

1 So -- and -- so I would listen -- I would
2 listen to both sides, for sure, and not be just lost in legal
3 jargon. Mr. Keimbaye may be a lawyer. I don't know. But I
4 think for something to get to this point, it -- it seems like
5 it didn't -- if it went through any usual channels that an
6 employer -- employee goes through, it didn't get stopped
7 there. So I can't say that I wouldn't have a bias.

8 MS. ROSEN: Okay. Thank you very much for
9 your candor, Juror Number 26. Would you say that you've held
10 this opinion for a long time?

11 PROSPECTIVE JUROR NUMBER 26: Well, I -- you
12 know, I could spend the next eight hours reflecting on that
13 and kind of doing a life debrief. And I would have to say
14 that I have -- I'm in medicine myself and, you know, as I
15 think about my career and there have not been always -- I
16 have known of many cases where the workplace maybe did not
17 necessarily always put the employee first.

18 So, you know, I don't think we have time on
19 this jury discovery here to fully reflect on my whole life of
20 experience. I'm simply answering the question as it came to
21 my head when you asked it.

22 MS. ROSEN: Okay. Thank you very much for
23 your candor.

24 Juror -- I see Juror Number 25 and Juror
25 Number 31 have also raised hands. And I will -- so Juror

1 Number 25, can you tell me -- can you explain a little bit
2 more about why you raised your hand?

3 PROSPECTIVE JUROR NUMBER 25: Yeah. Just in
4 the interest of full disclosure, I have been involved in
5 labor organizing, to a small extent, in the past. And I
6 think that that's something that, you know, of course,
7 impacts my views.

8 That said, I think that's something I'm aware
9 of and something that I can set aside. So aside from my
10 structural awareness of the ways that -- and the prevalence
11 of times when employers take advantage of employees, I think
12 that's a broad knowledge of society that I have. But it's
13 also something that I understand does not apply in every
14 case.

15 MS. ROSEN: Thank you. Thank you very much.

16 And Juror Number 31, can you explain why you
17 raised your hand?

18 PROSPECTIVE JUROR NUMBER 31: Well, I wasn't
19 quite sure I understood your question. You asked if we
20 thought that the Plaintiff comes in with an advantage --

21 MS. ROSEN: Right.

22 PROSPECTIVE JUROR NUMBER 31: -- versus a
23 corporation when they're making a complaint?

24 MS. ROSEN: Correct. Yes.

25 PROSPECTIVE JUROR NUMBER 31: Okay. I

1 think -- I've always sort of felt the opposite. The large
2 corporations, companies have a lot of advantages over the
3 individual employees. They can hire -- they have a bunch of
4 attorneys on staff, a full legal department. And most
5 companies, including mine, where I work, they work very hard
6 to make sure they aren't caught in any sort of legal jeopardy
7 by the actions of their employees.

8 And so it seems to me that the employee is at
9 a big disadvantage if they feel that they've been
10 discriminated against.

11 MS. ROSEN: Okay. Thank you for your candor.

12 And, Juror Number 32, I see you shaking your
13 head. Are you comfortable sharing a little bit more with us
14 about why you're shaking your head?

15 PROSPECTIVE JUROR NUMBER 32: No. Because I
16 totally agree with what he just said. I believe that
17 employers are able to hire lawyers, keep them, you know, in
18 case cases arise -- cases like these, especially big
19 organizations like Swedish -- Providence, I guess, falls
20 under Swedish. And I totally agree with him. I think the
21 employee is actually the one that comes in under when there's
22 a case like this.

23 MS. ROSEN: Okay. So, Juror Number 2, do you
24 believe that you are able to set those beliefs aside and
25 start this case with Providence and Mr. Keimbaye on an equal

1 playing field?

2 PROSPECTIVE JUROR NUMBER 2: I could try. But
3 I don't know how my subconscious would influence my thinking,
4 with me being able to, like, actively understand why I'm
5 thinking things, if that makes sense.

6 MS. ROSEN: Juror Number 5, the same question
7 for you. Do you think that you are able to start this case
8 out with putting Providence and Mr. Keimbaye on equal
9 footing?

10 PROSPECTIVE JUROR NUMBER 5: Yes. That's what
11 I will try to do.

12 MS. ROSEN: Thank you.

13 Juror Number 26, do you believe that you are
14 able to start this case out with putting Providence and
15 Mr. Keimbaye on equal footing?

16 PROSPECTIVE JUROR NUMBER 26: I certainly will
17 do my best to listen to both sides and to follow the rules as
18 you all lay them out.

19 MS. ROSEN: And, Juror Number 25, I think you
20 already said that you would be able to do that. But I don't
21 want to put words in your mouth. So is that accurate?

22 PROSPECTIVE JUROR NUMBER 25: Yes. I think I
23 can be reasonably impartial.

24 MS. ROSEN: Okay. Thank you.

25 And, Juror Number 31, are you able, do you

1 think, to start this case with Providence and Mr. Keimbaye on
2 an equal playing field?

3 PROSPECTIVE JUROR NUMBER 31: Yeah. I think I
4 can. I just -- the wording of your first question threw me
5 off a little bit, so I just wanted to make sure I had that
6 clear, and I wanted to let you know that that was not the way
7 I felt, that I felt that companies generally have an
8 advantage. But as far as myself, I think I can come into
9 this unbiased. Yes.

10 MS. ROSEN: Thank you very much. And, if I
11 ask a question you don't understand, please ask me to
12 rephrase it or let me know you don't understand it. I'm
13 happy to do that. I'm happy to do that. Thank you very much
14 for your candor.

15 Juror Number 32, do you believe that you're
16 able to start this case with Providence and Mr. Keimbaye on
17 an equal playing field?

18 PROSPECTIVE JUROR NUMBER 32: I believe so.
19 Yes.

20 MS. ROSEN: Okay.

21 Your Honor, I'd like to move to dismiss Juror
22 Number 2 for cause.

23 THE COURT: So, Juror Number 2, you said
24 something really interesting. You said something about,
25 well, you know, I don't know how my subconscious would

1 influence me.

2 One of the reasons why we have a jury
3 orientation video on implicit bias is because there's some
4 pretty good scientific reasons that sort of -- experiential
5 reasons to believe that when people become aware of biases
6 that they may hold unconsciously or subconsciously, that they
7 can then deal with them in a way where they can make a
8 decision about whether they're going to allow those
9 previously unconscious biases to influence their decision
10 making, if that makes sense.

11 So the question is, you know, again, no
12 one's -- no one is criticizing your beliefs in any way, but
13 the parties do have a right to start this trial with a level
14 playing field and to have jurors who are going to hold
15 Mr. Keimbaye to his burden of proof.

16 And the question is just, are you confident
17 you would be able to do that, or do you think that because of
18 the way you feel about fairness in the workplace and so on,
19 that you're just not the right juror for this case?

20 PROSPECTIVE JUROR NUMBER 2: I don't know.
21 I'd probably lean towards no. I would probably feel not
22 strong but, like, somewhat strong favoring toward Mr. -- I
23 don't want to mispronounce your last name. The --

24 THE COURT: The Plaintiff.

25 PROSPECTIVE JUROR NUMBER 2: What is

1 that -- the Plaintiff. There we go.

2 THE COURT: Okay.

3 PROSPECTIVE JUROR NUMBER 2: And yeah.

4 THE COURT: Okay. All right. We're going to
5 have -- let you go. You seem like a really thoughtful
6 person. I'm sure you'll make a great juror in a different
7 kind of a case. So thank you. But I'll go ahead and excuse
8 you.

9 PROSPECTIVE JUROR NUMBER 2: Thank you.

10 (Prospective Juror Number 2 excused.)

11 MS. ROSEN: Thank you.

12 A new question for everybody. Mr. Keimbaye is
13 representing himself. He is not a lawyer. Is there anyone
14 on the panel, and just please raise your hand if this is you,
15 who cannot hold Mr. Keimbaye to the same standard that you
16 would hold a lawyer in court to?

17 THE COURT: I think you might have to clarify
18 that question, Ms. Rosen, but --

19 MS. ROSEN: Sure. So Mr. Keimbaye has --
20 because he's representing himself, he has to follow all of
21 the court rules, and he has to conduct himself in the same
22 way that a lawyer would in court. And so my question is, is
23 there anyone who feels like they could not hold him to that
24 standard?

25 And, Number 3, you raised your hand; Number

1 26. Anyone else? 32, 5, 25. Okay. Let's start with Number
2 3. Would you tell me what you mean by raising your hand in
3 response to that question?

4 PROSPECTIVE JUROR NUMBER 3: I don't think I
5 would have a hard time expecting him to be a professional. I
6 think I would expect him not to know the rules at the same
7 level that an attorney knows them, because an attorney has
8 gone to school and gained an education and also gained in
9 experience in the processes. And so I would probably be a
10 little more willing to forgive mistakes -- or not forgive,
11 but overlook mistakes or misstatements or things like that.

12 Our laws allow a person to represent
13 themselves. I recognize that's required financially for
14 people. But I just don't think I would -- I think that I
15 would evaluate that person based on their experiences and
16 their education and be willing to overlook mistakes.

17 MS. ROSEN: Thank you very much, Juror
18 Number 3.

19 I think, Juror Number 5, you had raised your
20 hand?

21 PROSPECTIVE JUROR NUMBER 5: Yes. No.
22 Same -- basically the same kind of thing as just Juror
23 Number 3 said. First off, I was unsure about your question,
24 but I think I understand it. I think that, yeah, he's not a
25 lawyer, so he's not going to speak exactly in lawyer speak.

1 And I'm fine with -- I'm fine with that. And I understand
2 that that's not going to be perfect.

3 But I don't think it's my place to -- I
4 probably won't even know if he's making a mistake. So I'm
5 sure the Court will be sorting that out.

6 MS. ROSEN: Yeah. Let me clarify -- let me
7 just clarify that question a little bit. And thank you all
8 for, you know, for your candor in responding to that.

9 So the rules require that Mr. Keimbaye conduct
10 himself like an attorney would in court because he's chosen
11 to represent himself. And so what I'm -- all I'm asking,
12 really, is would you -- is there anyone who doesn't think
13 that they can hold him to the same standard because he's
14 required to follow the court rules and follow the law? So is
15 there anyone who would not hold him to the standard of
16 following the court rules and following the law?

17 Okay. That's my question. And thank you for
18 clarifying that.

19 This case involves a question of who is a
20 supervisor. And we'll talk about that. But I would like
21 just a show of hands if you could let me know if you've ever
22 supervised other employees in your job.

23 So that's Juror Number 5, Juror Number 7, 10,
24 31, 28, 25, 26, so almost everybody, it looks like, has
25 supervised employees in their job -- 25, I saw you. Thank

1 you.

2 So, Juror Number 25, you're muted.

3 PROSPECTIVE JUROR NUMBER 25: Sorry. I have a
4 question. Does your question refer to official supervision,
5 or does it refer also to informal supervision. That is to
6 say, a case where an employee is supervised by someone else
7 on like an official record, but who is informally mentored or
8 supervised as well?

9 MS. ROSEN: So that's a really good question.
10 Thank you for asking that clarification. I was -- because
11 that is an issue in this case, is whether or not somebody who
12 acts as a lead is, in fact, a supervisor. So thank you for
13 that clarification. And have you done both -- acted as both
14 a supervisor and somebody who is in more of a lead position?

15 PROSPECTIVE JUROR NUMBER 25: I have acted
16 regularly in a lead position and only very infrequently as
17 one of several official supervisors.

18 MS. ROSEN: And when you were acting in a lead
19 position, did you consider yourself to be a supervisor?

20 PROSPECTIVE JUROR NUMBER 25: I would say that
21 in most substantive ways, yes. Although I would have, of
22 course, talked to an official supervisor if there was
23 something emergent that I needed to discuss.

24 MS. ROSEN: And what were your duties in your
25 lead position?

1 PROSPECTIVE JUROR NUMBER 25: I'm referring
2 mainly to -- to supervising and mentoring students who are in
3 student employee positions because I am in academia. And so
4 there, my role is more of a mentor. But I am also
5 responsible for making sure that they fulfill, you know, the
6 basic work requirements that they're getting paid for.

7 MS. ROSEN: Okay. And so did you have the
8 authority to hire these people?

9 PROSPECTIVE JUROR NUMBER 25: I did not have
10 the authority to hire them directly. Typically, what would
11 happen is that I would recommend that they get hired, and
12 then somebody further up in administration than me would
13 actually hire them.

14 MS. ROSEN: Okay. Thank you very much.

15 And Juror Number 5, I think you raised your
16 hand for having supervised people. It sounds like you may
17 supervise people right now, correct?

18 PROSPECTIVE JUROR NUMBER 5: No. Not right
19 now.

20 MS. ROSEN: Oh, no. Okay. So you have
21 supervised people, though, as part of your job?

22 PROSPECTIVE JUROR NUMBER 5: Yes.

23 MS. ROSEN: Okay. And how many people did you
24 supervise?

25 PROSPECTIVE JUROR NUMBER 5: Only basically --

1 it would only be one-on-one. It was like an admin assistant,
2 so. And I've had probably four different employees.

3 MS. ROSEN: Has anyone on the panel acted as a
4 lead, like Juror Number 25 --

5 THE COURT: And I'm sorry -- I'm sorry, but
6 we're at the end of the 20 minutes, and we need to take our
7 morning recess. So we'll come back to that in Ms. Rosen's
8 next round.

9 So, members of the jury, let me remind you,
10 it's really important you not communicate about the case
11 except potentially the schedule for people that need to know.
12 And please don't look anything up or expose yourself to
13 anything that might relate to this case.

14 We're going to take our morning recess. And
15 we will resume at five minutes to 11. Please stay connected
16 to Zoom. But you're free to leave your seat. You can turn
17 off your camera, if you wish. And please be back on camera
18 and ready to go at five of. Thank you.

19 Okay. I muted the courtroom.

20 (Recess at 10:39:07 a.m., recommencing at 10:56:28 a.m.)

21 (The following proceedings were held inside the presence of
22 the prospective jury:)

23 THE COURT: Welcome back, everyone. All
24 right. There you are, Mr. Keimbaye. This always happens as
25 people get scrambled when we -- that's why it's so much

1 fun -- it used to be so much fun doing Zoom trials because
2 after every break, I had to move people back so that they
3 were in some semblance of order. So give me just a moment to
4 finish doing that. It's especially hard when we have so many
5 gaps. Okay. Oh, I lost Number 10's video. Mr. Curiel
6 (phonetic)? Can you turn on your camera? There you go.
7 Perfect. Thank you.

8 I think I have everybody in order now. Thank
9 you. Oh. Not quite. Juror 28 needs to be here. Okay.

10 Thank you, everyone, for being patient. At
11 this time, Mr. Keimbaye and Ms. Rosen have an opportunity to
12 ask a second round of questions of jurors.

13 So, Mr. Keimbaye, do you have any other
14 questions you would like to ask the panel?

15 MR. KEIMBAYE: No, Your Honor.

16 THE COURT: Okay. In that case, Ms. Rosen,
17 you can take up where you left off.

18 MS. ROSEN: Thank you very much, Your Honor.

19 Panel, thank you very much for your candor in
20 the morning session. I really appreciated it.

21 We had left the morning session talking a
22 little bit about who's a supervisor and whether anyone has
23 ever acted as a lead. And Juror Number 25 was very helpful
24 in answering that question.

25 Has anyone else on the panel supervised a lead

1 type person? Okay. So 3, 22, and 26.

2 Juror Number 22, can you tell me a little bit
3 about what that entailed?

4 PROSPECTIVE JUROR NUMBER 22: Sure. So I have
5 120-some employees right now. So I'm a CEO of a startup
6 company. And this is -- I've had multiple startup companies,
7 so kind of all I do is HR and manage -- manage people and
8 their issues.

9 MS. ROSEN: And then did you supervise people
10 who were in a lead role?

11 PROSPECTIVE JUROR NUMBER 22: Meaning?

12 MS. ROSEN: Meaning not quite a supervisor,
13 but somebody with a little bit more responsibility than the
14 average employee?

15 PROSPECTIVE JUROR NUMBER 22: I have ten
16 direct reports that are all VPs.

17 MS. ROSEN: Okay. Number -- thank you very
18 much Juror Number 22.

19 Juror Number 3, you raised your hand when I
20 asked if you'd ever supervised a lead employee -- or, yes, a
21 lead employee. Can you just --

22 PROSPECTIVE JUROR NUMBER 33: Yeah.

23 MS. ROSEN: -- elaborate on that a little bit?

24 PROSPECTIVE JUROR NUMBER 33: Yeah. Just to
25 be completely transparent, I worked in HR for more than 15

1 years at a director level. And so not recently, but in the
2 past, I have supervised nonexempt people who may direct work
3 daily for people, but not been considered an exempt level
4 manager or someone who did make hiring decisions or firing
5 decisions, or possessed education, required things like that.
6 I have some knowledge of the FLSA, I should say, Fair Labor
7 Standards Act. And I have managed both exempt and nonexempt
8 employees who supervisor people.

9 MS. ROSEN: Thank you very much.

10 PROSPECTIVE JUROR NUMBER 33: In some
11 capacity.

12 MS. ROSEN: Thank you very much, Juror
13 Number 3.

14 Juror Number 26, I think you raised your hand
15 for having supervised lead type employees?

16 PROSPECTIVE JUROR NUMBER 26: Maybe this isn't
17 relevant. Maybe I'm just -- I'm not used to that kind of
18 terminology. I work in medical teams and have certainly
19 supervised residents and students and other members of my
20 medical team, but not been listed as the supervisor, manager.

21 So if you're looking for the titles, no. I
22 think the actual supervising in real work, yes. So maybe
23 it's logistics.

24 MS. ROSEN: Okay. Thank you very much for
25 that answer.

1 Transitioning a little bit to a different
2 question here. I would like to know, at the end of this
3 trial -- assuming that you're picked for the jury -- at the
4 end of this trial, if you were still on the fence, still
5 undecided on the evidence, would any of you have a hard time
6 sending the Plaintiff away empty-handed? And if you could
7 just raise your hand, if you would fall into that category.

8 Juror Number 26, can you explain a little bit
9 what you mean by that?

10 PROSPECTIVE JUROR NUMBER 26: Well, I guess,
11 you know, again, we're speculating what undecided means. My
12 understanding is there's going to be some evidence and
13 whether you're going to be able to believe all of it on
14 either the Plaintiff or the Defense side, you know, I think
15 we're going to have deliberations. And, I guess, I can't
16 really project.

17 But I think if I believe there's some validity
18 to it, then, you know, I actually don't -- this is my first
19 time on jury duty, so I don't really know how all this goes.
20 But, you know, I think if we think that the Plaintiff is due
21 something, then it would be hard to send the Plaintiff away
22 empty-handed, if that's what you're asking.

23 MS. ROSEN: That's -- that's close. But I'm
24 more asking is if you got to the end of the case, and you did
25 not know whether the Plaintiff proved his case or not, you

1 were really on the fence about whether or not the Plaintiff
2 proved his case, would you feel like you were compelled to
3 have to give him something because you didn't want him to
4 walk away empty-handed?

5 PROSPECTIVE JUROR NUMBER 26: I can't say I
6 know how I'm going to feel on a certain day. But I would
7 have to say that, you know, proof is a -- proof is a tricky
8 word. You know, proof, you have to be -- I mean, there's the
9 legal -- I don't want to take up everybody's air time here.

10 But the point is, you know, proof, does that
11 mean that you're going to have an email or a snapshot or
12 something, or you're going to say that makes sense to me. So
13 I think part of that comes into do we believe that
14 there's -- again, I don't know the specifics of this case,
15 but that there's reason or there's evidence.

16 When you say proof, that's a loaded word. I
17 have to see what we think about that. But, you know, if we
18 decide we're -- I don't know how this goes. So I guess I'm
19 saying if I believe the Plaintiff, then it would be hard to
20 say, gosh, you know, we can't -- we can't do anything. I
21 don't know. You're asking me a question, and I can't say how
22 I'm going to feel in five or ten days.

23 MS. ROSEN: Yeah. And that's -- that's
24 totally valid. I totally understand that. What I'm more
25 asking is if you -- if you didn't -- if you weren't sure

1 whether the Plaintiff proved his case at the end of this
2 case, like, would you want to give him an award anyway?

3 PROSPECTIVE JUROR NUMBER 26: I don't know.
4 Maybe. Again, what are we talking about for proof? We're
5 getting -- I think we're getting ahead of the game, but I
6 hear what you're saying. You're trying to say, if you're not
7 certain. Well, I don't know if we'll be certain, or we'll
8 be -- you know, civil cases, they might be different than,
9 you know, TV -- what we've seen on TV drama shows. So I
10 can't say that I won't want to give him something.

11 MS. ROSEN: Okay. Thank you very much, Juror
12 Number 26.

13 Juror Number 32, I think you raised your hand?

14 PROSPECTIVE JUROR NUMBER 32: Yeah. I just
15 want to echo what the last juror said. And I think it's a
16 question of the way Mr. Keimbaye feels. So if his feelings
17 were strong enough to go this far, I feel like, you know, he
18 probably should be rewarded something. Obviously, we're
19 going to have to look at the evidence.

20 And I think, echoing the last person as well,
21 obviously, there's not going to be a got-you moment where,
22 hey, everything falls into place, and he either proves his
23 case or you guys prove your case. You know, I don't think
24 it's going to be one of those things.

25 But I feel like if his feelings, that he was

1 unfairly treated, are strong enough that he has gotten past
2 HR, past the -- past the complaints section of any kind of
3 company, and he's gotten to this point where it's coming to
4 trial, then there's something to it. And, yeah, I'd be
5 hard-pressed to send him away empty-handed because,
6 obviously, he feels strongly enough for it to have gotten
7 this far.

8 MS. ROSEN: Okay. Your Honor, I'd like to
9 move to dismiss Juror Number 32 for cause.

10 THE COURT: So, Juror Number 32, I want to
11 clarify a couple things. So people can bring a lawsuit for
12 any reason. I mean, almost anyone is free to file a lawsuit.
13 And when a person files a lawsuit, then in almost every civil
14 case the person who files the lawsuit has the burden of
15 proving his case or her case or their case.

16 So the fact that it came -- in other words,
17 how strongly someone feels about their case may have
18 something to do with the strength of the evidence or may not.
19 Sometimes people feel very strongly about things that have a
20 lot of substantiation, and sometimes people feel very
21 strongly about things that have little or no substantiation.

22 I think recent history kind of gives us some
23 guidance about that, right? You know, people can
24 passionately believe something that is unsupported by facts,
25 and people can passionately believe things that are supported

1 by facts. And everyone is entitled to their beliefs.

2 But the question is, one of the jobs of the
3 jury is going to be to listen and look at the evidence. And
4 the jury is the sole judges of the credibility of the
5 witnesses. So people are going to get up on the witness
6 stand, and they're going to take an oath to tell the truth.
7 And they will testify. And it is completely up to you as a
8 juror and to your fellow jurors to decide how much of what
9 they say you find credible, you believe. It might be
10 everything, it might be nothing, or it might be some, but not
11 others.

12 And then once the jury has heard all the
13 evidence from the witnesses and any documents, or records or
14 exhibits, that are admitted into evidence, then the jury's
15 going to need to decide, well, has Mr. Keimbaye proved his
16 case. And his burden of proof is by a preponderance of the
17 evidence.

18 So you've got to be -- you've got to believe
19 that the things he has to prove, you believe that they're
20 more probably true than not true.

21 And so I think -- and I'm not 100 percent --
22 but I think what Ms. Rosen is asking is, can you hold
23 Mr. Keimbaye to that burden of proof? Or are you just going
24 to feel that, well, if he got to trial, if he's taking this
25 case to trial, he must feel very strongly. And so he ought

1 to get something, even if I am not persuaded more likely than
2 not that he's proved his case.

3 Does that make sense? I'm trying to reframe
4 it so that I'm clear what your answers are.

5 PROSPECTIVE JUROR NUMBER 32: Well, yes. I
6 mean, I do understand that people bring frivolous lawsuits.
7 My husband is a lawyer. And there is a lawsuit currently
8 against him brought up by an individual that has absolutely
9 no merit whatsoever. But it has to go through the actual
10 process. So I understand that part.

11 THE COURT: Okay. So in sort of looking at it
12 through that lens, do you think -- can you hold Mr. Keimbaye
13 to his burden of proof, or do you feel like you're probably
14 going to let him slide if you find that he's sympathetic, but
15 not necessarily credible?

16 PROSPECTIVE JUROR NUMBER 32: Well, I mean,
17 I'm -- I mean, there's other issues at play here as well.

18 THE COURT: Yeah.

19 PROSPECTIVE JUROR NUMBER 32: I am in
20 healthcare as well.

21 THE COURT: Yeah.

22 PROSPECTIVE JUROR NUMBER 32: So I've been on
23 both sides. I've been in charge of people, and I've been,
24 you know, under people who have not been that kind to me.

25 THE COURT: Yeah.

1 PROSPECTIVE JUROR NUMBER 32: So I understand
2 it. Plus, I'm not from the U.S. I'm from outside of the
3 country. I'm from Africa as well. So there's lots of
4 elements that come into play.

5 I see it on a daily basis, the kind of biases
6 that people hold against me, just based on the way I look.
7 So, I mean, all of those things are kind of coming into play,
8 especially in healthcare. I've come across the kind of
9 things that Mr. Keimbye has experienced. I don't know the
10 case in full.

11 But, in my mind, I can -- I can kind of
12 imagine, based on my own 15 years of working -- oh, sorry,
13 more than 15 years of working in the U.S., what he has faced,
14 based on my own experiences. So it's coming -- the answer I
15 gave is coming from that place as well.

16 THE COURT: Okay. So let me ask you a
17 follow-up question. And I know this is -- this is sensitive
18 stuff we're talking about here.

19 Are you going to decide this case, based on
20 assumptions from your own experiences in healthcare, as to
21 how you think that someone who's an immigrant from Africa is
22 likely to be treated in the healthcare system? Or can you
23 decide this case only on the evidence that's presented during
24 the trial?

25 And, again, there's no right or wrong answer

1 here.

2 PROSPECTIVE JUROR NUMBER 32: I mean, it's not
3 an easy answer.

4 THE COURT: I know.

5 PROSPECTIVE JUROR NUMBER 32: Because I think
6 my view of things as someone with that kind of a background
7 is going to be different than someone who was born in the
8 U.S. and does not look like me.

9 THE COURT: Yeah.

10 PROSPECTIVE JUROR NUMBER 32: And has not
11 experienced what I've experienced. So I think the answer is
12 very different from some of the jurors here that may not
13 have, you know, that kind of a background. So I will look at
14 things very in a different light. The evidence will be the
15 same, you know, but we're judging it through different
16 lenses.

17 THE COURT: And I understand. Because one of
18 the, I think, really amazingly positive things of the jury
19 system is that we bring together a group of people,
20 hopefully, from diverse backgrounds and diverse life
21 experiences so that they have a chance when they're
22 deliberating to talk to one another about the lenses through
23 which they view the evidence. So, to my mind, that's not a
24 negative thing. That's a very positive thing.

25 However, for both sides to have a fair trial

1 in this case, it is important that each of our jurors be a
2 person who, understanding that you're going to look at the
3 evidence and weigh the evidence through the lens of who you
4 are and your life experience, can still commit to deciding
5 this case based on the evidence and not based on assumptions
6 that they might make from their own experiences.

7 And it's a little hard to draw that line as to
8 what the distinction is. But, you know, if you were to say,
9 well, I've been a victim of discrimination in the healthcare
10 world and, therefore, I'm going to assume from the get go
11 that a person of color -- or maybe not any person of color,
12 but an African immigrant is likely going to have been
13 unfairly treated, then, again, the parties aren't starting on
14 a level playing field. And we need jurors who can have them
15 start on a level playing field.

16 So, you know, is this a job that you're well
17 suited to do, or do you feel like you just really can't have
18 them start out with a level playing field and then wait for
19 the evidence to see whether you find more probably than not
20 that Mr. Keimbaye has proved his case?

21 PROSPECTIVE JUROR NUMBER 32: Are you asking
22 me?

23 THE COURT: Yeah. And I'm sorry about the
24 long question.

25 PROSPECTIVE JUROR NUMBER 32: Yeah. I mean,

1 to be totally honest, I don't think it's a level playing
2 field for me. I think I'm a little bit biased towards
3 Mr. Keimbaye at this point. I mean, the Defense can change
4 my mind, of course. But I think, at this point, I'm leaning
5 towards Mr. Keimbaye.

6 THE COURT: Okay. And I really, really
7 appreciate your candor about that. But I also have to grant
8 Ms. Rosen's challenge for cause. This isn't -- this isn't
9 the right case for you. And I really appreciate your
10 willingness to serve. But I'll go ahead and excuse you. So
11 thank you very much, ma'am.

12 PROSPECTIVE JUROR NUMBER 32: Okay. Thank
13 you.

14 (Prospective Juror Number 32 excused.)

15 MS. ROSEN: Thank you.

16 Having heard from Juror Number 32 -- and,
17 again, there's really no right or wrong answer here -- does
18 anyone else feel the same as she does? If you do, if you
19 could just raise your hand? Okay. Thank you.

20 And she brought up a really interesting point
21 that I want to kind of discuss with you. Is there
22 anyone -- and you can raise your hand again -- who feels like
23 the fact that this case has made it all the way to court
24 means it has merit? If you could raise your hand if you
25 believe that.

1 Okay. Juror Number 26, can you tell me a
2 little bit about why you believe that?

3 PROSPECTIVE JUROR NUMBER 26: Well, I guess
4 I -- well, we could decide what merit is. I think it's, you
5 know, the Plaintiff has a right to bring the case. And he
6 has concerns. And we haven't heard the facts of the case,
7 which, you know, I want to hear. So, you know, he has a
8 right to bring this case. And I don't know what the facts
9 are. So as far as, you know, I can't place judgment on what
10 the facts of the case are because I haven't heard them. But
11 I also believe that he has a right to be here and to be
12 heard.

13 And I guess I'm a little sad about some of the
14 people that have already been dismissed because of their
15 background, and I'll just say that, because I feel like maybe
16 that's kind of narrowing our jury pool a little bit. Maybe
17 that's not my place to say. But, yeah, makes me a little sad
18 about that.

19 MS. ROSEN: Does that make you have a more
20 negative feeling toward the Defense?

21 PROSPECTIVE JUROR NUMBER 26: I don't know
22 that I would determine negative feeling. I would just say
23 I'm a little sad about that, if sadness is negative.

24 MS. ROSEN: And, Juror Number 5, I think you
25 also indicated. So can you explain a little bit about what

1 | you're feeling?

2 | PROSPECTIVE JUROR NUMBER 5: I was just
3 | nodding my head in agreement with Number 26 because, yeah, I
4 | think she would have been awesome for this panel. I think
5 | she could have easily gotten -- given us a much better view.
6 | Just that's very frustrating.

7 | It just feels really, like, this is the
8 | advantage of the Defense because you're lawyers and you're
9 | playing the game. And Mr. Keimbaye, I don't think, has that
10 | advantage.

11 | MS. ROSEN: Okay. You know, we -- we're just
12 | trying really hard to get an impartial jury. That's really
13 | what we're trying to do here, for both us and Mr. Keimbaye.
14 | Not for -- you know, we want to start out with an impartial
15 | jury.

16 | So when people have said that they may have a
17 | problem being impartial, that's why we've, you know, chosen
18 | to excuse them. It's not because I'm, you know, I'm not
19 | interested in their viewpoint or their background or anything
20 | like that. It's really because, you know, people have said
21 | they don't think that they can be impartial.

22 | So, given that, Juror Number 5, does the fact
23 | that we've excused some people, does that make you have a
24 | negative feeling toward the Defense?

25 | PROSPECTIVE JUROR NUMBER 5: It certainly

1 makes it seem to me like I know which direction this is going
2 to go.

3 MS. ROSEN: And what do you mean by that?

4 PROSPECTIVE JUROR NUMBER 5: I mean, it just
5 seems like you guys are going to win because you're the
6 lawyers, and you're picking the -- picking the people off.
7 And I think the last juror was great because we need to know
8 what is -- what kind of background -- I'm not in the medical
9 field and not from the same country. And I don't know what
10 kind of biases -- I mean, I only know the ones that I could
11 assume. But, you know, I could be assuming incorrectly.

12 MS. ROSEN: So is what you're saying -- and I
13 really, again, appreciate your candor -- but is what you're
14 saying that you think that if somebody were to be on the jury
15 who had worked in the medical field as a person of color and
16 shared their experience, that you would give that experience
17 weight in deciding this case?

18 PROSPECTIVE JUROR NUMBER 5: Yes.

19 MS. ROSEN: Okay. Your Honor, I move to
20 dismiss Juror Number 5 for cause.

21 THE COURT: I don't think we're there.

22 MS. ROSEN: Okay. Okay.

23 Well, does that affect your ability to be
24 impartial, Juror Number 5?

25 PROSPECTIVE JUROR NUMBER 5: I don't know.

1 MS. ROSEN: Okay.

2 PROSPECTIVE JUROR NUMBER 5: That's my honest
3 answer. I just don't know.

4 MS. ROSEN: Okay. But you're saying that if
5 somebody brought their personal experience from working in
6 the healthcare industry into the jury room and talked about
7 that experience, you would give that experience weight in
8 deciding this case?

9 PROSPECTIVE JUROR NUMBER 5: Yeah. That would
10 help me know more about something that I don't know about.
11 So, yes. I would have to just trust that they're telling me
12 the truth -- and yeah. I don't know how else I would know
13 that.

14 MS. ROSEN: Well, you would look at the
15 evidence of the case, right?

16 PROSPECTIVE JUROR NUMBER 5: Right. But
17 you're asking me would I -- would I be listening to their
18 experiences. Yes. I would be listening to their
19 experiences.

20 MS. ROSEN: And that would play into your
21 decision-making in this case?

22 PROSPECTIVE JUROR NUMBER 5: Yes. Yes, it
23 would.

24 MS. ROSEN: Your Honor, I renew my motion to
25 dismiss Juror Number 5 for cause.

1 THE COURT: I guess -- let me follow up if I
2 could, Juror 5. So listening to and respecting and sort of
3 incorporating into your understanding of how the world works,
4 the perspectives of another juror is one thing. And I hear
5 you saying that you would do that. And that's fine.

6 However, the job of the jurors in any case,
7 whether it's a civil case or a criminal case, is to decide
8 that particular case on the evidence in that particular case,
9 so on the testimony of the witnesses in that particular case,
10 and on the exhibits that are admitted into evidence in that
11 particular case.

12 So you can look at the evidence through the
13 lens of other people's experience. And that's fine. But if
14 what you're saying is that you would -- you'd hear a juror
15 say, you know, I've observed a lot of discrimination in the
16 healthcare industry, and then assume that because that juror
17 has had that experience, that Providence or its employees
18 must have discriminated against Mr. Keimbaye in this case.

19 Am I making sense in terms of the distinction
20 that I'm drawing?

21 PROSPECTIVE JUROR NUMBER 5: Yeah. I
22 understand what you're saying.

23 THE COURT: So which side of that line do you
24 come down on? Would you be able to decide this case based on
25 the evidence, or do you feel like if there's another juror

1 saying, well, I've noticed a lot of discrimination in the
2 healthcare industry, that you would then sort of carry that
3 over to assume, even if there isn't enough evidence in this
4 case to prove it, that it probably happened in this case?

5 PROSPECTIVE JUROR NUMBER 5: Yes. I think I
6 would have a hard time. And I'm just being completely
7 honest. I would have a hard time. I know my own -- I know
8 my own discrimination, how I've been discriminated against.
9 And so I can only imagine how much worse it would be for
10 someone who's a person of color.

11 THE COURT: Yep.

12 PROSPECTIVE JUROR NUMBER 5: So I -- yeah.
13 And I just -- I think that I would be totally influenced by
14 what someone else is saying in -- I just can't help that.
15 And I have -- I have a really hard time imagining that,
16 really, anyone can do what you're asking, down to, like, very
17 precise, not be influenced by anything outside of just this.
18 That's -- it's because we all have our life experiences.

19 THE COURT: Yep. We do. And the reason why
20 we go through this process of talking to jurors before we
21 empanel a group is because we know that there's people,
22 hopefully, from all kinds of life experiences and all kinds
23 of demographics.

24 But, again, we still need to empanel people
25 who are going to consider the parties starting with a level

1 playing field and can commit to deciding the case based on
2 the evidence.

3 And, yeah, it's not an easy job. You're
4 absolutely right about that. I mean, in a criminal case, in
5 some ways it's an even harder job because the State has to
6 prove guilt beyond a reasonable doubt. So it's a much higher
7 standard of proof.

8 But the standard of proof is still there. And
9 what we don't want to do, is we don't want to empanel someone
10 who's going to assume that the cause ought to end up in a
11 certain way outside of what the evidence might show.

12 So what are your thoughts about that?

13 PROSPECTIVE JUROR NUMBER 5: I don't know. I
14 think it's just -- I don't know. I don't really have much to
15 say now. I feel like I've said what I had to say. I --
16 yeah. I think I've said what I had to say. So you can
17 dismiss me or not dismiss me. I don't care.

18 THE COURT: Well, no. I understand. And you
19 had other reasons why you wanted to go, too. I guess, okay.
20 The bottom line question is, can you commit to deciding this
21 case only based on the evidence? And it's okay if you can't
22 commit to that.

23 PROSPECTIVE JUROR NUMBER 5: Probably not. I
24 will be influenced by other things.

25 THE COURT: Yeah.

1 PROSPECTIVE JUROR NUMBER 5: To be honest.

2 THE COURT: No. I get it. And I do respect
3 that. I really do. It's just my job is to make sure that
4 both sides get a fair trial in this case. So I will go ahead
5 and excuse you. And thank you very much. And I'm sorry to
6 kind of put a little pressure on you to sort of clarify for
7 me. Maybe it's me being dense and having a hard time
8 understanding exactly what you're communicating to us. But I
9 think at this point you've made it clear. So thank you.

10 PROSPECTIVE JUROR NUMBER 5: Thank you.

11 (Prospective Juror Number 5 excused.)

12 MS. ROSEN: Thank you.

13 THE COURT: All right. Well, that took a
14 little while. Do you want another five minutes, Ms. Rosen?

15 MS. ROSEN: Sure. Sure, Your Honor. That'd
16 be great.

17 Okay. Having heard from Juror Number 5, is
18 there anyone else who thinks that they might view other
19 things as evidence in deciding this case, other than the
20 evidence that comes in during the trial? For example, do you
21 think you'd be influenced by another juror's experience in
22 the healthcare industry and what happened to that person in
23 deciding liability in this trial? If you could indicate by
24 raising your hand, that would be great. Thank you.

25 Has anyone ever served as a group leader,

1 whether informal or formal? If you have, raise your hand,
2 please.

3 Juror Number 7, can you explain a little bit
4 about the context?

5 PROSPECTIVE JUROR NUMBER 7: I had a --
6 throughout my entire career, I've had -- I managed people.
7 I've been team leads. Most recently, I was running a company
8 with over 100 people. You know, seven direct report -- ten
9 direct reports. So I am familiar with that role.

10 MS. ROSEN: Thank you. And, I believe, Juror
11 Number 26, did you raise your hand?

12 PROSPECTIVE JUROR NUMBER 26: Sure. I lead
13 medical teams. I've led projects. I've done other volunteer
14 work where I've led medical teams other places. I have ran,
15 you know, speech team for the school. You know, just a
16 variety of group leadership things, run different kinds of
17 trainings and so forth for my career.

18 MS. ROSEN: Thank you.

19 And, Juror Number 25, you raised your hand?

20 PROSPECTIVE JUROR NUMBER 25: Yeah. I've
21 chaired committees. And I've been in charge of a small
22 instructional team before.

23 MS. ROSEN: Does anyone have a negative view
24 of HR? I know that's kind of a loaded question. But does
25 anyone have a negative view of HR?

1 Juror Number 26?

2 PROSPECTIVE JUROR NUMBER 26: Yes.

3 MS. ROSEN: Okay. Can you tell me a little
4 bit more about that?

5 PROSPECTIVE JUROR NUMBER 26: I think that,
6 just off the top of my head, policies, procedures, just, you
7 know, filling out forms and trying to cross the t's, dot the
8 i's, and I don't know. You asked, so there you have it.

9 MS. ROSEN: Okay. So kind of a negative
10 viewpoint of it because of all of the paperwork and the
11 processes required; would that be accurate?

12 PROSPECTIVE JUROR NUMBER 26: Yeah. I mean,
13 there's some positive aspects as well. But you just asked,
14 so I told you what I was feeling in the moment.

15 MS. ROSEN: Thank you. Thank you.

16 Anyone else have a positive view of HR? Juror
17 Number 3, tell us a little bit about that.

18 PROSPECTIVE JUROR NUMBER 3: So I worked in HR
19 for a long time. And I think HR can add a lot of value. It
20 can help an organization hire the right people, retain the
21 right people, build a job that lets people engage and feel
22 valued and that they're able to contribute.

23 I kind of giggled earlier when you said, does
24 anybody have a negative view of HR. I worked with HR people
25 who are not stellar. And I worked with some superstar

1 | leaders who I learned from. So I probably -- I'm a little
2 | biased just because I've worked in HR, and I know the value
3 | it can offer. And I am proud of that. I think it really can
4 | make a place a good place to work.

5 | MS. ROSEN: Thank you.

6 | Anyone else have a strong opinion of HR that
7 | you'd like to share? Okay. Thank you.

8 | Are there any questions that I haven't asked
9 | you that you wish I would have asked you? Anything that
10 | you're thinking about as you sit here right now that you wish
11 | I would have asked you?

12 | THE COURT: All right. Thank you very much,
13 | Ms. Rosen.

14 | MS. ROSEN: Thanks. Thank you.

15 | THE COURT: All right. Remaining members of
16 | the jury panel, thank you for your time. I have a few
17 | instructions going forward and sort of some what happens next
18 | information.

19 | In a few moments, this particular hearing will
20 | end. We have another panel of folks to talk to tomorrow
21 | morning.

22 | Yes, Juror 25, you have a question?

23 | PROSPECTIVE JUROR NUMBER 25: Yeah. Just a
24 | very small question.

25 | THE COURT: Yeah.

1 PROSPECTIVE JUROR NUMBER 25: When I filled
2 out the questionnaire, there were a couple of answers that I
3 don't think impact my ability to be impartial, but which do
4 need correction. What's the appropriate time to make those
5 corrections?

6 THE COURT: You can do that now.

7 PROSPECTIVE JUROR NUMBER 25: Perfect. Okay.
8 Just on the question, on the questionnaire, that asked
9 whether I or anybody I know had been a patient at certain
10 institutions, my partner reminded me that she had gotten a
11 surgical procedure last year at Swedish and is probably going
12 back to follow up on an injury. And I myself was a patient
13 at Kadlec last week unexpectedly in Tri-Cities. So I just
14 wanted to add that. I don't think it impacts anything
15 further about the case.

16 THE COURT: All right. I mean, do any of
17 those things, do you think, influence you in any way in terms
18 of how you would view the evidence in this case?

19 PROSPECTIVE JUROR NUMBER 25: I don't think
20 so, since I didn't even remember until I was reminded about
21 it.

22 PRECAUTIONARY JURY INSTRUCTIONS

23 THE COURT: Fair enough. Thank you.

24 All right. So we have another panel of jurors
25 to talk to this afternoon. And, hopefully, after that, we

1 will have enough people to empanel a jury. So we will get
2 back to you, almost certainly today. So keep an eye on your
3 email, because if you're selected as a juror in this case,
4 we're going to need you here tomorrow morning before
5 nine o'clock so that we can start the remainder of the trial,
6 which will be in person.

7 J. reminded me -- I thought the county had
8 ended -- the Court had run out of funds for this program, but
9 apparently they haven't yet. So the Court has some limited
10 vouchers available for those of you who need to drive in and
11 can't conveniently take transit. So if you're selected as a
12 juror, J. will be in touch. And part of the information that
13 she will share with you is where to park and how to get those
14 vouchers if you're selected as a juror in this case.

15 Once we -- once we have chosen the jurors,
16 your presence is going to be critical if you're chosen,
17 because we can't proceed without you. Make sure you keep an
18 eye on your spam filter as well. Sometimes communications
19 from the Court end up in there. I don't know why.
20 Obviously, since you're here, you've already successfully
21 gotten the previous communications.

22 You haven't been released from jury service
23 yet, which means you're still subject to the court order that
24 requires you to appear, as well as the instructions not to
25 communicate with anyone about any aspect of this case. Not

1 what it's about, not who the lawyers are, not who the
2 Plaintiff is, not what the issues are.

3 The one exception is if you need to share the
4 schedule. And a reminder, the schedule will be tomorrow,
5 nine to four; Thursday, nine to four; not in session on
6 Friday; and then Monday through Thursday next week, nine to
7 four; and possibly Friday as well, if the jury is
8 deliberating and hasn't had time to reach a verdict yet by
9 the end of the court day on Thursday.

10 Also, a reminder, please do not look anything
11 up or expose yourself to any information that might relate to
12 this case. There's nothing about this case that I expect to
13 be particularly newsworthy. But trials are public things,
14 which means people are free to come in, observe, and then
15 write about them, broadcast about them, blog about them,
16 whatever.

17 So if you were to encounter any information
18 that you think might relate to this case, please just take
19 your attention away from it as soon as possible and then
20 share that with J., the bailiff, at your earliest
21 opportunity. She'll let me know. I'll let Mr. Keimbaye and
22 Ms. Rosen know so that, again, we're all operating on the
23 same universe of information.

24 Yeah. If anyone asks you about jury service
25 beyond just the schedule, again, feel free to tell them that

1 the Judge has instructed you you're not allowed to discuss
2 any facts or the law that relate to this case.

3 If you don't hear from us by 6:00 p.m., you
4 can assume you've been excused with our thanks. J. will try
5 to get to those of you who have been excused. But she gets
6 really busy toward the end of the day during the jury
7 selection process, so it may take her another day or so to
8 get back to people.

9 Juror 22, I see your hand up.

10 PROSPECTIVE JUROR NUMBER 22: Yeah. Quick
11 question. Sorry if I missed it. How many jurors do you need
12 to fully --

13 THE COURT: So --

14 PROSPECTIVE JUROR NUMBER 22: -- to have
15 complete --

16 THE COURT: -- ideally, 14; 12 to deliberate
17 and two as alternates. We choose our alternates at the
18 conclusion of the trial. And we have alternates, of course,
19 because sometimes people get sick, sometimes people have a
20 family emergency, and we need 12 deliberating jurors. So
21 that's why we choose alternates.

22 And we do that at the end of the case. We
23 sort of have numbered ping-pong balls in a spindle, and
24 that's where our alternates are going to be. So no one knows
25 who the alternates are going to be until we randomly choose

1 | them at the end of the case.

2 | Any other questions? Yes? Number 26, you
3 | have your hand up.

4 | PROSPECTIVE JUROR NUMBER 26: Yeah. Will the
5 | follow-up email, if we get it, if we're selected, include all
6 | the details about what we can bring into the jury room, as
7 | far as electronics, whether there's going to be Wi-Fi,
8 | whether we can bring food and where exactly to go, and all
9 | those things so that we can all arrive prepared?

10 | THE COURT: Yes. All those things. You can
11 | bring water, you can bring food. There is a pretty robust
12 | public Wi-Fi system. So during breaks, you can look at your
13 | electronics. When you come into the courtroom, we're going
14 | to ask you to leave your electronics in the jury deliberation
15 | room, and leave your food in the jury deliberation room. If
16 | you need to bring a bottle of water out to the jury box with
17 | you, you could certainly do that.

18 | Any other questions? All right. I want to
19 | extend my thanks for your participation in this process and
20 | for all your thoughtful responses to some, I think, fairly
21 | tough questions that I think made everybody kind of look
22 | inside of themselves a bit. And we really appreciate your
23 | candor and your willingness to participate in this process.
24 | And I look forward to seeing, hopefully, many of you, if not
25 | all of you, tomorrow in person.

1 Have a very nice evening -- or very nice rest
2 of the day, since it's still only the morning.

3 The jurors are free to leave the meeting. I'm
4 going to ask Mr. Keimbaye and Ms. Rosen to remain.

5 (Prospective Jury exits at 11:38:14 a.m.)

6 DISCUSSION RE JURORS

7 THE COURT: And just for the record, I'm going
8 to go through the list of who got excused and for what reason
9 just so the clerk has all that.

10 So Juror Number 1 was excused for cause.
11 Juror Number 2 was excused for cause. Juror Number 4 was
12 excused for cause. Juror 5 was excused for cause. Juror 8
13 was excused for cause. Juror 16 was excused for cause.
14 Juror 18 was excused for hardship. Juror 20 did not appear
15 at all. Juror 21 was excused for cause. Juror 30 was
16 excused for hardship. And Juror 32 was excused for cause.

17 And I thought that was important because some
18 of the excuses for cause were done by the Court before we got
19 to individual questioning. So I wanted both of you to know
20 that and also for the record to be clear.

21 Any issues at this time? Mr. Keimbaye, since
22 you're the Plaintiff, I'll call on you first.

23 DISCUSSION RE HOUSEKEEPING MATTERS

24 MR. KEIMBAYE: Yes, Your Honor.

25 THE COURT: Yeah?

1 MR. KEIMBAYE: I have a few questions
2 regarding exhibit that need to be handed to the witness
3 before examination.

4 THE COURT: Okay.

5 MR. KEIMBAYE: And so when Plaintiff is going
6 to examine any witness, and he -- he has more than one
7 exhibit to follow with the witness, will Plaintiff be handing
8 one exhibit at a time or all of them at the same time?

9 THE COURT: So I think the simplest thing for
10 you to do, Mr. Keimbaye, is to take the binder that contains
11 the exhibits that you want to talk about and just give the
12 binder to the witness and ask the witness to turn to
13 whichever exhibit you want to reference or you want the
14 witness to testify about.

15 Remember that a -- that an exhibit has to be
16 admitted into evidence before the witness gives testimony
17 about it beyond identifying the exhibit.

18 MR. KEIMBAYE: Say one more time again, the
19 last --

20 THE COURT: So before you ask a witness
21 questions about an exhibit, other than questions to identify
22 the exhibit, you know, what is it, are you familiar with it,
23 you need to offer the exhibit into evidence. And I have to
24 admit it into evidence before you ask the witness what the
25 exhibit contains, or ask the witness questions about the

1 contents of the exhibit.

2 MR. KEIMBAYE: Okay. Thank you for the
3 explanation.

4 THE COURT: Okay.

5 MR. KEIMBAYE: For example, for the
6 Defendants' witnesses, the majority of them will be via Zoom.
7 So will Plaintiff reach out to the Counsel to get the
8 information to their witnesses?

9 THE COURT: That's a really good question.
10 How are we going to handle that, Ms. Rosen? You're muted.

11 MS. ROSEN: Your Honor, we're happy to take
12 the exhibits and give them to those witnesses. We are
13 wondering if we can preadmit some exhibits that the parties
14 don't dispute because there's a number of exhibits that
15 Mr. Keimbaye and the Defense have agreed are admissible.

16 THE COURT: Okay. So I have your Joint
17 Statement of Evidence here. I'm going to pull it up. So you
18 have these electronically so that you can transmit them to
19 remote witnesses?

20 MS. ROSEN: Yes.

21 THE COURT: Okay. Excellent. All right. So
22 in the Joint Statement, it appears there's no objection. And
23 somebody stop me if this is incorrect. I'm just going off
24 the Joint Statement.

25 There's no objection to Exhibit 1 and 2. So

1 those will be admitted. No objection to Exhibits 7 and 8.

2 Oh. I'm sorry. I misspoke. No objection to Exhibits 8 and
3 9. So those will be admitted.

4 The next exhibit that I see for which there is
5 no objection is 15. So that's admitted. No objection to 18.
6 So that's admitted. No objection to 20. So 20 is admitted.
7 No objection to 27. So that's admitted. No objection to 32.
8 So that is admitted. No objection to 35. So that is
9 admitted.

10 (PLAINTIFF'S EXHIBITS 1, 2, 8, 9, 15, 18, 20, 27, 32 AND 35

11 RECEIVED INTO EVIDENCE)

12 MS. ROSEN: 17 is a joint exhibit, Your Honor.

13 THE COURT: I'm sorry?

14 MS. ROSEN: 17 is a joint exhibit --

15 THE COURT: No. I'm sorry, Ms. Rosen. I
16 heard you. The clerk is saying something.

17 THE CLERK: We don't have joint exhibits.
18 It's either --

19 THE COURT: Yeah. I know we don't have joint
20 exhibits. So 17 is admitted. It doesn't matter whose it is,
21 right?

22 THE CLERK: Yes.

23 MS. ROSEN: Okay. Thank you.

24 (PLAINTIFF'S EXHIBIT 17 RECEIVED INTO EVIDENCE)

25 THE COURT: I thought I had already -- 19.

1 Yeah. Oh. I see. 17, I hadn't admitted 17 yet. But, all
2 right, so 17 is admitted, then. Okay. Thank you.

3 And, then, I'm sorry, where did I leave off?

4 THE CLERK: 35.

5 MR. KEIMBAYE: 35.

6 THE COURT: 35? Okay. So 35 is admitted with
7 no -- because there's no objection. And, then, I'm scrolling
8 down, here. And the next one I have -- goodness -- with no
9 objection --

10 MS. ROSEN: 36 can be admitted.

11 (PLAINTIFF'S EXHIBITS 35 AND 36 RECEIVED INTO EVIDENCE)

12 THE COURT: All right. 36 is admitted.

13 And, Tonja, I'm going to want a printout --

14 THE CLERK: I can get that to you.

15 THE COURT: Yeah. Thank you.

16 THE CLERK: Thank you.

17 THE COURT: All right. And then I'm going to
18 make this a little smaller so I don't have to scroll quite so
19 much.

20 MS. ROSEN: 42 and 43.

21 THE COURT: How did I miss those? Oh.
22 Because there was an objection. So 42 and 43, you're
23 withdrawing the objection?

24 MS. ROSEN: Yes.

25 THE COURT: All right. 42 and 43 are

1 admitted.

2 (PLAINTIFF'S EXHIBITS 42 AND 43 RECEIVED INTO EVIDENCE)

3 THE COURT: Any others for which objections
4 are being withdrawn that were on the joint statement?

5 MS. ROSEN: We're looking at the list right
6 now, Your Honor.

7 THE COURT: Okay.

8 MS. ROSEN: No. No other ones.

9 THE COURT: Okay. Then I will continue my
10 scrolling. I'm not seeing -- here we go. Okay. So it
11 appears that -- I'm sorry, 122 was not objected to. So
12 that's admitted.

13 (DEFENDANTS' EXHIBIT 122 RECEIVED INTO EVIDENCE)

14 MS. ROSEN: Your Honor, he didn't object to
15 any of our exhibits, if you remember.

16 THE COURT: Oh.

17 MS. ROSEN: The ER 904, he didn't object to
18 any of them. So you made a ruling that relevance was the
19 only objection that he could bring on those exhibits.

20 THE COURT: Well, that's correct, then. I'm
21 just looking at --

22 MS. ROSEN: So --

23 THE COURT: -- Joint Statement.

24 MS. ROSEN: Yeah. Yeah. I mean, it might be
25 helpful if Mr. Keimbaye can indicate which ones he's going to

1 object on the basis of relevance.

2 THE COURT: Mr. Keimbaye?

3 I think there was one you withdrew the other
4 day, on Friday.

5 MS. ROSEN: There was. Yeah.

6 MR. KEIMBAYE: Are you asking me a question,
7 Your Honor?

8 THE COURT: Yes. Are there any Defense
9 exhibits for which you are objecting based on relevance?
10 Because --

11 MR. KEIMBAYE: Relevance -- relevance or
12 irrelevance?

13 THE COURT: I'm sorry. Relevance or what?

14 MR. KEIMBAYE: Your Honor, did you say
15 relevance or irrelevance?

16 THE COURT: Relevance. Are you making an
17 objection as to relevance for any of the Defense exhibits?
18 Because, to the extent they were sent to you under Evidence
19 Rule 904, and you didn't make a timely objection to them,
20 you've waived all objections except for relevance.

21 I'll tell you what. Take a look -- take a
22 look at the Joint Statement of Evidence and the ER 904 over
23 the lunch hour, and then, hopefully, you'll have a chance to
24 review those so that you can tell us a little bit later which
25 ones you object to because of relevance. Okay? Or lack of

1 relevance. Okay.

2 MR. KEIMBAYE: Thank you, Your Honor. Thank
3 you.

4 THE COURT: I am hopeful -- I am cautiously
5 hopeful that the afternoon panel will not contain quite so
6 many people that are asking to be excused for hardship or for
7 fairness. I only noted two on the questionnaire, 35 and 56,
8 that responded on the questionnaire that there might be a
9 reason why they couldn't be completely impartial.

10 Oh. And just for the record, for hardships
11 before voir dire, the Court excused Jurors 13, 23, 27, 29,
12 43, 45, 47, 50, 76, 77, and 81. And, Tonja, I can just hand
13 this -- the printout down to you.

14 THE CLERK: I have it.

15 THE COURT: Oh, you have it? Okay.

16 THE CLERK: Thank you.

17 THE COURT: Great. I just thought it ought to
18 be on the oral record, as well.

19 Yes, Mr. Keimbaye, I see you have your hand
20 up.

21 MR. KEIMBAYE: Yes. Just to go back to the
22 admitted exhibit before Exhibit 8, which numbers are admitted
23 as well, before --

24 THE COURT: I'm not going to go all the way
25 through this again. But I will -- the clerk will send those

1 out via email. And --

2 MR. KEIMBAYE: Okay.

3 THE COURT: -- and the bailiff can forward
4 that to you.

5 MR. KEIMBAYE: Okay. Thank you.

6 THE BAILIFF: A copy of the exhibit list?

7 THE COURT: The admitted exhibits.

8 THE BAILIFF: Yes, Your Honor.

9 THE COURT: Yes. So, J., the clerk is in
10 charge of that, and she will forward a printout to me and to
11 J., and then J. will forward that to you, so you'll have
12 that.

13 Yes, Ms. Rosen?

14 MS. ROSEN: Your Honor, we have a number of
15 housekeeping issues and some more serious-than-housekeeping
16 issues. Should we reserve to talk about that this afternoon?

17 THE COURT: Well, time's going to be a little
18 tighter this afternoon just because it's a shorter session.
19 One thing that I didn't see -- I did enter orders -- written
20 orders last week on the motions in limine. I'm sure you all
21 saw those. I, this morning, just before court, entered
22 orders -- I made oral rulings, but I didn't enter written
23 orders on the motion to dismiss for civil contempt, as well
24 as the motion on the CR 43. So those orders are in now.

25 What I didn't see, Mr. Keimbaye, is you sent

1 me a transcript of Ms. Husted's deposition testimony. But
2 what you didn't provide -- or at least I haven't seen it --
3 is designations of which portions of that deposition you want
4 to use in your case at trial. Because I have to rule on any
5 objections before any portion of that transcript is read to
6 the jury.

7 MS. ROSEN: Your Honor, you ruled that it
8 wasn't able because he didn't establish that she was
9 unavailable.

10 THE COURT: Oh. That's true. So we need that
11 as well.

12 MR. KEIMBAYE: I provided a deposition
13 with -- with the list. I send it via email.

14 THE COURT: What list?

15 MR. KEIMBAYE: Designate -- designate list of
16 the deposition.

17 MS. ROSEN: I believe he did, Your Honor. I
18 believe he sent the deposition designations for Ms. Husted.
19 But it's --

20 THE COURT: I'm not sure I've seen it.

21 MS. ROSEN: -- our position --

22 THE COURT: I know. I know. You've got this
23 positioning.

24 So the thing that we need, then, is some proof
25 that she's unavailable, some proof that she's --

1 MR. KEIMBAYE: I --

2 THE COURT: I know you told us that you talked
3 to her husband, and that he told you they moved to Florida.
4 But I don't have any kind of a sworn statement from you about
5 that. I certainly don't have any sworn statement from the
6 husband or from Ms. Husted. And we need to establish that
7 she is unavailable in order for her deposition to be
8 admissible into evidence.

9 When did you send --

10 MR. KEIMBAYE: Your --

11 THE COURT: -- when did he -- when did you
12 send these --

13 MS. ROSEN: Your Honor, my paralegal is saying
14 he only sent them to us.

15 THE COURT: Well, then I don't have them, so I
16 can't rule on them.

17 MR. KEIMBAYE: Your Honor, no. No. I sent
18 the list all together with -- to the Court, and I included,
19 you know, the other parties to it.

20 THE COURT: So. Okay. So I have -- I have
21 via email --

22 MR. KEIMBAYE: I address it -- I address it to
23 Ms. Ware.

24 THE COURT: Well, hold on. So I have this
25 objection that you filed to the Defense, providing a

1 transcript with highlights of their designations. And then
2 use of discovery and -- okay. Hold on. Yeah. You might
3 have sent it via email. Okay. So there's two attachments
4 here, and I don't know what the difference is. I'm going to
5 open them up and see. Use of discovery interrogatories,
6 et cetera. Oh. Okay. We have counter designation. So this
7 is -- okay. So we've got these pages. Oh. You're talking
8 about your deposition. Okay. And then Ms. Husted's
9 deposition.

10 MR. KEIMBAYE: Yes.

11 THE COURT: And okay. I'm going to print this
12 out so I can look at this.

13 MR. KEIMBAYE: Your Honor?

14 THE COURT: Yes, Mr. Keimbaye?

15 MR. KEIMBAYE: Concerning -- yes. Concerning
16 Ms. Husted and her husband.

17 THE COURT: Yeah.

18 MR. KEIMBAYE: Would it be okay with you to
19 call them and, you know, have them make a sworn statement --

20 THE COURT: Well, I'm --

21 MR. KEIMBAYE: -- because --

22 THE COURT: I'm not going to --

23 MR. KEIMBAYE: -- the only way that, you
24 know -- the only way that Plaintiff, you know, get the
25 information is via text message. And that's all the

1 Plaintiff has.

2 THE COURT: Okay. Well, you can file a
3 declaration with a copy of the text messages, telling us who
4 you received it from when you received it, why it's
5 authentic. I don't know what the text message says, so if
6 you provide that, I will take a look at it. But it has to be
7 somebody's sworn statement. Okay?

8 MR. KEIMBAYE: I can try again, after this
9 afternoon, to reach out to them, begging them, and see if
10 they can be willing, you know, to make a sworn declaration.

11 THE COURT: Sure. That'd be fine. You can do
12 it over the noon hour.

13 MR. KEIMBAYE: Would that be okay with you to
14 email it or file with the Court?

15 THE COURT: So they don't have -- they don't
16 have any obligation to file anything with the Court. So you
17 would be providing whatever they provide to you. You would
18 be providing that to the Court.

19 MR. KEIMBAYE: And which is this Court?

20 THE COURT: Yeah.

21 MR. KEIMBAYE: Okay. And would that be okay
22 to provide via email to address it to Ms. Ware?

23 THE COURT: Well, it depends what it is. But
24 yes. But remember, anything you share with the Court,
25 anything you send the Court, has to be copied to Defense

1 Counsel.

2 MR. KEIMBAYE: Yes.

3 THE COURT: Okay. All right. It's just about
4 noon. Any other questions?

5 MS. ROSEN: Yeah. Your Honor, I mean, I don't
6 know if you've had a chance to look at the emails from over
7 the weekend, where Mr. Keimbaye said that --

8 THE COURT: What emails?

9 MS. ROSEN: -- he was -- oh. There's some
10 emails where Mr. Keimbaye said he was not going to follow
11 your rulings on motions in limine.

12 THE COURT: Oh. Well, you have to follow the
13 orders on the motions in limine, Mr. Keimbaye. And, no. I
14 haven't seen any such emails.

15 MR. KEIMBAYE: Your Honor, may I make a
16 statement a little bit?

17 THE COURT: Yes. Of course.

18 MR. KEIMBAYE: Your Honor, ever since this
19 trial court deny Ms. Rosen motion for summary judgment,
20 Ms. Rosen has been extremely --

21 MS. ROSEN: Your Honor, he continues to attack
22 me personally. He accused me of wanting to assault him.

23 THE COURT: Okay.

24 MR. KEIMBAYE: Your Honor, I'm not --

25 THE COURT: I haven't seen any of this.

1 MR. KEIMBAYE: I'm speaking to the Judge. I'm
2 speaking to the Judge.

3 THE COURT: Do you have a question, or what is
4 it, Mr. Keimbaye?

5 MR. KEIMBAYE: Yes. Ms. Rosen has been
6 extremely aggressive toward Plaintiff, to a point where she
7 attempt to superimpose her will and her authority toward
8 Plaintiff, and sometimes behave as not only as a Defense
9 Counsel but, you know, a second judge in this case.

10 THE COURT: So --

11 MR. KEIMBAYE: That's the way she -- she --

12 THE COURT: So --

13 MR. KEIMBAYE: -- behave toward Plaintiff.

14 THE COURT: I --

15 MR. KEIMBAYE: And I am -- I am -- I wish, you
16 know, you would have to see Ms. Rosen how she treated
17 Plaintiff during his two depositions. She was extremely rude
18 and aggressive. And when Plaintiff provide all the answers
19 to her question, she would go back again, forcing Plaintiff
20 to change the answers to those deposition questions. And
21 there are certain moment where -- where Ms. Rosen act as --
22 as if -- it's like a ferocious, you know, lioness that is
23 going to -- to break the cage and attack the onlooker.
24 That's how she was --

25 MS. ROSEN: This is ridiculous.

1 MR. KEIMBAYE: -- behaving toward --

2 THE COURT: Okay. Okay.

3 MR. KEIMBAYE: Plaintiff during --

4 THE COURT: One at a time.

5 MR. KEIMBAYE: -- during the two depositions.

6 THE COURT: All right. All right.

7 Mr. Keimbaye, there's nothing I can do about that right now.

8 I will tell you a couple of things.

9 One, in court, I expect you and Ms. Rosen and
10 any other Defense Counsel to be professional, to treat one
11 another with courtesy and respect, and to follow the rules of
12 procedure, the Rules of Evidence, and the Court's rulings.

13 She does not have any authority over you in
14 terms of what you do. I mean, at your deposition, since
15 you're representing yourself, she has the right to ask you
16 questions, just as she would ask questions from any plaintiff
17 in any case.

18 In court, she doesn't have any authority over
19 you. However, the Court's order -- the Court does have
20 authority over both sides. And the Court's orders need to be
21 followed, even if you disagree with them. If you disagree
22 with them, then your recourse is to appeal. But in the
23 meantime, my rulings on the motions in limine need to be
24 followed by both sides.

25 If something comes up that you think changes

1 things, like let's say I've ordered that something has to not
2 be mentioned during trial because of a Defense motion in
3 limine, and then the Defense brings it up. So you think
4 something has changed. Then you can bring that up and ask me
5 to reconsider my ruling. But you need to bring it up outside
6 the presence of the jury. So either during a break or if
7 it's something that can't wait for a break, you can let me
8 know that you have an issue that you want to bring up outside
9 the presence of the jury, and we'll either go and do a
10 sidebar, or I will excuse the jury from the courtroom, and
11 we'll take it up on the record. Okay?

12 MR. KEIMBAYE: Thank you, Your Honor.

13 THE COURT: Of course.

14 MR. KEIMBAYE: To mention one word, Ms. Rosen
15 shouldn't act as a second judge to Plaintiff.

16 THE COURT: I'm sorry?

17 MR. KEIMBAYE: She shouldn't act as a second
18 judge toward Plaintiff.

19 THE COURT: No. And that won't be allowed.
20 But I don't know what conduct, exactly, you're complaining
21 about. If she is advising you about her understanding of the
22 Court's rulings, she can communicate that to you. That
23 doesn't make her a second judge. So I don't know exactly
24 what went on. And so it's very hard for me to say anything
25 about it.

1 I will say that, in the courtroom, I expect
2 both sides to be respectful and courteous and professional.
3 Okay?

4 MR. KEIMBAYE: And I have been. I have been
5 doing it, you know, since we started this case.

6 THE COURT: I appreciate that. All right.

7 MS. ROSEN: Your Honor, also, Mr. Keimbaye is
8 supposed to give us the -- a list of what he's going to
9 testify about tomorrow. And I'm wondering when I can expect
10 to receive that.

11 THE COURT: Mr. Keimbaye? Can you sort
12 of -- are you able to send Ms. Rosen sort of a list of the
13 topics that you're going to testify about sometime by close
14 of business today?

15 MR. KEIMBAYE: A list of what I will be
16 testifying on and, you know, calling the witnesses. Yes.
17 It's based on my -- on my --

18 THE COURT: No. Just your own testimony,
19 she's asking. You don't need to share what you're going to
20 be asking the witnesses. Just your own testimony, when you
21 are acting as a witness.

22 MS. ROSEN: And, Your Honor, Mr. Keimbaye
23 didn't give us 48-hour notice for anyone to appear tomorrow.
24 So we don't have anyone appearing tomorrow. It's just him, I
25 guess.

1 THE COURT: Who -- okay. We need to take our
2 break. Who --

3 MS. ROSEN: Okay.

4 THE COURT: Whose testimony do you want to
5 present tomorrow, Mr. Keimbaye?

6 MR. KEIMBAYE: Mr. John.

7 THE COURT: Just yours?

8 MS. ROSEN: We didn't -- Mr. John's in Los
9 Angeles.

10 THE COURT: Well, he's going to testify via
11 Zoom anyway, isn't he? Or is he going to testify --

12 MS. ROSEN: No.

13 THE COURT: -- in person? Okay.

14 MS. ROSEN: No. He's going to testify --

15 THE COURT: So Mr. John -- you needed to give
16 them notice by Friday. And, apparently, you didn't. So who
17 else?

18 MR. KEIMBAYE: When did they notify Plaintiff
19 that Mr. John is going to be away in -- in --

20 THE COURT: So the order in limine was that
21 both sides were going to notify each other at least two days
22 in advance -- I think it was two days, wasn't it? I need to
23 check the order.

24 MS. ROSEN: Yes.

25 THE COURT: What witness is going to testify.

1 So the deadline for witnesses testifying tomorrow was
2 yesterday.

3 MR. KEIMBAYE: Where in the motion in limine
4 that, you know, that statement is that stated?

5 THE COURT: Okay. We need to take our break.
6 Go look at the order. That was -- that was e-Filed and
7 served on you on Friday. Okay? And I will find it over the
8 noon hour. But I don't have time to look for it right now,
9 and I need to give my lower bench their noon recess. So
10 we'll see you back on Zoom at 1:30 for the second panel of
11 jurors.

12 MS. ROSEN: Thank you, Your Honor.

13 THE COURT: Thank you, everyone.

14 MR. KEIMBAYE: Thank you.

15 (Recess at 12:04:38 p.m., recommencing at 1:29:45 p.m.)

16 ///

SEATTLE, WASHINGTON

TUESDAY, SEPTEMBER 5, 2023

AFTERNOON SESSION - 1:29:45 P.M.

JURY TRIAL:

(The following proceedings were held inside the presence of the prospective jury:)

THE COURT: All right. Good afternoon, everybody. As the bailiff, J., said, I'm Judge Andrea Darvas, and I want to welcome you to jury selection in this case.

We do have a number of people missing, and I want to give J. the opportunity to follow up with them before we actually begin. So I'm going to ask all of you to please hang in there with me if you could, please.

I have one or two things that I need to talk with Mr. Keimbaye and Ms. Rosen about. And, okay, I see Mr. Keimbaye. Ms. Rosen, I'm not sure I see you. There you are. Okay.

So I'm going to open a breakout room in order to do that and we will be back with you very shortly. And thank you so much for your patience.

So, first I have to create the breakout room. All right.

(Prospective Jury exits at 1:30:40 p.m.)

DISCUSSION RE PRELIMINARY MATTERS

1 THE COURT: So, Ms. Rosen [sic], to answer one
2 of the questions you raised, the reason why there's gaps in
3 juror numbers is because not all of the jurors that were
4 assigned to us by the jury department completed their
5 questionnaires.

6 MS. BURNHAM: Okay.

7 THE COURT: And so I have just -- I have left
8 their numbers alone. I have just kept the numbers that were
9 assigned by the jury room when they were assigned to us and
10 just treated those as failures to appear.

11 MS. BURNHAM: Okay.

12 THE COURT: I also looked through the panel
13 that were scheduled for this afternoon, and there really
14 aren't that many. There were two that indicated some
15 potential fairness issues. And there were three that
16 indicated some hardship. But one of those overlaps with
17 Juror 35 with the potential fairness issue.

18 So I think we're going to be okay with
19 numbers. But when J. told me that six people didn't appear,
20 I was kind of shocked. So she's following up with those
21 people.

22 MS. BURNHAM: Okay.

23 THE COURT: Okay? I also looked
24 through -- one second. Sorry. I looked through the orders
25 in limine, and I have to apologize to Mr. Keimbaye. I think

1 he's correct. There's nothing in the orders in limine on
2 notice of witnesses to be called the next day.

3 I have a recollection that we discussed it on
4 Friday. I didn't -- I didn't make a specific note in my
5 notes, I wish I had, as to what the outcome of that
6 discussion was. I remember that there was an agreement that
7 there be prior notice. I can't remember if it was the day
8 before or two days before, to be honest with you. But I
9 remember there was a discussion about it, and -- but it
10 wasn't a motion in limine, and so it wasn't part of the
11 orders in limine.

12 Yes, Mr. Keimbaye?

13 MR. KEIMBAYE: Yes. Would the -- Your Honor,
14 I would like to take an opportunity for you to clarify for me
15 to better understand, again, one more time, Plaintiff motion
16 in limine number 22 --

17 THE COURT: We're going to do that later. I
18 don't want to take up time during jury selection to talk
19 about the motions in limine. But I'm happy to do that with
20 you.

21 So J. --

22 MR. KEIMBAYE: Thank you.

23 THE COURT: -- advises that the people missing
24 from the p.m. panel are 33, 40 -- I can't believe this. I've
25 always had -- frequently had two or three people that didn't

1 show up. I've never had six. 51, 53, 56, and 57. That
2 leaves us with -- how many did we have left over after the
3 morning session? Was it nine?

4 MR. KEIMBAYE: Nine. Yes, Your Honor.

5 THE COURT: Yeah. That's what I thought. So
6 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21. Well, we
7 need at least 20 if I'm going to seat two alternates. We can
8 get by with 18. No. Let's see. 12, 13, 14, 15, 16. Okay.
9 I'm sorry. Yeah. 12 plus 8 is -- so if both sides exercise
10 eight peremptory challenges, that gets us to 20. So, yeah,
11 we need at least 21 if we're going to seat an alternate.
12 It's going to be close.

13 All right.

14 MS. BURNHAM: Your --

15 THE COURT: Go ahead, Ms. Rosen.

16 MS. BURNHAM: Your Honor, can I just
17 address -- and, I'm sorry. This is Ms. Burnham, not
18 Ms. Rosen.

19 THE COURT: Oh. I'm sorry.

20 MS. BURNHAM: But if I could just address
21 some -- I'm sorry if my nametag is wrong, I can try to figure
22 that out.

23 I just wanted to address one thing before
24 we -- or a couple things before we get on the record, first
25 being what you said about the notice. My recollection was

1 that that was an oral ruling you made --

2 THE COURT: I think it was.

3 MS. BURNHAM: -- when we notified --

4 THE COURT: I think it was.

5 MS. BURNHAM: -- everyone -- okay. Everything
6 about the remote -- people appearing remotely. That was my
7 recollection. And so, again, we are not trying to, in any
8 way, inhibit Mr. Keimbaye from calling witnesses, but we do
9 have people that aren't here and have other jobs. So we just
10 need to be able to have that notice so that we can certainly
11 let them know, so they can be available for the Court and for
12 Mr. Keimbaye to examine.

13 THE COURT: Right.

14 MS. BURNHAM: With that, that's -- we plan to
15 move forward with that understanding of the Court's order, or
16 we just want to make sure that we're clear on what your order
17 is.

18 THE COURT: Right. Well, I just want to
19 ask -- okay, so Jennifer Ricker (phonetic), we may have
20 picked up a juror. Let me see.

21 MS. BURNHAM: Jennifer is our client.

22 THE COURT: No. She's your person. Okay.

23 And then Hanna (phonetic). That might be Juror 33. So I'll
24 admit her. And do you want Ms. Ricker admitted as well?

25 MS. BURNHAM: Yes, please, Your Honor.

1 THE COURT: And you're Ms. Burnham, right?

2 MS. BURNHAM: And then -- yes, Your Honor.

3 Thank you.

4 THE COURT: Forgive me.

5 MS. BURNHAM: And then -- no. You're fine.

6 It's been a long day.

7 And then one other thing I just wanted to
8 address -- and I sent an email over the break, but I'm not
9 sure that Your Honor had a chance to see it or Ms. Ware. But
10 we do have some concerns just with how Counsel is being
11 described. We just want to make sure, for fairness purposes,
12 when you say Mr. Keimbaye and the lawyers --

13 THE COURT: Yes?

14 MS. BURNHAM: I think it sets up -- I think it
15 could potentially cause some bias to just refer to us in that
16 way. We would ask that you just call us Defense Counsel and
17 Mr. Keimbaye --

18 THE COURT: All right.

19 MS. BURNHAM: -- as opposed to --

20 THE COURT: That's fine.

21 MS. BURNHAM: -- Mr. Keimbaye and the lawyers.

22 THE COURT: That's fine.

23 MS. BURNHAM: And then for purposes -- and for
24 purposes of when you list us, just Ms. Rosen and I are
25 representing Defense. The --

1 THE COURT: Got it.

2 MS. BURNHAM: -- other two people are -- have
3 not been on this case for months, so.

4 THE COURT: Oh. Okay.

5 MS. BURNHAM: Thank you, Your Honor.

6 THE COURT: That's fine.

7 All right. Mr. Keimbaye, yes? You had your
8 hand up.

9 MR. KEIMBAYE: Yes. Ms. Burnham, would you
10 mind repeat the last statement again one more time, please?

11 THE COURT: She's just -- she's just saying
12 that it's just her and Ms. Rosen as Defense Counsel. And
13 instead of referring to them as the lawyers, to refer to them
14 as Defense Counsel during the introductions, which I will do.

15 MR. KEIMBAYE: Well, Your Honor, that's what
16 the Plaintiff has been doing the whole entire time.
17 Plaintiff, you know, never mentioned --

18 THE COURT: No one's --

19 MR. KEIMBAYE: -- about the --

20 THE COURT: -- no one's -- no one's
21 criticizing anything that you've said, Mr. Keimbaye. That
22 was a request that Ms. Rosen --

23 MS. BURNHAM: I wasn't --

24 THE COURT: -- I'm sorry, that Ms. Burnham
25 made to the Court.

1 Are you handling voir dire this afternoon,
2 Ms. Burnham?

3 MS. BURNHAM: I am. I will change my -- I
4 will change my name if I can do that. I'm just not super
5 tech savvy, unless that's something you need to do on your
6 end. But I think I can change it on my own.

7 THE COURT: I'm not sure if you can. But I
8 can do it.

9 MS. BURNHAM: Okay. And then my only other
10 question was based on how this morning went. We are
11 wondering if -- we would like to strike outside of the
12 presence of the jury panel --

13 THE COURT: Yeah.

14 MS. BURNHAM: -- to avoid potential issues
15 that we faced this morning.

16 THE COURT: I'm not going to do that.

17 MS. BURNHAM: Okay.

18 THE COURT: Okay. I mean, for one thing, it's
19 clumsy. And for another thing, I just never do it. I mean,
20 if everyone were here in court --

21 MS. BURNHAM: Okay.

22 THE COURT: -- we would do it the way we're
23 doing it now. Peremptory challenges, of course, will be
24 outside the presence of the panel.

25 MS. BURNHAM: Okay.

1 THE COURT: Okay. All right. So I'm just
2 going to give this another minute.

3 Mr. Keimbaye, you wanted -- so Mr. John is
4 going to be flying here to Seattle; is that correct?

5 MS. BURNHAM: Yes, Your Honor.

6 THE COURT: So can you get him here by
7 Thursday?

8 MS. BURNHAM: Yes, Your Honor.

9 THE COURT: Okay. So, Mr. Keimbaye, it
10 sounds, from what Ms. Rosen said this morning, that Mr. John
11 won't be here tomorrow, but he'll be here on Thursday. So
12 you can call him as a witness on Thursday. So that leaves
13 tomorrow. Are there any witnesses that are under the control
14 of the Defense that you want to call tomorrow?

15 MR. KEIMBAYE: Yes, Your Honor, based on
16 Plaintiff -- surprisingly, Your Honor, witness -- estimated
17 witness examination was not, you know, sent to Plaintiff for
18 a week, until yesterday.

19 THE COURT: So, Mr. Keimbaye, I'm sorry, but
20 time is short. So could you just answer my question for me,
21 please? Is there a Defense witness or a witness who is under
22 the control of the Defendants that you would like to call as
23 your witness tomorrow?

24 MR. KEIMBAYE: Yes, of course.

25 THE COURT: Who?

1 MR. KEIMBAYE: I will go through the list
2 and --

3 THE COURT: No. No. I mean, you should know
4 by now who you're going to call -- who you'd like to call
5 tomorrow.

6 MR. KEIMBAYE: Karla Bruner.

7 THE COURT: Who?

8 MR. KEIMBAYE: Karla Bruner.

9 THE COURT: Karla Bruner's --

10 MS. BURNHAM: She was not subject --

11 THE COURT: Yeah. So we're only talking about
12 people who are managing -- who are either Defendants or are
13 managing agents of the Defendants. So that would be Mr. John
14 or Mr. Kortendick, and was there somebody else? No. That
15 would be it.

16 MS. BURNHAM: No, Your Honor.

17 THE COURT: And Mr. John --

18 MR. KEIMBAYE: If Mr. Kortendick is available,
19 yes.

20 MS. BURNHAM: Mr. Kortendick --

21 THE COURT: Is he out of state, too?

22 MS. BURNHAM: He's also out of state, and
23 because we didn't have notice, we weren't able to notify him.
24 We did notify him earlier this morning, based on the
25 conversation this morning, that he may be called Thursday.

1 So Thursday is the soonest he can be here.

2 THE COURT: Okay. So I think we're stuck with
3 Thursday. So tomorrow you can call yourself as a witness,
4 Mr. Keimbaye, and you may be able to read portions of
5 Ms. Husted's declaration -- excuse me, not declaration, but
6 deposition -- as long as you've established that she's
7 unavailable, so the Court can make a finding that she's not
8 available to testify at trial.

9 MR. KEIMBAYE: Yes, Your Honor. I would like
10 to get a clarification on that one.

11 THE COURT: Yeah?

12 MR. KEIMBAYE: Because for deposition
13 publication, it is the duty of the Court to publish it or the
14 parties?

15 THE COURT: Do you understand what publishing
16 means?

17 MR. KEIMBAYE: And that --

18 THE COURT: Publishing it for the parties just
19 means that we take the original transcript, and the clerk
20 opens it. It doesn't provide any information to the jurors.
21 The jurors don't get to take it and read it.

22 MR. KEIMBAYE: In my opinion, when you
23 mentioned by publication, I thought it would be displayed to
24 the jury.

25 THE COURT: That's incorrect, sir.

1 MR. KEIMBAYE: And so when will that be done?
2 During the examination?

3 THE COURT: I don't understand your question.

4 MR. KEIMBAYE: The position on publication.

5 THE COURT: So, typically, a deposition is
6 published if a portion of it is being read to the jury or if
7 it's being used for impeachment and shown to the -- and shown
8 to the witness in that fashion. But publication of a
9 deposition does not mean that the deposition goes to the
10 jury. It just means that certain portions of the deposition
11 can be used in front of the jury, or read to the jury, or
12 read to a witness.

13 MR. KEIMBAYE: And so Plaintiff is not allowed
14 to use the deposition of Ms. Husted as exhibit during his
15 presentation?

16 THE COURT: So you have made certain
17 designations of portions of Ms. Husted's deposition testimony
18 that you want to have read to the jury.

19 MR. KEIMBAYE: Yes.

20 THE COURT: And I have started looking through
21 that and the Defense objections and the Defense
22 counterdesignations. I've made some rulings on that, but I'm
23 not finished yet because I just haven't had time to go
24 through the whole thing yet.

25 So there will be portions, assuming that you

1 can provide evidence to the Court that she is unavailable to
2 testify --

3 MR. KEIMBAYE: Yes. Yes.

4 THE COURT: -- there will be portions of her
5 deposition that can be read to the jury. So you would be
6 either reading them to the jury or having someone come in to
7 help you to read it to the jury.

8 MR. KEIMBAYE: I would like the second
9 parties, Your Honor.

10 THE COURT: Well, it's -- we don't provide
11 that second party. So that would be up to you to bring
12 someone. And then, typically, you might read the questions,
13 and they might read her answers.

14 MR. KEIMBAYE: I see. I see.

15 THE COURT: Okay.

16 MS. BURNHAM: And, Your Honor, for purposes of
17 preparing, do we have a deadline for when we would know
18 whether or not we have a ruling on that? I mean, certainly
19 before -- I assume we would get some notice, in terms of who
20 he's calling.

21 THE COURT: Right. Well, why don't you assume
22 that after his testimony, he might be trying to read into the
23 record portions of Ms. Husted's deposition, assuming that he
24 can make the showing that she's unavailable. And I will try
25 to get through all of that after court today. I don't know

1 when else I can do it. The afternoon recess is not going to
2 be long enough.

3 MR. KEIMBAYE: Your Honor, I will be emailing
4 it to your office and to the other parties after this jury
5 selection.

6 THE COURT: Okay. You --

7 MR. KEIMBAYE: I mean --

8 THE COURT: You really --

9 MR. KEIMBAYE: -- I mean -- I mean the
10 declaration.

11 THE COURT: Okay. You can email it, but you
12 also need to e-File it and provide e-working copies, okay?
13 We're not --

14 MR. KEIMBAYE: Yes.

15 THE COURT: -- email is really not the proper
16 vehicle for this. Okay?

17 MR. KEIMBAYE: Yes. Yes, Your Honor.

18 THE COURT: All right. We did have Juror 33,
19 I think, join us.

20 THE BAILIFF: Yes.

21 THE COURT: Is that going to be it? Because I
22 think we need to move forward.

23 THE BAILIFF: So we also have 51 that has
24 joined.

25 THE COURT: I do have 51 as well? Okay.

1 Good.

2 THE BAILIFF: 51 and 33. But we still do not
3 have 53 and 57.

4 THE COURT: Well, we don't have 40, either. I
5 mean, you gave me a list of people that we don't have.

6 THE BAILIFF: All right.

7 THE COURT: And I'm taking 33 and 51 off that
8 list. Is there anyone else I can take off that list?

9 THE BAILIFF: I need to see who came in, so.

10 THE COURT: Okay. Well, in the meantime, I'm
11 going to close the breakout room so that we can get started.

12 MS. BURNHAM: Okay. Thank you, Your Honor.

13 THE COURT: Just a minute. My cursor is not
14 cooperating with me, which happens sometimes, for some
15 reason.

16 MR. KEIMBAYE: Were you asking me a question
17 earlier?

18 THE COURT: No.

19 MR. KEIMBAYE: Okay. Thank you.

20 THE COURT: Hold on. Let me -- I want to
21 close the room, is what I want to do. Yeah. There we go.

22 All right. Well, we're back in the main
23 session. I'll unmute the courtroom. All right.

24 (Prospective Jury enters at 1:47:45 p.m.)

25 THE COURT: Good afternoon. This is Judge

1 Darvas. Can I please have all the jurors turn on your video
2 so that we can see you? And then the bailiff might be
3 shuffling you around a little bit, based on the numbers.

4 THE BAILIFF: If I move them on my screen, it
5 will not be in order anymore, so.

6 PRELIMINARY INSTRUCTIONS

7 THE COURT: All right. That's fine. Then
8 just number them. Thank you.

9 All right. Thank you for hanging in there
10 with us, members of the jury panel. As I said, I'm Judge
11 Andrea Darvas. I want to welcome you to jury selection in
12 this case.

13 We are on the record. I'm -- my staff and I
14 are here in courtroom West 728 at the King County Courthouse
15 in Seattle. The doors are unlocked. Members of the public
16 are free to come in and observe these proceedings.

17 And the purpose of these proceedings is to
18 talk to you all so that we can be sure that we are empaneling
19 a jury that can be equally fair to both sides, who can be
20 impartial, and decide this case based on the evidence that's
21 presented at trial, and on the law that I will be giving to
22 the jury and not influenced by other extraneous factors.

23 It is important that when it comes time for
24 you to speak, that you speak clearly and that we avoid
25 talking at the same time because the official record of these

1 proceedings is kept through a digital audio recording system.

2 Let me make some introductions at this time.

3 The Plaintiff in this case is Dominique Keimbaye.

4 Mr. Keimbaye is representing himself. And I'll go ahead and
5 invite him to introduce himself to you.

6 Mr. Keimbaye, you're muted, so you have to
7 unmute so we can hear you. Thank you.

8 MR. KEIMBAYE: I apologize.

9 Members of the jury, thank you for being here.
10 My name is Dominique Keimbaye.

11 THE COURT: Thank you.

12 The Defendants are Providence Regional Medical
13 Center of Everett and Christopher Kortendick. The Defendants
14 are represented by their attorneys, Kathryn Rosen and
15 Margaret Burnham.

16 And I think we have Ms. Burnham here this
17 afternoon, if you'd like to introduce yourself and your
18 clients.

19 MS. BURNHAM: Good afternoon, members of the
20 jury. My name is Margaret or Meg Burnham. And I'm
21 representing Providence, along with Chris Kortendick. And
22 I'm joined by my cocounsel, Katie Rosen.

23 THE COURT: All right. Welcome to all of you.

24 Members of the jury, as you saw in the
25 questionnaire that you filled out online, this is a civil

1 case that was brought by Mr. Keimbaye as the Plaintiff
2 against the Defendants, Providence Regional Medical Center
3 Everett and Christopher Kortendick.

4 The Plaintiff claims that during his
5 employment as an anesthesia technician, between
6 December 27th, 2017, and June 22, 2018, he was subjected to
7 harassment and a hostile work environment based upon his
8 race, national origin, and sex, by Defendant Christopher
9 Kortendick and others.

10 Mr. Keimbaye alleges that the Defendant,
11 Providence, knew of the harassment and failed to take prompt
12 remedial action to correct it. Mr. Keimbaye claims that he
13 suffered injuries and damages as a result of the Defendants'
14 actions. The Defendants deny these claims.

15 If you are selected to serve as a juror in
16 this case, it will be your duty to determine, based on the
17 evidence presented at trial, whether Mr. Keimbaye was injured
18 as a result of harassment or a hostile work environment,
19 whether any of the named Defendants are liable for such
20 injuries. And, if so, what reasonable compensation should be
21 paid to Mr. Keimbaye for such injuries.

22 It's important that you discharge your duties
23 without discrimination, meaning that any bias regarding race,
24 religious beliefs, national origin, disability, sexual
25 orientation, gender, or gender identity of any party, any

1 witness, or any lawyer should play no part in the exercise of
2 your judgment throughout the trial.

3 Mr. Keimbaye and Defense Counsel have the
4 right, as well as the duty, to challenge any jurors for
5 cause. And I want to say a word about what that means.

6 The law defines a challenge for cause as a
7 challenge for a bias. And, in our culture today, the word
8 bias has picked up, in lots of people's minds, some fairly
9 ugly connotations.

10 And when we hear the word bias, for many of
11 us, we immediately think about fairly ugly things, like
12 racism or sexism or discrimination, based on religion or
13 national origin or sexual orientation or gender identity.
14 And, indeed, those things are all part of what we call bias.

15 But in a court of law, the term bias is
16 actually broader than that. It includes anything about a
17 juror's deeply-held beliefs or life experiences that would
18 make it difficult for you to decide this case objectively and
19 impartially, being equally fair to both sides.

20 And let me give you an example that does not
21 have anything to do with this particular case, but just
22 provides an example about how broadly we view the term bias
23 in court.

24 From time to time, in this courthouse and,
25 indeed, in my own courtroom, we have trials where a Defendant

1 in a criminal case has been accused of molesting a child.

2 And, inevitably, when we gather a group of
3 potential jurors -- a larger group of potential jurors and
4 start to talk to them about potentially being a juror in the
5 case, always there will be some people on the panel who
6 themselves have been victim of sexual assault or abuse, or
7 someone they care about very deeply and are very close to has
8 been a victim of sexual assault or abuse. Or perhaps someone
9 they're very close to has been accused of having committed
10 sexual assault or abuse, perhaps wrongly accused.

11 And for people with those life experiences,
12 the subject of molesting a child can bring up very, very
13 powerful emotions. And for some potential jurors, they can
14 set those aside and say, nope, that's a different situation.
15 I'm going to listen to the evidence with an open mind, and
16 I'm going to be able to weigh it objectively and impartially
17 and be completely fair.

18 But for some other jurors -- potential jurors,
19 those emotions are really overwhelming. And they don't feel
20 like they can set them aside and they don't feel like that's
21 a good case for them to be objective and impartial. And it
22 doesn't make them unfair people or bad jurors or anything
23 along those lines. It's just -- it's an acknowledgment that
24 human beings are complicated. And they might be very fine
25 jurors in a completely different kind of a case, maybe a

1 robbery case, maybe a case like this case.

2 But not every potential juror is well-suited
3 for every kind of case. And there are no right or wrong
4 answers to questions that are asked during the jury selection
5 process.

6 We do ask that you look within yourselves and
7 see if there is anything about your deeply-held beliefs or
8 your life experiences that would interfere with your ability
9 to be an objective and impartial juror in this case and then
10 to share that with us. And we won't judge you for it. We
11 will be very respectful of what you have to say.

12 But for both parties to have a fair trial,
13 it's really important that the jurors who are actually
14 empaneled to decide this case are folks that can be objective
15 and impartial and equally fair to both sides.

16 All right. So thank you so much for filling
17 out the electronic questionnaire. I know that took a good
18 chunk of your time. It was tremendously helpful. And some
19 potential jurors have already been excused based on responses
20 to the questionnaire.

21 Your responses to the questionnaire have been
22 shared with Mr. Keimbaye and with Defense Counsel.

23 You know, it looks like we might have
24 another -- we might have another juror joining us. Yeah.
25 Juror 40, I think, is just now joining us.

1 So, J., I'll let you go ahead and --

2 THE BAILIFF: Yeah. Because I can't change
3 the --

4 THE COURT: No. No. You don't need to change
5 the order. Just put a number.

6 THE BAILIFF: All right.

7 THE COURT: Thanks. I don't see him yet.

8 THE BAILIFF: I see him.

9 THE COURT: Oh. Okay. Perfect. Thank you.
10 Yeah. Just give him a number, and we'll move on.

11 Mr. Hattet (phonetic), it sounds like you --
12 or looks like you just joined us. This is Judge Darvas. And
13 I introduced Mr. Keimbaye and Ms. Burnham and the case,
14 although my introduction to the case is pretty much identical
15 to what was on your questionnaire. So I'm really glad you
16 were able to join us. Thank you.

17 Let's see. If you are selected to serve as a
18 juror -- oh, no. I already did that part. Sorry. Okay.

19 So thank you for filling out that electronic
20 questionnaire. Minus your contact information, your
21 responses have been shared with Defense Counsel and with
22 Mr. Keimbaye. And based on your answers to the
23 questionnaire, we may have some follow-up questions for a
24 number of you. And then Defense Counsel and Mr. Keimbaye
25 also may have some other questions to ask you after I am done

1 with that.

2 Again, the purpose of this jury selection
3 process is to make sure that we select a jury that's free
4 from any outside or preexisting biases that might interfere
5 with your ability to fairly decide this case, to decide it
6 objectively and impartially, based only on the evidence
7 that's presented to you during this trial and on the law that
8 you receive in this courtroom.

9 And evidence basically only consists of two
10 things. One is the sworn testimony of witnesses and the
11 other is exhibits that are admitted into evidence. Those
12 might be documents, photographs, records, those types of
13 things.

14 So those are the only two sources of
15 information that our jurors should be using to decide this
16 case, plus the instructions of law that I will be giving to
17 the jury at the conclusion of the case.

18 All right. If a question touches on something
19 you feel is too intensely personal, that you would prefer
20 answering that question or questions on that particular topic
21 outside the presence of the rest of the jury panel, please
22 bring that to my attention.

23 And the best way to get my attention is to
24 wave in front of your camera because I can spot a moving
25 target usually faster than I can spot the Zoom hand raise.

1 But since the Zoom hand raise does bring you to the very top
2 of my screen, I will see that eventually. So you can use
3 that if you're more comfortable using that.

4 So why are we here on Zoom? This is something
5 we have only been doing since the pandemic. Maybe I'm kind
6 of Paleolithic, but I had never even heard of Zoom before the
7 spring of 2020.

8 The way we used to do it, is we'd bring a big
9 group of you, maybe 150 people or so, and summon you to the
10 courthouse, have you gather in a big room, have an
11 orientation session, and then 40 or 50 of you would get
12 called into a courtroom, and we'd spend most of the rest of
13 the day asking you questions as a group, including some
14 individual questions as well.

15 COVID, of course, completely upended that.
16 And some really smart people on my bench -- of which I was
17 not one because I wasn't one of the most tech-savvy people --
18 figured out ways for us to continue doing trials, even jury
19 trials, without having people all together in one room.

20 And so we devised this jury questionnaire that
21 shortens the jury selection process because we already have a
22 fair amount of information that you've provided to us. And
23 then we can follow up with you in half-a-day. So that's why
24 we're doing it this way.

25 But the trial itself will be in person, here

1 in the courtroom in the King County Courthouse in downtown
2 Seattle. So I just wanted to make that clear.

3 Your identities are by the juror number that
4 was assigned to you for this trial, which is on the screen
5 below you next to your name. Please don't change that.

6 Try to conserve as much bandwidth as possible.
7 It doesn't look like anyone's using a virtual background.
8 That's helpful because that does eat up bandwidth.

9 Additionally, if you can maybe persuade the
10 other people in your household not to be using the Wi-Fi
11 system while we're on the jury selection process, that will
12 be helpful as well.

13 Please don't communicate or interact with
14 anyone else while you're on this Zoom hearing with us. We do
15 need your complete attention. We will take a break around
16 2:30. But until then, and after we're finished with that, we
17 will need your full attention until the hearing is concluded.

18 If you need to deal with something urgently,
19 please get my attention by raising your hand and waving.
20 But, otherwise, the best advice I can give you about protocol
21 for the Zoom jury selection process is just behave the way
22 you would expect to behave if you were sitting here
23 physically in the courtroom.

24 If you're sitting here physically in the
25 courtroom, you're not checking your phone, you're not using

1 any apps or programs, other than what you need for this Zoom.
2 And, of course, if you were in the courtroom, you wouldn't
3 even be doing that. You're not reading anything. You're not
4 communicating with anyone else. You're not checking your
5 email or your chat, or looking something up on the internet,
6 or checking social media or any of the myriad things we tend
7 to do when we have a screen in front of us and keyboard.

8 So, again, please treat this process the same
9 way you would treat it if you were here physically in court.
10 Don't use the chat function, please, or the record function.

11 I will take a screenshot at some point this
12 afternoon so that it can be sent to Defense Counsel and to
13 Plaintiff, just so they can kind of remember your faces when
14 it comes time to do the ultimate selection of the jurors who
15 will actually be hearing and deciding this case.

16 If you do become disconnected, please try to
17 reconnect right away. If you can't, please contact the
18 bailiff as soon as possible. Her contact information will be
19 on the email that she sent you to invite you to this session.

20 All right. I don't think I have to go into
21 all this other stuff. But a couple things that are really,
22 really important and that aren't necessarily intuitively
23 obvious. Please don't try to do any research or look
24 anything up that might relate, in any way, to this case, the
25 location, the issues, the parties, or the lawyers.

1 Why is that? Well, this case has been pending
2 for a couple of years.

3 And, I'm sorry, I see Juror Number 56 holding
4 a phone up. Do you need that for audio? Sorry. We can't
5 hear you because you're muted.

6 PROSPECTIVE JUROR NUMBER 56: I was trying to
7 call the bailiff to ask a question, since I can't use the
8 chat.

9 THE COURT: Okay. Well, you can ask me --

10 PROSPECTIVE JUROR NUMBER 56: Can you hear me
11 now?

12 THE COURT: Yeah. We can hear you fine.
13 What's the question?

14 PROSPECTIVE JUROR NUMBER 56: Okay. Oh. I'm
15 just wondering, since we started a little bit late, I'm just
16 wondering how long we will be here? I just have an
17 appointment starting, and I'm wondering if I need to send my
18 patients away.

19 THE COURT: So we should recess before 4:15,
20 hopefully a little earlier than that.

21 PROSPECTIVE JUROR NUMBER 56: Okay.

22 THE COURT: Okay?

23 PROSPECTIVE JUROR NUMBER 56: Okay. So I
24 might need to send -- cancel all my patients this afternoon.
25 Okay. Okay.

1 THE COURT: We'll take a break at two --

2 PROSPECTIVE JUROR NUMBER 56: All right.

3 Thanks so much.

4 THE COURT: We'll take a break at 2:30, and
5 you can -- you can do that at that time. Will that work for
6 you?

7 PROSPECTIVE JUROR NUMBER 56: Yeah. I'll have
8 somebody else do it for me.

9 THE COURT: Perfect. Perfect. Thank you so
10 much.

11 PROSPECTIVE JUROR NUMBER 56: Okay.

12 THE COURT: All right. So the reason why we
13 don't want you looking anything up or exposing yourself to
14 any information is because, as I said, this case has been
15 pending for a while. And the parties have had an opportunity
16 to do what we call discovery. They've had the opportunity to
17 interview any witnesses that they feel might have relevant
18 information to the case.

19 (Scrolling.) Oh, good grief.

20 They had an opportunity to exchange documents
21 and records that might be pertinent to the case. And they're
22 prepared to challenge any evidence that they do not agree
23 with.

24 But what they can't do is challenge
25 information that a juror might bring into the decision-making

1 process from outside the courtroom. There's no way to
2 cross-examine something you read on the internet or something
3 that someone else told you or communicated to you about, or
4 something that you read anywhere else besides the internet.
5 People, I guess, do still read things in hard copy.

6 So we have to ask you to refrain from that.
7 It's really important, and it's essential for a fair trial,
8 that all of the information that you bring into your
9 decision-making process as jurors is evidence that you
10 receive in the courtroom and the law that you receive in the
11 courtroom.

12 In terms of the instructions of law, you will
13 get those in hard copy, so you don't have to be anxious about
14 having to memorize a bunch of legal stuff. Everybody will
15 get their own individual copies of the instructions of law
16 before you begin your deliberations.

17 All right. The other really important rule is
18 that you not communicate about the case with anyone in any
19 form with one exception, and the people in your life who need
20 to know schedule, you can share the schedule with them.

21 But, other than that, you are not to
22 communicate about what the case is about or who the parties
23 are or who Counsel might be or what the issues are, whether
24 it's a civil case or a criminal case. None of that.

25 Feel free to blame me if people are interested

1 in what's going on in your life right now as a potential
2 juror. Feel free to tell them that the mean trial judge has
3 instructed you you're not allowed to discuss anything about
4 the case, other than the schedule, unless one of two things
5 happens: Either you have been excused as a juror, or you've
6 been empaneled as a juror, the trial is over, you've
7 deliberated, and the jury has reached a verdict.

8 At that point, I will discharge the jury from
9 all of the limitations that are being placed on you as
10 jurors. And, at that point, you'll be free to talk about the
11 case. So it's only a temporary vow of silence. It's not a
12 permanent one.

13 Let me talk about the schedule. So we conduct
14 trials only Mondays through Thursdays. Courthouse is open on
15 Friday. We're busy doing a lot of things. Sentencing
16 calendars, motions hearings, other kinds of hearings. But we
17 don't conduct trials on Fridays. And we don't ask jurors to
18 come in on a Friday unless the jury is deliberating and
19 hasn't had time to reach a verdict by the end of the court
20 day on Thursday.

21 So this week, after today, we will be in
22 session, tomorrow, Wednesday; and the day after tomorrow,
23 Thursday. And then you're free on Friday, Saturday, and
24 Sunday. And then we would need you Monday through Thursday
25 next week, and possibly Friday next week if the jury is

1 deliberating and hasn't reached a verdict yet by the end of
2 the court day on Thursday.

3 Our court day starts at nine in the morning,
4 and we go until noon. Midmorning, typically around 10:30 or
5 so, we take a 15-minute recess. During the recess, of
6 course, jurors, you know, can get something to drink, can use
7 the facilities, stretch, just, you know, relax for a few
8 minutes.

9 Then, we recess again at noon. And,
10 typically, the noon recess is for 90 minutes, until 1:30 in
11 the afternoon. Depending on how things are going, we may
12 occasionally only recess for 60 instead of 90 minutes. But
13 we'll always take at least a 60-minute noon recess.

14 And then we go until 4:00 p.m. Midafternoon,
15 typically around 2:30, we'll take another 15-minute recess.
16 And then we recess the court day at four.

17 If there's a witness on the witness stand who,
18 another five or ten minutes will wrap up their testimony,
19 rather than make them come all the way back to court the next
20 day, we might go slightly past the four o'clock hour. But we
21 will pretty reliably have the jurors done and out of here by
22 4:15 every day.

23 So that is the schedule. Before we ask you
24 any questions, there is an oath or affirmation required. So
25 I'm going to ask all of the jurors to please unmute your

1 microphones and then please raise your hand hands for me.

2 Thank you.

3 Do you and each of you solemnly swear or
4 affirm that you will truthfully answer such questions as may
5 be asked of you by the Court or the Plaintiff or Defense
6 Counsel concerning your qualifications to act as jurors in
7 this case? If yes, please say, I do.

8 PROSPECTIVE JURY SWORN

9 THE PROSPECTIVE JURY COLLECTIVELY: I do.

10 VOIR DIRE BY THE COURT

11 THE COURT: Thank you very much. Is there
12 anyone who did not respond affirmatively? Okay. Perfect.
13 Thank you.

14 So, before I actually ask you any questions,
15 let me say a word about how important it is that you're all
16 here.

17 We're taking a chunk out of your lives, and we
18 certainly recognize that. But it's so incredibly important
19 that you've made yourselves available and taken time away
20 from your busy lives and your other obligations to make
21 yourself available for jury service.

22 This is such an important service that the
23 Constitution of our United States, as well as the
24 Constitution of our State of Washington guarantees the right
25 to a jury trial to people bringing civil claims. Not just to

1 people who are accused of crimes, but to people bringing
2 civil claims, such as this one.

3 So I literally cannot do my job without you.
4 It is not an easy thing to do. And we recognize that. And I
5 think it's the most difficult thing that our nation asks of
6 its citizens, short of putting on a uniform and serving in
7 the military.

8 And I realize we compensate you next to
9 nothing for doing this. The jury fee was set in 1957, by the
10 way, when the minimum wage was a dollar an hour. That was
11 long before many of you were even born. So I'm sorry about
12 that. But it's still tremendously important, and we really,
13 really appreciate your service.

14 We do recognize that even though it's an
15 inconvenience and a relative hardship for just about
16 everybody, there may be some jurors that for whom serving as
17 a juror in this case, given the schedule that I've outlined,
18 is really a very onerous or an extraordinary hardship.

19 You know, if you or someone in your family has
20 a surgery scheduled, for example, during the course of this
21 trial, or you have nonrefundable tickets somewhere, or
22 there's some other major life event that's occurring during
23 the trial that you really cannot reschedule, we want to be
24 able to consider that.

25 Before I ask, there's one caveat that I need

1 to share and that is that I can excuse a juror for a hardship
2 that's personal to you or to your immediate family.

3 For instance, if you work for an employer that
4 will not pay you while you're on jury service, and serving as
5 a juror in this case would jeopardize your ability to pay
6 your rent or your mortgage, or put food on the table, we
7 don't ask that you do that.

8 But I often hear from potential jurors who are
9 concerned about what their absence from work might do for
10 their clients or for their employers, or for their coworkers,
11 and, typically, I can't excuse jurors for that reason.

12 And if you think about it, it kind of makes
13 sense. Those of you who work for other people and get paid
14 for your time, you're getting paid because what you do for
15 your employer is very valuable to your employer. And you not
16 being there is going to be a hardship, whether it's your
17 coworkers or your employer or other people.

18 But if we were to excuse potential jurors for
19 those reasons, then our juries would likely be comprised only
20 of retired people and unemployed people, and that's really
21 not a fair representation of the community. And we strive to
22 have our jurors be comprised of people who represent the
23 broad diversity of our community. So I hope that makes sense
24 to everyone.

25 So, with that in mind, is there anyone who

1 feels that you can't serve as a juror in this case because of
2 a hardship? I'm not seeing hands. All right. Wonderful.

3 Next question: Is there anyone here who has
4 concerns for any reason about your ability to be a fair and
5 impartial juror in this case? So both parties start off with
6 a level playing field in your mind. Anybody with any
7 concerns about that? All right. I'm not seeing hands.

8 Last question from me: Members of the jury
9 will have a duty to follow the instructions of law that I
10 will be giving to the jury. Is there anyone who has
11 concerns, for any reason, about your ability to follow the
12 instructions of law that I'll be giving to the jury? I'm
13 still not seeing hands.

14 All right. Thank you very much, everyone.
15 So, at this time, I will turn the questioning over to the
16 parties.

17 Mr. Keimbaye is the Plaintiff. The Plaintiff
18 has the burden of proof. And so, in most aspects of the
19 trial, the Plaintiff goes first. So would you please give
20 your attention at this time to Mr. Keimbaye?

21 VOIR DIRE BY THE PLAINTIFF

22 MR. KEIMBAYE: Thank you, members of the jury
23 panel. I will be asking you questions. And these questions
24 address every member of the jury panel.

25 I will warn you that I have a thick accent,

1 and French is my first language, so please pay attention. I
2 might pronounce some words that might sound in French, and so
3 if you need me to repeat, I can repeat the question again.

4 Question number one: What fascinates and
5 qualifies you to get involved in the jury duty? You are
6 welcome to raise your hands and answer the question.

7 Yes. Go ahead, Number 33.

8 THE COURT: So, I'm sorry. Which number,
9 Mr. Keimbaye?

10 MR. KEIMBAYE: Number 33. Yes.

11 THE COURT: So there is no Juror Number --
12 labeled number 3. The lowest number juror is 33. Is that
13 who you're calling on?

14 MR. KEIMBAYE: Yes.

15 THE COURT: Okay.

16 MR. KEIMBAYE: I see the hands.

17 PROSPECTIVE JUROR NUMBER 33: Hi. As I listed
18 in my questionnaire, I do have a degree in political science.
19 So I have a deep abiding respect for the process and the
20 ethics required of a jury member. Us political science
21 majors all can joke around we're the only people on the
22 planet that want jury duty. So I take this responsibility
23 very seriously. And I am one of the few people on the planet
24 that will show up with a smile.

25 MR. KEIMBAYE: Thank you. Anybody else?

1 All right. Question number 2: How long have
2 you been practicing the jury duty if you have done it
3 already?

4 PROSPECTIVE JUROR NUMBER 44: I'll go. This
5 is 44. I served on a jury probably 30 years ago. That's the
6 only time I have served and have not been called since that
7 time. And I was fully employed, so that actually worked in
8 my favor. Now that I'm retired, I am much more available to
9 serve on a jury. So I'm looking forward to that.

10 MR. KEIMBAYE: Thank you. Anybody else?

11 Next question: Do you have to travel from
12 outside of Seattle metro area and stay to take part in this
13 jury -- jury selections?

14 Okay. Go ahead, Number 60, and then Number 59
15 next.

16 PROSPECTIVE JUROR NUMBER 60: I can make it.
17 But I live in Bothell, so it is, like, maybe a 35-minute
18 drive each day.

19 MR. KEIMBAYE: Thank you.

20 PROSPECTIVE JUROR NUMBER 59: Same here. I
21 live in Kirkland, just on the South Side of Bothell. So it,
22 too, would be about a 35-40 minute commute for me each day.

23 MR. KEIMBAYE: Thank you.

24 Number 62, yes?

25 PROSPECTIVE JUROR NUMBER 62: I live in

1 Kirkland as well. So it will be some travel for me as well.

2 MR. KEIMBAYE: Go ahead, Number 40. Yes?

3 PROSPECTIVE JUROR NUMBER 40: I'm in
4 Snoqualmie. I don't know the exact minutes. I don't drive
5 often. I think about 40.

6 MR. KEIMBAYE: Thank you.

7 51, and then 39, please.

8 PROSPECTIVE JUROR NUMBER 51: This doesn't
9 answer your question directly, but I don't own a vehicle. So
10 getting to the courthouse would be slightly difficult for me,
11 but.

12 MR. KEIMBAYE: I see.

13 39?

14 PROSPECTIVE JUROR NUMBER 39: Oh. I am also
15 in Snoqualmie.

16 MR. KEIMBAYE: Okay. All right.

17 Go ahead, Number 58.

18 PROSPECTIVE JUROR NUMBER 58: I guess similar
19 to Colton, I bike everywhere. So I guess if the Court didn't
20 have bike parking, that probably would be an issue for me.

21 MR. KEIMBAYE: Anybody else?

22 My next question: How long has any one of you
23 been living in this state?

24 Go ahead, Number 36, and then 35 next.

25 PROSPECTIVE JUROR NUMBER 36: I moved here in

1 1995.

2 PROSPECTIVE JUROR NUMBER 35: I've lived here
3 for about 13 years.

4 MR. KEIMBAYE: 13? Okay. Thank you.

5 Go ahead 56, yes, and then 59.

6 PROSPECTIVE JUROR NUMBER 56: My whole life,
7 so about 45 years.

8 MR. KEIMBAYE: Okay.

9 59, yes?

10 PROSPECTIVE JUROR NUMBER 59: Same. My whole
11 life, 51 years.

12 MR. KEIMBAYE: Okay. And 62?

13 PROSPECTIVE JUROR NUMBER 62: About 35 years.

14 MR. KEIMBAYE: And 33, and then 34.

15 PROSPECTIVE JUROR NUMBER 33: It'll be three
16 years next month.

17 MR. KEIMBAYE: Three years? Okay.

18 PROSPECTIVE JUROR NUMBER 34: 46 years next
19 week.

20 MR. KEIMBAYE: Okay. Thank you.

21 I see some hands. Okay. 49, yes? And
22 then --

23 PROSPECTIVE JUROR NUMBER 49: 40 years.

24 MR. KEIMBAYE: Okay. 40, and then 30 -- 58?

25 PROSPECTIVE JUROR NUMBER 40: Four years.

1 MR. KEIMBAYE: Four years. Okay.

2 PROSPECTIVE JUROR NUMBER 58: Also four years.

3 MR. KEIMBAYE: Okay.

4 54?

5 PROSPECTIVE JUROR NUMBER 54: I've been here
6 47 years.

7 MR. KEIMBAYE: 47. Okay. Thank you.

8 THE COURT: You have a couple of virtual hands
9 up, Mr. Keimbaye. 44 and 55.

10 MR. KEIMBAYE: Okay. Go ahead, 44.

11 PROSPECTIVE JUROR NUMBER 44: Yeah. I was
12 born here. I moved away and have been now back for about 38
13 years.

14 MR. KEIMBAYE: 38 years? Okay.

15 And 55?

16 PROSPECTIVE JUROR NUMBER 55: Yeah. I've been
17 here about 16 years.

18 MR. KEIMBAYE: 16 years. Okay. All right.

19 Next question: Is it morally okay to take
20 part in the jury duty in order to jeopardize any party's
21 claim?

22 Go ahead, Number 34.

23 PROSPECTIVE JUROR NUMBER 34: Can you just
24 repeat the question? I'm not sure I fully understand.

25 MR. KEIMBAYE: Yes. Is it morally okay to

1 take part in the jury duty in order to jeopardize any party's
2 claim?

3 Go ahead, 49.

4 PROSPECTIVE JUROR NUMBER 49: If you're asking
5 is it okay to get on the jury in order to hurt someone, I
6 would say no.

7 MR. KEIMBAYE: Thank you.

8 Go ahead 35, yes.

9 PROSPECTIVE JUROR NUMBER 35: Yeah. I would
10 agree and say that it's not morally correct to get on the
11 jury in order to jeopardize the case.

12 MR. KEIMBAYE: Thank you.

13 And 34?

14 PROSPECTIVE JUROR NUMBER 34: I agree with
15 that as well. Not morally okay.

16 MR. KEIMBAYE: Thank you.

17 Go ahead 62. Yes?

18 PROSPECTIVE JUROR NUMBER 62: I agree with the
19 others. It is not okay.

20 MR. KEIMBAYE: Thank you.

21 Yes, go ahead, 33?

22 PROSPECTIVE JUROR NUMBER 33: Yeah. It is not
23 okay to disrespect the process and the legality and the
24 ethics of providing a fair trial.

25 MR. KEIMBAYE: Thank you.

1 44?

2 PROSPECTIVE JUROR NUMBER 44: I would agree.

3 MR. KEIMBAYE: Thank you.

4 All right. Go ahead, 59, yes. And then 56.

5 PROSPECTIVE JUROR NUMBER 59: Yeah. I agree.

6 It's not okay for you to take part in a jury to cause other
7 people pain.

8 MR. KEIMBAYE: 56, and then 55.

9 PROSPECTIVE JUROR NUMBER 56: Agree with
10 everyone else.

11 MR. KEIMBAYE: Thank you.

12 PROSPECTIVE JUROR NUMBER 56: Yeah. I, too,
13 would agree with everyone else.

14 MR. KEIMBAYE: Okay.

15 40, yes?

16 PROSPECTIVE JUROR NUMBER 40: No. Not okay.

17 MR. KEIMBAYE: Thank you.

18 My next question: Do you have preexisting
19 biases against complaining color employees like Plaintiff
20 Mr. Keimbaye?

21 Go ahead 58, and then 56 next.

22 PROSPECTIVE JUROR NUMBER 58: No. I do not.

23 MR. KEIMBAYE: Thank you.

24 PROSPECTIVE JUROR NUMBER 56: Are you asking
25 if we have a bias against a person of color?

1 MR. KEIMBAYE: Preexisting, you know, biases,
2 thoughts, or beliefs.

3 PROSPECTIVE JUROR NUMBER 56: About you, in
4 particular?

5 MR. KEIMBAYE: In general with, you know,
6 color employees or minority, I would say.

7 PROSPECTIVE JUROR NUMBER 56: Okay. Thank
8 you. No. No. I do not.

9 MR. KEIMBAYE: Thank you.

10 49?

11 PROSPECTIVE JUROR NUMBER 49: No. I do not.

12 MR. KEIMBAYE: Okay.

13 35?

14 PROSPECTIVE JUROR NUMBER 35: No, sir, I do
15 not.

16 MR. KEIMBAYE: Okay.

17 59?

18 PROSPECTIVE JUROR NUMBER 59: No. I do not.

19 MR. KEIMBAYE: 33, and then 54?

20 PROSPECTIVE JUROR NUMBER 33: No. I do not.

21 PROSPECTIVE JUROR NUMBER 54: No. I don't.

22 MR. KEIMBAYE: 36, yes?

23 PROSPECTIVE JUROR NUMBER 36: No. I do not.

24 MR. KEIMBAYE: Okay. 55, and then 62?

25 PROSPECTIVE JUROR NUMBER 55: No. I do not.

1 PROSPECTIVE JUROR NUMBER 62: No. I do not.
2 MR. KEIMBAYE: Number 44, and then 34?
3 PROSPECTIVE JUROR NUMBER 44: I do not.
4 PROSPECTIVE JUROR NUMBER 34: No. I don't.
5 MR. KEIMBAYE: Thank you.
6 Go ahead, Number 40. Yes?
7 PROSPECTIVE JUROR NUMBER 40: No bias.
8 MR. KEIMBAYE: Thank you. Anybody else?
9 This is a similar question, but do you have
10 preexisting opinions to believe that employers and the HRs
11 are always right in their firing decisions?
12 Go ahead, Number 33.
13 PROSPECTIVE JUROR NUMBER 33: No. I do not.
14 MR. KEIMBAYE: 34?
15 PROSPECTIVE JUROR NUMBER 34: No. I don't.
16 MR. KEIMBAYE: 44?
17 PROSPECTIVE JUROR NUMBER 44: I've had
18 extensive experience, and I do not.
19 MR. KEIMBAYE: 36 and 49?
20 PROSPECTIVE JUROR NUMBER 36: No. I do not
21 think that.
22 PROSPECTIVE JUROR NUMBER 49: No. I do not
23 think that.
24 MR. KEIMBAYE: Thank you.
25 55?

1 PROSPECTIVE JUROR NUMBER 55: No. I do not.

2 MR. KEIMBAYE: 54?

3 PROSPECTIVE JUROR NUMBER 54: No. I do not.

4 MR. KEIMBAYE: 58?

5 PROSPECTIVE JUROR NUMBER 58: No. I do not.

6 MR. KEIMBAYE: Okay.

7 62, and then 40.

8 PROSPECTIVE JUROR NUMBER 62: No. I do not.

9 MR. KEIMBAYE: Thank you.

10 PROSPECTIVE JUROR NUMBER 40: No.

11 MR. KEIMBAYE: Thank you. Let me see.

12 Anybody else?

13 Okay. Number 56, yes, go ahead.

14 PROSPECTIVE JUROR NUMBER 56: I also do not.

15 MR. KEIMBAYE: Thank you.

16 Well, that's all I have to ask you, and thank
17 you for your answers.

18 THE COURT: All right. Thank you very much,
19 Mr. Keimbaye.

20 Before we turn to Ms. Burnham for her first
21 round of questions on behalf of the Defendants, it's almost
22 exactly 2:30, so we're going to take our break.

23 Before we do that -- don't leave yet. Please
24 remember, don't communicate about the case with anyone, other
25 than the schedule, but no other aspect of the case, please.

1 Don't look anything up or expose yourself to information that
2 might relate to the case. You can leave where you're
3 sitting, but please stay connected to the Zoom meeting.
4 It'll just be much faster to resume. And please be back on
5 camera at 2:45. All right?

6 Thank you, everyone. We'll be at recess for
7 now.

8 (Recess at 2:30:06 p.m., recommencing at 2:45:18 p.m.)

9 (The following proceedings were held inside the presence of
10 the prospective jury:)

11 THE COURT: All right. Welcome back,
12 everybody. I'm going to have to reorder everybody.
13 Everybody always gets out of order when we take a break. You
14 can imagine how much fun all Zoom jury trials were when we
15 were doing them up until very recently.

16 All right. Looks like we have everybody. So,
17 at this time, members of the jury, I'll ask you to please
18 give your attention to Ms. Burnham for her first round of
19 questions on behalf of the Defendants.

20 MS. BURNHAM: Good afternoon, Your Honor,
21 Mr. Keimbaye.

22 And, Your Honor, should we wait for
23 Mr. Keimbaye to join us? It doesn't look like he's --

24 THE COURT: Oh. Is he not -- is he not here?

25 MS. BURNHAM: I don't -- oh. He just unmated.

1 So I'm not sure if he's here and his --

2 THE COURT: If he unmuted, then he's here.

3 Okay.

4 MR. KEIMBAYE: I'm here.

5 THE COURT: Okay.

6 MS. BURNHAM: Yeah. I just didn't want to get
7 started.

8 THE COURT: Welcome, Mr. Keimbaye.

9 Thank you for pointing that out. With such a
10 crowded screen, it can be a little difficult sometimes. So
11 thank you.

12 MR. KEIMBAYE: Thank you.

13 VOIR DIRE BY THE DEFENDANTS

14 MS. BURNHAM: Let me start over. Thank you
15 all so much for being here this afternoon. I want to let you
16 know how much we appreciate you all being here and being
17 willing to serve on a jury. And I really appreciate you all
18 being honest. I know this is a very kind of strange, quick
19 way to have to share a lot of information about yourself with
20 a bunch of strangers, which can feel very odd. But this is
21 an important part of our judicial system. So I just wanted
22 to start by thanking you all for being here.

23 Now that you all have heard a little bit from
24 Judge Darvas, and you also heard from Mr. Keimbaye, is there
25 anybody who's sitting here right now who feels like this case

1 just may not be a good fit for them? Perhaps they would do
2 better on a different case under different facts or
3 circumstances, but this case just wouldn't be a good fit?

4 Number 56?

5 PROSPECTIVE JUROR NUMBER 56: Is this beyond
6 the reasons that we mentioned in our questionnaire?

7 MS. BURNHAM: No. It can even include the
8 reasons that you mentioned in your questionnaire. And feel
9 free to just share whatever comes to mind when ask any
10 question.

11 PROSPECTIVE JUROR NUMBER 56: Oh. Okay.
12 Yeah. My father was a doctor in Everett for 40 years and
13 worked extensively with Providence and had some strong
14 opinions. So I tried to share as much as I could about that
15 in the questionnaire so that I wouldn't waste your time
16 today.

17 MS. BURNHAM: And can you share a little bit
18 about what those strong opinions are?

19 PROSPECTIVE JUROR NUMBER 56: Particularly
20 that it's a religiously-run healthcare organization, and
21 the -- I'm trying to think how to word it. I guess, perhaps,
22 the overreach of the -- of the religious organization on
23 patients' healthcare and acceptable decisions that could be
24 made.

25 MS. BURNHAM: Thank you for sharing that with

1 us. That's -- and just for everyone, that's a perfect
2 answer. That's exactly the stuff that, you know, we're
3 asking for, is for you all to just kind of give us an insight
4 into who you are.

5 And Juror 56, when you say that your father
6 held those views, did his views have an impact on your views?

7 PROSPECTIVE JUROR NUMBER 56: I think so.
8 Yes. I think that would be safe to say.

9 MS. BURNHAM: Okay. And how long have you
10 held those views?

11 PROSPECTIVE JUROR NUMBER 56: Well, he has
12 worked with Providence, perhaps, since 1977. So I would say
13 probably lifelong.

14 MS. BURNHAM: Okay. So about -- math is not
15 my strong suit. I will not try to do it in front of
16 everybody. But around 45 years? Is that --

17 PROSPECTIVE JUROR NUMBER 56: Yeah. I would
18 say that. Yeah.

19 MS. BURNHAM: Okay. And do you think that
20 based on that, you know, kind of lifelong feeling, that the
21 Plaintiff and the Defendant in this case may not start out on
22 a level playing field?

23 PROSPECTIVE JUROR NUMBER 56: I think that's
24 safe to say. Yeah.

25 MS. BURNHAM: And would you say that you would

1 | tend to favor one side over the other, especially in this
2 | case, knowing that it's Providence versus an individual?

3 | PROSPECTIVE JUROR NUMBER 56: Yes. I think
4 | I -- I would err on the side of the Defense -- or, excuse me,
5 | of the Plaintiff.

6 | MS. BURNHAM: Okay. And would that make it
7 | difficult for you to serve on this jury?

8 | PROSPECTIVE JUROR NUMBER 56: I definitely
9 | think that, whether I'm aware of it or not, I don't know that
10 | I would be completely objective.

11 | MS. BURNHAM: All right. Your Honor, I
12 | respectfully move to strike Juror 56.

13 | THE COURT: All right. Thank you, Juror 56.
14 | We appreciate your candor. That's exactly what we're looking
15 | for, is for people to look inside themselves and, you know,
16 | to tell us if they can't be equally fair to both sides. And
17 | we're very respectful of that.

18 | It sounds like you'd be a great juror, because
19 | you're a very thoughtful person, in a different kind of a
20 | case. So I'm going to go ahead and excuse you from this one.
21 | And thank you. So maybe you don't have to cancel your
22 | patients after all. I don't know.

23 | PROSPECTIVE JUROR NUMBER 56: Okay. We'll see
24 | what we can do.

25 | THE COURT: All right.

1 PROSPECTIVE JUROR NUMBER 56: All right.
2 Thank you so much.

3 THE COURT: All the best.

4 MS. BURNHAM: Thank you.

5 PROSPECTIVE JUROR NUMBER 56: Bye.

6 (Prospective Juror Number 56 excused.)

7 MS. BURNHAM: Juror 35, I see you have your
8 hand raised.

9 PROSPECTIVE JUROR NUMBER 35: Yeah. So I have
10 worked in healthcare for about five years now. But I have
11 had, like, a myriad of health issues for my entire life.

12 I'm going to go ahead and say that I agree
13 with -- with the juror who was just dismissed and say that
14 when a medical corporation, right, like a big medical system,
15 comes from a religious perspective, it is incredibly hard for
16 me to -- to come at it from an objective perspective, for
17 sure.

18 MS. BURNHAM: And thank you so much, Juror 35.
19 That's really important information to share. And how long
20 have you held that belief?

21 PROSPECTIVE JUROR NUMBER 35: I was born in a
22 Catholic hospital. So -- and it is the hospital that I had
23 gone to in Illinois before moving here, throughout my entire
24 life, and some of the effects of the medical care that I
25 received there have continued throughout my 36 years, so.

1 MS. BURNHAM: Okay. Okay. And that sounds
2 like a pretty strong belief. Is that something that you
3 would agree -- I don't want to put words in your mouth.
4 Would you consider that to be a strong belief?

5 PROSPECTIVE JUROR NUMBER 35: Yeah.
6 Absolutely.

7 MS. BURNHAM: Okay. And based on that strong
8 belief, would that make it difficult in this case for you to
9 sit on the jury and make a decision on this case?

10 PROSPECTIVE JUROR NUMBER 35: Yes. I think
11 because of this and just, like, my general feeling on
12 corporations in general, it would be hard for me to be
13 objective to the company, specifically.

14 MS. BURNHAM: Okay. And so are you saying it
15 would be hard for you to be fair in this case?

16 PROSPECTIVE JUROR NUMBER 35: Yes.
17 Absolutely.

18 MS. BURNHAM: Your Honor, I respectfully move
19 to strike Juror Number 35.

20 THE COURT: Okay. Just to clarify, Juror 35.
21 Certainly, the employer in this case is a hospital and
22 medical center. But this is a case involving employment.
23 Does that make any difference to you, or do you still believe
24 that it would be hard for you to be fair toward the Defendant
25 in this case -- or the Defendants, plural, in this case?

1 PROSPECTIVE JUROR NUMBER 35: I -- to kind of
2 put it bluntly --

3 THE COURT: Yeah.

4 PROSPECTIVE JUROR NUMBER 35: -- think that
5 most corporations are evil and wrong. So it would be
6 incredibly hard for me to be objective, just in general.
7 But, again, coming from, like, the religious medical
8 perspective adds an extra layer to the difficulty that I
9 would have.

10 THE COURT: Understood. Okay. Thank you so
11 much. I'll go ahead and excuse you, then. And thank you so
12 much for your time.

13 MS. BURNHAM: Thank you very much, Juror 35.
14 (Prospective Juror Number 35 excused.)

15 MS. BURNHAM: Okay. We have some more hands.
16 Juror 33?

17 PROSPECTIVE JUROR NUMBER 33: As I disclosed
18 in the questionnaire, I do have a history of my --

19 MS. BURNHAM: I'm sorry, Juror 33. I'm not
20 trying to interrupt you. But your video turned off maybe
21 just for me. Oh. There you are. Sorry. Go ahead.

22 PROSPECTIVE JUROR NUMBER 33: I'm so sorry.

23 MS. BURNHAM: No problem. You disappeared
24 from my screen. I didn't know where you went. Okay. Go
25 ahead.

1 PROSPECTIVE JUROR NUMBER 33: I also have dogs
2 that swear it's playtime right now, and I can't do anything
3 about that. I'm very sorry.

4 As I disclosed in the questionnaire, my career
5 has been impacted by sexual harassment. In my case, it was a
6 female manager harassing my male coworkers. But also
7 artificially promoting their career over mine, undeservedly,
8 when, by every measure and by every sane person's opinion, I
9 was more qualified than them. I was also good friends with
10 one of the victims of the harassment. So I did have a
11 front-row seat to the impact it had on him.

12 This is all to say, if harassment does turn
13 out from the facts of the case to be valid, I will have
14 strong empathy with the Plaintiff. I do not think it will
15 cause me to see mistreatment that is not there if the facts
16 do not say so.

17 MS. BURNHAM: Okay. That is great
18 information. Thank you for sharing that. I know, again,
19 this is so awkward, right, when you're sharing all this
20 stuff, and then you have your dogs, and everything's in your
21 household. So thank you for sharing with us that
22 information.

23 Do you think, based on -- well, let me ask you
24 a follow-up question. You said that something happened to
25 one of your coworkers, and you kind of were in the front

1 | seat, and you could see what was going on. When was that?

2 | PROSPECTIVE JUROR NUMBER 33: Give me a
3 | second. Five years ago, I think.

4 | MS. BURNHAM: Okay. And did that, in any way,
5 | change your view of corporations in general?

6 | PROSPECTIVE JUROR NUMBER 33: No. Just the
7 | individual involved.

8 | MS. BURNHAM: Okay. And do you think, because
9 | of that experience, that, in this case, you're more likely to
10 | feel like Mr. Keimbaye starts out a little bit ahead in terms
11 | of his burden of proof, or to say it a different way, that
12 | we're not starting on a level playing field so that Defendant
13 | and Plaintiff are not starting at the same point? Do you
14 | think, because of your personal experience, you may feel that
15 | Mr. Keimbaye starts out a little bit ahead?

16 | PROSPECTIVE JUROR NUMBER 33: If that does
17 | happen, it will be entirely unconscious. As I said earlier,
18 | I take the responsibility of jury duty very seriously. I am
19 | aware that my experiences might color my gut reactions. And
20 | I do -- if selected, I do plan on mitigating it to the best
21 | of my ability.

22 | MS. BURNHAM: Okay. And I'm hearing you say
23 | that you're, you know -- and I appreciate that you're taking
24 | this so seriously. I know, again, this is -- this is a part
25 | of our civic duty, so we really appreciate that you're here.

1 And I'm hearing you say that you might not be able to
2 guarantee that you won't be influenced by your feelings. Is
3 that -- is that fair, or -- is that a fair characterization
4 of what you just said?

5 PROSPECTIVE JUROR NUMBER 33: If I am
6 influenced, it will be entirely unconscious, and I am aware
7 that I need to be monitoring for any unconscious biases, and
8 I will be self-monitoring myself.

9 MS. BURNHAM: Okay. Thank you very much,
10 Juror 33.

11 I saw another hand, but now it's disappeared.
12 There it is. 59.

13 PROSPECTIVE JUROR NUMBER 59: Yeah. Similar,
14 I guess, to 33. I have been a victim of harassment, myself.
15 It was a number of years ago. However, left a major
16 impression on me, ongoing, from my career then -- from then
17 forward.

18 I've also observed the harassment of others in
19 the workplace. I have been, in the past, what you call a
20 whistleblower. Most recently, within the last 18 months, at
21 my current organization, called out my boss at the time, as I
22 witnessed what she was doing to other people.

23 So I don't feel like I could really be
24 impartial. I feel pretty strongly, based on what I read that
25 you had sent -- pretty strongly about where I would -- where

1 I would stand.

2 MS. BURNHAM: And, just to kind of follow up
3 on that -- and, again, thank you so much for sharing that --
4 will it be hard for you to be fair and impartial in this
5 case? Is that what I'm hearing you say?

6 PROSPECTIVE JUROR NUMBER 59: I believe it
7 will be. Yeah. I feel pretty strongly, based on what I have
8 seen happen. I've lived through a lot of, probably, events
9 that, maybe, he has gone through. Just in the investigation
10 process of what I have reported on. I've been a manager of
11 somebody who has had reports against them. I've also been
12 through a lot of these human resource processes and feel
13 pretty strongly about how I would -- how it would go.

14 MS. BURNHAM: And do you feel like some of
15 those personal experiences that you just shared -- and thank
16 you for sharing those -- do you feel like those personal
17 experiences are going to impact your ability to fairly judge
18 this case?

19 PROSPECTIVE JUROR NUMBER 59: I do believe so.
20 It's been something that I have had in the forefront of my
21 leadership career since that first incident happened over 25
22 years ago. All the way forward, it's part of why I'm in the
23 master's program that I'm in now around organizational
24 leadership and ethics. So I feel pretty strongly about this.

25 MS. BURNHAM: Okay. Thank you for sharing

1 with us, Juror 59.

2 Your Honor, I respectfully move to strike
3 Juror 59.

4 THE COURT: Juror 59, can I just follow up for
5 a moment?

6 PROSPECTIVE JUROR NUMBER 59: Yeah.

7 THE COURT: So the jury in this case is going
8 to decide, first of all, whether Mr. Keimbaye was harassed or
9 subjected to a hostile work environment. I think all of us
10 would agree that these are really bad things. But the jurors
11 have to decide whether they occurred. And, then, if they
12 decide that they occurred, would then move on to, you know,
13 what fair and reasonable compensation should be.

14 Are you saying that you think that you
15 wouldn't be able to be impartial in making that determination
16 as to whether the hostile work environment or harassment in
17 the workplace actually occurred because of the experiences
18 that you've shared with us?

19 PROSPECTIVE JUROR NUMBER 59: Yes.

20 THE COURT: Okay. All right. Fair enough.
21 Thank you. I just wanted to make sure I understood your
22 answers.

23 In that case, I think I have to let you go.
24 Thank you so much for your time.

25 MS. BURNHAM: Thank you very much, Juror 59.

1 THE COURT: All right.

2 PROSPECTIVE JUROR NUMBER 59: Bye.

3 (Prospective Juror Number 59 excused.)

4 MS. BURNHAM: Juror 51, I see that you have
5 your virtual hand raised.

6 PROSPECTIVE JUROR NUMBER 51: Yeah. I'll take
7 a shot at answering a question. I guess, at risk of sound
8 like an echo chamber from one of the previously-dismissed
9 jurors, I know that there's a complicated, I guess to put it
10 lightly, relationship between religiously-oriented or
11 affiliated, I guess, healthcare organizations and the ability
12 of patients to access, you know, previously guaranteed
13 abortion rights.

14 I know at a high level, Providence is a
15 religiously-oriented healthcare system with a negative view
16 of abortion rights. And I do think that I would hold some
17 bias against the organization because of that as a staunch
18 believer of abortion rights.

19 MS. BURNHAM: Thank you so much, Juror 51.
20 And that's a great example for the rest of you. If there's
21 something that any other juror says where you're thinking,
22 man, I feel that way, too, please feel free to let me know.
23 That helps this process kind of go a little bit smoother and
24 faster.

25 So, Juror 51, it sounds like that's a pretty

1 strong opinion that you -- that you hold. Is that a fair
2 characterization?

3 PROSPECTIVE JUROR NUMBER 51: Yeah.

4 MS. BURNHAM: Okay. And how long have you
5 held that opinion?

6 PROSPECTIVE JUROR NUMBER 51: Probably since I
7 got involved with, you know, I guess, political movements. I
8 don't know, since I was 18. I'm 30 now. So 12 years.

9 MS. BURNHAM: Okay. Thank you for doing the
10 math for me. In terms of that strong opinion, do you think
11 that because you've held that strong opinion for 12 years,
12 that that's going to impact your ability to be impartial in
13 deciding this case?

14 PROSPECTIVE JUROR NUMBER 51: Yeah. I mean, I
15 would try to be impartial. But I think it's hard to, you
16 know, ignore long-held, you know, biases. So yes.

17 MS. BURNHAM: And do you think you're going to
18 bring those long-held biases in with you into jury
19 deliberation, if you were chosen to be a jury -- on the jury?

20 PROSPECTIVE JUROR NUMBER 51: Yes. Yes.

21 MS. BURNHAM: Your Honor, I respectfully move
22 to strike Juror 51.

23 THE COURT: Okay. And, Juror 51, again, just
24 for clarification. To the best of my knowledge, this case
25 has absolutely nothing to do with reproductive choice or

1 | abortion. But are you saying that you have negative feelings
2 | toward Providence because of that issue, and that that would
3 | influence your decision-making on this case because
4 | Providence is a party?

5 | PROSPECTIVE JUROR NUMBER 51: Yes. Understood
6 | that the case does not -- is not adjacent to abortion rights
7 | directly.

8 | THE COURT: Right.

9 | PROSPECTIVE JUROR NUMBER 51: But the
10 | Defendant -- or, Defendant -- I'm not sure if my usage of the
11 | term is correct -- but, you know, at the end of the day, it's
12 | an organization that promotes, I guess, ideals that I don't
13 | align with. So, to answer your question directly, yes.

14 | THE COURT: Okay. Fair enough. Thank you for
15 | clarifying that. In that case, I think I need to let you go.
16 | Again, we need jurors who are going to be having the parties
17 | start at a level playing field in this case. And so thank
18 | you very much for sharing your thoughts with us. But I do
19 | need to let you go as a juror in this case.

20 | PROSPECTIVE JUROR NUMBER 51: Understood.

21 | MS. BURNHAM: Thank you very much.

22 | PROSPECTIVE JUROR NUMBER 51: I'm assuming, do
23 | I drop now?

24 | THE COURT: Yeah. You can just go ahead --

25 | PROSPECTIVE JUROR NUMBER 51: -- is that

1 my -- okay.

2 THE COURT: -- and leave the Zoom meeting.

3 Thank you very much.

4 PROSPECTIVE JUROR NUMBER 51: Thank you.

5 (Prospective Juror Number 51 excused.)

6 MS. BURNHAM: Okay. Does anyone else want to
7 opine or talk about what we just heard from other jurors?

8 Number 58? I'm sorry if I missed you before.

9 PROSPECTIVE JUROR NUMBER 58: No. You didn't
10 miss me.

11 MS. BURNHAM: Okay. Cool.

12 PROSPECTIVE JUROR NUMBER 58: I mean, I'm in a
13 pretty similar situation to the previous juror. I've even,
14 like, volunteered with Planned Parenthood as defense against
15 antiabortion protestors before, where I've, like, helped
16 escort patients into the facilities and defended them
17 against, you know, violent protestors outside.

18 But, you know, up until this discussion
19 started happening, I had no idea who the Defense or Plaintiff
20 or anything was, so I had no idea that they were a religious
21 organization or a part of any of that. So I don't know if
22 it'll actually affect my decision-making. I can't really say
23 whether or not ahead of time. I just do also hold very
24 strong opinions in that section.

25 MS. BURNHAM: Okay. And let's talk about that

1 a little bit. So, as Judge Darvas has reminded a couple
2 jurors, this is not a case about medical treatment.

3 PROSPECTIVE JUROR NUMBER 58: Yeah.

4 MS. BURNHAM: This is an employment case. But
5 do you feel that your experiences involving religious
6 organizations or companies will impact your ability to view
7 both the Plaintiff and the Defense on an equal playing field
8 as we start out this case?

9 PROSPECTIVE JUROR NUMBER 58: I don't know if
10 I can say for sure because, like I was saying, I have no idea
11 who the Defense was up until these discussions started, had
12 never looked into anything like that. Like, I only
13 use -- I've only been here four years, and I've only used UW
14 Medicine for everything I've needed. I didn't know about any
15 of the other companies out here or anything like that. So I
16 never really looked into any of them. So I don't know if I
17 could say for sure if it would affect my opinions or not.

18 MS. BURNHAM: Are you concerned that it may
19 affect your opinion?

20 PROSPECTIVE JUROR NUMBER 58: I suppose --
21 yeah. Like, I suppose if anything around their religious
22 involvement came up during the case of the course, that would
23 definitely affect my opinion.

24 MS. BURNHAM: So knowing that Providence has a
25 religion affiliation, are you inclined to favor the Plaintiff

1 in this case?

2 PROSPECTIVE JUROR NUMBER 58: I suppose
3 slightly.

4 MS. BURNHAM: Okay. And will that impact your
5 ability to have impartiality throughout this case when you're
6 reviewing the evidence?

7 PROSPECTIVE JUROR NUMBER 58: I suppose it
8 slightly would. I can't -- I can't think it would be, like,
9 you know, a huge issue, but I can't say that it would not
10 show up in my thoughts.

11 MS. BURNHAM: Okay. And so if you had two
12 options, whether or not you thought you would be influenced
13 and not be able to be impartial, or you will be impartial and
14 hear the jury instructions and follow those, where do you
15 fall in there?

16 PROSPECTIVE JUROR NUMBER 58: I think it's
17 really difficult to answer because it still depends on what
18 comes up during the course of the trial.

19 MS. BURNHAM: Sure.

20 PROSPECTIVE JUROR NUMBER 58: I think I'd
21 weigh slightly towards that it would, like, affect, my
22 impartiality.

23 MS. BURNHAM: Okay. And if this were a
24 different kind of case that didn't involve a religious
25 organization, do you think that you would be able to give an

1 answer that you wouldn't be -- you would be impartial in that
2 case?

3 PROSPECTIVE JUROR NUMBER 58: Yeah. Yeah.
4 Like, up until that was mentioned, I was feeling totally fine
5 about this case.

6 MS. BURNHAM: And do you feel it would be hard
7 for you to be impartial in this case, knowing that there's a
8 religious organization involved?

9 PROSPECTIVE JUROR NUMBER 58: Yeah. Probably.
10 I also have pretty extensive opinions -- my wife used to work
11 for a religious organization doing refugee resettlement. And
12 we have some pretty, pretty bad opinions regarding the way
13 that they've treated some of the refugees that came into our
14 country and around their kind of forced, like, religious
15 beliefs upon people coming from countries that did not hold
16 the same religious beliefs.

17 MS. BURNHAM: Thank you very much, Juror 58.

18 Your Honor, I respectfully move to strike
19 Juror 58.

20 THE COURT: All right. Juror 58, I have to
21 ask you for clarification --

22 PROSPECTIVE JUROR NUMBER 58: Yeah.

23 THE COURT: -- as well. Sorry about that. To
24 the best of my knowledge, nothing about the Defendant
25 hospital being operated by the Sisters of Providence is going

1 to come up in the trial. I mean, this just has to do with
2 workplace conditions.

3 And, again, to the best of my knowledge, it
4 has nothing to do with anyone trying to proselytize or anyone
5 trying to either impose religious beliefs, or treat employees
6 in a certain way or not treat them in a certain way due to
7 religion. I think religion just has nothing to do with this
8 case.

9 But just hearing that the hospital is, indeed,
10 owned by the Sisters of Providence, does that translate, in
11 your mind, to, you know, they don't start at a level playing
12 field with me because I have really strong feelings about
13 religious organizations?

14 PROSPECTIVE JUROR NUMBER 58: Yeah. Yeah. I
15 think the big thing there is just knowing that the Plaintiff
16 is coming here from another country and with my experience,
17 with my wife and us, you know, working with a lot of refugees
18 coming from other countries and seeing how a religious
19 organization treated them a little poorly --

20 THE COURT: Right.

21 PROSPECTIVE JUROR NUMBER 58: -- would
22 definitely affect my decision-making.

23 THE COURT: Okay. That's -- I certainly
24 understand that. Thank you so much, sir. I'll go ahead and
25 excuse you, then.

1 PROSPECTIVE JUROR NUMBER 58: Okay.

2 MS. BURNHAM: Thank you very much, Juror 58.

3 (Prospective Juror Number 58 excused.)

4 THE COURT: And we're way past the 20 minutes
5 at this point, so let me just check with Mr. Keimbaye.

6 Mr. Keimbaye, do you have any follow-up
7 questions for the jury panel?

8 MR. KEIMBAYE: No, Your Honor.

9 THE COURT: Okay. Let me see. Hold on a
10 second, please. Okay.

11 So, Ms. Burnham, how much more time would you
12 like?

13 MS. BURNHAM: Five minutes?

14 THE COURT: Oh. That's fine. Sure. Go
15 ahead.

16 MS. BURNHAM: Didn't know what I could ask
17 for, so I thought I'd start there.

18 THE COURT: I'd give you a little more than
19 that if you wanted it, since we have the time --

20 MS. BURNHAM: Okay.

21 THE COURT: And Mr. Keimbaye is indicating he
22 doesn't have more questions. But yeah. Will ten do it?

23 MS. BURNHAM: Ten will be great. And I might
24 not even need ten.

25 THE COURT: Perfect.

1 MS. BURNHAM: Does anybody -- and I know this
2 is an extremely personal question, so to the extent that this
3 is so personal that you would like to not talk about it in
4 front of others, please just let us know, and we can -- as
5 Judge Darvas instructed earlier, we can certainly talk about
6 this outside of the presence of everyone else.

7 But does anybody have a medical condition that
8 would make it hard for them to sit and focus during the
9 course of this trial?

10 Judge Darvas talked about our schedule. We
11 have every intention of getting this done by late next week.
12 But knowing that you will be in the courtroom and you'll be
13 sitting for -- throughout the day, and we'll take breaks, but
14 you will be sitting for long periods, does anybody have a
15 medical condition that they feel might impact their ability
16 to focus during that period?

17 THE COURT: And before you answer that
18 question, I will say if people -- if sitting isn't
19 comfortable, and people need to stand up periodically, we can
20 certainly accommodate that. Lying down, I don't know how we
21 can do that. So, with that in mind, go ahead and answer the
22 question, if people have responses.

23 MS. BURNHAM: Okay. All right. I just wanted
24 to make sure.

25 All right. Moving on. Have any of you had a

1 friend or a family member that has ever filed a complaint as
2 a result of unfair treatment? Okay. Great.

3 And because the Plaintiff is the one who filed
4 this lawsuit -- so Mr. Keimbaye, you met him earlier -- he
5 has the burden of proof in this case. So he has the burden
6 to prove his claims. Is there anyone here who would set
7 aside that standard -- so set aside that he would have to
8 prove his claims -- and would require Defense, instead, to
9 disprove his claims? And I'm sorry, that was a very
10 convoluted question, so if anybody didn't understand what I
11 said, I am happy to ask it a different way.

12 So everyone feels comfortable holding
13 Mr. Keimbaye to the burden of proof? I'm seeing a lot of
14 nodding. Great.

15 All right. And this is somewhat of a similar
16 question, but slightly different. At the end of trial, if
17 you were still on the fence, so if you didn't really know how
18 you were feeling and you didn't know, you know, if
19 Mr. Keimbaye had met his burden of proof, would any of you
20 have a hard time sending him away empty-handed?

21 34, you're making moves, but I'm not sure if
22 you want me to call on you.

23 PROSPECTIVE JUROR NUMBER 34: No. I just am
24 worried that I'm not -- I just don't know, like, the right
25 answer as to how I'm going to feel without having gone

1 through any of this process.

2 MS. BURNHAM: Okay.

3 PROSPECTIVE JUROR NUMBER 34: Or actual
4 information.

5 MS. BURNHAM: Okay.

6 PROSPECTIVE JUROR NUMBER 34: I mean, I am an
7 empathetic person, so.

8 MS. BURNHAM: No. That's -- that's fair.
9 That's fair. This is just more, you know, you all know
10 yourselves much better than I do.

11 So I guess another way to ask this question is
12 if you were doing jury selection, is there anyone here who
13 feels like they would dismiss themselves? Or, to put it
14 another way, that, you know, you feel like you, again, just
15 aren't really a right fit for this case based on some beliefs
16 that you may hold?

17 This feels a little bit like college.
18 Everyone's being very quiet. No one wants to answer. That's
19 okay.

20 Have any of you ever served as a group leader?
21 I'm talking Girl Scouts, I'm talking maybe in your HOA. I
22 don't know, at college.

23 All right. Number 44, tell me about that.

24 PROSPECTIVE JUROR NUMBER 44: Yeah. I
25 currently serve as president of our Homeowners Association.

1 MS. BURNHAM: Okay.

2 PROSPECTIVE JUROR NUMBER 44: In the course of
3 my career, I served several times in both direct and somewhat
4 indirect organizations that are affiliated with my work as a
5 leader, so.

6 MS. BURNHAM: Okay.

7 Number -- I'm going to call on some people
8 maybe I haven't heard from yet. Number 49.

9 PROSPECTIVE JUROR NUMBER 49: I don't know
10 exactly what you mean by group leader. But I was a manager
11 of small and larger groups within the organization that I
12 worked for, and I -- I was a member of the YMCA board of
13 directors for the Bellevue YMCA, and I had a number of other
14 leadership-type positions like that.

15 MS. BURNHAM: Okay. Thank you.

16 I'm going to call on 55, and then 62.

17 PROSPECTIVE JUROR NUMBER 55: Yeah. I've
18 worked in management roles in my current position, as well as
19 doing, like, project management as well. And, many years
20 ago, I was in a management position with my -- with
21 Starbucks. And then before that, just other group leader
22 stuff. I've coached basketball, too.

23 MS. BURNHAM: That's a good one.

24 PROSPECTIVE JUROR NUMBER 55: So a good group.

25 MS. BURNHAM: Yeah.

1 62?

2 PROSPECTIVE JUROR NUMBER 62: I've been
3 department head. I've headed some committees for a
4 parent-teacher organization. That type of thing.

5 MS. BURNHAM: I'm just going to run to my next
6 question. I apologize, 34. I just want to make sure I can
7 get to it before we run out of time.

8 Are any of you going to have a hard time
9 weighing the evidence the same from Defense Counsel versus
10 the Plaintiff? But because Plaintiff is representing
11 himself, my question is, essentially, are any of you going to
12 have a hard time holding him to the same standard as you
13 would hold Defense Counsel? And there are no wrong answers.
14 Bueller [sic]. Okay.

15 That sounds good. All right. Do any of you
16 feel that because we're here, we're doing jury selection,
17 we've made it all the way here, that that must mean there's
18 some merit to Plaintiff's claims?

19 39, I haven't heard from you. Do you have any
20 opinion on that? Sorry to call you out. I know that's kind
21 of rude, but I just haven't heard from you. I wanted to talk
22 to you.

23 PROSPECTIVE JUROR NUMBER 39: Can you repeat
24 the question, please?

25 MS. BURNHAM: Sure. So my question was, do

1 | you have any opinion, considering that we're here now, we're
2 | doing jury selection, you know, it's gotten to trial,
3 | Plaintiff's claims have gotten to trial, that that means that
4 | there's any merit to Plaintiff's claims?

5 | PROSPECTIVE JUROR NUMBER 39: I don't think
6 | so, though I don't really understand all the ins and outs of
7 | all the legality stuff.

8 | MS. BURNHAM: Okay.

9 | PROSPECTIVE JUROR NUMBER 39: I would guess
10 | that maybe there's some sort of stance to it; otherwise, it
11 | might have been settled sooner --

12 | MS. BURNHAM: Okay.

13 | PROSPECTIVE JUROR NUMBER 39: -- than the
14 | three years that have passed. Otherwise, I don't know.

15 | MS. BURNHAM: And hearing what you've heard
16 | this afternoon, do you view the Plaintiff and the Defendants
17 | starting out on a level playing field in this case?

18 | PROSPECTIVE JUROR NUMBER 39: Not necessarily,
19 | because he's representing himself versus the other side has
20 | more representation.

21 | MS. BURNHAM: Okay. And tell me about that.
22 | What does that make you feel, or how do you feel about that?

23 | PROSPECTIVE JUROR NUMBER 39: It doesn't seem
24 | like it's a level playing field, just by number of people
25 | alone. But, you know, I don't know what the facts are.

1 Maybe the facts present themselves as a level playing field.

2 I don't know. We haven't heard too much yet, so.

3 MS. BURNHAM: Sure. That's by design that you
4 haven't heard too much yet.

5 PROSPECTIVE JUROR NUMBER 39: Yeah.

6 MS. BURNHAM: But in terms of right now,
7 coming into this trial, if you are chosen as a juror, do you
8 feel that the parties are starting out on a level playing
9 field?

10 PROSPECTIVE JUROR NUMBER 39: Not necessarily
11 because, I mean, he's one person, and then the hospital has
12 much more representation, and probably a lot more legal
13 expertise, I would guess.

14 MS. BURNHAM: And would that make it hard for
15 you in deliberations to hold Plaintiff to the same standard
16 as the Defendants?

17 PROSPECTIVE JUROR NUMBER 39: Not necessarily.
18 Because I think the burden -- you said the burden of proof is
19 on him. So, I mean, it depends on what is brought to light,
20 I suppose.

21 MS. BURNHAM: Okay. And I hear that you're
22 saying, you know, I want to be fair, I'm going to listen to
23 the evidence. But do you think you're going to have a hard
24 time being fair in this case, just based on the fact that
25 Mr. Keimbaye is representing himself?

1 PROSPECTIVE JUROR NUMBER 39: I don't know.
2 I've been on both sides of this type of thing. I've worked
3 at a corporation where I've been privy to information that
4 employees have brought suits. And then I've also been
5 somebody who's been called a whistleblower. So it kind of
6 depends on the scope. My suggestions and my touches to these
7 things were pretty minor. So I certainly think it would be
8 wrestling. But I don't know -- I don't know how strong my
9 biases are because I've not really thought about this too
10 much.

11 MS. BURNHAM: Okay. Fair enough. Fair
12 enough. Do you feel -- would you feel uncomfortable serving
13 on the jury in this case?

14 PROSPECTIVE JUROR NUMBER 39: It's not my
15 favorite. But, I mean, I don't know that any case would be.

16 MS. BURNHAM: Yeah. I won't take a poll of
17 hands whose favorite it is that's on this panel right now.
18 But -- all right. But if this were a different kind of case
19 where it didn't involve, you know, claims of harassment in
20 the workplace, do you feel like that would be the kind of
21 case where you could say without a doubt that you would be
22 neutral and fair?

23 PROSPECTIVE JUROR NUMBER 39: Yes.

24 MS. BURNHAM: Okay. And you can't say that
25 for this case; is that right?

1 PROSPECTIVE JUROR NUMBER 39: No. Because
2 I've actually had more personal experience with harassment
3 type of things.

4 MS. BURNHAM: And do you feel that that
5 personal experience impacts your view of this case as you go
6 in?

7 PROSPECTIVE JUROR NUMBER 39: In this
8 particular case, not 100 percent sure, but I do know that I
9 have experiences that could bias.

10 MS. BURNHAM: Okay. And I hear you saying
11 you're not 100 percent sure, but do you think it's more
12 likely than not?

13 PROSPECTIVE JUROR NUMBER 39: Probably, even
14 if I wouldn't want it to be.

15 MS. BURNHAM: Okay.

16 Your Honor, I respectfully move to strike
17 Juror Number 39.

18 THE COURT: So your audio was a little bit
19 hinky at my end, Juror 39.

20 MS. BURNHAM: Mine is? Oh.

21 THE COURT: No. No. No. Not Ms. Burnham's,
22 but Juror Number 39. So I think I caught it. So you're
23 concerned that you may have a bias. I guess the question is,
24 one of the reasons why we ask people to look inside
25 themselves, and, in fact, why we have the juror orientation

1 video on implicit bias, is research has found that when
2 people become aware of biases that they hold -- that they
3 unconsciously hold. Because when people have biases that
4 they're not aware of, then those biases are influencing their
5 decision-making without them being aware of that.

6 When people become aware of biases, they can
7 often set them aside and not allow them to influence the
8 decision-making.

9 So I just wanted to ask you, you know,
10 regardless of where your sympathies might lie, for example,
11 would you be able to put those aside and hold Mr. Keimbaye to
12 his burden of proof, which means he has to show more probably
13 than not that he was a victim of harassment in the workplace
14 and/or a hostile work environment at the workplace?

15 And I'll be giving instructions to the jury on
16 what that means and what findings you need to make in order
17 to decide whether he's proved that more likely than not.

18 So the question is, would you be able to do
19 that, do you think? Do you think, whatever your sympathies
20 or biases might be, could you set those aside, or do you
21 think that that's really asking too much?

22 PROSPECTIVE JUROR NUMBER 39: I think I might
23 think about them more.

24 THE COURT: Right. Well, it's not a matter of
25 thinking about them. It's really a matter of can you think

1 about them and then say, I'm going to decide this case based
2 on the evidence and not on my biases. Or do you think that,
3 nah, that's asking too much, I really can't do that?

4 PROSPECTIVE JUROR NUMBER 39: I think if I
5 were to try and make a decision, I would make it based on my
6 opinion, which would probably be influenced by my experience.

7 THE COURT: Okay. So can I translate that to,
8 you probably can't put that aside and judge this case based
9 on the evidence?

10 PROSPECTIVE JUROR NUMBER 39: Unfortunately,
11 yes.

12 THE COURT: Okay. Fair enough. And I'm not
13 trying to give you a hard time. I'm just trying to clarify
14 my understanding of what you're telling us.

15 And, given that, I think I do need to let you
16 go. And thank you so much. And I appreciate your
17 willingness to talk to us about this stuff.

18 MS. BURNHAM: Thank you so much, Juror 39.
19 (Prospective Juror Number 39 excused.)

20 MS. BURNHAM: And, Your Honor, I have no
21 further questions. Thank you.

22 THE COURT: All right. Thank you.

23 So, folks, let me tell you about next steps,
24 here. First, I'd like to remind you of the importance of
25 keeping your minds open and not communicating about the case

1 with anyone in any form, and not exposing yourself to any
2 information that might relate to this case.

3 We will -- by we, I mean my intrepid bailiff,
4 Jacqueline Ware, will get back to you if you're chosen as a
5 juror before six o'clock tonight -- probably quite a bit
6 before six o'clock tonight. So keep an eye on your email.

7 If you are chosen as a juror in this case, we
8 will need you here tomorrow morning before nine o'clock. Her
9 email will tell you when to report, where to report. For
10 those of you who aren't taking transit, there are parking
11 vouchers available if you need to drive. And she'll be
12 explaining all of that to you as well.

13 If you are chosen as a juror, it's really,
14 really important that you show up because we won't be able to
15 start without you. And let me just look at my checklist to
16 make sure I've covered everything.

17 All right. You haven't been released from
18 jury service yet, which means you're still subject to the
19 court order that requires you to appear. I already mentioned
20 no communication about the case in any form.

21 I can't remember if I talked about social
22 media. For those of you who use social media, please don't
23 say anything at all about this case, if you use it. And I
24 would urge you to not to even mention that you're involved in
25 jury selection or a potential juror because if you do that,

1 here's what's going to happen. You're either going to get a
2 whole bunch of folks asking you questions that you're not
3 permitted to answer or you'll get flooded with information
4 from a bunch of people who want to share their experiences
5 with you about jury selection or about jury service or
6 something like that. And, at best, that'll be distracting.
7 At worst, it might be a little bit confusing, since their
8 experiences are not going to be relative to your experiences.

9 So I urge you to sort of not say anything on
10 social media about jury service until either you know you've
11 been excused or the jury has reached a verdict. And then, of
12 course, you're free to communicate about the case in any form
13 that you wish.

14 I think that's about it. Does anyone have any
15 questions?

16 Yes. Juror 54?

17 PROSPECTIVE JUROR NUMBER 54: How many people
18 are on the jury?

19 THE COURT: 12 plus, if I have enough people,
20 we're going to seat one or two alternates. But I don't know
21 if I'm going to have enough people for that.

22 Any other questions? All right. Regardless,
23 really appreciate everyone's time. I hope this was at least
24 a little bit interesting for you all. And I look forward to
25 seeing many of you tomorrow. Have a very nice evening, and

1 keep an eye on your email.

2 UNIDENTIFIED FEMALE JUROR: Thank you.

3 UNIDENTIFIED MALE JUROR: Thank you.

4 (Prospective Jury exits at 3:29:02 p.m.)

5 DISCUSSION RE JURY PANEL

6 THE COURT: Okay. Jurors have gone. I have
7 one, two, three, four, five, six, seven -- we've got nine
8 jurors left on that panel. One, two, three, four, five, six,
9 seven -- yep. So we have a total of 18. But let's see --

10 MS. BURNHAM: I thought we had ten -- I
11 thought we had ten in that last panel. Hold on. Let me
12 double-check.

13 THE COURT: All right. We still have -- well,
14 we still have 33, 34, 40, 44

15 THE BAILIFF: What about 36?

16 MS. BURNHAM: 36.

17 THE COURT: Oh. You know, you're right. We
18 do have 36. You are correct. I inadvertently marked that
19 one when I meant to mark 35. And then I marked 35, but I
20 didn't sufficiently erase my mark on 36.

21 MS. BURNHAM: Bingo.

22 THE COURT: Okay. So that gives us, I
23 believe, 19 total. Okay. So here's -- here's the next
24 steps. And maybe -- Mr. Keimbaye, I know you're a veteran of
25 at least one trial. So you may already know this. But the

1 next step --

2 MR. KEIMBAYE: Not really, Your Honor.

3 THE COURT: The next step would be peremptory
4 challenges. Each side -- I don't think I'm going to have
5 enough people for -- so if we've got nine and ten, that's 19,
6 right? So that's enough for each side to get three
7 peremptory challenges. I can't give one of you four and not
8 give the other one of your four. So I think I either need
9 to -- well, I need to see how they go because not all
10 peremptory challenges get exercised.

11 We do not have time to supplement the panel
12 and still get this trial done. So if we end up not having
13 enough jurors, then either the parties need to agree to a
14 jury of less than 12, or we are going to have to have a
15 mistrial and reschedule this trial for a later date when I
16 can allow more time.

17 I, frankly, was not expecting the relatively
18 large proportion of people who really have negative feelings
19 about Providence. That was a surprise to me. And so if we
20 do this again, I will probably schedule more than one day for
21 voir dire.

22 But we're stuck with what we've got right now.
23 So I suppose what I can do is just empanel the jury of 12 and
24 not have any alternates and hope for the best. I think
25 that's probably the best thing to do, but I'm willing to hear

1 from Counsel and from Mr. Keimbaye before I do that.

2 Mr. Keimbaye, do you have any feelings about
3 that?

4 MR. KEIMBAYE: Your Honor, I may have. Yes.

5 THE COURT: Well? Do you want to share those?

6 MR. KEIMBAYE: It would be nice to see all the
7 jurors' images again, and, you know, go through.

8 THE COURT: Those were emailed to you.

9 J., you did email those out, right? Yeah.
10 Those were emailed to you, so you should have those. One
11 from the morning, one from the afternoon. I took a
12 screenshot this morning, and the bailiff emailed that to you.
13 And I took a screenshot this afternoon, and the bailiff
14 emailed that to you.

15 MR. KEIMBAYE: Okay. I'll take a quick look
16 at it.

17 THE COURT: Okay. But that doesn't answer my
18 question about how to proceed.

19 MR. KEIMBAYE: Okay. Do you mind repeating it
20 one more time, what's your --

21 THE COURT: No. I really don't want to repeat
22 it again.

23 Let's do peremptory challenges. Well, unless
24 Ms. Burnham has something she wants to say about it.

25 MS. BURNHAM: I was just going to say, I think

1 if we each have three peremptories, that leaves one
2 alternate. So Defense would be comfortable with that.

3 THE COURT: Okay. I think that's probably the
4 best way to proceed. It makes me really nervous to have a
5 trial go over a weekend and not have an alternate. Okay.

6 So do you understand how peremptory challenges
7 work, Mr. Keimbaye?

8 MR. KEIMBAYE: That's the reason why I'm
9 trying to ask for clarification.

10 THE COURT: So the rules allow each side to
11 ask the Court to excuse up to three jurors without giving a
12 reason. There's an overlay to that, which is if you exercise
13 one of those challenges without a reason against a juror who
14 appears to be a person of color, then the Court needs to look
15 at whether a reasonable observer could believe that that
16 particular challenge against that particular juror was
17 influenced by the juror's race or ethnicity.

18 But, other than that, you can ask me to excuse
19 up to three of the jurors who remain. And so can
20 Ms. Burnham.

21 Do you have a question? Yeah?

22 MR. KEIMBAYE: Yes. Besides what you are
23 asking Plaintiff to decide on, Plaintiff is a little bit
24 concerned that the jury panels is not -- is not diverse.

25 THE COURT: The jury panel is what it is,

1 Mr. Keimbaye. I don't have any control over that. And it is
2 what it is. You don't get a certain number of people of
3 color on a particular jury. They're chosen randomly. A few
4 of the people were excused because they said they couldn't be
5 unbiased. We're stuck with the people we have.

6 So do you want -- I can give you all -- I can
7 recess for five minutes and give you all a chance to review
8 your notes on what the jurors said, both in their
9 questionnaire and during the questioning today. And take
10 another look at their photos, so you can match those against
11 their names. And then we need to do peremptory challenges.

12 So would you like to take five minutes to do
13 that?

14 MR. KEIMBAYE: Yes. I can do that, Your
15 Honor.

16 THE COURT: Okay. All right. Let's recess
17 and come back -- you know, I think we have enough time. I'll
18 give you closer to ten minutes. So let's recess until 3:45.
19 Okay? Please be back at 3:45. Thank you.

20 MR. KEIMBAYE: Thank you.

21 (Recess at 3:36:11 p.m., recommencing at 3:47:16 p.m.)

22 (The following proceedings were held outside the presence of
23 the prospective jury:)

24 PEREMPTORY CHALLENGES

25 THE COURT: All right. Welcome back. Because

1 we are going to be choosing our alternate juror at random,
2 I'm just going to -- instead of filling in the box every time
3 there's a challenge, we're just going to seat the next juror.

4 So, figuratively, it'll be like every juror in
5 the box with a higher number than the one that was excused is
6 going to move over one seat, if you can imagine it that way,
7 since we don't have a designated alternate seat. And it's
8 simpler, because if you want to, what you can do on your
9 Excel spreadsheet is just delete people, although, actually,
10 I haven't deleted all the people that were excused.

11 So maybe I should -- you know, rather than
12 take the time to do that, maybe we'll just try to do it the
13 old-fashioned way and fill in the box after all. So hold on
14 one second. One, two, three, four, five, six. Okay. We'll
15 try it that way, instead.

16 All right. Mr. Keimbaye, of the jurors who
17 remain, who would you like to strike first? Or -- oh, let me
18 explain the procedure. Sorry.

19 You can tell me that you'd like to thank and
20 excuse Juror Number, whatever the number is, and give me
21 their name, just to make sure we have the right person. Or
22 you can say you accept the panel. If you accept the panel,
23 then that means that -- you know, I do need to delete these
24 people because I think that's the only way to make this work.

25 So let me do that. Sorry. I didn't

1 anticipate this problem. All right. So 1 is gone, 2 is
2 gone, 3 is here, 4 is gone, 5 is gone, goodness gracious, 7
3 is here, 8 is gone, 10 is here, 15 is here. Next juror that
4 we have is 22. Interrupt me if I've got this wrong. I think
5 I've got this right, but.

6 MR. KEIMBAYE: So far so good.

7 THE COURT: Okay. I'm only able to delete
8 these one at a time. Okay. So then 22 is the next juror
9 here. 23 is not here. 25 is here. 26 is here. 27 is not
10 here. 28 is here. 29 is not here. 30 is not here. 31 is
11 here. That's it for the morning panel.

12 And then the next number is -- okay, so 32 is
13 not here. 33 is here. 34 is here. 35 was excused. 36 is
14 here. 39 was excused. 40 is here. 44 is -- 43 is not, but
15 44 is here. And then the next number after 44 is 49. Okay.
16 So 49 is here. 50 is not. 51 was excused. 53 didn't
17 appear. So the next number we have is 54, and then 55. And
18 then 56 was excused. 57 failed to appear. 58 and 59 were
19 both excused. 60 is here, and 62 is here.

20 Okay. Thank you for bearing with me on that.
21 It's just easier to delete them as we go along.

22 So, Mr. Keimbaye and Ms. Burnham, if either of
23 you accepts the panel, that means that you give up any
24 peremptory challenge against a juror who is figuratively in
25 the box. In other words, among the first 13 who are left.

1 Okay? That means you keep your future peremptory challenges,
2 but you can only exercise them against people that were not
3 yet in the first -- the group of 13 at the time that you
4 accept the panel.

5 So, all right. So, Mr. Keimbaye, is there a
6 juror you would like to have excused?

7 MR. KEIMBAYE: So, starting with this morning
8 and this afternoon, would the Court mix them, or the -- the
9 morning --

10 THE COURT: They're going to go -- they're
11 going to go in order -- in their numerical order. So the
12 morning group is going to be --

13 MR. KEIMBAYE: First?

14 THE COURT: First. So I can -- I can give you
15 the numbers that are here, if that would be helpful to you.
16 But if you already have them, then that's fine.

17 MR. KEIMBAYE: I do. I do have numbers. And
18 I am questionable about Panel Number 7 because there is no
19 deeper clarification about her --

20 THE COURT: No. No. No. No. You don't need
21 to give me a reason. If there's a juror you'd like me to
22 excuse, just give their number and their name.

23 MR. KEIMBAYE: Yes. I would strike or excuse
24 Jean Park --

25 THE COURT: Number 7?

1 MR. KEIMBAYE: Yes, please.

2 THE COURT: All right. Is there a GR 37
3 objection? I believe Ms. Park might be Asian.

4 MS. BURNHAM: She is, Your Honor. For that
5 reason, we would just like to ask for some more information
6 in terms of --

7 THE COURT: Okay.

8 MS. BURNHAM: -- why she is being --

9 THE COURT: Yeah. I see on the -- so why do
10 you want to excuse Ms. Park?

11 MR. KEIMBAYE: Are you asking me?

12 THE COURT: Yes, I am.

13 MR. KEIMBAYE: Based on her few explanation
14 about managing a group of hundred or, you know, some sort,
15 you know, of people. And she didn't clarify deeply enough.
16 And, you know, it makes Plaintiff --

17 THE COURT: She's managed people. She's been
18 a lead. She most recently managed about 100 employees.
19 That's the --

20 MR. KEIMBAYE: Yes.

21 THE COURT: -- only note I have about that
22 juror.

23 MR. KEIMBAYE: Yes.

24 THE COURT: I have no other notes about her.
25 That's it. And there were many other people who said they

1 managed people.

2 MR. KEIMBAYE: True.

3 THE COURT: So I think you need more than
4 that.

5 MR. KEIMBAYE: I mean, when she was explaining
6 herself based on the questions that, you know, Plaintiff
7 asked and Defendants asked, her opinions were not, like,
8 clearly, you know, elaborate about either parties. And that
9 is a little bit --

10 THE COURT: She didn't -- I mean, I only have
11 one note from her, which she answered affirmatively to
12 Ms. Rosen's question about, you know, how many of the people
13 have managed others, and she said yes. She's been a lead.
14 She's also managed people, and she most recently managed
15 about 100 employees. That's it.

16 I'm going to grant the GR 37 objection. Do
17 you have another peremptory challenge against a different
18 juror?

19 MR. KEIMBAYE: No, Your Honor.

20 THE COURT: Not at all? All right. I'll turn
21 to the --

22 MR. KEIMBAYE: I -- I do have skepticism about
23 Juror -- let me take a look at the number here. I'm using
24 two screens. Hold on one second, please. 54.

25 THE COURT: 54?

1 MR. KEIMBAYE: Yes.

2 THE COURT: Arvid Hokenson (phonetic)? Yes?

3 MR. KEIMBAYE: Yes.

4 THE COURT: Arvid Hokenson. Okay. 54 is
5 excused. Let me delete that line. All right.

6 Ms. Burnham?

7 MS. BURNHAM: We'd like thank and excuse Juror
8 Number 26.

9 THE COURT: 26. Mary O'Connor (phonetic).
10 All right. Juror 26 is excused.

11 Mr. Keimbaye, do you have another peremptory
12 challenge you'd like to exercise?

13 MR. KEIMBAYE: No, Your Honor.

14 THE COURT: All right. So 44 is now in the
15 box. All right.

16 Does the Defense have another peremptory
17 challenge?

18 MS. BURNHAM: Yes, Your Honor. We'd like to
19 thank and excuse Number 31.

20 THE COURT: Juror Number 31 is Michael Bunn
21 (phonetic). 31 will be excused.

22 All right. That brings Number 49, Richard
23 Parkin, into the jury box.

24 THE CLERK: Your Honor, was 40 excused?

25 THE COURT: 49. Parkin.

1 THE CLERK: 4-0. I thought the next Juror
2 Number was 40.

3 THE COURT: What? I don't understand your
4 question.

5 THE CLERK: Oh. I thought the next person
6 going into the box was 4-0.

7 THE COURT: 4-0's already in the box. 4-0's
8 going to be in seat --

9 THE CLERK: Oh. I'm sorry.

10 THE COURT: Wait a minute. Wait a minute.
11 Wait a minute. Yeah. Is going to be in seat number 11. So
12 we're going to have 13 jurors, so. All right.

13 Mr. Keimbaye, you have another opportunity to
14 exercise a peremptory challenge against Juror 49, if you
15 wish.

16 MR. KEIMBAYE: Does it have to be 49 only?

17 THE COURT: Well, 49 or a number higher than
18 49, because you accepted the panel when 44 was the last juror
19 in the box.

20 MR. KEIMBAYE: I see. No, Your Honor.

21 THE COURT: All right.

22 Ms. Burnham, do you have a third peremptory
23 challenge?

24 MS. BURNHAM: Yes, Your Honor. Defense would
25 like to thank and excuse Juror Number 33.

1 THE COURT: 33?

2 MS. BURNHAM: Yes, please.

3 THE COURT: All right. That's Ms. Rumay
4 (phonetic). All right. 33 will be excused.

5 All right. Mr. Keimbaye, you have two
6 peremptory challenges left. If you wish to exercise them,
7 they would need to be exercised against Juror 55 or higher.

8 MR. KEIMBAYE: Let's challenge 55.

9 THE COURT: You want to challenge 55?

10 MR. KEIMBAYE: Yes.

11 THE COURT: All right. 55 will be excused.

12 All right. That brings 60 into the box. Do
13 you want to challenge 60? That will bring 62 into the box if
14 60 is excused. Although 60 is also Asian, so that would be
15 subject to a General Rule 37 objection if you excuse her. Or
16 are you happy with the jury the way it is?

17 MR. KEIMBAYE: Are you asking me, Your Honor?

18 THE COURT: Yes, I am.

19 MR. KEIMBAYE: I am happy. Yes.

20 THE COURT: Okay. We have a jury.

21 All right. So Juror Number 1 will be Erik
22 Byrd; Juror Number 2 will be Jean Park; Juror Number 3 will
23 be Luis Curiel; Juror Number 4 will be Melissa Nielsen; Juror
24 5 will be Bryce Smith; Juror 6 is Ansel Neunzert; Juror 7 is
25 Kalpesh Patel; Juror 8 is Emily Kane; Juror 9 is Natalie

1 Tarantino; Juror 10 is James Hanna; Juror 11 is Scott
2 Washburn; Juror 12 is Richard Parkin; and Juror 13 is Lena
3 Shanfelt.

4 Okay. I'm assuming the most urgent thing for
5 me to do this evening is to rule on the deposition
6 designations for Ms. Husted? Or is there something more
7 urgent?

8 MS. BURNHAM: Respectfully, Your Honor, I
9 think we have a couple urgent things, if you'll give me five
10 minutes.

11 THE COURT: I will.

12 DISCUSSION RE MOTIONS IN LIMINE RULINGS

13 MS. BURNHAM: Thank you. One of the things
14 that we wanted to bring up is we have some major concerns
15 based on emails that were exchanged over the weekend -- and I
16 know you have instructed the parties that everyone should
17 abide by the motions in limine -- but based on Mr. Keimbaye's
18 emails over the weekend, we have some major concerns about
19 opening statement and what will be -- we don't -- we
20 certainly have concerns about a mistrial, which is reflected
21 in our emails.

22 And so we renew our request that you review
23 his opening, or both parties' opening, or whatever you want
24 to do, prior to tomorrow to avoid a potential mistrial.

25 THE COURT: Well, so somebody saying something

1 wrong doesn't automatically mean a mistrial, first of all.

2 But, second of all, Mr. Keimbaye, do you
3 understand that your claim for wrongful termination is not
4 part of this case? So you shouldn't be testifying about it,
5 and you shouldn't be talking about it in opening statement.
6 Do you understand that?

7 MR. KEIMBAYE: Yes, Your Honor.

8 THE COURT: Okay. So your opening statement
9 is going to be only talking about your claims for the hostile
10 work environment and the harassment that you are claiming,
11 right?

12 MR. KEIMBAYE: That is correct, Your Honor.
13 May I say something about this particular claim?

14 THE COURT: Of course.

15 MR. KEIMBAYE: In Ms. Rosen's email on -- on
16 Saturday or Sunday -- Saturday, one of -- one of the points
17 that she made, she state that, you know, Plaintiff is not
18 allowed to state his hostile work environment is based on his
19 national origin, color, race, or gender.

20 THE COURT: No.

21 MR. KEIMBAYE: I mean --

22 THE COURT: No. That's not -- if they told
23 you that, it's wrong. And I don't see that on the email.

24 MR. KEIMBAYE: It is wrong. So I -- I replied
25 to that email. I point particularly to, I believe, their

1 motion in limine number 19, state clearly, Plaintiff hostile
2 work environment is based on national origin, race, color,
3 and gender.

4 THE COURT: Yes. No one's -- no one's saying
5 you can't talk about those things.

6 MR. KEIMBAYE: I believe one of the points she
7 made in her email, you know, state that Plaintiff is not
8 allowed to say that.

9 MS. BURNHAM: Incorrect.

10 THE COURT: I don't see that in this email. I
11 printed out the email. Again --

12 MS. BURNHAM: I mean --

13 THE COURT: Okay. Go ahead, Ms. Burnham.

14 MS. BURNHAM: I am so sorry, Your Honor. I
15 think the confusion isn't about the hostile work environment
16 claim. I think it's about the alleged Title 7 and some other
17 things in his trial brief, and so we were trying to clarify
18 the actual claims that the jury can hear about. And so we
19 were saying you can't argue Title 7 or discrimination under
20 the Washington Law Against Discrimination.

21 And you can see the email. You can see his
22 response.

23 THE COURT: Well, again, testimony -- people
24 aren't supposed to be testifying about the law. They're
25 supposed to be testifying about facts and experiences. So,

1 | you know, if you're going to mention the Washington Law
2 | Against Discrimination, Mr. Keimbaye, the only appropriate
3 | time to do that would be in closing argument.

4 | MR. KEIMBAYE: Okay. Your Honor, I agree.
5 | Wouldn't Plaintiff be allowed to mention about his civil
6 | right to be free?

7 | THE COURT: Yes. Of course.

8 | MR. KEIMBAYE: Okay. Okay. Then, I'm okay
9 | with that.

10 | THE COURT: All right. Did you have another
11 | question?

12 | MS. BURNHAM: And I will try to be as quick as
13 | possible. We also have a question in terms of, we mentioned
14 | earlier, the topics for Plaintiff's examination of himself.
15 | Again, we just -- we're hoping for a deadline on that. And
16 | so our understanding from Your Honor was that it would come
17 | to us by the end of the day. And so we would like Your Honor
18 | to make a ruling on that.

19 | MR. KEIMBAYE: Well, anyway, I will wait for
20 | the Judge to answer your question first, and then --

21 | THE COURT: Well, give me a just a moment.
22 | I'm going to pull this thing up. I have two screens as well.
23 | This would be the order on Defendants' motions in limine.

24 | Ms. Burnham, you probably have a better memory
25 | than I do as to which motion in limine we're talking about

1 here, so I can find it quickly.

2 MS. BURNHAM: Right. I don't. I should, but
3 I don't. Give me one second. I can try to pull it up. I'm
4 sorry, Your Honor. I think it's 7, but I could --

5 THE COURT: Oh. Way early. Okay. Nope. No.
6 That's emotional distress.

7 MS. BURNHAM: Oh, darn.

8 THE COURT: By the litigation. Yeah. I
9 thought it was one of the later ones.

10 MS. BURNHAM: Okay.

11 THE COURT: I think it was kind of a granted
12 in part thing.

13 MS. BURNHAM: It was one of -- I know it was
14 one of ours. And you granted it in part. I think it's 4.
15 Hold on.

16 THE COURT: Oh. Here we go. It's number 4.
17 It's number 4. It says, Plaintiff need not present his own
18 testimony in question and answer format. However, Plaintiff
19 shall indicate the topics and issues he will testify about
20 before offering such testimony in order to permit Defense
21 Counsel to lodge any appropriate objections.

22 So, yeah. He doesn't have to give you an
23 outline in advance. But he needs to preface it. Like, now
24 I'm going to testify about this incident at work with
25 Mr. Kortendick. Or now I'm going to testify about the, you

1 know, whatever.

2 So you just need to -- you need to telegraph
3 to us what you're going to testify about so that Defense
4 Counsel can make an objection, if appropriate. And I will
5 have a breakout room where -- no. I won't have a breakout
6 room because we're going to be in person. Sorry.

7 Yeah. I mean, I'll rule on it if it's clear.
8 And, if not, you know, we'll either excuse the jury or have a
9 sidebar. And I would urge you, Mr. Keimbaye, you don't have
10 to share it with Defense Counsel, but I would urge you to
11 make an outline for yourself for your testimony --

12 MR. KEIMBAYE: Yes, Your Honor. Yes, Your
13 Honor.

14 THE COURT: -- because I don't want you to
15 ramble. I don't want you to go back and cover things you've
16 already covered because if you do that, for example, then I
17 expect to hear an objection, you know, for cumulative
18 evidence or asked and answered or something. And, you know,
19 I'll be inclined to grant it.

20 So I want you to be efficient with your use of
21 time while you give the jury the information you feel they
22 need to decide your case.

23 MR. KEIMBAYE: Yes, Your Honor. And in regard
24 the outline of the topics, as the Plaintiff is going through
25 from topic to topic, he can -- he can present the exhibit

1 related to those topics? He can present it?

2 THE COURT: So if they're exhibits that I
3 admitted into evidence this morning, then absolutely. If
4 there are -- if they are exhibits that have not yet been
5 admitted, then what you need to do is identify it by exhibit
6 number and say, now I want to talk about Exhibit 12. I'm
7 making that up.

8 MR. KEIMBAYE: Yes.

9 THE COURT: But, right? And --

10 MR. KEIMBAYE: Yes.

11 THE COURT: And then you can identify what
12 Exhibit 12 is.

13 MR. KEIMBAYE: Yes.

14 THE COURT: But don't testify about the
15 information in Exhibit 12 until I make sure that there's no
16 objection.

17 So what you do is you identify the exhibit,
18 you identify what it is, and then --

19 MR. KEIMBAYE: Yes.

20 THE COURT: -- if you -- if you want to talk
21 about it, or you want it in front of the jury during
22 deliberations, what you say is, the Plaintiff offers exhibit,
23 whatever the number is. And then if Defense Counsel has no
24 objection, I will admit it. And then you can talk about it
25 after that and it will go back to the jury during

1 deliberations.

2 If Defense Counsel objects, then I will take a
3 look at the exhibit. I'll make a ruling as to whether you
4 can talk about that and/or whether you can show it to the
5 jury. Okay?

6 MR. KEIMBAYE: Thank you.

7 THE COURT: Sure.

8 MS. BURNHAM: And, Your Honor, on Friday we
9 learned for the first time that Plaintiff had an unfortunate
10 event happen to him, as he told you on Friday, regarding a
11 relationship and a potential unborn child.

12 And that was the first we heard about that.
13 And, certainly, we feel that that falls under your ruling on
14 the motion in limine regarding stress relating to this
15 litigation. But we would like a clear ruling that that will
16 not come into evidence as well, as it is extremely
17 prejudicial and was not discussed during the course of
18 discovery.

19 THE COURT: Mr. Keimbaye? You're shaking your
20 head.

21 MR. KEIMBAYE: Before -- before that
22 particular question that, you know, the Defendants brought it
23 up, in motion in limine number 7 --

24 THE COURT: Which one? Yours or theirs?

25 MR. KEIMBAYE: Yeah. It is related to this

1 question.

2 THE COURT: No. No. Your motion in limine
3 number 7 or the Defense motion in limine number 7?

4 MR. KEIMBAYE: Defendants, yes, Your Honor.

5 THE COURT: Got it.

6 MR. KEIMBAYE: Sorry about that.

7 THE COURT: Okay. Yeah. Cause to Plaintiff
8 by this litigation. Yeah. You're right. That's the topic.

9 MR. KEIMBAYE: It says that Plaintiff may not
10 discuss, argue, and elicit testimony regarding emotional
11 distress damages.

12 THE COURT: No.

13 MR. KEIMBAYE: So if --

14 THE COURT: Keep -- keep -- no. No. No. No.
15 You've got it -- you've got to finish the sentence. Caused
16 by this litigation. So emotional distress damages that you
17 suffered because you were mistreated at work, that you can
18 talk about. But emotional distress from the litigation is
19 not -- is not something that you should be testifying about
20 and not something that you could recover damages for. Do you
21 understand the difference?

22 MR. KEIMBAYE: So Plaintiff allowed only to
23 testify about emotional distress that he experienced while he
24 was still at work?

25 THE COURT: Well, and emotional distress that

1 | you experienced after you were no longer employed, but that
2 | was caused by the way you were treated at work. But
3 | emotional distress that was caused --

4 | MR. KEIMBAYE: Of course. Yes.

5 | THE COURT: -- because, you know, you feel the
6 | lawyers mistreated you in some fashion --

7 | MS. BURNHAM: Oh, no. Oh, no. Your Honor --

8 | THE COURT: -- is not -- right. And so
9 | Ms. Burnham was also concerned about you testifying about,
10 | well, all of the stress caused you to lose this relationship
11 | that you had with somebody else.

12 | That's not an element of damage in this case.
13 | And it's not something the jury should be hearing about.

14 | MR. KEIMBAYE: Your Honor, it should be,
15 | because it caused the Plaintiff to have a strained
16 | relationship with his family, friends, and girlfriend. That
17 | was -- that was his only support throughout -- throughout the
18 | last five years. It was overwhelming to the point where she
19 | could no longer support it --

20 | THE COURT: Because of -- because why again?

21 | MR. KEIMBAYE: Say again?

22 | THE COURT: So she could no longer support the
23 | relationship because why, again?

24 | MR. KEIMBAYE: She could no longer, you
25 | know -- enduring the pain along -- along the way with the

1 Plaintiff based on, you know, you know, the -- the emotional
2 distress that he's been, you know, enduring since, you know,
3 he left work.

4 So Plaintiff has a strained relationship with
5 his family, his friends, and his -- his significant, you
6 know, significant one.

7 THE COURT: Okay.

8 MR. KEIMBAYE: The poor woman suffered more
9 than, you know, Plaintiff.

10 THE COURT: All right. She's not going to be
11 a witness at trial, is she?

12 MR. KEIMBAYE: My own --

13 THE COURT: Is she going to be a witness at
14 trial? She's not on the witness list? Okay.

15 I'm not sure -- okay. So I'm not --

16 MR. KEIMBAYE: Your Honor, she --

17 THE COURT: Okay. I get it.

18 MR. KEIMBAYE: She's part of my life. She's
19 part of my life.

20 THE COURT: Understood.

21 I'm not sure what the basis for excluding this
22 is, Ms. Burnham.

23 MS. BURNHAM: Your Honor, on Friday, he
24 represented to the Court and to Counsel that the loss of the
25 relationship and the child was due to the stress caused by

1 this litigation. He directly represented that on Friday.
2 And that falls directly under your order. And worsened
3 effect --

4 MR. KEIMBAYE: That would be -- that would
5 be -- that would be chaotic, you know, to prevent Plaintiff
6 from, you know, testifying information about --

7 MS. BURNHAM: Your Honor --

8 MR. KEIMBAYE: -- that's my life. That's my
9 family.

10 MS. BURNHAM: -- we're concerned that --

11 MR. KEIMBAYE: That's part of my life. That's
12 my family.

13 MS. BURNHAM: I need some clear rulings.

14 MR. KEIMBAYE: That is my life. If Plaintiff
15 cannot talk about, you know, being physically assaulted in
16 the groin area, even, you know, in that -- that particular
17 case, Plaintiff's not allowed to talk about, you know, his
18 injuries from the physical assault. And that is -- that is
19 injustice from preventing --

20 THE COURT: Okay. We've --

21 MR. KEIMBAYE: That --

22 THE COURT: -- we've moved on to a different
23 topic.

24 The reason --

25 MS. BURNHAM: Can I just --

1 THE COURT: Well, hold on. The reason for the
2 rulings about the alleged assaults by the doctors is that
3 they don't work for Providence. They are not under
4 Providence's control. And so they're not something that
5 Providence can be held accountable for. You could have sued
6 those doctors that assaulted you. But you didn't do that.

7 MR. KEIMBAYE: Can Plaintiff -- can Plaintiff
8 be allowed that, you know, when he was assaulted and
9 approached his supervisor to intervene and, you know -- you
10 know, address his concern to those assaulters, his own
11 supervisor promised, you know, to do that. But, then, it
12 never, you know, get back to him or, you know --

13 THE COURT: So wait a minute. Wait a minute.
14 Are you -- are you -- Mr. Keimbaye, are you saying that when
15 a doctor assaulted you, you told somebody at Providence that
16 this had happened?

17 MR. KEIMBAYE: Yes. Yes. Mr. John. My
18 primary -- you know, my primary supervisor, Mr. John. He
19 was -- it happened for him to be on the same floor on that
20 day by accident, because he was mostly on the second floor.
21 And as Plaintiff left the operation room, went straight to
22 the restroom adjacent to the -- to that OR, to clean up the
23 blood. And after I finished cleaning my blood, I was walking
24 to the -- to the work room there -- two work rooms -- the one
25 on the third floor. There, you know, I run into Mr. John --

1 THE COURT: Okay. I don't need -- I don't
2 need the whole narrative. But you're saying that you told
3 Mr. John about it immediately?

4 MR. KEIMBAYE: Yes. Yes. Same day. Not even
5 like 30 minutes later.

6 THE COURT: Okay. All right. All right.

7 Ms. Burnham?

8 MS. BURNHAM: Sorry, Your Honor. If I could
9 finish what I was saying earlier about the other issues as
10 well. But, in terms of what Mr. Keimbaye just raised, it's
11 our understanding that you've already ruled on this at
12 summary judgment that these claims are not a part of this
13 case against the doctors. That was already a clear ruling
14 made by you.

15 THE COURT: Well, okay. But, I never heard
16 anyone say that Mr. Keimbaye claims he told Mr. John about it
17 right after it happened.

18 MS. BURNHAM: Yeah. Well, that's a
19 new -- that's new to us, too.

20 THE COURT: Yeah. But that --

21 MR. KEIMBAYE: I have that --

22 THE COURT: -- that --

23 MR. KEIMBAYE: -- I have that conversation
24 throughout the deposition -- throughout the deposition.

25 THE COURT: All right. Well, if you say so.

1 MS. BURNHAM: A lot of what he just said is
2 hearsay, Your Honor. He's talking about things that are all
3 hearsay.

4 MR. KEIMBAYE: Go through my deposition.

5 THE COURT: Okay. I'm not going to -- I'm not
6 going to keep out the claim that he was assaulted by a doctor
7 if he's going to testify under oath that he told Mr. John
8 about it immediately and asked for protection and nothing
9 happened. That's part of his hostile work environment claim.

10 It was never suggested to me. I just thought
11 that he -- that he's complaining that these things happened,
12 but not that he ever brought it to the attention of
13 Providence. If he says he brought it to Providence's
14 attention timely, then I don't think it can be kept out.

15 With respect to the loss of the child, you can
16 testify, Mr. Keimbaye, that you had all this emotional
17 distress because of the way you were treated by Providence,
18 not including your termination because that claim is out.

19 MR. KEIMBAYE: Yes, Your Honor.

20 THE COURT: But we're not going to -- we're
21 not going to talk about the miscarriage. That is too
22 inflammatory. But if you want to talk about the fact that
23 you were so emotionally distressed that you couldn't sustain
24 this relationship anymore, I will allow you to do that.

25 MR. KEIMBAYE: I -- I'm not going to

1 mention -- I'm not going to mention, you know -- you know,
2 abortion, but, you know, loss of child, you know, I should be
3 able to mention. Because of my emotional distress and, you
4 know, and torment that, you know, I was unable, you know, to
5 support, you know, would be, you know, my -- my wife. And,
6 you know, and if she was, like, destroyed completely.

7 THE COURT: We are not going to talk about
8 abortion or miscarriage.

9 MS. BURNHAM: Loss of child.

10 THE COURT: Right.

11 MR. KEIMBAYE: I would mention about loss of
12 child, you know, for certain. But I'm not going to --

13 THE COURT: Are we talking --

14 MR. KEIMBAYE: -- mention, you know, the
15 abortion.

16 THE COURT: Are we talking about an unborn
17 child? Are we talking about an actual baby?

18 MR. KEIMBAYE: Unborn child. Yes.

19 THE COURT: Okay. We're not --

20 MR. KEIMBAYE: Innocent unborn child.

21 THE COURT: Yeah. That's not coming into
22 evidence. So don't bring it up. If you want to talk about
23 losing the relationship, I guess you can do that.

24 Folks, we need to wrap it up. It's after
25 4:25. I will meet you -- hold on. Don't get excited yet.

1 I will be in at 8:30 tomorrow morning. You
2 all be in at 8:30 tomorrow morning. We have half an hour
3 before -- and if we have to keep the jury waiting a little
4 longer than that, we can. But we'll have half an hour to
5 hash out the rest of this stuff.

6 Is there something burning on your mind,
7 Ms. Burnham -- excuse me, I'm sorry. I didn't mean this to
8 sound like a pun.

9 MS. BURNHAM: I'm sorry. Just something that
10 I need to know before tomorrow, that I think both parties
11 would like to know. We are planning to exchange our
12 demonstratives that we are using during opening. I assume
13 Mr. Keimbaye will do the same, per the Court's order.

14 But in terms of that, there are some exhibits
15 in our -- in our opening that were exhibits that were not
16 objected to pursuant to the ER 904s. Therefore, pursuant to
17 your court's ruling -- Your Honor's ruling, those are all,
18 all objections are waived except for relevance. You asked
19 Mr. Keimbaye earlier in the day to identify any that he
20 believes are relevant. And so we are just hoping to get a
21 ruling on that.

22 THE COURT: Okay. Which is which of these
23 again, J.? Is the white one the Defense?

24 THE BAILIFF: The white one is the --

25 THE COURT: Yeah. It's the one that says

1 Davis Wright on it. I should have figured that out.

2 All right. Which exhibit numbers are we
3 talking about, here? Let's go through them real quick.

4 MS. BURNHAM: In my opening?

5 THE COURT: Yeah.

6 MS. BURNHAM: Okay. Sorry. Let me grab it.
7 Sorry.

8 THE COURT: No worries.

9 MS. BURNHAM: I'm usually much more prepared
10 than that. Okay. We're talking about Exhibit 109, Exhibit
11 137 -- I'm sorry, 131, not 137. 131.

12 THE COURT: 131?

13 MS. BURNHAM: Uh-huh.

14 THE COURT: Okay.

15 MS. BURNHAM: 145.

16 MR. KEIMBAYE: 145 you said?

17 MS. BURNHAM: Yes, Mr. Keimbaye.

18 And I do believe that is it.

19 THE COURT: Okay. Is there a relevance
20 objection as to any of these? So you said 109, 131, and 145?

21 MS. BURNHAM: Yes. 109, 131, and 145. Yes.

22 MR. KEIMBAYE: 145, what's your intention with
23 this exhibit?

24 THE COURT: So that's not the question. The
25 question is do you have a relevance objection as to any one

1 of those three? Because you've waived other objections by
2 not objecting within 14 days of receiving the ER 904.

3 MR. KEIMBAYE: Plaintiff would need -- would
4 need this, you know, to present to the -- to the jury, Your
5 Honor.

6 THE COURT: I don't understand what you're
7 saying, sir. These are exhibits that were part of the
8 Defense Evidence Rule 904 submission. You didn't object to
9 any of them, which means you waived objections except as to
10 relevance.

11 So I'm asking you if you have a relevance
12 objection to any one of these three exhibits, 109, 131, or
13 145.

14 MR. KEIMBAYE: Are these already admitted to
15 evidence?

16 THE COURT: Yes. They haven't been admitted
17 yet, but they're likely to be. If you have a relevance
18 objection, I will hear it and then rule on it. But I'm not
19 hearing it.

20 MR. KEIMBAYE: One minute, Your Honor, please.

21 THE COURT: One minute.

22 MR. KEIMBAYE: No objection, Your Honor.

23 THE COURT: All right. 109, 131, and 145 can
24 be admitted and can be used in opening.

25 (PLAINTIFF'S EXHIBIT 109, 131, AND 145 RECEIVED INTO

1 EVIDENCE)

2 MS. BURNHAM: Thank you, Your Honor.

3 THE COURT: All right. Please be here at 8:30
4 tomorrow morning. And if there's any other issues that we
5 need to discuss before opening statements, we'll do it at
6 that time. All right?

7 MS. BURNHAM: Thank you very much, Your Honor.

8 MR. KEIMBAYE: Thank you.

9 THE COURT: Have a good evening, everyone.

10 MR. KEIMBAYE: You too.

11 THE COURT: We are at recess.

12 (Proceedings adjourned at 4:30:53 p.m., to recommence on
13 September 6, 2023.)

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SEATTLE, WASHINGTON

WEDNESDAY, SEPTEMBER 6, 2023

MORNING SESSION - 8:31:33 A.M.

JURY TRIAL:

(The following proceedings were held outside the presence of the jury:)

THE COURT: All right. We are back on -- we are back on the record in Keimbaye v. Providence Regional Medical Center of Everett, et al., cause number 21-2-075459, SEA. We selected a jury yesterday, and we'll be starting with opening statements this morning after the preliminary instructions to the jurors.

It struck me that the parties probably had some issues you wanted to have addressed before we start with the jury, so I invited everyone to come in at 8:30 so that we would have a little bit of time without taking up the trial time.

I did finish going through the objections to Ms. Husted's deposition, got an order entered on rulings on the objections late yesterday. I don't know if you have had a chance to see it. The way that the e-Filing system works -- and you all may already know that -- is that if any order is -- or paper for that matter, I think, -- is e-Filed after the clerk's office closes at 4:30, it's dated the following court day. In any event, so that is done.

1 I also noticed because I went into the docket
2 that Mr. Keimbaye had filed his declaration together with
3 some screenshots of text messages from Ms. Husted confirming
4 that they had moved to Florida. So that's -- that's
5 basically what I have done and what I have seen since we went
6 off the record yesterday.

7 Mr. Keimbaye, do you have any questions or any
8 issues that you would like to address before we have the
9 jurors into the courtroom?

10 PRELIMINARY MATTERS

11 MR. KEIMBAYE: Is there anything else that the
12 Plaintiff would like to be aware of before an introduction to
13 jury member's introduction and also opening statement?

14 THE COURT: I --

15 MR. KEIMBAYE: Such --

16 THE COURT: -- I --

17 MR. KEIMBAYE: -- as a --

18 THE COURT: I'm sorry, is that a question to
19 the Court?

20 MR. KEIMBAYE: No, it's not a question, but,
21 you know, approach to the opening statement, you know.

22 THE COURT: So I -- I'm still not
23 understanding.

24 MR. KEIMBAYE: Are there certain rules a
25 Plaintiff would follow before entering to opening statement?

1 THE COURT: Oh.

2 MR. KEIMBAYE: Yeah.

3 THE COURT: Well, yeah, there's lots and lots
4 of rules.

5 MR. KEIMBAYE: Okay.

6 THE COURT: So I can't -- if you have a
7 specific question, I'm happy to answer. We did talk about
8 that a little bit yesterday, which is you could -- the
9 general rule is, you need to confine -- and that's true for
10 both parties -- need to confine your opening statements to a
11 description of the evidence that you expect to present during
12 your case. So opening statement is not argument, argument
13 comes at the end of the case once the evidence is in.

14 MR. KEIMBAYE: That's right.

15 THE COURT: But it's your opportunity to tell
16 the jury what you expect the evidence in this case will show.
17 And you can also briefly tell them what you're going to be
18 asking them to do once they've heard all the evidence, okay?
19 And so you should limit your remarks to the evidence that
20 will presented in this case. And as we discussed yesterday,
21 your claim for wrongful discharge or wrongful termination of
22 your employment is not part of this case. So, you know, keep
23 that in mind.

24 Do you have any specific questions,
25 Mr. Keimbaye?

1 MR. KEIMBAYE: Except the -- the specific
2 questions about I'd like to ask is in regard to application
3 of the position?

4 THE COURT: Yeah, we'll address that.

5 MR. KEIMBAYE: Okay.

6 THE COURT: Any -- any other questions --

7 MR. KEIMBAYE: Not at this --

8 THE COURT: -- at this time? Okay.

9 MR. KEIMBAYE: Not at this moment.

10 THE COURT: All right. Thank you, sir.

11 MR. KEIMBAYE: Thank you.

12 THE COURT: Counsel?

13 MS. ROSEN: Your Honor, we have a number of
14 things, unfortunately.

15 THE COURT: I had a feeling you might. Look,
16 why don't we address the deposition first because I suspect
17 that Mr. Keimbaye would like to present that sometime today.

18 MS. ROSEN: Yes, we filed -- you may not have
19 seen, but around 7:45 this morning, we filed a --

20 THE COURT: No, I haven't seen.

21 MS. ROSEN: -- okay. We filed an objection to
22 his -- the declaration he submitted on the basis of hearsay
23 and authenticity of the text message.

24 THE COURT: I'm going to allow the deposition.
25 And -- and the objection is noted and I -- and I understand

1 the basis for it, but I -- I think that it lays a sufficient
2 foundation for the witness not living in the county or being
3 more than 20 miles from the courthouse, which is all that the
4 rule requires.

5 MS. ROSEN: And I agree with that, Your Honor.
6 My concern is that it's not admissible evidence. The text
7 message isn't admissible evidence.

8 THE COURT: No, no, no. It's evidence that
9 she's out of the county. It doesn't have to be admissible in
10 court. It doesn't have to be admissible as part of the
11 trial.

12 MS. ROSEN: Right. No, I understand, but I
13 thought for the Court to consider evidence in -- in deciding
14 a motion, that evidence had to be admissible. It couldn't be
15 hearsay or -- I mean, he could have created that text message
16 out of thin air.

17 THE COURT: Yeah, I doubt he would have though
18 or could -- frankly, I'm not sure he could have. I certainly
19 couldn't have. And if he had, I think it would have been
20 likely much more specific than it was. The text message
21 identifying that they were living in Florida went back to, I
22 believe, March.

23 MS. ROSEN: Right. And he never produced that
24 to us in discovery and it's responsive to a discovery
25 request.

1 THE COURT: What was the discovery request?

2 MR. KEIMBAYE: Ms. Rosen, did you see the date
3 on those text message?

4 THE COURT: Well, they're attached to you
5 declaration, Mr. Keimbaye. I assume you have a copy.

6 MS. ROSEN: Yeah, there're -- I mean, there
7 are some from, I believe, February.

8 MS. BURNHAM: Yes, and there was one from
9 yesterday.

10 MS. ROSEN: And we'll -- I don't know the
11 discovery request off the top of my head, --

12 MS. BURNHAM: I can tell.

13 MS. ROSEN: -- but I'll find it for you.

14 MS. BURNHAM: There was no -- it's --

15 MS. ROSEN: I mean, Your Honor, we're really
16 concerned here that Mr. Keimbaye is not being held to the
17 same standard as we are. I think there's been a lot of legal
18 advice given to him and it's really concerning to me.

19 THE COURT: Understood.

20 MS. BURNHAM: We're looking at the discovery
21 request.

22 MS. ROSEN: We're looking at the discovery.

23 MS. BURNHAM: It's think it's -- I think it's
24 request for Production Number 14 is what my memory tells me.

25 THE COURT: I -- I'm sorry, I'm having trouble

1 hearing you, Ms. Burnham.

2 MS. BURNHAM: I -- I'm sorry. I think it was
3 request for Production Number 14, which specifically asked
4 for any text message communications about this trial or about
5 litigation in -- this litigation in general.

6 THE COURT: And when -- when was that sent
7 out?

8 MS. BURNHAM: I will get that.

9 MS. ROSEN: We'll get the date for you. I'll
10 move on to another topic while --

11 THE COURT: Okay.

12 MS. ROSEN: -- we're looking at that.

13 THE COURT: Let's -- let's do that. Hold on a
14 second, I'm going to catch up on my notes here.

15 (Pause in proceedings.)

16 MS. BURNHAM: It was request for Production
17 Number 14. You responded on August 27th, 2021, and he has
18 not supplemented.

19 THE COURT: All right. Thank you, Ms. Rosen.

20 MS. ROSEN: Okay. Did -- were you able to
21 hear that, Your Honor?

22 THE COURT: No.

23 MS. ROSEN: It was request for production
24 number 14. He responded in August 27th, 2021, and never
25 supplemented.

1 MS. BURNHAM: And we have a motion in limine.

2 MS. ROSEN: And we have a motion in limine on
3 -- I believe it's on -- yeah, on some things that were not
4 disclosed in discovery not coming in.

5 MR. KEIMBAYE: Hold on.

6 THE COURT: Okay.

7 MS. ROSEN: I mean, undoubtedly, had we known
8 that, we would have taken -- we would have taken some
9 affirmative steps.

10 MS. BURNHAM: Yeah.

11 THE COURT: Okay. What --

12 MR. KEIMBAYE: Ms. Rosen, are you referring to
13 text message or something else?

14 THE COURT: She's -- she's talking about the
15 text messages that you filed with your declaration that you
16 filed yesterday.

17 MR. KEIMBAYE: Yes, the late -- the latest --

18 MS. ROSEN: Your Honor, I --

19 MR. KEIMBAYE: -- the latest that --

20 THE COURT: Hold on -- hold on, she's still
21 talking. I'll call on you, --

22 MR. KEIMBAYE: Okay.

23 THE COURT: -- but -- but we do this one at a
24 time.

25 MR. KEIMBAYE: Thank you.

1 MS. ROSEN: Yeah, we're concerned because
2 yesterday Mr. Keimbaye talked over Ms. Burnham quite a bit.

3 So, Your Honor, I mean it's our position that
4 because he did not produce these in discovery when -- I
5 understand there were some more recently, but then there were
6 ones back in February that he never produced in discovery.

7 THE COURT: I thought it was March, but you
8 may be right.

9 MS. ROSEN: Yeah, so I mean, that's our
10 concern is that, you know, Mr. Keimbaye repeatedly doesn't
11 follow the rules and he -- he doesn't have any consequences
12 because of it. And, I mean, it's very prejudicial to us to
13 allow this in at the last minute when, you know, we had no
14 idea that she was in Florida or not available.

15 THE COURT: All right.

16 Now, Mr. Keimbaye, you can respond.

17 MR. KEIMBAYE: Okay.

18 THE COURT: So do you understand the point
19 that Ms. Rosen made? So --

20 MR. KEIMBAYE: Yes, she -- she was mentioning
21 about discovery.

22 THE COURT: Right. They sent you a discovery
23 request for copies of any communications you had with
24 witnesses. And you responded to that a couple years ago, but
25 you didn't supplement your responses with these text messages

1 that you had with Ms. Husted and then later with her husband
2 until yesterday after the trial started.

3 MR. KEIMBAYE: The discovery request from the
4 Defendants was a year or two years ago.

5 THE COURT: Yes.

6 MR. KEIMBAYE: And this text message here was
7 the most recent when the -- the trial court was scheduled for
8 I believe July 30 -- July 31st. And right after Plaintiff
9 learn about the -- the trial day for the July 31st, Plaintiff
10 reach out to Ms. Husted to, you know, to figure out whether
11 or -- whether or not she will be available, you know, to
12 testify in court.

13 And no -- it seems as if for someone, you
14 know, has a, you know, threaten her or some -- some reason so
15 she -- she moved to Florida. And I planned to keep on, you
16 know, texting, calling, and no answer whatsoever.

17 THE COURT: Yeah, yeah, we -- we understand
18 that, that's not the issue. The issue is that when you had
19 those communications with her, you didn't share that
20 information with the Defense. That's the issue that they're
21 raising.

22 MR. KEIMBAYE: I mean, Your Honor, the request
23 for any discovery, it was a -- was a year or two years ago.
24 And this text message, I believe, in February, and then the
25 latest one is August. And then, yesterday, that I -- I

1 called repeatedly, you know. I try to reach -- reach out to
2 them and no answer, so I text.

3 THE COURT: Mm-hmm.

4 MR. KEIMBAYE: And I end up, you know,
5 deciding to write a declaration and then submit it with
6 the -- along with those text message.

7 THE COURT: But -- okay. But -- but why
8 didn't you share the text messages from back in March with
9 the Defense?

10 MR. KEIMBAYE: In my belief, you know, their
11 request for discovery that was submitted to Plaintiff in
12 2021, it -- it was regarding, you know, any, you know, past
13 communication with the -- with the Ms. Husted, not the
14 current one.

15 THE COURT: All right.

16 Ms. Rosen, what's the argument under CR 26(e)?
17 It's -- it's not a hundred percent clear to me that there was
18 a duty to supplement here.

19 MS. ROSEN: Well, Your Honor, there's a motion
20 in limine on issues that he did not -- that if he did not
21 produce something in discovery, then it cannot come in at the
22 trial. You granted that motion in limine.

23 THE COURT: Well, I did, but the deposition of
24 Ms. Husted was something that occurred during the discovery
25 period.

1 MS. ROSEN: Right. But these text messages
2 that would have allowed us to prepare our case differently
3 were not produced to us.

4 THE COURT: What would you have done
5 differently?

6 MS. ROSEN: We would have figured out if she
7 was really in Florida. We would have decided, you know,
8 whether or not we would have wanted to get in touch in with
9 her ourselves or, you know, we would have done some
10 discovery.

11 THE COURT: I -- I don't know what that means.

12 MS. ROSEN: We would have, you know, possibly
13 reached out to her ourselves to confirm that she was in
14 Florida and confirmed that she's unavailable to testify.

15 THE COURT: Okay.

16 Yes, Mr. Keimbaye?

17 MR. KEIMBAYE: Your Honor, if I remember
18 correctly, it was during our pretrial conference in -- in
19 July that when Plaintiff brought up the Ms. Hulsted, you
20 know, unavailability, you know, to -- for the trial.

21 THE COURT: Mm-hmm.

22 MR. KEIMBAYE: And Plaintiff made sure that
23 during the pretrial conference on Zoom, Ms. Rosen said that,
24 No, she -- no, she's not in Florida.

25 THE COURT: I don't remember that.

1 MS. ROSEN: I did not say that.

2 MR. KEIMBAYE: You -- you said that. When --
3 when --

4 MS. ROSEN: How do I know if she's in Florida?
5 I don't know.

6 THE COURT: Okay. So I -- I don't recall
7 that, Mr. Keimbaye. And -- and even if it happened, how
8 is -- how does that figure into this argument?

9 MR. KEIMBAYE: And -- and by the way, when we
10 were filling in a -- filling out, you know, a witness that
11 will be not testify --

12 THE COURT: Yeah.

13 MR. KEIMBAYE: -- in court, or -- or parties
14 were planning to -- to use their position to publish, --

15 THE COURT: Mm-hmm.

16 MR. KEIMBAYE: -- Plaintiff clearly put
17 Ms. Husted and that other parties sees Plaintiff saying, Will
18 not appear accept deposition.

19 THE COURT: I understand that, that's not the
20 issue either.

21 We -- you've got a really big firm. If you
22 want to have someone reach out to Ms. Husted, you've got her
23 phone number now, I -- I think from those texts. But if not,
24 I -- I will order Mr. Keimbaye to share whatever contact
25 information he has with her, and you can check, and we can

1 postpone any reading of her deposition until you've had an
2 opportunity to do that.

3 That's the best I'm going to be able to do
4 because, frankly, the supplementation rules -- and I recall
5 there was some proposal to change CR 26(e) and to make the
6 duty to supplement more clear, but I don't think that rule
7 has been adopted yet. So I'm kind of stuck with what the --
8 the old CR's say. So --

9 MS. ROSEN: We put it in our request,
10 Your Honor. We specifically requested that he supplement.

11 THE COURT: All right. Well, that's what I'm
12 going to do.

13 MS. ROSEN: Okay. So we -- we will put that
14 off then if that's okay.

15 THE COURT: Yeah, but -- but I mean --

16 MS. ROSEN: Would you allow us to submit some
17 briefing on that?

18 THE COURT: All right. But -- but I'd like
19 somebody to be working on that this morning so that,
20 hopefully, the issue can be resolved this afternoon.

21 MS. ROSEN: Okay. We will -- we will get
22 someone working on that.

23 THE COURT: All right. Thank you.

24 MS. ROSEN: Okay. Can we move on?

25 THE COURT: Yes.

1 MS. ROSEN: Are we ready to move on?

2 THE COURT: Yeah.

3 MS. ROSEN: So Mr. Keimbaye did send me a list
4 of the topics that he plans to testify about today. A couple
5 issues on that: Number 6, he talks about exposure to
6 tuberculosis cases, which I think is highly prejudicial to
7 Providence and not really relevant at all to this case. So I
8 would just ask that --

9 THE COURT: Is this a new issue? Because this
10 is the first I'm hearing of it.

11 MS. ROSEN: It's -- it's mentioned in his
12 trial brief.

13 THE COURT: Was it -- was it mentioned during
14 his deposition, which I have not read? There appear to be
15 two volumes.

16 MR. KEIMBAYE: Yes, Your -- yes, Your Honor.

17 MS. ROSEN: He mentioned being exposed to one
18 case of tuberculosis in his deposition.

19 MR. KEIMBAYE: Two -- two.

20 MS. ROSEN: I -- I mean, we don't see what
21 bearing it has on this case because -- and it's highly
22 prejudicial to let the jury hear that there were tuberculosis
23 cases at Providence.

24 THE COURT: Well, it may be, but I don't know
25 that it's --

1 MR. KEIMBAYE: I got tested. I got tested
2 weeks later.

3 THE COURT: So, Mr. --

4 MS. ROSEN: Sir, I'm talking.

5 THE COURT: Mr. --

6 MS. ROSEN: You cannot talk when I'm talking.

7 THE COURT: Okay. Folks, hello. I'm in
8 charge here for better or for worse.

9 Mr. Keimbaye, --

10 MR. KEIMBAYE: Yes, Your Honor.

11 THE COURT: -- please do not speak unless I
12 call on you, all right?

13 MR. KEIMBAYE: Thank you.

14 THE COURT: If you -- if you have a thought --
15 if you have a disagreement with something that Defense is
16 saying, write it down so you won't forget it, and -- and then
17 you can tell me when I call on you, but we don't interrupt
18 one another here.

19 MR. KEIMBAYE: Oh, thank you.

20 THE COURT: Okay?

21 Ms. Rosen?

22 MS. ROSEN: So, Your Honor, we just would
23 be -- we ask that he would be barred from talking about being
24 exposed to tuberculosis.

25 THE COURT: So it -- it's potentially relevant

1 if there was a policy and he was treated differently than
2 other employees based on that policy. I don't know what any
3 of these circumstances are.

4 MS. ROSEN: There's no evidence of that at all
5 in the record, that there was a policy, that he was treated
6 differently. There's no evidence of that.

7 THE COURT: All right.

8 MS. ROSEN: And he has no foundation on that.

9 THE COURT: All right. Mr. Keimbaye, what's
10 the relevance of this potential TB exposure?

11 MR. KEIMBAYE: Oh, yes, Your -- Your Honor, I
12 can --

13 MS. ROSEN: Oh, and there's a motion in limine
14 on comparators, sorry, Your Honor.

15 MR. KEIMBAYE: I can, specifically, --

16 THE COURT: On what?

17 MS. ROSEN: Comparators. So if you're saying
18 he was treated differently than somebody else with regard to
19 tuberculosis, we -- you granted our motion in limine that he
20 hasn't introduced any comparator evidence.

21 THE COURT: I -- I think --

22 MS. ROSEN: So he can't mention comparators.

23 THE COURT: I thought that comparators had to
24 do with damages. His whole case is that he was discriminated
25 against and harassed because of his protected status, because

1 of his race, because of his national origin, and -- and
2 because of his -- his sex.

3 MS. ROSEN: Right. It's a harassment case, so
4 comparators are not relevant at all.

5 THE COURT: All right. Mr. Keimbaye, what's
6 the relevance of this alleged exposure to tuberculosis?

7 MR. KEIMBAYE: Yes. I remember correctly one
8 of -- you know, one of my --

9 THE COURT: No, don't tell me about what
10 happened. Just tell me why you think it's relevant to your
11 claims.

12 MR. KEIMBAYE: It is relevant because all the
13 stuff that were exposed to that TB patient case were -- were
14 properly identified and listed to go to the employee health
15 department to get tested except Plaintiff. It took weeks
16 before one of the -- the employers, a CRNA, anesthetist --
17 certified anesthetist that Plaintiff usually set up, you
18 know, her -- her rooms for her.

19 And it happened that she was in -- in one of
20 those rooms that, you know, Plaintiff, you know, set up her
21 case and helping her with the -- the patient. I remember
22 correctly it was a -- a Filipino woman, a patient, that has
23 abdominal aneurysm. So we were soaking the blood,
24 everything. And I -- I was the only one, you know, helping
25 the -- certify nurse anesthetist to complete her case and

1 somehow everybody get -- got listed, you know, to go and test
2 it.

3 It took -- because she's a -- a traveler -- a
4 nurse and so it took weeks, probably two months before, you
5 know, she came back to the -- to that Everett location. And
6 because she loved the way I set up, you know, her cases, she
7 was looking for me, asking me, you know, to set up her case.
8 And all of the sudden, she brought it up, you know, to my
9 attention.

10 And -- and so I said, you know, When -- when
11 did they get tested?

12 She told me that, you know, two -- two or
13 three days, you know, after the case that, you know,
14 everybody got tested. But me, I was not informed whatsoever
15 by the OR department or by my -- by my direct supervisor.
16 And it happened twice, so I have to go talk to Travis.

17 And Mr. John told me that, you know, he -- he
18 cannot -- took power of it this whole -- you should go to the
19 main OR and ask, you know, the -- the front desk, you know,
20 to go through the -- the date when they know the exposure
21 happened so that, you know, they can, you know, send you, you
22 know, to get tested and that's what I did.

23 THE COURT: Okay.

24 MR. KEIMBAYE: I remember correctly they send
25 me, you know, to go the employee health department to get

1 tested in one of my left arms.

2 THE COURT: Okay. All right. So how do you
3 know that the other employees were sent to get to tested much
4 sooner than you?

5 MR. KEIMBAYE: Because of that certified nurse
6 anesthetist was -- was in that room and I was her helper. We
7 finished the case --

8 THE COURT: No, no, no. You've already
9 described this. Is she -- is she the one who told you that
10 everybody had --

11 MR. KEIMBAYE: Yes.

12 THE COURT: -- been sent to get tested?

13 MR. KEIMBAYE: Yes.

14 THE COURT: That -- unfortunately, you can't
15 testify to that because that's hearsay and she won't be here
16 to testify.

17 MR. KEIMBAYE: Well, you know, Your Honor,
18 when I went to the -- the OR Department, they confirmed that,
19 yes, indeed, you know, it was a -- a positive case and so
20 they send me right away to go get tested. So --

21 THE COURT: I -- I understand that.

22 MR. KEIMBAYE: -- so it was not like hear and
23 say.

24 THE COURT: No, no, no, no. The -- I'm not
25 suggesting it was a mistake. I'm just saying something

1 | someone else told you -- unless it was a party -- is hearsay
2 | and is not admissible for the truth of the matter. And --
3 | and so, right now, we -- we don't have any evidence that you
4 | were treated differently because of your race or your
5 | national origin in getting sent to get tested for
6 | tuberculosis. Right? Because you don't have personal
7 | knowledge that other people we sent sooner than that. All
8 | you know is what someone told you, and that someone who told
9 | this to you isn't going to be in court to be cross-examined.

10 | Yes?

11 | MR. KEIMBAYE: Your Honor?

12 | THE COURT: Yes.

13 | MR. KEIMBAYE: It did not happen once. It
14 | happened twice.

15 | THE COURT: Okay. But it's still the same
16 | issue. Unless there is admissible evidence that you were
17 | treated differently in terms of being sent to get tested then
18 | other people, then it's -- it's hearsay and it's not
19 | admissible. And -- and for that reason, it's not relevant to
20 | your case.

21 | So I mean, if you had called that nurse
22 | anesthetist as a witness, then maybe. But otherwise, there's
23 | no admissible evidence that you were treated differently, and
24 | the jury is only allowed to hear about admissible evidence.

25 | What next?

1 MS. ROSEN: I just want to make sure
2 Mr. Keimbaye understands the hearsay rule so I don't have to
3 constantly object --

4 THE COURT: Yeah.

5 MS. ROSEN: -- during his narrative.

6 THE COURT: Well, there's a lot of lawyers
7 that don't entirely understand the hearsay rule, believe it
8 or not.

9 MS. ROSEN: It can be challenging.

10 THE COURT: So it's -- it's fairly
11 complicated.

12 But do you have any questions about the
13 hearsay rule, Mr. Keimbaye? The -- the general rule is that
14 a witness can only testify about things that that witness
15 personally observed and can't testify about what someone else
16 told them. And the exception is, if the someone else is a
17 party.

18 So what Mr. Kortendick said to you or in your
19 presence is admissible. What Mr. John said to you or in your
20 presence is admissible. What any other managing agent for
21 the hospital -- and I'm not sure there's going to be any
22 others in this case -- told you or said in your presence is
23 admissible.

24 But things you heard from other people are not
25 admissible, okay? And that's true for every witness. So,

1 | you know, Mr. John won't be allowed to testify about what
2 | Ms. Lonon told him for example, or what -- or about what, you
3 | know, the nurse anesthetist told him, or what a doctor told
4 | him.

5 | There's some nuances there because if the
6 | statement isn't being offered for the truth, then --then it's
7 | not hearsay. But I think that's probably too complicated to
8 | explain. I mean, people take -- people take courses in this
9 | stuff in law school and it's usually more than -- more than
10 | one course. Hearsay is complicated.

11 | MS. ROSEN: So for purposes of his narrative,
12 | he should assume that he can testify to things Travis John
13 | and Chris Kortendick told him.

14 | THE COURT: Right.

15 | MS. ROSEN: But nothing else?

16 | THE COURT: Essentially, yes. Again --

17 | MS. ROSEN: Do you understand that,
18 | Mr. Keimbaye?

19 | THE COURT: -- if we -- if we get into the
20 | weeds.

21 | Do you understand that, Mr. Keimbaye?

22 | MR. KEIMBAYE: Yes, Your Honor.

23 | THE COURT: Okay.

24 | MS. ROSEN: Okay.

25 | THE COURT: I don't see the relevance of the

1 tuberculosis at this point given that your knowledge about
2 how other people were treated in terms of being sent to get
3 tested does not come from a source that's admissible in
4 evidence, so please do not testify about tuberculosis
5 exposure. Thank you.

6 MS. ROSEN: Okay. I have a couple other
7 things, but we can probably just wait until this afternoon,
8 Your Honor. So we haven't -- we've only pre-admitted a
9 handful of the exhibits. So we'll have to offer all of them
10 individually.

11 THE COURT: I -- I think at this point, that
12 that is likely to be the most efficient thing to do.

13 MS. ROSEN: Okay.

14 THE COURT: I know that you had sent, I think,
15 an email late that -- that was not so late that the Bailiff
16 wasn't still here and so she forwarded it to me, and I saw
17 it. Something to do with some of the exhibits and I did not
18 have time last night. You can -- believe it or not, this is
19 not my only case.

20 MS. ROSEN: It probably feels like it is, but,
21 yeah.

22 THE COURT: When I'm in trial, it's certainly
23 the most important case. But I have two summary judgments on
24 Friday and a bunch of nondispositive motions, and so, I --

25 MS. ROSEN: Yeah. And you don't have the

1 clerk -- the law clerk, so.

2 THE COURT: Oh, we haven't had law clerks
3 since before I was on the bench.

4 MS. ROSEN: I know, that was -- I mean, that
5 must be really rough.

6 THE COURT: And I was -- I've been on the
7 bench since January of '05, so it's been a long time.

8 MS. ROSEN: Yeah. Yeah. The only other just
9 quick things, Your Honor, is we just want to confirm
10 Mr. Keimbaye doesn't have any demonstratives in his opening
11 because he --

12 THE COURT: Oh.

13 MS. ROSEN: -- never sent any to us.

14 THE COURT: Are you planning to show the jury
15 anything during your opening statement, Mr. Keimbaye?

16 MR. KEIMBAYE: No, Your Honor.

17 MS. ROSEN: Okay.

18 THE COURT: Okay. Well, that takes care of
19 that.

20 MS. ROSEN: Yeah, sure. Okay. And then,
21 Chris Kortendick is planning to testify tomorrow, and we just
22 want to clarify that he can only be called once -- I will do
23 my -- or Ms. Burnham will do her direct of him tomorrow, too,
24 after Mr. Keimbaye finishes.

25 THE COURT: Okay. How -- just pretty much pay

1 no attention at all to those witness examination estimates --

2 MS. ROSEN: Mm-hmm.

3 THE COURT: -- because they were just like
4 wildly inflated.

5 MS. ROSEN: Yes.

6 THE COURT: So realistically, if you were
7 calling him as your witness on direct, how long?

8 MS. ROSEN: An hour.

9 MS. BURNHAM: An hour.

10 THE COURT: Okay.

11 MS. BURNHAM: At most.

12 THE COURT: Okay. Yeah, I -- because he's
13 flying in and then he's flying out again?

14 MS. ROSEN: Mr. Kortendick will be via Zoom.
15 Mr. John is flying in.

16 THE COURT: Okay.

17 THE BAILIFF: May I please allow the jurors to
18 come through?

19 THE COURT: Please do.

20 THE BAILIFF: Thank you.

21 Please rise for the jury.

22 (Pause in proceedings.)

23 THE COURT: Okay. Well, then Mr. Kortendick
24 can -- can come back for direct exam can't he since he's only
25 going to be here via Zoom?

1 MS. ROSEN: He's on a really intense project
2 for work.

3 THE COURT: Okay.

4 MS. ROSEN: So it's hard for him to get away
5 during the day. He doesn't work for us anymore so.

6 THE COURT: Right. No, I -- I was guessing
7 that.

8 MS. ROSEN: Yeah.

9 THE COURT: Okay. We're going to try to make
10 that work. I realize that that was the subject of a motion
11 in limine, and I granted that so -- okay.

12 And then Mr. John is coming in tomorrow and
13 you want to get that down too. All right.

14 MS. ROSEN: Yeah, the goal is to get them, I
15 think, both done tomorrow. That's my goal at least.

16 THE COURT: Okay. All right. In terms of the
17 -- one moment. All right. So the exhibit list that Tonja
18 sent out yesterday -- and in case I didn't introduce her --
19 I'll be introducing her to the jury, but just so Mr. Keimbaye
20 and Counsel know, this is Tonja Hutchinson. She is
21 technically our regular court room clerk, but she's been gone
22 more than she's been here because she's also the regular
23 courtroom clerk for all of the toxic tort trials which take
24 weeks and weeks and weeks and weeks.

25 So she's -- she's just gotten done with a

1 fairly long stint in Judge Rogers courtroom and she'll be
2 starting another one at some point elsewhere. But in the
3 meantime, we have her back which, is great.

4 Okay. Thank you.

5 THE CLERK: Also, Judge. I'm sorry, we're
6 having some formatting issues with the examiner.

7 THE COURT: Oh, I -- I'm not too excited about
8 the format. But what they did bring up was that the exhibits
9 that were admitted yesterday, 109, 131, and 145, were not
10 reflected on that list that you sent out. And I -- I didn't
11 doublecheck because I just --

12 THE CLERK: Oh, I'll doublecheck.

13 THE COURT: -- I didn't have time. So, yeah,
14 no, they're not -- they're not shown as admitted and they
15 were admitted yesterday, so that's 109, 131, and 145.

16 THE CLERK: Thank you, Your Honor. And that's
17 one of the exhibits.

18 THE COURT: Okay.

19 All right. Otherwise, once J. is done with
20 her peptalk -- it's not really a peptalk, but she's got a lot
21 of informational stuff to share with the jury.

22 Are we ready for the jury otherwise?

23 MS. ROSEN: Yes.

24 THE COURT: Okay. J., I think we're ready.

25 THE BAILIFF: Okay.

1 THE COURT: Yay.

2 (Recess at 9:09:40 a.m., recommencing at 9:11:11 a.m.)

3 (The following proceedings were held inside the presence of
4 the jury:)

5 THE BAILIFF: Please recognize the jury.

6 (Jury enters at 9:11 a.m.)

7 THE COURT: All right. Good morning, members
8 of the jury. Please be seated. It's so nice to see you in
9 person.

10 OPENING REMARKS

11 All right. So you have been selected as the
12 jury in this case. You have already met J., Jacqueline Ware,
13 the bailiff. Her job is to assist you. If there is anything
14 that we can do better to accommodate you as a juror, please
15 let her know and she'll involve me if necessary. However,
16 she can't answer any questions about the law or about the
17 facts of this case. So, please, don't ask her about that
18 and, please, do follow any instructions that she gives you.

19 Our court clerk is Tonja Hutchinson. She is
20 assisted by Claire McKenzie, down here, who I believe is in
21 training.

22 Do I have that right, Claire?

23 Okay. Perfect.

24 The job of the court clerk is to handle
25 exhibits and other significant papers, to manage any

1 | electronic exhibits, and to manage the official court record
2 | in this case. You've had a chance to be introduced to the
3 | parties, the lawyers, and the issues in this case, but I
4 | guess I'll do it again since they're not on a screen now.

5 | The Plaintiff is Dominique Keimbaye.

6 | If you'd like to introduce yourself to the
7 | jury, Mr. Keimbaye?

8 | MR. KEIMBAYE: Yes. My name is Dominique
9 | Keimbaye. Nice meeting you.

10 | THE COURT: All right. And counsel for the
11 | Defendants are Ms. Rosen and Ms. Burnham.

12 | If you'd like to introduce yourselves to the
13 | jury and your clients.

14 | MS. ROSEN: Good morning. I'm Katie Rosen.

15 | MS. BURNHAM: And I'm Meg Burnham.

16 | MS. ROSEN: Thank you.

17 | THE COURT: All right. So the first order of
18 | business now that you're here in the courtroom is for another
19 | oath to be administered and the clerk typically does that.
20 | We don't do that during the Zoom jury selection since she
21 | doesn't have a -- a web camera. But since she's here now,
22 | would you all please rise and give your attention to Tonja
23 | Hutchingson.

24 | JURY SWORN

25 | THE CLERK: Please raise your right hand.

1 Do you and each of you -- excuse me, each of
2 solemnly swear or affirm that you will well and truly try the
3 matter at issue and return a true verdict according to the
4 evidence and the instructions of the Court, please say I do.

5 JURY PANEL COLLECTIVELY: I do.

6 PRECAUTIONARY JURY INSTRUCTIONS

7 THE COURT: Thank you. Please be seated once
8 again.

9 So you are now the jury in this case. Couple
10 of reminders that we did talk about a little bit yesterday.
11 You must discuss this case, the evidence, the parties, or the
12 lawyers amongst yourselves or with anyone else until this
13 matter is submitted to you for your deliberation.

14 No discussion means no communication of any
15 kind including electronic communication, texts, blogs,
16 Tweets. One of these days someone's going to tell me what
17 we're calling tweets now. I -- I'm one of the weird people
18 that never joined Twitter, so I don't -- I don't know.

19 But in any event, yeah, please don't
20 communicate about the case in any fashion. It's really
21 important that you keep your minds open and attentive
22 throughout the trial and that you keep your mind free of
23 outside influences so that you can decide this case based on
24 the evidence and the instructions of law that I will be
25 giving to you.

1 Don't allow anyone to discuss this case with
2 you or in your presence. If somebody tries, like I said,
3 feel free to tell them that you're a juror and that you're
4 under Court orders not to discuss the case. If they persist,
5 just walk away and report that to J at your earliest
6 opportunity, please.

7 Violation of this order is serious. It can
8 involve a personal penalty to use a juror and can result in a
9 mistrial which would cause great injury to the parties in
10 this case since if a mistrial were to occur, what we would
11 have to do is basically scrap everything we've done so far
12 and start the trial all over again with a new jury panel. So
13 we really don't want to do that.

14 As we discussed, you can certainly tell your
15 family or your employer that you're a juror and the times and
16 the schedules as to when you need to be in court. I may
17 remind you about that from time to time during the course of
18 the trial. And it's -- it's not that I am insulting your
19 intelligence -- God forbid -- but it can be a difficult
20 instruction to follow. It's a little counterintuitive.

21 I don't know of any other situation in our
22 culture where we take 13 people and we put you together in a
23 little room and we tell you, Guess what, folks, the one thing
24 you're not allowed to talk about is the one thing you have in
25 common which is this case and being a juror in this case.

1 But it is really important for all of the parties to have a
2 fair trial in this case.

3 All right. We also touched on this yesterday
4 as well, but I want to emphasize of the importance that you
5 not read, view, or listen to any information that might
6 relate to this case whether it's from the standard media, or
7 the internet, or something else that might touch on the
8 subject of this trial. Please don't use any device or any
9 resource to look up information that might relate to this
10 case and that includes the law.

11 All of the law that you will need to decide
12 this case, you will get here in this courtroom, and you'll
13 get hard copies to take with you during your deliberations.
14 We have, unfortunately, -- I don't think it's ever happened
15 in my court, thank goodness -- but I have certainly heard of
16 stories where jurors, you know, tried to look up legal terms
17 and things like that on the internet. Please don't do that.
18 It -- it can result in a mistrial. We really don't want that
19 to happen.

20 The lawyers and the parties and the witnesses
21 are not allowed to talk to you during the trial except here
22 in open court. So if you encounter any of these folks coming
23 or going from the courthouse or in the security line, they
24 won't interact with you. They won't greet you. They won't
25 talk to you. And they're not being rude, they're simply

1 following the instructions from the Court. They will
2 probably even try to avoid making eye contact with you, so
3 please don't hold that against them. That's just one of the
4 rules.

5 Even some contact or some discussion that has
6 nothing at all to do with this case, you know, you're in an
7 elevator together and somebody want's to start chatting about
8 what the Mariners are doing or something like that, it would
9 give a bad impression if anyone were to observe it. So
10 again, please don't be offended if they -- if they don't talk
11 to you except here in open court.

12 In deciding this case, you'll be asked to
13 apply a concept called the "burden of proof." And I think we
14 touched on that a little bit during the jury selection
15 sessions yesterday. The burden of proof refers to the
16 measure or the amount of proof that is required to prove a
17 fact or a proposition. The burden of proof in this case is
18 proof by a preponderance of the evidence which is a fancy of
19 saying that you must be persuaded after you consider all the
20 evidence in the case, that a proposition is more probably
21 true than not true, more than 50 percent.

22 It's your duty as the jury to decide the facts
23 in this case based on the evidence that will be presented to
24 you during this trial.

25 The word "evidence" is a legal term. It

1 includes such things as the testimony of witnesses as well as
2 documents or other physical objects that may be admitted into
3 evidence.

4 It's also your duty to accept the law from my
5 instructions regardless of what you personally believe the
6 law is or what you think it should be. You'll be applying
7 the law from my instructions to the facts that you decide
8 have been proved or not proved, and in this way decide the
9 case.

10 At the end of the trial, I'll give you some
11 more detailed instructions that will control your
12 deliberations. When you deliberate, it will be your duty to
13 weigh and evaluate all of the evidence received in this case
14 and in that process to decide the facts. To the facts as you
15 find them, you'll apply the law that I give to you whether
16 you agree with the law or not.

17 Again, the only evidence that you are to
18 consider will consist of the testimony of witnesses, exhibits
19 that are admitted into evidence, and -- and I doubt that will
20 come up during this trial, but it does come up occasionally
21 during a trial -- is stipulations between the parties. What
22 a stipulation means is just an agreement between the parties
23 that a particular fact is true. I doubt that will come up in
24 this case, but it's a possibility. And if it does, then I'll
25 -- I'll explain it to you a little bit further at that time.

1 When witnesses testify, please listen very
2 carefully. You'll need to rely on your memory and on your
3 notes during your deliberations because testimony can rarely,
4 if ever, be repeated for you. Exhibits, on the other hand,
5 that are admitted into evidence will be provided to you
6 during your deliberations and those will be available to you
7 while you deliberate.

8 You are allowed to take notes during this
9 trial. It's entirely your decision whether or not you choose
10 to take notes. We've provided you with notebooks and pens
11 for taking notes if you wish to do that. If you do decide to
12 take notes, please don't show your notes to anyone or allow
13 anyone to read them, and don't discuss your notes with anyone
14 until you begin deliberating on your verdict.

15 During deliberations, you'll be able to
16 discuss your notes with the other jurors or show your notes
17 to them if you wish. And once you've reached a verdict, J.
18 will collect your notebooks and destroy your notes, and no
19 one will be allowed to read those.

20 Do keep in mind that for some folks notetaking
21 might interfere with your ability to observe the demeanor of
22 the witnesses or other events during the trial.

23 The remarks, statements, and arguments that
24 you may hear from Mr. Keimbaye or from Defense counsel are
25 intended to help you understand the evidence and apply the

1 law. However, their statements and their arguments are not
2 evidence or the law.

3 Because Mr. Keimbaye is representing himself,
4 he plays a dual role. So what he says when he's on the
5 witness stand and under oath is evidence just like any other
6 witness who is testifying under oath. But his other
7 statements and arguments when he's not on the witness stand
8 and not under oath are not evidence just as the statements
9 and arguments you may hear from Defense counsel are not
10 evidence.

11 Again, the evidence is the testimony and the
12 exhibits. The law will be contained in my instructions to
13 you, and you must disregard anything that a party or a lawyer
14 says that may be at odds with the evidence or the law in my
15 instructions.

16 You may hear objections made by the parties or
17 the lawyers during trial. Each party has the right to object
18 to questions asked by the other side and may have a duty to
19 do so. Those objections should not influence you. Please
20 don't make any assumptions or draw any conclusions based on
21 objections you may hear from either side in this case.

22 One of my duties, as the trial judge, is to
23 decide whether specific evidence should be admitted during
24 the trial. As an example, if a party offers a photograph as
25 an exhibit, I'll decide if it's admissible based on

1 applicable rules of evidence and legal concepts. Please do
2 not be concerned about the reasons for my rulings. You must
3 not consider or discuss any evidence that I do not admit or
4 that I ask you to disregard.

5 Our State Constitution prohibits a trial judge
6 from making a comment on the evidence. Because it's your
7 role to evaluate the evidence, it would not be proper for me
8 to express by words or by conduct my personal opinion about
9 the value of a particular witness's testimony or an exhibit.
10 I will not intentionally do this. If it appears to you that
11 I have indicated in any way my personal opinion, you must
12 disregard that entirely.

13 Because this is a civil case, you will be
14 allowed to propose questions in writing to witnesses after
15 the lawyers and Mr. Keimbaye have completed their
16 questioning. You may ask questions in order to clarify the
17 testimony, but you should not express any opinion about the
18 testimony or try to argue with a witness. If you do decide
19 to propose questions, please remember that your role is that
20 of a neutral factfinder and not that of an advocate.

21 The way this will work is before I excuse each
22 witness, I will ask if any juror has a question that you would
23 like to have me ask the witness. Your notebooks will have a
24 form in which you can write out any questions that you wish
25 to have me ask a witness. You don't need to sign -- in fact,

1 please do not sign your question. The bailiff will collect
2 your questions and then I will review them with Mr. Keimbaye
3 and with counsel for the Defendants, and then make a decision
4 on which questions that were proposed by a juror to ask a
5 witness.

6 There may be some questions that I won't ask,
7 or I will reword. This might happen either because of the
8 rules of evidence or other legal reasons, or sometimes
9 because a question is expected to be answered later in the
10 case, perhaps through a different witness.

11 If I don't ask a question that you've proposed
12 or if I rephrase it, please don't attempt to speculate as to
13 the reasons and please don't discuss the circumstance with
14 your fellow jurors.

15 By giving you the opportunity to propose
16 questions, I'm not requesting or suggesting that you do that.
17 Bear in mind that it will often be the case that a party or a
18 lawyer has not asked a question because they know it's
19 legally objectionable or because a later witness may be
20 addressing that subject.

21 All right. Let me briefly explain to you the
22 -- the rest of the procedure that we'll be following during
23 the trial. First, Mr. Keimbaye will have an opportunity to
24 make an opening statement where he will outline the testimony
25 of witnesses or other evidence that the Plaintiff expects

1 will be presented during the trial. After the Plaintiff's
2 opening statement, Defense counsel may make an opening
3 statement, or they may reserve their opening statement until
4 after the Plaintiff rests.

5 Next, the Plaintiff will present the testimony
6 of witnesses or other evidence to you. Any witness called by
7 a party may be cross-examined by the other parties. Once the
8 Plaintiff has finished presented evidence, Defense counsel
9 may present the evidence of witnesses or other evidence to
10 you as well.

11 When all the evidence has been presented to
12 you, I will instruct you on the law that applies to this
13 case. The Court will still require that I read those to you
14 out loud on the record. But you will all have hard copies on
15 which you can follow along, and you'll be able to take those
16 into the jury deliberation room with you.

17 After the instructions of law, the parties
18 will have an opportunity to make closing arguments to you
19 where they will sum up what they believe the evidence has
20 shown, explain to you what they believe your verdict should
21 be, and why. And after that, we will excuse our alternate
22 juror.

23 You may have noticed there's 13 of you. Only
24 12 of you will be deliberating. We seat an alternate because
25 we understand that life happens and sometimes someone may

1 become ill or have a family emergency or something come up
2 such that they can't finish their jury service through
3 deliberations to a verdict, so we -- we seat an alternate who
4 can step in.

5 We have not predesignated the alternate juror.
6 What we will do at the conclusion of the trial just before
7 deliberations begin, we have a spindle here with numbered
8 ping pong balls, kind of like a lottery, way less exciting.
9 I'll ask Madam Clerk to spin the spindle and select a ping
10 pong ball and the number on the ping pong ball will be the
11 seat number of our alternate juror, assuming, of course, that
12 all 13 of you are still with us at the conclusion of the
13 trial. So everyone has an equal chance of being chosen as an
14 alternate and that's the fairest way I know of to -- to
15 accomplish that.

16 All right. And after that, 12 of you will
17 retire to the jury deliberation room where you will select a
18 presiding juror and begin deliberating on your decisions
19 which we refer to as a verdict. We will provide you will a
20 verdict form to record your verdict.

21 But again, until you're released to begin your
22 deliberations, please don't communicate about the case with
23 your fellow jurors or with anyone else.

24 Throughout the trial, you need to maintain an
25 open mind. Try not to form any firm or fixed opinions about

1 any issue in the case until the entire case has been
2 submitted to you for your deliberation. Remember, the
3 evidence comes in witness by witness, exhibit by exhibit, and
4 you won't have the full picture until both sides have
5 presented their cases and both sides have rested, so please
6 maintain an open mind until all that has occurred.

7 As jurors, you are officers of this court.
8 You must not let your emotions overcome your rational thought
9 process. You must reach your decisions based on the facts
10 proved to you and the law given to you, not on sympathy,
11 prejudice, or personal preference. To assure that all
12 parties receive a fair trial, you must act impartially with
13 an earnest desire to reach a just and proper verdict.

14 All right. Ladies and gentlemen, that is the
15 longest you are going to hear me talk until the conclusion of
16 the case when it comes time to read the instructions of law
17 to you. So at this time, would you please give your
18 attention to Mr. Keimbaye for his opening statement on behalf
19 of the Plaintiff's case.

20 OPENING STATEMENT BY THE PLAINTIFF

21 MR. KEIMBAYE: Thank you, Your Honor.

22 Ladies and gentlemen of the jury, Defendant
23 Providence, and his employees and supervisor harmed
24 Plaintiff, Mr. Keimbaye, by violating his civil right to be
25 free from hostile work environment and racial discrimination

1 under the laws of the Washington State.

2 Plaintiff testimony alone as a material
3 witness would burden and trouble Defendants with a huge
4 liability. In this case, there wont be any last minute
5 surprise witnesses and nobody is going to -- to break down in
6 the stand of this court with tearful confession.

7 Members of the jury, why you should belief the
8 Defendants' employer, Providence, and his supervisors are
9 liable. Plaintiff will be presenting you with the simple
10 fact that he was unfairly discharged and terminated.

11 THE COURT: So -- so I'm sorry to interrupt,
12 Mr. Keimbaye, but the -- the unfair discharge and termination
13 case is not -- claim is not part of this case, so please move
14 on to the issues that are part of this case.

15 MR. KEIMBAYE: All right. Your Honor.

16 THE COURT: Thank you.

17 MR. KEIMBAYE: Plaintiff will be presenting
18 you with the simple fact that he was discharged from his
19 anesthesiology technician position at Providence Regional
20 Medical Center in Everett, Washington based solely on his
21 national origin, color, gender, and race.

22 MS. BURNHAM: Your Honor, I'm so sorry, but we
23 have to object.

24 THE COURT: Sustained.

25 Did you hear me, Mr. Keimbaye? Your claim for

1 unlawful discharge is not part of this trial, so please move
2 on the issues that are part of this trial.

3 MR. KEIMBAYE: You -- you will get explanation
4 why Mr. Keimbaye was fired.

5 THE COURT: Okay. The jury needs to disregard
6 any discussion about Mr. Keimbaye being fired or why he was
7 fired or any alleged discrimination. Those are not part of
8 this trial.

9 The issues that are part of this trial are
10 whether Mr. Keimbaye experienced unlawful harassment in the
11 workplace and whether he was subjected to a hostile work
12 environment because of his race, his national origin, and/or
13 his sex. Those are the issues that are going to be presented
14 to you.

15 Mr. Keimbaye, please confine your remarks in
16 opening statement to the issues that the jury needs to
17 decide, okay?

18 MR. KEIMBAYE: All right.

19 THE COURT: Thank you.

20 MR. KEIMBAYE: You will get a explanation why
21 Mr. Keimbaye was fired.

22 THE COURT: No. We're not going to talk about
23 you being fired.

24 MR. KEIMBAYE: All right. Your Honor, I'll
25 skip that.

1 THE COURT: Thank you.

2 MR. KEIMBAYE: Members of the jury, it is up
3 to you to sift through layers on layers of truth until you
4 determine for yourself which version sounds the most
5 convincing. In the end, you all are going to agree with the
6 Plaintiff that Defendant Providence, and his supervisors,
7 did, in fact, -- in fact, treat Mr. Keimbaye very poorly,
8 unethically, and inhumanly based on his race and national
9 origin.

10 There are certain fact -- there are certain
11 point that Plaintiff must prove to you. Plaintiff
12 Mr. Keimbaye was and is still a hard-working man and
13 qualified to perform his anesthesiologist technician position
14 dutifully and competently.

15 After notifying his employer and his
16 anesthesia supervisor at the beginning of his employment
17 about the possibility of commuting late to work due to
18 traffic and to be -- and to being new -- to a long drive to
19 work because he live in downtown Bellevue about 40 miles from
20 -- from Everett.

21 Plaintiff was exposed to extreme and hostile
22 work harassment including sexual harassment and offensive --
23 offensive and abusive comment based on his national ethnicity
24 and origin, his darkened skin color, his race -- and was
25 brutally and physically assaulted and attacked in his groin

1 area causing Plaintiff to bleed through his urethra while he
2 was dutifully and compassionately assisting their anesthesiologist
3 provider and contractor, who was performing anesthesiology
4 care on a dying patient who was already undergoing an
5 open-heart surgery. Regardless of what I look like, I am who
6 I am, and I am sincerely happy with my darker skin.

7 Plaintiff Mr. Keimbaye was still in his
8 probationary employment and was allowed and permitted by his
9 very own supervisor to take BLS and ACLS on my training for
10 his certification through the HealthStream network. Because
11 Plaintiff was not only mostly assigned to tough task but also
12 to difficult thoracic and open-heart cases where the
13 anesthesiologist providers expect more advanced
14 cardiovascular resuscitation skill from Mr. Keimbaye.

15 That was the reason why Plaintiff was looking
16 for upgrading his skills. So that in case of an emergency or
17 code blue, he would be able to help those anesthesiologists
18 with the, you know, any cardiovascular issues.

19 Point number 4. Plaintiff persistently and
20 consistently asked that his very own supervisor help him
21 report or at least direct him to the HR office to file his
22 harassment concern. This was Plaintiff legal choice to get
23 the fact of his enduring harassment and abuse out and hope to
24 get it stopped to harassment and mistreatment of him.

25 After taking Mr. Keimbaye to the HR office,

1 his very own -- own supervisor suddenly discovered and panic
2 about Plaintiff seriousness and impatient to pursue and filed
3 his harassment concern which would affect their very own
4 close and long-time friends.

5 Then one day, they panic and distance
6 themselves from Mr. Keimbaye. They did what most employers
7 would do with a probationary employee and complaining
8 employees for harassment and workplace discrimination which
9 would get -- which was to get Mr. Keimbaye out as far away
10 for the rest of the organization as possible by maliciously
11 relying now on Plaintiff timecard, LUGS, and access to his
12 BLS and ACLS online training as a proof of dishonesty and
13 policy violation.

14 This action taken by plenty of supervisors was
15 beyond comparable to their action taken against Plaintiff
16 tardiness. Tardiness raised when he was employed by this
17 very employer, Providence, back in Portland, Oregon from 2008
18 to 2014.

19 Now, the behavior of Plaintiff employers may
20 seem reasonable with some of you and anybody. After all,
21 hostile work environment and all racial discrimination is and
22 may be a paramountly incurable issue in the workplace in this
23 country. Members of the jury, hostile work environment and
24 workplace discrimination exists.

25 I experience -- but no matter who've come to

1 judge Defendant, employer Providence, and his employees in an
2 ethical, moral, and human term, the fact of the matter is
3 when they refuse to help Plaintiff Mr. Keimbaye file his
4 concern and discharge him because he had an intention to
5 pursue and report his hostile work environment in which a
6 discrimination concern against their closest friends and
7 longtime coworkers, they undoubtedly broke the law by
8 violating Plaintiff civil right to be free from harassment at
9 work.

10 Point number 6. This Trial Court along with
11 the Court of Appeal had denied not once, but four times
12 Defendants' motions to dismiss Plaintiff claim.

13 MS. BURNHAM: Your Honor, this is improper
14 argument.

15 THE COURT: That -- that's sustained.

16 Court -- court rulings on previous claims or
17 current claims are -- are not something that the jury should
18 be concerned with because what the Court thinks of the case
19 is not relevant for the issues that the jury needs to decide.

20 MR. KEIMBAYE: Evidence to be showing later.
21 But, please, members of the jury, expect conflict in the
22 testimony and pay particular attention to supporting
23 evidence, which will help you assess the credibility of the
24 contributory testimony. The fact that Mr. Keimbaye was
25 allowed to take online BLS and ACLS classes and was

1 unfamiliar with the Defendant payroll means that he might do
2 things that were not based on Defendant's employer policy and
3 get himself blamed for.

4 Even though Mr. Keimbaye was a -- a former
5 employee and he will -- it also means that Defendants have a
6 duty to know that like Plaintiff, new employees would be
7 using the payroll system. And that Defendant employer should
8 properly train and encourage them to use in a way that will
9 protect them like Mr. Keimbaye from being accused and
10 blameful for while he was still learning how to use the
11 payroll system.

12 Plaintiff also used Defendants' payroll system
13 for his callback and on-calls in a foreseeable manner in that
14 he was reasonable -- reasonably careful to ask for help and
15 permission from his -- from his employer and supervisor, but
16 he was told to violate timecard fraud and dishonesty.

17 Defendant may try to persuade -- persuade you
18 with Plaintiff history of employment with them in Portland,
19 Oregon or any previous lawsuit in prior record regarding a
20 parking violation. And one of them might be to portray
21 Plaintiff as a tardy employee and uncivilized person and a
22 litigious individual. But please pay particular attention to
23 what is said about any specific matter.

24 The reality today is that we all know that we
25 are not perfectly honest with our family, friends, neighbors,

1 coworkers, community, and even with this very country that we
2 all love, serve, and live in. And so our big corporation
3 including Defendant employers, Providence doubt my
4 deceitfully and unfairly conduct employment practice against
5 employees -- employees like Mr. Keimbaye based on the
6 protected class.

7 "Injustice anywhere is the threat to justice
8 everywhere," MLK.

9 Thank you.

10 THE COURT: Thank you, Mr. Keimbaye.

11 MR. KEIMBAYE: Thank you.

12 THE COURT: Does Defense counsel wish to make
13 an opening statement at this time?

14 MS. BURNHAM: Yes, Your Honor.

15 MS. ROSEN: I believe Juror Number 1 --

16 MS. BURNHAM: Oh, sorry.

17 THE COURT: Oh, is your pen out of ink?

18 JUROR NUMBER 1: Do you have a pen that works?
19 I'm so sorry.

20 MS. ROSEN: Oh, we have one.

21 THE COURT: Well, yeah.

22 MS. BURNHAM: I can --

23 MS. ROSEN: Yeah.

24 JUROR NUMBER 1: So --

25 THE COURT: I don't think you have anything at

1 all to be sorry for. We'll get you another pen.

2 MS. ROSEN: Here, we --

3 MS. BURNHAM: Oh, there's one right there.

4 MS. ROSEN: Oh.

5 UNIDENTIFIED SPEAKER: Let me grab it. Thank
6 you.

7 JUROR NUMBER 1: Oh, thank you.

8 MS. BURNHAM: Your Honor, am I free to roam?

9 THE COURT: Yes.

10 MS. BURNHAM: Okay.

11 THE COURT: Yeah. Yeah, I -- I don't tie
12 people to a podium. I -- I know some courts do that and I
13 know often times trial lawyers like to move around a little
14 bit, so that's fine.

15 MS. BURNHAM: I don't know if I'm going to
16 move around a lot but I

17 THE COURT: But if you want to use the podium,
18 you're certainly free to do that too.

19 THE CLERK: Your Honor, I might just add a
20 mike and see if that helps.

21 THE COURT: Oh, sure.

22 Yep, we want to make sure everyone can hear
23 you and we want to make sure the record can hear you.

24 THE COURT: All right. Thank you,
25 Ms. Burnham.

1 (Pause in proceedings.)

2 THE COURT: Can we get started while we're
3 messing with the tech issues?

4 MS. BURNHAM: Yes, we can, Your Honor.

5 THE COURT: Thank you.

6 MS. BURNHAM: And I apologize. I know this is
7 -- nobody likes to watch anybody else fiddle with tech. All
8 right.

9 OPENING STATEMENT BY THE DEFENDANT

10 MS. BURNHAM: Good morning, Your Honor,
11 Mr. Keimbaye, and members of the jury. My name is Meg
12 Burnham and I along with my cocounsel, Katie Rosen, have the
13 pleasure of representing the Defendants in this case,
14 Providence and Chris Kortendick.

15 You just heard a lot of allegations from
16 Mr. Keimbaye, and I know you are all still processing what he
17 told you. But much of what Mr. Keimbaye just told you, the
18 evidence will show did not happen.

19 Contrary to what you just heard, let me be
20 clear, the evidence will show that Mr. Keimbaye was not
21 subject to harassment or a hostile work environment.

22 We can all agree that no one should face
23 harassment in the workplace or anyplace. But that's not what
24 this case is about. This case is about a probationary
25 employee who is angry that he got for timecard fraud and

1 tardiness after he was already coached for violating the
2 tardiness policy. And when he was placed on administrative
3 leave so that Providence could investigate his time keeping,
4 he got nervous losing his job, so he made allegations that he
5 was sexually harassed by his coworker, Opal Lonon, months
6 before, in hopes that Providence would drop its investigation
7 into his timekeeping and start investigating Opal instead.
8 He wanted to pass the buck and shift blame.

9 THE COURT: And I'm sorry, could you move that
10 microphone up a little bit --

11 MS. BURNHAM: Am I being not loud enough?

12 THE COURT: -- so it's closer.

13 MS. ROSEN: Yeah.

14 MS. BURNHAM: Sorry. Just --

15 MS. ROSEN: Thank you.

16 MS. BURNHAM: Can you all hear me now? I
17 don't think --

18 THE COURT: Yeah.

19 MS. BURNHAM: Is it on?

20 THE COURT: No, when you speak in the
21 microphone it makes a huge difference.

22 MS. BURNHAM: Oh, okay.

23 THE COURT: Yeah.

24 MS. BURNHAM: I can't hear it, sorry.

25 All right. While Mr. Keimbaye got part of his

1 wish, Providence did investigate Opal Lonon's behavior. But
2 Providence also continued to investigate Mr. Keimbaye for
3 timecard fraud and for his tardiness. Ultimately, Providence
4 found that Mr. Keimbaye was stealing time. He was reporting
5 time worked when he wasn't actually working. He was also
6 tardy for 56 percent of shifts, so Providence terminated him.

7 Your job, members of the jury, is not to
8 decide whether Mr. Keimbaye's termination was lawful. Your
9 job is to decide whether Mr. Keimbaye was harassed during his
10 employment. This is not a case about discrimination or
11 wrongful discharge.

12 Now, Judge Darvas instructed you to keep an
13 open mind during this trial and we ask that you do the same
14 because as we all know, there are two sides to every story.
15 And the evidence that you will hear throughout this trial
16 will establish that Mr. Keimbaye's accusations against
17 Providence and Chris Kortendick are gross misrepresentations
18 of the facts and inconsistent with the reality of what
19 happened during his very short employment with Providence.

20 There is no credible evidence that
21 Mr. Keimbaye was ever harassed by his coworkers, Chris
22 Kortendick and Opal Lonon. And although Mr. Keimbaye has
23 made these allegations, there is just no credible evidence to
24 support them. They are baseless, provocative allegations,
25 nothing more.

1 Members of the jury, opening statement is the
2 chance for us to briefly review the evidence that you will
3 hear during this trial. I am not going to go through all of
4 the evidence, rest assured, right this moment, but you will
5 hear it in the coming weeks. But for right now, I just want
6 to focus on the most important facts that we believe
7 demonstrate that all of Mr. Keimbaye's accusations are
8 nothing more than just that, accusations.

9 We have no interest in making this case any
10 more complicated or lengthy than it needs to be. We don't
11 want to waste your time, the Court's time, or Mr. Keimbaye's
12 time, so I'll keep this as short as I can.

13 As I go through some of the evidence, I ask
14 that you keep three critical facts in mind. Critical fact
15 number 1, Mr. Keimbaye never reported any harassment by
16 anyone until he was placed on administrative leave while
17 Providence investigated his timekeeping.

18 Critical fact number 2, when Mr. Keimbaye
19 alleged sexual harassment to Providence's HR, Providence
20 immediately conducted an investigation, interviewed every
21 person who Mr. Keimbaye said would substantiate his
22 allegations, and ultimately concluded that there was no
23 sexual harassment.

24 Critical fact number 3, months after
25 Mr. Keimbaye was terminated for timecard fraud and tardiness

1 and without any evidence, Mr. Keimbaye, for the first time,
2 alleged that Chris Kortendick engaged in race and national
3 origin harassment.

4 But before we start with critical fact number
5 1, I need to give you some background. Let's start with what
6 Providence Health and Services in for those of you who may
7 not be familiar. Providence is the largest healthcare in
8 Washington with hospitals, clinics, senior care centers, and
9 hospice and home health services throughout the state. But
10 for purposes of this trial, we are only talking about the
11 Providence located in Everett, Washington. That is the
12 location where Mr. Keimbaye worked and that is where our
13 story begins. Let's jump in.

14 I mentioned earlier that Mr. Keimbaye only
15 worked for Providence for about six months in 2018. He was
16 hired as an anesthesia technician and he reported to Travis
17 John, the anesthesia technician supervisor.

18 And how do we know that? Well, let's look at
19 the job offer. From this document, we see that from the
20 moment Mr. Keimbaye was informed of his job offer, he knew
21 his supervisor was Travis John and only Travis John.

22 And remember, Mr. Keimbaye only worked for
23 Providence for less than six months, until June 22nd, 2018,
24 but let's look at a timeline to help us get our bearings.

25 Mr. Keimbaye started working for Providence in

1 December of 2017. And shortly after starting his work for
2 Providence, Mr. Keimbaye began regularly violating
3 Providence's attendance policy by being tardy. You will hear
4 evidence that Mr. Keimbaye had 51 tardies in his six months
5 of employment. And his first tardy was about a week after he
6 started.

7 You will hear from witnesses that even being a
8 few minutes late could impact patient safety. Because if
9 Mr. Keimbaye was a few minutes late, he would miss the
10 anesthesia technician huddle where major issues and concerns
11 were addressed for the day. That huddle started promptly at
12 6:30 a.m., so being even just a few minutes late might mean
13 you miss the huddle all together.

14 And once Mr. Keimbaye's supervisor, Travis
15 John, was told by the timekeeper scheduler, Chris Maddy, that
16 Mr. Keimbaye's tardies were becoming frequent, Travis John
17 coached Mr. Keimbaye in February, March, and April, and
18 informed Mr. Keimbaye he must be on time moving forward, but
19 that's not what happened.

20 After he was coached about his tardiness,
21 Mr. Keimbaye continued to be tardy and also regularly
22 reported that he worked after his shift either without the
23 required approval or without actually working the time at
24 all, just reporting that he was working on his timecard when
25 he actually wasn't. We call that timecard fraud.

1 Here, we see the timekeeper scheduler, Chris
2 Maddy -- and you will hear from her during this trial -- and
3 you see that she is notifying Travis John, Mr. Keimbaye's
4 supervisor, of her concern of Mr. Keimbaye's, quote, pattern
5 of manipulation and timecard fraud.

6 And that brings us to critical fact number 1.
7 Mr. Keimbaye never reported any harassment by anyone until he
8 was placed on administrative leave while Providence
9 investigated his timekeeping. So Mr. Keimbaye worked for
10 Providence for less than six months, and it was only after
11 Ms. Maddy sounded the alarm about Mr. Keimbaye's pattern of
12 timecard fraud and Providence placed Mr. Keimbaye on an
13 administrative leave so it could investigate his timekeeping
14 that Mr. Keimbaye alleged for the first time he was sexually
15 harassed by his coworker, Opal Lonon, months before.

16 But why do I bring up the timing? Well,
17 because an employee that waits bring up claims until the
18 employee fears termination, which is exactly what happened
19 here, as jurors, you need to ask yourself why. Mr. Keimbaye
20 had no legitimate reason for waiting to report his
21 allegations. You are going to hear that he could have
22 reported his allegations at any time during his employment,
23 through phone, through email, or in person. And he could
24 have done it anonymously if he wished.

25 Any argument that Mr. Keimbaye was unable to

1 report his allegations before he was placed on administrative
2 leave defies logic. He was trying to pass the buck and that
3 brings us to critical fact number 2.

4 When Mr. Keimbaye alleged sexual harassment to
5 Providence's HR, Providence immediately conducted an
6 independent investigation. Interviewed every person who
7 Mr. Keimbaye said would substantiate his allegations and
8 ultimately concluded that there was no sexual harassment.
9 That's a mouthful, I recognize, so let's break that down a
10 little bit.

11 We know that Mr. Keimbaye alleged he was
12 sexually harassed by Opal Lonon after he was placed on
13 administrative leave for timecard theft. And keep in mind,
14 members of the jury, at that point Mr. Keimbaye had not made
15 any allegations regarding Mr. Kortendick -- Chris Kortendick
16 -- but we'll come back to that.

17 What's important is how Providence reacted to
18 Mr. Keimbaye's report. Providence did exactly what it is
19 supposed to do and what any company that cares about its
20 employees would do. It started an investigation. And
21 Providence didn't cut corners. You are going to hear from
22 Providence's investigator, Marilyn Rice, that she spoke with
23 every person Mr. Keimbaye said would corroborate or
24 substantiate his allegations of sexual harassment by Opal
25 Lonon.

1 But much to Mr. Keimbaye's dismay, the
2 employees he said would confirm his allegations told
3 Providence's investigator they knew nothing about it. From
4 this investigation report, we see that Marilyn Rice, the HR
5 investigator, talked to Travis John, Mr. Keimbaye's
6 supervisor, who reported he never observed, nor had he heard
7 from other coworkers that there was any inappropriate
8 behavior by Ms. Lonon.

9 Ms. Rice also talked to Chris Kortendick, who
10 reported he never heard or saw any inappropriate behavior
11 from Ms. Lonon towards Mr. Keimbaye. Ms. Rice also talked to
12 three other anesthesia technicians who all reported they
13 never saw Opal Lonon ever act inappropriately towards
14 Mr. Keimbaye. No witnesses reported seeing any inappropriate
15 behavior from Ms. Lonon and the investigation was closed.

16 In fact, the only witness to say anything
17 about a hug was Opal, herself, who admitted on one occasion
18 to hugging Mr. Keimbaye. And Providence took Opal's behavior
19 seriously. Although it did not rise to sexual harassment,
20 hugging another employee violated Providence's policy, so
21 Opal was placed on a final written warning.

22 But keep in mind, when Marilyn Rice
23 interviewed Mr. Keimbaye, he reported vastly different
24 allegations than what he claims now. Mr. Keimbaye didn't
25 mention anything to Ms. Rice about Ms. Lonon touching

1 herself, that she touched his chest, that Ms. Lonon liked
2 hairy chests, or that Ms. Lonon harassed him every time she
3 saw him, which is now what he's claiming. These are all
4 brand new allegations he raised for the first time during
5 this litigation.

6 But none of that changes the indisputable
7 evidence that Mr. Keimbaye had committed timecard fraud by
8 reporting time he worked when he actually wasn't working, and
9 that Mr. Keimbaye was late to his shift more than he wasn't.
10 And on that basis, and at human resources recommendation,
11 Travis John made the decision to terminate Mr. Keimbaye's
12 employment.

13 And that brings us to critical fact number 3.
14 Months after Mr. Keimbaye was terminated for timecard fraud
15 and tardiness, Mr. Keimbaye, for the first time, alleged that
16 Chris Kortendick engaged in race and national origin
17 harassment against him. It was not until several months
18 later, months and months after the termination, that
19 Mr. Keimbaye again made new, never-reported allegations that
20 Chris Kortendick harassed him on the basis of race and
21 national origin.

22 You will hear during this case that
23 Mr. Kortendick denies ever treating Mr. Keimbaye
24 inappropriately or making any comments about his race or
25 national origin. You will hear that it was Mr. Keimbaye who

1 acted inappropriately towards Mr. Kortendick and towards his
2 colleagues in general, even in the operating room.

3 And you will hear from witnesses that they
4 never saw Mr. Kortendick treat Mr. Keimbaye inappropriately
5 or unprofessionally. And despite being involved in two HR
6 investigations where he had direct access to HR and could
7 have reported Mr. Kortendick while he was still employed,
8 Mr. Keimbaye never reported anything about Mr. Kortendick.
9 And importantly, you are going to hear that Mr. Kortendick
10 was not Mr. Keimbaye's supervisor.

11 And you may be thinking, well, why does that
12 matter? Well, it matters because the only way that
13 Mr. Kortendick and Providence can be held liable in this case
14 for any alleged harassment by Mr. Kortendick is if he is
15 found to be a supervisor. But he wasn't a supervisor at all.
16 He couldn't hire, fire, discipline, assign, schedule, or
17 promote employees. He also couldn't make recommendations to
18 do those things.

19 And Mr. Kortendick was in the same Bargaining
20 Unit or Union as Mr. Keimbaye because they held the same
21 position. If Mr. Kortendick was his supervisor, he couldn't
22 be in the same Union as Mr. Keimbaye. For example, the
23 actual supervisor, Travis John, was not in the Y=Union with
24 Mr. Kortendick with Mr. Keimbaye because he wasn't allowed to
25 be.

1 And the evidence will show that Chris
2 Kortendick was not involved or consulted about the decision
3 to terminate Mr. Keimbaye. That decision was made by the
4 actual supervisor, Travis John. The only difference between
5 Mr. Kortendick and Mr. Keimbaye is that Mr. Kortendick
6 sometimes served as the lead anesthesia technician. Which
7 basically means he would help direct calls from the -- from
8 the anesthesiologist when the anesthesiologist could not
9 reach a specific technician.

10 You'll hear all about a magic phone which
11 really isn't all that magical at all. But it's basically the
12 default phone where calls go when an anesthesiologist or
13 anyone else is trying to reach a technician and is unable to
14 reach that specific technician. Chris Kortendick carried
15 that phone when he was the lead. And that magic phone didn't
16 make him a supervisor.

17 Once again, Mr. Keimbaye is passing the buck.
18 And that is why we are here today because Mr. Keimbaye won't
19 accept accountability for his timecard fraud and his
20 tardiness. And instead, he wants to drag his former
21 coworkers through the mud, but he has no evidence.

22 And I must address Mr. Keimbaye's allegation
23 that he reported he was hit by a doctor in the groin area to
24 Travis John. You will hear from Travi John that Mr. Keimbaye
25 never reported being hit. Mr. Keimbaye never reported

1 anything at all to Travis John, nothing about Opal, nothing
2 about Chris Kortendick, nothing at all.

3 Members of the jury, you will hear no credible
4 evidence that Mr. Keimbaye faced any harassment or worked in
5 a hostile work environment. You won't hear the credible
6 evidence because it doesn't exist. The evidence will be that
7 contrary to what he now asks you to believe, Mr. Keimbaye was
8 an employee trying to pass the buck, trying to distract from
9 his timecard fraud and his tardiness by implicating his
10 coworker, Opal Lonon. And when that didn't work and
11 Providence terminated him for is time theft, he then
12 conveniently raised allegations against Chris Kortendick
13 months later.

14 But those allegations, just like the
15 allegations against Opal Lonon, are just that, allegations.
16 There is no credible evidence, none, to support them. Claims
17 of harassment and hostile work environment are very serious
18 charges and Mr. Keimbaye's claims carry a heavy burden of
19 proof.

20 It is Mr. Keimbaye's burden to prove by a
21 preponderance of the evidence that the harassment he says
22 happened actually happened. And he has to prove through
23 evidence that not only these events happened, but they were
24 so offensive and so pervasive that they altered the
25 conditions of his employment.

1 I ask that you keep that heavy burden of proof
2 in mind throughout this trial. Listen carefully, watch to
3 see whether you think Mr. Keimbaye met his burden. He won't
4 be able to. The buck stops here. At the conclusion of this
5 case, after you have considered all of the evidence, and
6 applied the evidence to the jury instructions, we will ask
7 that you return a verdict in favor of Providence and Chris
8 Kortendick. Thank you very much for your time.

9 THE COURT: Thank you, Ms. Burnham.

10 All right. It's 10:15, but this might be a
11 good time to take the morning recess so that I don't
12 interrupt the witness testimony. Remember, members of the
13 jury, what you heard isn't evidence. It's statements by
14 Mr. Keimbaye of what he intends to prove to you. And by
15 Ms. Burnham, as to what she believes the evidence will show,
16 so please keep your minds open. We'll take a break for 15
17 minutes and then we'll have you back in court for the
18 testimony of the first witness.

19 THE BAILIFF: All please rise.

20 Juror Number 5, you'll lead your row in.

21 THE COURT: Oh, I forgot to mention, please
22 leave your notebooks on your chairs. Nobody is going to take
23 a peak in those and then they'll be ready for you when you
24 come back to the courtroom and -- and that applies to every
25 break we take.

1 (Jury exits at 10:15:09 a.m.)

2 DISCUSSION RE TESTIMONY ON LAWSUITS

3 THE COURT: All right. Anything we need to
4 take up before we recess?

5 MS. ROSEN: Just one thing, Your Honor. I --
6 I want to ask Mr. Keimbaye about his lawsuits, and I believe
7 he opened the door for that in his opening by mentioning
8 them. He mentioned that he had prior lawsuits and that we're
9 going to paint him as a litigious person.

10 THE COURT: Okay.

11 Mr. Keimbaye, you want to say anything about
12 what Ms. Rosen is saying?

13 MR. KEIMBAYE: Would you mind repeat what you
14 don't understand about my opening statement?

15 MS. ROSEN: Sure, Mr. Keimbaye. All I'm
16 saying is that you mentioned your lawsuit, your other
17 lawsuits, and you mentioned us painting you as a litigious
18 person in your opening, which I believe opens the door for us
19 to ask you about those lawsuits on cross-examination.

20 MR. KEIMBAYE: I did not specifically, you
21 know, say that, you know, I indeed had a previous lawsuit.

22 THE COURT: Well, what you -- what you said
23 was that the Defense may try to persuade the jury that your
24 history of employment in Oregon or any previous lawsuits or
25 court records or even parking violations and to portray you

1 as a tardy employee and an uncivilized person and as someone
2 who is litigious. That's not word-for-word, but it's close.

3 MR. KEIMBAYE: Your Honor, the reason
4 Plaintiff brought it up is because Plaintiff doesn't know
5 exactly what the -- the plan of the opening statement will be
6 and so it's -- it's good to let the, you know, the -- the
7 jury members know.

8 THE COURT: Sure. But once you bring it up,
9 you open the door for the other side to talk about it.

10 MR. KEIMBAYE: Let them go.

11 THE COURT: And that's what -- that's what
12 Ms. Rosen is saying.

13 MR. KEIMBAYE: I'm not -- let them go for it.

14 THE COURT: Okay.

15 MR. KEIMBAYE: If they --

16 THE COURT: All right.

17 MS. ROSEN: And so then can we --can we agree
18 that the actual paper -- that the exhibits of the lawsuits
19 are admissible because he's waiving an irrelevancy objection?

20 THE COURT: Yeah, those were part of the --
21 the ER 904, correct?

22 MS. ROSEN: Correct.

23 THE COURT: Yeah, I think -- I mean, it
24 doesn't sound to me like I'm hearing an objection from
25 Mr. Keimbaye to that.

1 MR. KEIMBAYE: I object to that, Your Honor.

2 THE COURT: I'm sorry?

3 MR. KEIMBAYE: If you -- it was withdrew. Why
4 would they admit it now?

5 MS. ROSEN: We didn't withdraw those.

6 THE COURT: They didn't withdraw that. So I
7 don't want to go into detail. It's a waste of time.

8 MS. ROSEN: Mm-hmm.

9 THE COURT: But Mr. Keimbaye did indeed bring
10 up prior lawsuits and so, you know, as long as we don't go
11 wading into the weeds on those --

12 MS. ROSEN: We're not. I'm not.

13 THE COURT: -- in detail, --

14 MS. ROSEN: Yeah.

15 THE COURT: -- yeah, you can -- you can ask
16 him about those.

17 MS. ROSEN: Okay. Thank you, Your Honor. I'm
18 not -- I don't intend to go deeply into them. Okay.

19 THE COURT: Okay.

20 MS. ROSEN: Thank you.

21 THE COURT: Thank you.

22 Anything else?

23 MS. ROSEN: No.

24 THE COURT: All right. It's just about 10:20
25 so let's resume at 10:35. We'll be at recess till then.

1 MS. ROSEN: Thank you.

2 MS. BURNHAM: Thank you.

3 (Recess at 10:19:51 a.m., recommencing at 10:36:58 a.m.)

4 (The following proceedings were held inside the presence of
5 the jury:)

6 THE BAILIFF: Please recognize the jury.

7 THE COURT: All right. Welcome back, members
8 of the jury. Please be seated.

9 Mr. Keimbaye, are you ready to call your first
10 witness?

11 MR. KEIMBAYE: Yes, Your Honor.

12 THE COURT: Who's your first witness?

13 MR. KEIMBAYE: Myself, Your Honor.

14 THE COURT: All right. Come up to witness
15 stand.

16 MR. KEIMBAYE: May I bring my stuff with me?

17 THE COURT: Mm-hmm.

18 MR. KEIMBAYE: Thank you.

19 THE COURT: You know, we used to have a little
20 table up here. What happened to it?

21 THE CLERK: I'm sorry, what happened to --

22 THE COURT: We used to have a little table
23 next to the witness stand.

24 THE CLERK: I think that table belonged to
25 counsel for their stuff.

1 THE COURT: Okay. Well, we need to -- we need
2 to get something so that people have a place to put binders
3 and things, but you can stick it up here for now,
4 Mr. Keimbaye.

5 MR. KEIMBAYE: Thank you.

6 THE COURT: And just put that down, and then
7 before you sit down, I need to swear you in so please raise
8 your right hand.

9 Sir, do you swear or affirm that the testimony
10 you will give in that matter will be the truth, the whole
11 truth, and nothing but the truth?

12 MR. KEIMBAYE: Yes, Your Honor.

13 **DOMINIQUE KEIMBAYE,**
14 Plaintiff, having been duly sworn, testified as
15 follows:

16 THE COURT: Thank you. Have a seat please.

17 All right. And, Mr. Keimbaye, try to sit so
18 that --

19 MR. KEIMBAYE: No, yes.

20 THE COURT: -- the microphone --

21 MR. KEIMBAYE: Oh, yes.

22 THE COURT: -- is close to your face. There
23 you go.

24 MR. KEIMBAYE: Thank you.

25 THE COURT: Okay. Thank you, sir.

1 And so, if you could -- oh, and try not to
2 brush up against that because it makes a really bad noise and
3 then sometimes the pad comes off.

4 All right. And, Mr. Keimbaye, we --
5 generally, we start with witnesses by asking them to state
6 their name, spell their name, and give us your address. It
7 can be a mailing address if you don't want to give us your
8 home address.

9 **DIRECT TESTIMONY**

10 MR. KEIMBAYE: Members of the jury, Counsel,
11 and the Court, my name is Dominique Keimbaye, and I am
12 representing my case.

13 THE COURT: Yeah, Mr. Keimbaye, for the
14 record, would you mind spelling your name for us?

15 MR. KEIMBAYE: Yes, yes. Dominique is
16 spelled, D-o-m-i-n-i-q-u-e, Keimbaye, K-e-i-m-b-a-y-e.
17 Dominique Keimbaye.

18 THE COURT: And then if you could tell us your
19 mailing address?

20 MR. KEIMBAYE: Yes. My mailing address is PO
21 Box 2024, Bellevue, Washington 98009.

22 THE COURT: Thank you.

23 MR. KEIMBAYE: Members of the jury, before you
24 hear of Plaintiff's testimonies, you should ask yourself if a
25 Plaintiff did not have interaction or communication with his

1 supervisor at all, how did he get to know or hear things that
2 he know were personal to his supervisor that he will be
3 testifying about?

4 MS. ROSEN: Objection, Your Honor. This is
5 argument.

6 THE COURT: Sustained.

7 So, Mr. Keimbaye, you're on the witness stand,
8 now, under oath so this is your opportunity to actually tell
9 facts to the jury.

10 MR. KEIMBAYE: Yes.

11 THE COURT: It's not the time to argue. It's
12 not the time to tell them what they should be asking
13 themselves or what they should think about things. As a
14 witness, what -- what they need you to do is to provide them
15 with evidence, with facts.

16 MR. KEIMBAYE: Yes. Yes, Your Honor.

17 THE COURT: Okay? All right. Thank you.

18 The objection was sustained.

19 MS. ROSEN: Thank you.

20 MR. KEIMBAYE: Plaintiff is going to tell you
21 about his hiring and poor pay. Plaintiff was hired and began
22 his probationary employment on December 27, 2018. After
23 going through the -- going through the Union scale and
24 seniority pay based on his anesthesiologist technician,
25 Plaintiff discovered and was getting paid for five years of

1 | experience instead of nine years. Plaintiff then --

2 | THE COURT: So -- I'm so sorry to interrupt,
3 | Mr. Keimbaye, but you're not acting as the lawyer know.
4 | You're -- you're acting as the witness. So please use "I"
5 | instead of "Plaintiff." In other words, refer --

6 | MR. KEIMBAYE: Okay.

7 | THE COURT: -- to yourself in the first
8 | person --

9 | MR. KEIMBAYE: All right.

10 | THE COURT: -- instead of the third person.

11 | MR. KEIMBAYE: All right, ma'am. Thank you.

12 | THE COURT: Okay. Thank you.

13 | MR. KEIMBAYE: I appreciate it.

14 | THE COURT: It'll be a lot less confusing for
15 | all of us.

16 | MR. KEIMBAYE: I should have let them know at
17 | the beginning, but I have been going back and forth from "I"
18 | and --

19 | THE COURT: Well, it's -- it's fine when
20 | you're -- you're making an argument because then you're --
21 | you're kind of acting as -- as the advocate.

22 | MR. KEIMBAYE: Yes.

23 | THE COURT: But right now, you're -- you're
24 | the witness and so we expect the witnesses to speak in the
25 | first person, okay?

1 MR. KEIMBAYE: Yes, thank you, --

2 THE COURT: Thank you.

3 MR. KEIMBAYE: -- Your Honor. Thank you.

4 I had to raise my concern to my supervisor,
5 Mr. John, and the recruiter, Nicholas Bach, in order to -- in
6 order for them to get to adjust my pay. And in order for --
7 for them to -- even though I work for -- for Providence
8 Medical Center in Portland, Oregon from 2008 to 2014, and
9 they have very have a record of my years of experience, they
10 cut off four years, and they were paying me only for five
11 years of experience. And I have evidence to prove that in
12 Exhibit 34.

13 MS. ROSEN: Objection, Your Honor. He has to
14 properly admit exhibits.

15 THE COURT: Well, are you -- are you wanting
16 to be referencing Exhibit 34?

17 MR. KEIMBAYE: Yes.

18 THE COURT: Oh, so you can describe what it is
19 without telling us the information that it contains.

20 MS. ROSEN: I'd also like to object,
21 Your Honor, in that this -- the issue of Mr. Keimbaye's pay
22 is not at issue in this case.

23 THE COURT: This is the onboarding letter if
24 you will?

25 (PLAINTIFF'S EXHIBIT 34 MARKED FOR IDENTIFICATION)

1 MS. ROSEN: No.

2 THE COURT: All right. Well, never mind. I'm
3 -- I'm not doing this correctly.

4 Mr. Keimbaye, so if you want to introduce an
5 exhibit into evidence, you reference the exhibit number and
6 you tell us what it is. You describe what it is without
7 telling us what it says.

8 MR. KEIMBAYE: Okay.

9 MS. ROSEN: And, Your Honor, I did make an
10 objection about Mr. Keimbaye talking about his pay because
11 there is no foundation and it's not at issue in this case.
12 It's also subject to a motion in limine.

13 THE COURT: Yeah, I think it is.

14 Let's move on to a -- that objection's
15 sustained.

16 Let's move on to a different subject,
17 Mr. Keimbaye, please.

18 MR. KEIMBAYE: Now I will be talking about a
19 new employee orientation and my introduction to my anesthesia
20 teams and supervisor. After my new -- new employee
21 orientation on December 27th, 2018, with the HR team, I met
22 with my supervisor, Mr. John. Mr. John took me to the main
23 surgery floor to give me a tour and introduce me to my
24 anesthesia teams and coworkers.

25 Soon after I met with my team, Mr. John then

1 pull me out from the anesthesia workroom and handed me off to
2 Mr. Kortendick. There, Mr. John state to me that
3 Mr. Kortendick was going to be your main supervisor and
4 trainer from now -- from now on going forward.

5 He then told me that he had been dealing with
6 the front office management because the OR administrator and
7 manager Dan Roehrich, was retiring and that he was taking --
8 Mr. John was taking administration classes to take over on
9 that role as OR manager.

10 As I was hearing from my supervisor, I
11 immediately notified Mr. John that I was going --

12 MS. ROSEN: Objection, Your Honor. Hearsay.

13 THE COURT: Well, overruled at this point.

14 Go ahead.

15 MR. KEIMBAYE: I was new to a new -- I was new
16 to a long drive to work and that I would commute late to work
17 due to traffic because I live in downtown Bellevue, about
18 40 miles from Everett, and that I was new to the area driving
19 from Bellevue to Everett. Mr. John then told me that not to
20 worry about it, but to call him anytime if I was going to run
21 late for more than 15 or 20 minutes so that he would get
22 someone to prep my rooms for me.

23 Most of the time, Plaintiff had a direct
24 person-to-person communication with the -- my supervisor.
25 Sometimes, I would call him on the work phone that they gave

1 to me -- they provide it to me. And some of the times, I
2 would text him and some of the -- the texts that I sent it to
3 him also are related to the statement that the I am making
4 here.

5 During the conversation about my long commute
6 to work, Mr. John later admitted and reassure me that he
7 could see himself in my situation, too, because his wife had
8 been commuting about one to two hours late from Everett to
9 work at Microsoft building in downtown Bellevue as a cook or
10 a chef. But he, John, was so thankful that his wife
11 coworkers and manager love her and did not care about her
12 tardiness. That was the reassurance that Mr. John was giving
13 to me to not worry about my commute or my tardiness to -- to
14 get to work.

15 In -- in the end, Mr. John told Dominique,
16 myself, he would review and approve my timecards before I
17 could submit it because he saw me as a hardworking anesthesia
18 tech, that being me, here, at the -- at the Everett location.

19 From that moment going -- going forward, I
20 continued to work closely with my main anesthesia supervisor
21 that Mr. John handed me off to, which is Mr. Kortendick. And
22 Mr. Kortendick, in my belief, has a -- a new employee and my
23 other supervisor introduced me to -- to him. That means that
24 he was authorized to direct -- he was authorized to direct,
25 you know, my daily --

1 MS. ROSEN: Object, Your Honor.

2 MR. KEIMBAYE: -- daily job functions --

3 THE COURT: Okay. One --

4 MR. KEIMBAYE: -- at work.

5 THE COURT: One moment.

6 Overruled. Mr. Keimbaye is testifying about

7 his subjective understanding; not necessarily what

8 Mr. Kortendick's actual responsibilities and role were.

9 MS. ROSEN: Okay. Thank you, Your Honor.

10 MR. KEIMBAYE: So for me to work under his
11 supervision, I am supposed to follow his roles in what he
12 taught me or what he want me to do for -- for him and for his
13 employer.

14 Mr. Kortendick was fully in charge to train
15 and supervise my job by doing a proper centerline setup,
16 arterial line setup, echo ground setup for the -- the heart
17 monitor during the open-heart surgery, and also a proper set
18 up for fiberoptic for some lung -- lung cancer surgeries and
19 thoracic surgeries. And that was all under his supervision
20 and he was supervising me and observe me to do what his
21 employer expect from me as a technician to do so that he, you
22 know, we provide the proper and safe care to their patients.

23 From there on, we all were hanging out in the
24 anesthesia workroom where all the harassment started.

25 Mr. John was standing with his back against the -- the

1 counter in the anesthesia workroom and I was standing
2 probably three to four feet away from Mr. John. And in front
3 of -- I say to my right, Mr. Kortendick was sitting on a bar
4 stool. There was also another coworker, his name is Gustav
5 Ramos, he's Spanish, and then another coworker, her name is
6 Amy Fletcher.

7 There, Mr. Kortendick kept on staring at me
8 and started laughing, kept on staring at me and laughing.
9 And all of the sudden, he brought up a question and when you
10 know that someone is asking about your whereabouts or where
11 you came from, you know, very friendly and a respectful way,
12 you would know no matter what. So then Mr. Kortendick ask
13 Dominique, me, where I was from.

14 And so at first, I -- I thought he was being
15 friendly, so I said, Man, look at me, I am from Africa. You
16 know, can you tell?

17 All the sudden, his reply was, You are the
18 darkest man I have -- I have ever seen. And started laughing
19 after it.

20 Mr. John, our main supervisor was standing
21 right there. I guess was putting some smile.

22 And then he went on to say that, And so where
23 -- and so where are you from again?

24 So I said, I am from Chad.

25 He then said that, Oh, you are too dark. I

1 | thought, you know, you are from, you know, Sudan. And then
2 | continue on laughing.

3 | And when he mentioned that, You are too dark,
4 | and I thought you are from Sudan. Amy Fletcher was sitting
5 | right next -- probably two or three feet you know, on my
6 | right side, sitting on the -- on the bar stool.

7 | She felt uncomfortable, Okay, guys, I'm -- I'm
8 | hungry. Can I take my break?

9 | MS. ROSEN: Objection. Your Honor. Lack of
10 | foundation and hearsay.

11 | THE COURT: Well, sustained again.

12 | You -- you shouldn't testify about what other
13 | people said who are not parties. So it's okay to talk about
14 | what Mr. John said because he's a party representative. It's
15 | okay to talk about what Mr. Kortendick said because he's a
16 | party. But things that Ms. Fletcher may have said, you
17 | should not be testifying about.

18 | MR. KEIMBAYE: From that moment going forward,
19 | sometimes when there were a code blue in the ER and because I
20 | was still new and trying to, you know, capture everything
21 | from Mr. Kortendick, he would tell me, Okay, there's a, you
22 | know, a code blue in the OR, let's go.

23 | As I got up following him, he would literally
24 | skip in the -- in the hallways and run -- I mean, it was odd
25 | to -- to watch. He would run and skip in the -- head to the

1 ER. And me not being able to, you know, to find my way
2 around yet, I would struggle. And when I called him, he
3 would not answer to my -- my phone call. And I would try my
4 best to take the stair and go all the way down to the ER to
5 assist, you know, the -- those anesthesiologists that who are
6 ready. We -- we witness one of first-degree burn patient.
7 And --

8 (Pause in proceedings.)

9 MR. KEIMBAYE: I mean, I am human. And I -- I
10 hope that whatever he was dealing with, he should -- he
11 shouldn't take on me the way he treated me.

12 Right after I began to take on my own assigned
13 rooms, Mr. Kortendick would go to my prep rooms and
14 vandalize --

15 MS. ROSEN: Objection. Your Honor. This
16 is --

17 THE COURT: Sustained.

18 So, Mr. Keimbaye, you can testify about things
19 that you observed but -- but speculation or things other
20 people told you is not admissible evidence. So, okay,
21 this -- this allegation has to be supported by some evidence
22 before the jury's allowed to hear about it.

23 MR. KEIMBAYE: I -- I was assigned to two
24 rooms, Open-Heart Room Number 3 and Number 4. How -- as I
25 was getting supplies from the workroom to my room, while I

1 was entering the room, he was coming out from my room.

2 And so I ask him, What were you doing here?
3 You know, I -- I already, you know, calibrate my anesthesia
4 machines and everything. And so you don't have to, you know,
5 like, you know, come here and, you know, change the -- the
6 screen monitors.

7 Oh, his colleague -- his colleague likes that.
8 You know, he --

9 MS. ROSEN: Objection, Your Honor.

10 MR. KEIMBAYE: -- he changed the -- the --

11 MS. ROSEN: Can we have a sidebar?

12 THE COURT: So are -- are you able to just
13 confine the testimony to what he said? Or do we --

14 MS. ROSEN: This is new testimony that I've
15 never heard before.

16 MR. KEIMBAYE: It is not new.

17 THE COURT: All right. We can --

18 Members of the jury, something that I normally
19 include in my prepared remarks and I -- I didn't for some
20 reason in this case. There are times when we need to take up
21 matters outside of your presence, sounds like this is one of
22 those times.

23 Is it brief enough that we can do it at
24 sidebar?

25 MS. ROSEN: Yes.

1 THE COURT: Okay.

2 So, Mr. Keimbaye, since you're both lawyer and
3 Plaintiff, I'll ask you to step down and join us and we'll
4 just step back into chambers for a moment and we'll be back
5 with you very shortly, members of the jury.

6 (Inaudible sidebar conference from 11:09:55 a.m. to
7 11:12:59 a.m., not transcribed.)

8 THE COURT: Thank you for being patient with
9 us.

10 All right. The objection's overruled.

11 Go ahead, Mr. Kortendick [sic].

12 MR. KEIMBAYE: And so as I confronted him and
13 telling him that you have changed the screen monitor in my
14 room. And he admitted, and so I -- I told him that, you
15 know, because of what you did, anesthesiologist providers,
16 contractors, end up blaming me and insult me.

17 But in reality and based on the -- the policy
18 of the department, the employer told us clearly that any
19 open-heart surgery or thoracic surgery rooms,
20 anesthesiologist technicians are not allowed to change the
21 screen -- the monitor settings because they are -- they are
22 preset by only the Bio-Med department. So that incase of the
23 emergency, only the -- the bio-med technicians and engineer
24 can switch around those screen monitors so that, you know,
25 the anesthesiologist provider can switch it to a 5-lead for,

1 | you know, serious heart issues or 3-lead for, you know, some
2 | basic, you know, patient care monitoring.

3 | But because of his actions in my room -- and
4 | he admitted to it -- I was the one that, you know, getting
5 | blamed for it. And then throwed it to the ground while I was
6 | setting medications for the patient care and there were at
7 | least eight or -- or ten other, you know, OR staff. And that
8 | provider was ridicule me -- was rediculize [sic] me, you
9 | know, in front of, you know, the other staff that, you know,
10 | we were working with. And everybody was -- was laughing at
11 | me as I am some -- some moron.

12 | And telling me, you know, What part of Africa
13 | did you get your training from? And listing numerous, you
14 | know, countries: Somalia, Kenya, Tanzania. And then say,
15 | Get the hell out my room and go get me someone that, you
16 | know, he -- that provider could understand or -- or can
17 | assist him, you know, resetting, you know, his screen
18 | monitor.

19 | Later on, I was called to assist with another
20 | open-heart surgery and that's where that provider -- it was
21 | his own mistake. Because of the patient that was brought
22 | into the operation room was already intubated with a size 8
23 | ET-tube and it -- it was a reopen open-heart surgery.

24 | The patient was already undergoing surgery and
25 | somehow the anesthesiologist mistakenly -- while I was

1 setting, you know, a TE-probe for him to get a closer look to
2 the -- so that, you know, the -- the ET-tube, it's a -- it's
3 in place and that, you know, the patient was getting enough
4 supply of oxygen.

5 It was his own mistake that the person pull
6 out that ET-tube what was a size 8. He was asking me to --
7 to hand him a new ET-tube. And I look at the -- all the ones
8 that he given to me. I provide him with the same size, size
9 8, while I was, you know, getting all the supplies for him.
10 And he was struggling to -- to insert that ET-tube into the
11 patient airway. At that point, that poor patient was losing
12 oxygen like below 60 percent while undergoing surgery.

13 Somehow, I got blamed for it and punched so
14 hard in the groin area. The pain was so excruciating to the
15 point where I hold my groin area with my -- my left hand
16 while trying to juggle inside the drawer to get him a
17 different ET-tube. But it was the correct one, I give to him
18 before, but I was the one that get blamed for it.

19 So I hand -- he ask me to get -- give him
20 another ET-tube. I give him size seven-and-five. It was too
21 small for that big patient. He's a tall guy. So he end up
22 again asking me and so I -- I told that person that.

23 This is the correct size that you pull out and
24 this -- the new one, it's the same size I give to you.

25 And he was able to put it back. If I -- if I

1 were to retaliate and punch that person back, I would not be
2 sitting here in front of you. I would be sitting in a jail
3 to this day because of who I am here right now. How is this
4 fair?

5 There were some -- some of the anesthesia
6 workroom on the first floor for gastronomy and endoscopy that
7 usually call us, you know, on the -- on the second floor to
8 bring the spare anesthesia machine to set up in those room so
9 that they can do -- they can use a MRI or, you know, CT scan
10 to properly do those cases. I always bring, you know,
11 anesthesia, you know, parts and supplies along with, you
12 know, Mr. Kortendick to set those rooms up, you know, for --
13 for the patient care.

14 There was one -- one time when I was all alone
15 assigned to -- to help in that room on the first floor. And
16 also, you know, dealing with the open-heart cases on the --
17 on the third floor. I brought the, you know, spare
18 anesthesia machine down first you know, -- you know, to
19 connect the -- the lines. But there's a type of line, it's
20 called a Y-type where, you know, you connect the air line
21 and, you know, the nitrogen and the oxygen, you know, all
22 and, you know, and the gas lines go to it. We -- we have it
23 on the second floor. Mr. Kortendick would purposely
24 dislocate those parts, making it difficult --

25 MS. ROSEN: Objection, Your Honor.

1 THE COURT: Sustained.

2 Again, Mr. Keimbaye, you -- you have to
3 testify about things that either a party told you or a thing
4 that you personally observed. And -- and don't rely on
5 things you assume happened or you believe happened or you're
6 speculating happened.

7 MR. KEIMBAYE: So when I was looking for those
8 parts, I ask Mr. Kortendick, I remember you -- you used
9 those, you know, anesthesia parts last time for your cases.
10 Where did you put them?

11 He's like, I don't know.

12 Usually, when I ask him a question, he's like,
13 I don't know.

14 So I bypass him and went to the anesthesia
15 workroom and asking my other coworkers if the -- they knew
16 where I can -- I could, you know, find those Y-type and, you
17 know, anesthesia supplies that, you know, supply the, you
18 know, vaporizing agents and, you know, oxygen through the
19 anesthesia machine and to the patient.

20 They said the last time, Mr. Kortendick was
21 the --

22 THE COURT: No, no, no, no, no, no. No, don't
23 testify about what these coworkers may have said, it's
24 hearsay.

25 MR. KEIMBAYE: Yes.

1 So earlier, when I ask Mr. Kortendick, he --
2 he told me, he don't know. So I bypass him, and I use my
3 other coworkers.

4 And so I said, Please, go ask him and see if
5 he -- he able give it to you. And when they go and ask him,
6 you know, --

7 THE COURT: No, no. If you -- did you hear
8 them ask him? So you were with them when they talked to
9 Mr. Kortendick? You were there in the room?

10 MR. KEIMBAYE: Yes.

11 THE COURT: Okay. Then you can testify about
12 what you heard him say.

13 MR. KEIMBAYE: So when they ask him, he was
14 able to tell them that it's somewhere in that drawer. He was
15 able to tell them where they were located but he -- he was
16 not able to tell me where they were located. And that alone
17 was causing me, you know, is failing me, you know, and
18 causing me to have a poor performance. And because of that,
19 you know, constantly, you know, I get blamed for it.

20 And all of those, I brought it to -- to my
21 supervisor because Mr. John told me always, he made me
22 believe -- believe him and trust him. Like he made him -- he
23 made me believe that, you know, he's a trustworthy person
24 that, you know, Talk to me. Call me any time if you need
25 something.

1 So I walk out, you know, following him from
2 the anesthesia workroom and so I said, You heard what, you
3 know, Mr. Kortendick was telling -- or was saying about, you
4 know, my -- my darkened skin colors, all those kind of stuff.

5 And sometimes when I -- when I work with him,
6 he was like so rude and mean toward me. Sometime he would
7 not, like, you know, try to help me.

8 I mean, my very own supervisor would say that
9 he's just a rude person because when he, himself, started --
10 because Mr. Kortendick was the first one, you know, at that
11 location. When he first move from Colorado to Everett to
12 work at the -- at that hospital, Mr. Kortendick was so -- so
13 rude and mean toward him as well because he knew that, you
14 know, he was going to get promoted to -- to become a super --
15 the main supervisor.

16 And as he got on the job -- Mr. John -- how he
17 got on the job, he said that, you know, he just allowed
18 him -- allow Mr. Kortendick to take on more responsibility,
19 to train new employees, to supervise them. And that he's now
20 dealing more about the front office.

21 So my main supervisor knew all of this, about
22 his behavior -- about Mr. Kortendick behavior. And earlier,
23 Defense was claiming that, you know, --

24 MS. ROSEN: Objection, Your Honor.

25 MR. KEIMBAYE: -- on prior did not --

1 THE COURT: No, so -- so, remember, you're not
2 arguing right now. You're testifying about facts and your
3 experiences. So don't relate to what the Defense may have
4 been arguing. You'll have a chance during closing argument,
5 of course, --

6 MR. KEIMBAYE: Thank you, Your Honor.

7 THE COURT: -- to make comments on things
8 Defense counsel may have said.

9 MR. KEIMBAYE: And when I -- I was trained by
10 Mr. Kortendick, on his day offs, he would hand me off to Opal
11 Lonon and I would work side-by-side with Ms. Lonon. That's
12 where all the sexual harassments began. At first I thought
13 the -- the person was joking, being funny, but it became more
14 serious. And I -- I start distance myself from her and
15 telling Ms. Lonon that I have girlfriend. She was not there
16 with me -- here in Bellevue, but she was in Portland.

17 And I told her that I am more into a biracial,
18 trying to tell this coworker all of those stay so that, you
19 know, maybe it would help so she can distance herself or, you
20 know, stop her, you know, interest toward me. There were --
21 there was one time we were all in the -- in the anesthesia
22 workroom. Mr. John walk in for whatever, you know, they were
23 having conversation with Ms. Lonon of how she was a
24 standing --

25 MS. ROSEN: Objection, Your Honor. It's

1 hearsay.

2 THE COURT: Well, again --

3 MR. KEIMBAYE: I'll -- I'll --

4 THE COURT: Okay. So --

5 MR. KEIMBAYE: This is happening -- this is in
6 my presence.

7 THE COURT: All right. I think it's
8 premature. Overruled at this point.

9 MS. ROSEN: Okay.

10 THE COURT: Go ahead.

11 MR. KEIMBAYE: Ms. Lonon would stand and
12 demonstrate from her head to toe, Look at all of this that
13 you are missing.

14 MS. ROSEN: Objection, Your Honor, that's
15 hearsay.

16 THE COURT: I don't think it's being offered
17 for the truth. Overruled.

18 MR. KEIMBAYE: And my supervisor and everybody
19 were there but just laughing about it. And when Mr. John and
20 Mr. Kortendick were walking out, I feel uncomfortable and
21 follow them out, walking with them in the -- in the hallway,
22 going to the -- the front office.

23 As I was walking right next to them, Mr. John
24 said, Oh, someone is wanted for sex.

25 My own -- my very own supervisor, Oh, someone

1 is wanted for sex.

2 I was hoping to get some intervention but very
3 own supervisor making fun of me for someone that is
4 constantly going after me.

5 There was one time, early in the morning, I
6 believe it was around April to May, I was rushing in and out
7 from the anesthesia workroom getting some -- some supplies
8 and going back to my room, back and forth. The only person
9 that, you know, I -- I was bypassing from the room and going
10 back to my OR rooms, it was Mr. John -- Mr. Kortendick.

11 By the time I got back, you know, to the
12 anesthesia workroom to get some more supplies, you know, for
13 -- to my other room, Mr. Kortendick was getting his own
14 supplies also, you know, on the -- on the shelf. And as I
15 grab everything and I was like turning around to go back to
16 the -- to the OR rooms, all the sudden, I saw someone rushing
17 and it was Ms. Lonon, with the supplies in my hands and
18 everything, grabbing me so tight, putting her -- her mouth
19 under my neck. Put her legs in between my leg. It literally
20 like it two people -- it's like, you know, kind of like, you
21 know, cuddling together, you know, on -- on a couch or bed.

22 And so I said, What was this? What was this?

23 And Mr. Kortendick was standing there laughing
24 and raise his eyebrows.

25 And so I said, Get off from me. Let me -- let

1 me go take care of my rooms because I'm running late.

2 She then say -- say the same thing again,
3 You're missing all of this.

4 And during there -- after the investigation,
5 all three of us admitted -- myself, Mr. Kortendick, and
6 Ms. Lonon -- admitted that she and did force herself on me.
7 And I would show you if it would please the Court to show
8 Exhibit 40.

9 THE COURT: 40?

10 MR. KEIMBAYE: Yes. I believe the -- the
11 first page.

12 THE COURT: So the way exhibits work,
13 Mr. Keimbaye, is that I have to either admit an entire
14 exhibit or refuse the entire exhibit. We can't admit
15 portions of an exhibit. So either it's all admissible or
16 it's not admissible.

17 MR. KEIMBAYE: Yes, all of them, Your Honor.

18 THE COURT: All right.

19 Is there objection to Exhibit 40?

20 MS. ROSEN: No, Your Honor, because it's a
21 duplicate of 145, which has already been admitted.

22 THE COURT: Oh, okay. Well, then let's --
23 let's use the Defense exhibit then because I don't -- I don't
24 admit the same exhibit twice. That tends to be very
25 confusing for everyone. So all right. 145 is admitted which

1 means you can testify about it.

2 MR. KEIMBAYE: So in the investigation and
3 they asked Mr. Kortendick -- they asked Mr. Keimbaye,
4 Mr. Kortendick, and Ms. Lonon, all confirm.

5 MS. ROSEN: Objection, Your Honor. That is
6 not what the exhibit says.

7 THE COURT: So if you're going to be
8 testifying about the exhibit, Mr. Keimbaye, you have to
9 confine your testimony to what the exhibit actually says.

10 MR. KEIMBAYE: The exhibit says that --

11 THE COURT: You could read from portions of it
12 if you want to do that --

13 MR. KEIMBAYE: Yes.

14 THE COURT: -- since it's been admitted in
15 evidence.

16 MR. KEIMBAYE: Yes, yes. Yes, Your Honor.

17 On page 1, an investigation of inappropriate
18 behavior. It says, date January 18. First row, Dominique,
19 Opal Lonon, Christopher Kortendick. And the statement says,
20 "Opal collide her leg -- her right legs around the right
21 legs. Held him with both arms around his chest."

22 And under the comment, it says "Admitted."
23 All three of us admitted.

24 MS. ROSEN: Your Honor, that's a
25 misrepresentation of that exhibit and he doesn't have the

1 foundation to testify to that.

2 THE COURT: Sustained. I mean the exhibit
3 says what it says.

4 MR. KEIMBAYE: What is the misrepresentation
5 here? All three: first, second, and third row, three people
6 admitted.

7 THE COURT: So the exhibit says what it says,
8 Mr. Keimbaye, so if you want to -- it's admitted into
9 evidence. You can read portions of it. But it's better if
10 you -- if you don't testify about what your own understanding
11 of the exhibit is or what your conclusions are from it. It
12 says what it says, and if there's portions of it you want to
13 read out loud, you certainly can.

14 MR. KEIMBAYE: Well, based on the -- the
15 investigator here, it lists all three people from January 18
16 in a -- in the same row. And made this statement about
17 whether Ms. Opal collide her legs around Mr. Keimbaye and
18 that, you know, put her arms around his chest. And in that
19 same row, it says under the comment, it says "Admitted." And
20 it -- it put the, you know, "Confirmed," all three of them
21 confirmed. He was there in the room when Ms. --

22 MS. ROSEN: Your Honor, that is not what the
23 exhibit says.

24 THE COURT: I -- I realize that.

25 The jury is going to get a chance to see the

1 exhibit.

2 MS. ROSEN: Okay.

3 THE COURT: And we can cover this on cross.

4 MR. KEIMBAYE: Okay.

5 MS. ROSEN: Yes.

6 MR. KEIMBAYE: When I pled and beg my
7 supervisor to help me with a, you know, report form or phone
8 number where I can, you know, call the HR and report a case,
9 Mr. John constantly promise me that he would get back to me.
10 That was from April all the way to -- to May.

11 And right around May, both Mr. John and
12 Mr. Kortendick were with me in the anesthesia workroom where
13 I said, Please, take me or at least guide me where I can find
14 the HR office so that, you know, I could report my concern to
15 the HR.

16 Both Mr. John and Mr. Kortendick took me
17 personally from the anesthesia workroom on the first floor
18 all the way down to the first floor, walking me all the way
19 to where Mr. Sweeney, which is one of the HR business
20 partner, office is located.

21 As we approached Mr. Sweeney office in the
22 hallway behind the -- the main cafeteria, all the sudden,
23 Mr. John and Mr. Kortendick distance themselves from me to have
24 a chat about ten-feet away from me. And right after, you
25 know, talking to each other in a quite way and that came back

1 to -- to me, Mr. John state that ever since that, they have
2 been working here. They haven't seen any HR office here in
3 this building.

4 I mean, where in the world is someone, my own
5 supervisor would say -- would tell me that the biggest
6 medical hospital doesn't have an -- an HR office to it?

7 So let's go -- then Mr. John then told me
8 that, you know, Let's go back to the floor and, you know,
9 take care of the -- the rooms and turnovers.

10 I just followed them back. We walked back to
11 the main OR. And that was way before -- before all the
12 accusation of me taking advantage of the -- of the timecard
13 or, you know, breaking, you know, their policy, right,
14 violation.

15 On -- on June 6, --

16 Your Honor, I -- I would like to use my
17 Exhibit 16 for my work schedule.

18 THE COURT: Same objection to Exhibit 16?

19 MS. ROSEN: No objection, Your Honor.

20 THE COURT: Exhibit 16 is admitted.

21 (PLAINTIFF'S EXHIBIT 16 RECEIVED INTO EVIDENCE)

22 MR. KEIMBAYE: On June 6, I was there doing
23 assisting with the heart cases on the -- on the third floor.
24 The last open-heart cases that left, it was in the room 304.
25 And there only -- that was in the late afternoon. The only

1 person that was there with me was Mr. Kortendick. He was
2 assigned to -- to take care of the GI and endoscopy on the
3 first floor. And he set up, you know, the anesthesia
4 equipment and the carts in that room and that case was done
5 early during the day.

6 I -- I got a call in the middle of, you know,
7 helping with the, you know, open-heart cases, somewhere
8 around five -- 5:00 p.m. or 5:30. That they have been
9 calling repeatedly, you know, for -- for us to remove, you
10 know, all the anesthesia equipment, you know, from the GI
11 room so that, you know, they can, you know, do their, you
12 know, other cases without anesthesia equipment around.

13 Surprising, he was the one that, you know, was
14 assigned in that area. So I -- I got a call for it, so I
15 give up some of my jobs, you know, upstairs and that was like
16 literally late after my shift. So I run downstairs, bringing
17 one piece of equipment at a time -- bringing, you know, a
18 drug cart which is at least four -- four feet tall with
19 drawers and heavy with medication in it. And then I have to
20 go back and then bring the anesthesia -- the anesthesia spare
21 machine.

22 That's where I saw Kortendick standing
23 somewhere in front of the main front desk. I pushed the
24 spare anesthesia machine all the way to our workroom and --
25 and from then as I was walking out, he came to the anesthesia

1 | workroom and he said that, you know, he was going home. So I
2 | thought he was going to stay for the open -- for the other
3 | one which was -- which was, you know, an open-heart surgery
4 | that is running in one of those rooms.

5 | So he was heading to the -- to the breakroom
6 | to get changed and go home. I then follow him and go around
7 | to have a conversation with the front desk. I was not
8 | schedule to work on that day on June 6th, but I approached
9 | the front desk asking them that, you know, it was only
10 | Mr. Kortendick and myself. I -- I knew that Ms. Myra was
11 | scheduled for on-call that day, so I ask the charge --
12 | evening shift charge nurse if it was okay with them?

13 | I'm still here, and I could stay and help the
14 | anesthesiologist provider to finish with the open-heart case
15 | so that, you know, I can help the provider, you know, taking
16 | the patient from the -- the operation room back to the CIC --
17 | the CICU.

18 | That late-night charge nurse, the only name
19 | that, you know, I got is Rosie or Rosalin. So she turned
20 | around on -- on her chair like, you know, I was sitting here,
21 | turned around talking to her teams, if my right is on-call
22 | and Dominique is asking me to stay to help her, you know,
23 | that it -- the remaining open-heart case, Is it okay for --
24 | for her to let me stay?

25 | So they all agreed, and she decide that she

1 would attempt to call Ms. Myra to let her know so that, you
2 know, she can, you know, rest instead of, you know,
3 struggling in traffic to come to work.

4 After finishing with the phone with Myra, that
5 nurse -- charge nurse told Plaintiff to go to the -- the
6 operation room and talk to the provider in person and see if
7 he would need my assistant. I follow properly, went back to
8 the operation room, ask Dr. Porterfield.

9 He told me, I mean, yeah, I'm -- I'm by myself
10 here. What -- what do you think? Who's going to help me
11 locating the patient back to the CICU?

12 MR. KEIMBAYE: So after getting that
13 confirmation from the provider, I came back to let Ms. Rosie
14 know that it looks like the provider need my -- my help. So
15 I then went back in that room to help him out until he finish
16 with the -- his cases.

17 (CONTINUED TO VOLUME II)

18 ///

CERTIFICATE OF TRANSCRIBER

I, Deborah S. Anderson, a court-approved transcriber, certify that the foregoing is a full, true, and correct transcript, transcribed to the best of my ability from the official electronic sound recording of the proceedings in the above-entitled matter;

That I am neither an attorney, not employed by, related to, nor of counsel for any of the parties named herein, nor otherwise interested in the outcome of this action.

IN WITNESS WHEREOF, I have hereunto sent my hand:



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Date: September 16, 2024

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THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR THE COUNTY OF KING

DOMINIQUE KEIMBAYE,	)
	)
	) KING COUNTY
Plaintiff,	) CAUSE NO. 21-2-07545-9 SEA
	)
v.	) COA NO. 85882
	)
PROVIDENCE REGIONAL MEDICAL	)
CENTER EVERETT, ET AL,	)
	)
Defendants.	)

VERBATIM REPORT OF PROCEEDINGS

BE IT REMEMBERED that the above-entitled matter came on regularly for hearing at the King County Superior Courthouse, 516 Third Avenue, Department 23, Seattle, Washington.

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Proceedings recorded by electronic sound recording;
Transcript produced by Anderson Transcription Solutions

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SEATTLE, WASHINGTON

WEDNESDAY, SEPTEMBER 6, 2023

MORNING SESSION - CONTINUED FROM VOLUME I

JURY TRIAL (DAY 2):

(The following proceedings were held inside the presence of the jury:)

DIRECT TESTIMONY OF DOMINIQUE KEIMBAYE

MR. KEIMBAYE: And there's another charge nurse named Catherine who was there, all three of us. So once they finish the case, I was pushing the -- that patient on -- on the bariatric bed while the anesthesia provider, you know, supply oxygen, you know, through the mask, you know, to the patient. We took the patient all the way to the -- to the CICU floor. And I came back along with, you know, that charge nurse, Ms. Catherine. We all stay in that operation room, clean up all the blood on the floor, that on the bed, on the anesthesia machine, everything.

And I had a witness that saw me talking to the front office asking them for permission to -- to do that job. But they told me that I did not ask anybody permission and voluntary too stay to -- to gain hours or steal on-call position that was for Ms. Myra.

And -- and, Your Honor, is it okay to look into Plaintiff Exhibit 44 where Plaintiff was seen talking to the charge nurse on that day, on June 6th?

1 No, no. Instead of, you know, Ms. Amy
2 Fletcher, I'm talking about Mr. Kortendick instead.

3 THE COURT: I -- I'm sorry?

4 MR. KEIMBAYE: 43 please.

5 THE COURT: Okay. You said 44, so I was
6 confused. 43?

7 MR. KEIMBAYE: Yes, I believe.

8 THE COURT: Okay.

9 Is there objection to Exhibit 43?

10 MS. ROSEN: No, Your Honor, it's already been
11 admitted.

12 THE COURT: Oh, as -- oh, is this -- this
13 exhibit's already admitted?

14 MS. ROSEN: Yes.

15 THE COURT: Oh, okay.

16 Yeah, then you're free to talk about it.

17 MR. KEIMBAYE: So in this exhibit,
18 Mr. Kortendick email Mr. John on June 6th, 2018. He says,
19 (Reading):

20 "I observed Dominique in the anesthesia
21 workroom at 1650. I was unaware that he was still
22 here and thought he had left at 5:00 p.m. -- 1700.
23 Oh, it was 1730 or 1700, yes. When I walk into the
24 workroom, he seems to be surprised to see me. I
25 ask him if he was on-call? He told me that he was

1 not."

2 That's what I said earlier.

3 "He was not on-call, and he was taking care
4 of the GI."

5 Exactly. He left all those equipment behind and I
6 got a call for it. I went to pick all of those things.

7 "At that point, all three of us -- "

8 I don't know who Jacqueline is. So he is
9 mentioning Jacqueline here. I -- I never work with a
10 Jacqueline.

11 "All three of us, Jacqueline, Dominique, and
12 myself were walking out of the OR and going to go
13 home. When I got out from the locker room, he was
14 at the front desk talking to the charge nurse."

15 That's exactly what I was doing, asking for
16 permission to help with the remaining open-heart surgery.

17 THE COURT: Is this a good place to stop for
18 the noon hour, Mr. Keimbaye? It's just about 12:00. I want
19 you to be able to finish your thought, but.

20 MR. KEIMBAYE: May I finish this and then we
21 can --

22 THE COURT: Yeah, you could go ahead and
23 finish that, sure.

24 MR. KEIMBAYE: Thank you, Your Honor.

25 THE COURT: Yeah.

1 MR. KEIMBAYE: (Reading):

2 "He was at the front desk talking to the
3 charge nurse, still in scrub. It was a quiet night
4 with only two rooms going, one ortho case in room
5 202 and the heart."

6 Which was the one that I was asking for permission
7 to help out with. What better way I have to show that I was
8 being honest working like a donkey over there. I'm sorry.

9 "It was a quiet night with only two rooms
10 going. One ortho case in room 202 and a heart that
11 was still going from the morning in room 303.
12 Jacqueline and I had everything done but those two
13 rooms. The heart anesthesiologist did not need us
14 and clear us to go home."

15 What a lie.

16 Yes, ma'am.

17 THE COURT: This a good place to stop?

18 MR. KEIMBAYE: Yes.

19 THE COURT: Okay. We'll go ahead and stop
20 now.

21 All right. Members of the jury, please let me
22 remind you, really important, keep your minds open, don't
23 discuss or communicate about the case in any form with
24 anyone. Don't allow yourself to get exposed to any
25 information that might relate to the case. We will be at

1 recess until 1:30 and J will tell where and what time to meet
2 her. We're going to ask you to be back a few minutes early
3 so that we could be ready to go in the courtroom for the rest
4 of Mr. Keimbaye's testimony at 1:30. Have a lovely lunch.

5 THE BAILIFF: All please rise.

6 (Jury exits at 12:03:00 p.m.)

7 THE COURT: All right. Feel free to step
8 down, Mr. Keimbaye. Feel free to step down, yeah.

9 MR. KEIMBAYE: Thank you.

10 (Witness excused.)

11 THE COURT: All right. Anything -- any
12 burning issues we need to take up before we recess?

13 All right. Thank you. We will be at recess.
14 We'll resume at 1:30. Have a good lunch everyone.

15 MS. BURNHAM: Thank you, Your Honor.

16 (Recess at 12:03:19 p.m., recommencing at 1:34:54 p.m.)

17 ///

SEATTLE, WASHINGTON

WEDNESDAY, SEPTEMBER 6, 2023

AFTERNOON SESSION - 1:34:54 P.M.

JURY TRIAL (DAY 2):

(The following proceedings were held outside the presence of the jury:)

THE CLERK: Court is again in session.

THE COURT: Thank you very much. Please be seated. Any preliminary matters before we bring in the jury? All right. I guess we're ready for the jury, then. Thank you.

(Jury enters at 1:35:33 p.m.)

THE BAILIFF: Please recognize the jury.

THE COURT: Good afternoon, members of the jury. Please be seated. I hope everyone got a chance to enjoy the sunshine, at least a little bit. We are ready for cross-examination of Mr. Keimbaye.

So, Mr. Keimbaye, I need to invite you back to the witness stand, please. And my policy is I only swear in a witness one time per trial. So please just consider yourself still under oath.

DOMINIQUE KEIMBAYE,

Plaintiff, having been previously sworn, testified as follows:

THE WITNESS: Thank you.

1 THE COURT: Actually, you don't need the
2 notebook. Yeah. If Counsel wants you to look at something,
3 she'll provide that to you. Okay?

4 MR. KEIMBAYE: Thank you.

5 MS. ROSEN: Your Honor, I don't think he
6 finished his direct of himself.

7 THE COURT: Oh. I thought you were done.

8 MR. KEIMBAYE: No.

9 THE COURT: Were you not done?

10 MR. KEIMBAYE: No. No, Your Honor.

11 THE COURT: I'm so sorry. Please continue,
12 then.

13 MR. KEIMBAYE: Thank you.

14 THE COURT: Be careful of the microphone.

15 MR. KEIMBAYE: Okay.

16 **DIRECT TESTIMONY CONTINUED**

17 MR. KEIMBAYE: So, earlier, I was talking
18 about my interaction with the charge nurse on June 6, asking
19 for permission to stay and help with the remaining open heart
20 case.

21 The next following day, on June 7th, Plaintiff
22 worked the schedule -- worked the schedule from Exhibit 016
23 for his own calls. Plaintiff is scheduled to take on call on
24 that day. And he was there working -- I was there working.
25 I apologize to go back to Plaintiff. I was there working

1 alongside of Ms. Fletcher -- Amy Fletcher, and Ms. Lonon.

2 Later on, a few cases were running. And Amy
3 came to me and asked me, since, you know, I -- I was on call,
4 is it okay for Opal and her to leave early. And so I told
5 Amy that, you know, I am on call, and there are a few rooms
6 running, so I can take care of it as I work in my -- my
7 rooms. I will take care of the rooms and the get it set, you
8 know, for them the next day.

9 And that's the conversation that I had
10 directly with Amy. And then, from there, they left.

11 Now, when they were leaving, I was at the
12 front desk, you know, to make sure that, you know, they were
13 aware that I am here and I was on call so that, you know, I
14 can take care of the rooms and be there to support the night
15 shift.

16 In the allegation, you know, that I was not,
17 you know -- there was nothing going on that I was not
18 permitted to stay to work. So I worked throughout the night,
19 probably around 9:30 or 10:00 p.m. where I talked to the
20 front desk that, you know, I would need a room to stay
21 overnight.

22 So I went to the information desk in another
23 building on the first floor to get the key from the
24 information desk for the anesthesia staff restroom. And they
25 gave me the key where I went to one of the anesthesia staff

1 work group to stay in. And that room is not only for
2 anesthesiologists, but for the whole entire anesthesia staff,
3 including myself and anybody else as a technician or
4 anesthesiologist.

5 I have no idea whatsoever. The next day, on
6 June 8th, when I -- on Friday, June 8th, when I woke up in
7 the morning, brushing my teeth, somewhere around the
8 6:00 a.m., I was walking from the building on the first
9 floor, trying to go back to the main OR to work.

10 All the sudden, I saw one of their
11 anesthesiologists -- female anesthesiologists providing --
12 providers rushing out from another room adjacent to the room
13 I was staying. I had no idea someone was staying there. I
14 walk -- as I closed the door, I was walking toward the
15 information desk, where I got the key. I hear someone
16 starting, you know, insulting me, denigrating me --

17 MS. ROSEN: Objection, Your Honor. It's
18 hearsay, and it's a subject of a motion in limine.

19 THE COURT: I don't know the context. Do we
20 need to take a sidebar on this?

21 MS. ROSEN: Yes. I think we probably do.

22 THE COURT: All right. Mr. Keimbaye, if you
23 can step down, and let's talk about this in chambers very
24 quickly.

25 Members of the jury, please just hang tight.

1 We'll be with you very shortly.

2 (In chambers sidebar conference from 1:43:56 p.m. to
3 1:45:53 p.m.)

4 THE COURT: All right. All right. You may
5 proceed Mr. Keimbaye.

6 **DIRECT TESTIMONY CONTINUED**

7 MR. KEIMBAYE: So after leaving the room, I
8 returned the staff key for that room at the information desk,
9 and I headed straight to the main OR where I usually work.
10 And, there, I run into Travis and start talking to him about,
11 you know, what I experienced when I was leaving that room.
12 And Mr. John told me that the -- well, the anesthesiologist
13 had already talked to him about it, and that she's -- she was
14 currently in the anesthesiologist coordinator office talking
15 to him about -- about me not being allowed to stay in the
16 anesthesiologist's room.

17 And so I was explaining myself to Mr. John.
18 Mr. John, I have no obligation whatsoever to walk from the
19 work floor to the information desk, and grabbed the key on my
20 own to go -- to stay in the anesthesiologist staff room.

21 I was on call, and I talked to the front desk
22 before I went there. They were the one, you know, that
23 directed me to go to get the key so I can stay. Because I
24 live in downtown Bellevue, and it was around, you know,
25 10:00 p.m. or something.

1 So I prefer to stay closer, because I work the
2 next day, and that's the reason why I went to grab the key
3 and stay instead of driving all the way there and then back
4 again.

5 Mr. John then started, you know, telling me
6 that the provider is so mad at you, that she was recommending
7 to -- to the coordinator, you know, to -- to have you fired.
8 And that's the statement that Mr. John relayed to -- to me.

9 And that was the last time -- the last time
10 that I was physically in scrub and work at the -- at the main
11 operation. That was the last time that I worked there on
12 June 8, 2018.

13 Over the weekend, because I work four ten
14 hours, so I had Monday off. And the night from Monday to
15 Tuesday morning, around the 4:45 a.m., I rarely text Mr. John
16 with my personal phone number. I always -- like, when I am
17 at work, I call him on -- on the work phone, or I talk to him
18 face to face.

19 So I text him around 4:45 a.m. telling him
20 that I was having a horrible migraine, so I was letting him
21 know that I'm going to call in sick. And he replied, that's
22 fine with me. And so that was the night, on Monday night to
23 Tuesday on June 12th. And that same day -- around 2:00 p.m.
24 later that same day on June 12th, I believe around 2:00 p.m.
25 or around 4:00 p.m., I got a phone call back. Mr. John

1 usually did not call my personal phone at all the whole
2 entire time.

3 So I got a phone call that same day, somewhere
4 in the afternoon. He called me, hey, I want to -- I just
5 want to let you know that you are being put on administrative
6 leave for time fraud and policy violation.

7 So I tried to ask him to clarify for me. But
8 he refused that. And he said, you will be meeting with the
9 HR, you know, on your -- during your administrative leave.
10 And they can, you know, tell you more.

11 Now, going back to all the harassment that
12 I've been experiencing, including the assault in the -- in
13 the OR, right after I -- I clean off my blood, I went to the
14 third floor, where it happened for Mr. John to be there. I
15 had the conversation with him. And he all he told me about
16 the -- the anesthesiologist provider that assaulted me, I
17 would have talk with him. That's his famous word. I have
18 talk with him. That's not okay. I would have talk with him.

19 Same thing. When I was kicked out by another
20 provider that I mentioned earlier, he was going through an
21 anesthesia drug cart, you know, trying to check there for
22 updates on the third floor. I walk out from the OR and went
23 and talked to him. He replied back to me that, oh, that guy
24 sometimes can be -- can be rude. But, you know, I will have
25 talk with him, and I will let you know.

1 And all of those promises back and forth, I
2 never hear back from him, you know, Mr. John. Including
3 when, somewhere on May 24, 2018, I was in the anesthesia work
4 room. We have two anesthesia work rooms. One on the second
5 floor, one on the third floor.

6 Now, I was mostly assigned to difficult cases,
7 so I was mostly on the third floor. There was one thoracic
8 case running in room 12, and the two open-heart cases running
9 in room 3 and room 4 -- 304 -- 203 and the 404.

10 I called Mr. John over the phone that, hey,
11 John, I am probably going to stay late because I have two
12 open-heart cases going on in third floor, and then a thoracic
13 case in room 12. And if it's okay with him, I could stay on
14 clock to help with those cases while working on my ACLS.

15 I always ask him, you know, ask him about, you
16 know, my online BLS and ACLS courses. All he always say,
17 that's fine with me. I was in the room doing the ACLS. You
18 know, I was on the last step where you have to do the --
19 those simulations -- those difficult courses. I saw some
20 even physicians in it, you know -- cardiologists fail those
21 courses.

22 While I was doing it, I saw Ms. Lonon and
23 Ms. Fletcher coming to the third floor to get a glimpse
24 through the glass window. And I was sitting on my back. And
25 I had the feeling that someone was watching me. So I turn

1 around, and when I saw them, they start running, take the
2 stairs, go downstairs.

3 So I log out from the HealthStream. I went
4 downstairs to the second floor. It was like somewhere around
5 7:00 p.m. There, I saw Ms. Lonon and Amy Fletcher were
6 sitting on a bar stool in the seventh floor anesthesia work
7 room talking, laughing loud.

8 I went to sit down on the bar stool
9 away -- probably six feet away from her -- from them.
10 Ms. Lonon was going -- talking about, you know, loving a --
11 hate men -- men with hairy chest, all those kind of stuff.

12 I was sitting quiet. Amy was going crazy
13 saying, you are crazy. You are crazy. All the sudden,
14 Ms. Lonon turned toward me, Dominique, do you have a hairy
15 chest? All the sudden, she was sitting on a rolling bar
16 stool, rolling her bar stool literally to put her hands under
17 my scrubs to touch my chest to see -- to feel if I have a
18 hairy chest.

19 And so I said, don't you dare touch me. So I
20 get up on my feet. And that's where all the chaotic and
21 accusation from her that I was using BLS and the ACLS as a
22 pretext to gain additional hours.

23 One moment, please.

24 Your Honor, I would like to talk about Exhibit
25 Number 11.

1 THE COURT: So if you want to talk about this,
2 Mr. Keimbaye, can you identify what this is, please?

3 MR. KEIMBAYE: This exhibit is in regard to my
4 BLS and ACLS record.

5 THE COURT: Is there an objection to Exhibit
6 11?

7 MS. ROSEN: No objection, Your Honor.

8 (PLAINTIFF'S EXHIBIT 11 RECEIVED INTO EVIDENCE)

9 THE COURT: All right. 11 may be admitted.

10 MR. KEIMBAYE: So all of these record access
11 to my ACLS and BLS here. My supervisor and employers list
12 all of them in Plaintiff Exhibit 001.

13 THE COURT: All right. So we're not talking
14 about Exhibit 11 anymore?

15 MR. KEIMBAYE: They are -- they are linked.
16 All of the access and dates on 11 were reported in Exhibit 1
17 and 2.

18 THE COURT: All right. Are you offering
19 Exhibits 1 and 2?

20 MR. KEIMBAYE: Yes.

21 THE COURT: They're already in. So, yeah.
22 You can talk about those. Thank you.

23 MR. KEIMBAYE: So they list a bunch of, you
24 know, 74 occurrence of late out work. These are my access to
25 BLS and ACLS during work and after work, which means after

1 5:00 p.m. And all of this, I always, always communicate with
2 my -- my supervisor, Mr. John, asking him, is it okay for me
3 to stay in clock and work on my BLS or ACLS a little bit
4 before -- because it's tough courses, that, you know, I have
5 to go through studies first, and then test myself at the end.
6 And even in class ACLS are not easy questions, you know, for
7 someone to -- to pass it right away.

8 So all the 74 hour -- 74 appearance of late
9 out, all of this came from Plaintiff Exhibit 11. And they
10 list them all here to target Plaintiff that, you know --

11 MS. ROSEN: Your Honor, --

12 MR. KEIMBAYE: -- he was purposefully staying
13 late.

14 MS. ROSEN: -- objection.

15 THE COURT: What? Sorry.

16 MS. ROSEN: This is not correctly summarizing
17 the document.

18 THE COURT: Well, again, these documents say
19 what they say. You can certainly testify as to fact. But if
20 you want to argue the significance, then you should save that
21 for the closing arguments, Mr. Keimbaye.

22 MR. KEIMBAYE: So all of the 74 occurrence of
23 late out on Exhibit 1, that was admitted, came from my access
24 to ACLS and BLS in Exhibit 11. Same as Exhibit 2, which is
25 admitted. They list in review Dominique time card. Also to

1 follow up, confirm, did you approve, assign Dominique to
2 complete the ACLS on time -- on work time?

3 And, here, Mr. John is responding, not on
4 June 6, but back in May. I mean, Mr. Sweeney (phonetic) is
5 asking Mr. John the whole bundle of all the access of
6 Plaintiff access to BLS and ACLS. And Mr. John is only
7 referring to June 6, which was the day that the Plaintiff
8 asked for permission to stay to help with the -- the
9 remaining open-heart case.

10 And, in fact, back in May, Plaintiff also
11 asked Mr. John to stay in clock to take his BLS and ACLS. I
12 always came up front and asked him so that I can avoid any
13 sort of these allegations.

14 And, by the way, I properly -- properly asked
15 for permission. I did not want, on my own way out, to get
16 registered for BLS and ACLS. Even though they claimed that
17 it's not required for me to have an ACLS and BLS to work,
18 they honestly -- honestly, Judge, constantly expect more
19 advanced skill from -- from me. And they are offering
20 ACLS -- ACLS for free through their online system.

21 And as a new employee I was so excited to
22 upgrade my skill so that I could provide the better care for
23 patients.

24 The amount of work that I was doing over
25 there. I was not just focusing on my rooms. I run across

1 the floor, help my coworkers, anybody. Even, you know,
2 outside the department.

3 Here, in Exhibit 017.

4 THE COURT: 17? I should have printed out
5 that list. Is 17 in evidence? It is. Okay. Thank you.

6 MS. ROSEN: All right.

7 MR. KEIMBAYE: Mr. Sweeney was asking
8 Mr. John, saying, based on Dominique issue, can you review
9 all anesthesia tech to ensure that we don't have others
10 working past the end of the shift or changing the time on
11 their standby hours?

12 Mr. Sweeney was asking for transparency here
13 to Mr. John so that he can provide a record of the remaining
14 other anesthesia techs that works with the --

15 MS. ROSEN: Objection, Your Honor.

16 MR. KEIMBAYE: -- that works with Dominique.

17 THE COURT: Mr. Keimbaye --

18 MS. ROSEN: He --

19 THE COURT: Mr. Keimbaye, you can't really
20 testify about what was going on in Mr. Sweeney's mind when he
21 sent this. So please confine your testimony to your own
22 observations. You could certainly testify about what the
23 exhibit -- what's in the exhibit. But you shouldn't be
24 speculating about anyone's state of mind.

25 MR. KEIMBAYE: So, here -- yes, Your Honor. I

1 apologize.

2 So, here, Mr. John replied, any late out are
3 by my request based on case load. There will be a couple by
4 Mike (phonetic) and Chris on the front half of the week.
5 There were -- there were needs, though, and I approve it.
6 There is a difference.

7 All the communication that I have with my own
8 supervisor, instead of being transparent about someone asking
9 him something. He was literally call me out that, you know,
10 I don't -- I did not have those communications with him or
11 ask him for permission.

12 By the way, on June 6th, when I asked for
13 permission, you know, to stay to work with that open heart,
14 John -- Mr. John usually -- his schedule, I believe he
15 finish, you know, his shift at 3:00 p.m. So he was nowhere
16 around. And there was a charge nurse there for me to ask for
17 permission. I didn't need to, you know, to call him home to
18 ask him for permission.

19 And even -- even though I ask for permission
20 and there's a record for it, he was try, literally, to put me
21 under the bus how I don't talk to him at all.

22 MS. ROSEN: Objection, Your Honor. This is
23 argument.

24 THE COURT: It is. Sustained. And the jury
25 should disregard Mr. Keimbaye's last statement.

1 MR. KEIMBAYE: Exhibit 018.

2 So, back in April, Mr. John called me to meet
3 with them at Mr. Dan Roehrich's office, who is the OR
4 administrator and manager. In that meeting, Mr. John went in
5 length talking about, he heard about my -- me trying to -- to
6 quit my job because of the concern that I was having toward
7 me, the harassment that I was having toward me.

8 And I told Mr. John, and then --

9 MS. ROSEN: Objection, Your Honor. This is
10 hearsay.

11 THE COURT: Well, typically what you said out
12 of court is hearsay. I'm going to let this go for now.
13 Let's see where it's going.

14 MR. KEIMBAYE: So I told the -- Mr. John that
15 if Mr. Kortendick's behavior toward me could not stop, I
16 would -- I would leave or quit my job.

17 He told me in that meeting that they weren't
18 aware of Mr. Kortendick's behavior, and that the OR managers
19 are looking into taking actions about it. And that you are
20 the -- everybody loves you here, and that all the providers
21 that, you know, I talk to, talk great -- talk greatly about
22 you, that you are the hardest worker that, you know, they
23 need here. And that they would not like that, you know, I
24 quit my job.

25 At the same time, Mr. John and Chris,

1 me -- and say that please call me anytime if you need
2 something and if you are running late to come to work. Call
3 me or text me.

4 On Exhibit 19 -- 019 --

5 THE COURT: All right. It doesn't look like
6 this one's in evidence, Mr. Keimbaye. So if you can identify
7 what it is?

8 MR. KEIMBAYE: This exhibit is in regard to my
9 timecard, and Mr. John is telling Mr. Chris and Ms. Maddy --

10 THE COURT: Before you testify about what's
11 actually in the exhibit, I just wanted you to identify it.
12 So these are communications about your timecard?

13 MR. KEIMBAYE: Yes.

14 THE COURT: Okay. Are you offering this into
15 evidence?

16 MR. KEIMBAYE: Yes, Your Honor.

17 THE COURT: All right. Thank you.

18 Is there an objection to admission of
19 Exhibit 19?

20 MS. ROSEN: Yes, Your Honor. It's multiple
21 documents in one.

22 THE COURT: Oh.

23 MS. ROSEN: It appears to be a hodgepodge of
24 emails.

25 MS. BURNHAM: It's at least three emails.

1 MS. ROSEN: Three different emails.

2 THE COURT: It's not just an email string?

3 MS. BURNHAM: No.

4 THE COURT: Oh. You're right. Yeah. These
5 are a bunch of emails mixed, some of which don't relate to
6 one another. So I can't admit this, because an exhibit is
7 supposed to be one discrete document, even if it's several
8 pages long. Looks like this is several documents -- several
9 email strings about different topics.

10 MR. KEIMBAYE: So, look at Exhibit 050, about
11 my BLS and ACLS approval.

12 THE COURT: All right. That appears to be a
13 one-page document. Are you offering it into evidence,
14 Mr. Keimbaye?

15 MR. KEIMBAYE: Yes, Your Honor.

16 THE COURT: All right. Is there an objection?

17 MS. ROSEN: Your Honor, let me just look at it
18 briefly. The copy we have is highlighted for some reason.
19 Is that the same copy you have, Mr. Keimbaye?

20 MR. KEIMBAYE: Yes.

21 MS. ROSEN: Okay.

22 THE COURT: It just -- well, I mean, but the
23 entire contents of the email --

24 MS. ROSEN: Yeah.

25 THE COURT: -- are --

1 MS. ROSEN: Yeah.

2 THE COURT: I'm not trying to call them
3 highlighted just because it's gray in the exhibit notebook.
4 Is it in color in the original? Oh. Okay.

5 MS. ROSEN: Yeah. And we don't really know
6 where the highlighting came from. But you're right. The
7 whole thing is highlighted.

8 I don't think it's relevant. So I'm going to
9 object based on relevance.

10 THE COURT: Okay. Mr. Keimbaye, do you want
11 to offer a little more testimony that would explain why this
12 is relevant?

13 MR. KEIMBAYE: It is relevant because when I
14 talked to the nurse educators about, you know, taking their
15 BLS and ACLS courses, they want an approval from my
16 supervisor, Mr. John. And that's the reason why Shanie
17 McLaren reached out to --

18 MS. BURNHAM: Your Honor, now he's testifying
19 about the document.

20 (PLAINTIFF'S EXHIBIT 50 RECEIVED INTO EVIDENCE)

21 THE COURT: Okay. We don't know why
22 Ms. McLaren reached out, because we can't read her mind. I'm
23 going to -- I'll admit Exhibit -- Exhibit 50. It doesn't
24 appear to be unfairly prejudicial. And it's at least
25 somewhat related to this line of testimony about the BLS and

1 ACLS. So you can testify about the exhibit. But, again,
2 don't speculate about the purpose of another person sending
3 an email.

4 MR. KEIMBAYE: Yes. So, in order for me to
5 get registered for BLS and ACLS, it has to be approved by my
6 supervisor. And that's the reason why he got this email, and
7 it says, good morning, Ms. Shanie -- Ms. McLaren, addressed
8 to Mr. John, good morning. Dominique would like BLS, ACLS,
9 and PALS assignment in HealthStream.

10 I believe Ms. McLaren didn't know that I
11 was -- I --

12 MS. ROSEN: Object to the form. He can't
13 testify to what Ms. McLaren knew or thought.

14 THE COURT: Sustained.

15 MS. ROSEN: And he didn't read the whole
16 email. So I would request that he read the whole email,
17 please.

18 MR. KEIMBAYE: So --

19 THE COURT: Well, it's in evidence.

20 MS. ROSEN: Okay.

21 THE COURT: So I don't think it all has to be
22 read to the jury unless Mr. Keimbaye wants it all read to the
23 jury.

24 MR. KEIMBAYE: So Ms. McLaren said, before I
25 make those assignments, I need the copies of her current

1 ACLS, BLS, and PALS, if any. Also, is she required to have
2 all three certification for her job requirement?

3 After hearing from Mr. John, I got an email in
4 Exhibit 004. By the way, the date for Exhibit 050 is
5 08/04/18 -- 2018. And, then, for Exhibit 004, it is two days
6 later. And Ms. McLaren assigned me to take BLS and ACLS
7 courses to complete -- to me in HealthStream.

8 MS. ROSEN: Objection, Your Honor. That is
9 not what the email says. And he hasn't moved to admit the
10 email yet.

11 THE COURT: Right.

12 MS. ROSEN: And it hasn't been admitted.

13 THE COURT: So are you offering Exhibit 4?

14 MR. KEIMBAYE: Yes, Your Honor.

15 THE COURT: Is there an objection?

16 MS. ROSEN: No.

17 (PLAINTIFF'S EXHIBIT 4 RECEIVED INTO EVIDENCE)

18 THE COURT: Exhibit 4 is admitted.

19 Okay. Go ahead, Mr. Keimbaye.

20 MR. KEIMBAYE: I'm going to look at
21 Exhibit 004 -- 005 instead.

22 THE COURT: Are you offering Exhibit 5?

23 MR. KEIMBAYE: Yes.

24 THE COURT: Is there an objection?

25 MS. ROSEN: Yes, Your Honor. This has not

1 | been authenticated. And I don't see how this is relevant.

2 | THE COURT: All right. Do you want to
3 | describe for us what this is?

4 | MR. KEIMBAYE: Yes. This is the study guide
5 | for the -- for the ACLS that I have to study through it in
6 | order to take the online certification.

7 | MS. ROSEN: Objection, Your Honor. That's a
8 | lack of foundation.

9 | THE COURT: Well, overruled as to that
10 | objection.

11 | Where did this come from, Mr. Keimbaye?

12 | MR. KEIMBAYE: From the -- my ACLS and account
13 | from their HealthStream.

14 | THE COURT: So -- so where did you get this
15 | document?

16 | MR. KEIMBAYE: I printed out from my account
17 | under ACLS --

18 | THE COURT: Okay.

19 | MR. KEIMBAYE: That's the study guide.

20 | THE COURT: So this came from -- and what's
21 | the relevance of this to your claims for harassment in a
22 | hospital work environment?

23 | MR. KEIMBAYE: Well, the Defendants are using
24 | my access to this authorized study course to accuse me of
25 | time card fraud and dishonesty. And so it's wrong for them

1 to use, you know, what they authorized me to do against me.

2 MS. ROSEN: Your Honor, again, that's
3 argument.

4 THE COURT: It is. Let me reserve on this for
5 a moment. We've reached 2:30, so we need to take our
6 afternoon recess.

7 So, members of the jury, please continue
8 keeping your minds open. Don't communicate about the case.
9 We'll have you back here after the afternoon recess for more
10 of Mr. Keimbaye's testimony.

11 THE BAILIFF: All please rise.
12 (Jury exits at 2:30:43 p.m.)

13 DISCUSSION RE EXHIBITS

14 THE COURT: Okay. If you want to step down,
15 Mr. Keimbaye, feel free to do that.

16 So, correct me if I'm wrong, but, as I
17 understood it, the Defense isn't saying that Mr. Keimbaye was
18 not allowed to didn't -- not allowed to do BLS and ACLS
19 training --

20 MS. ROSEN: No. That's --

21 THE COURT: -- on the system, but is saying
22 that he wasn't authorized to clock that time. Do I have that
23 right?

24 MS. ROSEN: You do a little bit. Let me tweak
25 it for you a little bit.

1 THE COURT: Okay.

2 MS. ROSEN: He was authorized to do BLS --

3 THE COURT: Okay.

4 MS. ROSEN: -- because that was a requirement
5 of his job.

6 THE COURT: Okay.

7 MS. ROSEN: ACLS was not a requirement of his
8 job. He could have taken those, but he was not allowed to
9 take those on the clock and be paid for it.

10 THE COURT: Okay. But he was allowed to do
11 the BLS?

12 MS. ROSEN: Right. And this study guide he
13 submitted is for the ACLS.

14 THE COURT: Right. Okay. Understood.

15 In that case, I won't admit Exhibit 5.

16 MR. KEIMBAYE: Your Honor, may I make a
17 statement?

18 THE COURT: All right. Go ahead.

19 MR. KEIMBAYE: At that time, when the
20 Plaintiff was asking them for permission to take only ACLS,
21 Plaintiff already has a valid BLS through November 2019.

22 THE COURT: Okay.

23 MR. KEIMBAYE: And so --

24 THE COURT: Well, one of the -- one of the
25 emails that you brought up in your testimony, because I

1 remember seeing it, from Mr. John, indicated that you had a
2 BLS certification that was expiring. And I don't think he
3 indicated exactly when. And so you -- so he authorized the
4 BLS.

5 But, either way, you know, you've testified
6 you were authorized to do the ACLS. That's fine. But the
7 jury doesn't need to see the study module. I don't think
8 seeing the study module is going to be helpful to them in
9 deciding any issue in this case. So that's the reason I'm
10 not going to admit that.

11 MR. KEIMBAYE: Okay.

12 MS. ROSEN: Your Honor, I'm very concerned
13 about the amount of argument that Mr. Keimbaye is making in
14 his exam. I'm trying not to object constantly. But, I mean,
15 you've admonished him no less than five or six times not to
16 make argument, and he continues to do so. And I think it's
17 extremely prejudicial to us.

18 THE COURT: Well, okay. I don't know what you
19 want me to do at this point.

20 MS. ROSEN: Well --

21 THE COURT: Or whether you're just making a
22 record.

23 MS. BURNHAM: I would like there to be some
24 kind of sanction if he continues to engage in argument.

25 SIDEBARS MEMORIALIZED

1 THE COURT: All right. I'll take that under
2 advisement. I did want to put the two sidebars on the
3 record. I should have done the first one this morning
4 because it was from the morning's testimony.

5 I believe, and correct me if I'm wrong,
6 because I didn't make a contemporaneous note during the
7 sidebar. I have very extensive notes of the testimony.

8 I believe that Mr. Keimbaye was arguing about
9 Mr. Kortendick admitting to having changed something in the
10 OR, changed settings on a monitor or something like that.

11 MS. ROSEN: That's right.

12 THE COURT: And there was an objection. And
13 at sidebar, Mr. Keimbaye indicated that he was going to
14 testify under oath that Mr. Kortendick admitted doing that.
15 And that admission -- I'm sorry, help me to remember. That
16 admission was in Mr. John's presence? I don't remember that
17 part.

18 MS. ROSEN: I don't -- I'm sorry.

19 THE COURT: He does -- he does say that
20 Mr. Kortendick admitted doing that.

21 MS. ROSEN: It's been a long day.

22 THE COURT: It has been a long day. And we're
23 not done yet.

24 MS. ROSEN: I know.

25 THE COURT: But, in any event, given that

1 Mr. Kortendick is a party, and Mr. Keimbaye testified under
2 oath that he admitted changing these settings, the Court
3 found that the testimony was admissible.

4 Much of the objection was that this was new
5 testimony that the Defense hadn't heard before as part of
6 Mr. Keimbaye's deposition testimony. And the Court
7 indicated, well, he certainly could be impeached through his
8 prior testimony.

9 The sidebar this afternoon was actually pretty
10 much -- well, similar kinds of issues. But, this time,
11 relating to Mr. Keimbaye's testimony about having spent the
12 night in a room, and on leaving the room the next morning,
13 being subjected to abuse by an anesthesiology provider. And
14 Defense objected again that this was the first they were
15 hearing about this, and that it was irrelevant to his claims.

16 Mr. Keimbaye indicated, during the sidebar,
17 that he immediately told Mr. John about it and got some kind
18 of acknowledgement from Mr. John that things were going to
19 happen as a result of that, or at least the person was going
20 to be spoken to.

21 And, given that, the ruling was that he could
22 testify about that. And if it's something different than
23 what he testified about at his deposition, then, again,
24 that's subject to impeachment.

25 I would invite Counsel and then Mr. Keimbaye

1 to supplement the record if you wish to do that.

2 MS. ROSEN: Sure. Your Honor, on the second
3 sidebar, I also argued on the basis of it being subject of a
4 motion in limine and hearsay.

5 THE COURT: Right. And I remember -- thank
6 you for reminding me. And the hearsay objection was
7 overruled because any insults or abusive language by -- or
8 alleged insults or abusive language by this person were not
9 being offered for the truth of the matter asserted.

10 Mr. Keimbaye, did you want to add anything to
11 supplement my putting the sidebars that we had this morning
12 and this afternoon on the record?

13 MR. KEIMBAYE: I mean, Your Honor, in order
14 for me to talk to my direct supervisor, I have to have
15 something, you know, to tell him. And because, you know --

16 THE COURT: I'm sorry. But that -- that
17 doesn't sound like it's the answer to my question. My
18 question is whether there was something that we talked about
19 at sidebar that hasn't been made part of the record yet that
20 you wanted to add to make sure it is part of the record. I'm
21 not asking you to explain any of the circumstances of your
22 testimony.

23 MR. KEIMBAYE: No, Your Honor.

24 THE COURT: Okay. Fair enough. Thank you.

25 All right. I suspect everybody could use a

1 break. So let's resume at five minutes to three.

2 THE BAILIFF: All please rise.

3 (Recess at 2:55:53 p.m., recommencing at 2:58:24 p.m.)

4 (The following proceedings were held outside the presence of
5 the jury:)

6 DISCUSSION RE PLAINTIFF'S TARDINESS

7 THE COURT: Why does he wait until we're
8 supposed to start in order to step out?

9 THE COURT: Did you have an emergency?

10 MR. KEIMBAYE: Yes, Your Honor.

11 THE COURT: I can't hear you.

12 MR. KEIMBAYE: Yes.

13 THE COURT: Can you share with us what that
14 was?

15 MR. KEIMBAYE: Just now?

16 THE COURT: Yeah. We were supposed to start
17 at five minutes of, and that's when I came on the bench. And
18 I was told that you had just left the room.

19 MR. KEIMBAYE: I'm sorry. I didn't see you,
20 so I was rushing to the restroom.

21 THE COURT: So if you need to take a restroom
22 break, that's why we have recesses. And they're always at
23 least 15 minutes. So use the restroom during that 15-minute
24 break. And please be back in court on time. We don't have
25 people punch time clocks here. But not being here when we

1 are scheduled to start is disrespectful of the jury's time,
2 and it's disrespectful to the Court.

3 MR. KEIMBAYE: Well, then --

4 THE COURT: And this is the second time today
5 that you haven't been in the courtroom when we were scheduled
6 to start. Although the last time you were only about a
7 minute late. But please try to -- try to be here when you're
8 supposed to be here.

9 Ms. Rosen has indicated that she has one
10 matter to take up before we bring the jury in.

11 DISCUSSION RE JUROR 9

12 MS. ROSEN: Thank you, Your Honor. We've
13 noticed one of the jurors looking visibly frustrated by me
14 making objections, rolling eyes, and other type of behavior,
15 which is really concerning to us.

16 THE COURT: Which juror?

17 MS. ROSEN: Is it Juror Number --

18 MS. BURNHAM: 9.

19 MS. ROSEN: 9.

20 THE COURT: Okay.

21 MS. ROSEN: And it's very concerning to us
22 because we believe that the amount we're having to object to
23 Mr. Keimbaye is prejudicing us. And, obviously, it's -- it's
24 not looking great to the jury.

25 THE COURT: All right. I will certainly

1 remind the jury that counsel have a duty to object to
2 questions or evidence that is not legally admissible. And
3 that they certainly shouldn't hold it against you if you make
4 objections.

5 I also want to remind Mr. Keimbaye that when
6 you -- when you're offering testimony, you need to testify as
7 to facts and not arguments. Okay? Arguments are fine, but
8 they're for a different part of the trial. They're for
9 closing argument at the conclusion of the trial, okay?

10 MS. ROSEN: I'd just like to renew my request
11 for sanctions if he continues to violate that, Your Honor.
12 Nothing else works with him. I mean, you see, just by not
13 valuing everybody's time, coming back on time.

14 THE COURT: All right. He was only about
15 three minutes late. So it wasn't the end of the world.

16 But I expect you not to do that anymore --

17 MR. KEIMBAYE: Well --

18 THE COURT: -- Mr. Keimbaye, unless there's a
19 bona fide emergency.

20 MR. KEIMBAYE: I am sincerely sorry. I am
21 learning.

22 THE COURT: Okay.

23 MR. KEIMBAYE: Thank you.

24 THE COURT: Appreciate that.

25 All right. So, again, just please make sure

1 | you testify about facts and about things that you actually
2 | observed.

3 | In terms of the Court's response to the issue
4 | that Defense Counsel raised, I'm not finding that
5 | Mr. Keimbaye's testimony is over the top or a willful
6 | violation of the rules or unduly prejudicial to the Defense.
7 | I don't believe at this point it's sanctionable. I will step
8 | in if I need to. And I will certainly remind the jury of
9 | Counsel's duty to make appropriate objections.

10 | MS. ROSEN: And Juror Number 9 is a lawyer, so
11 | she's going to hold more sway with the jury than others.

12 | THE COURT: Possibly.

13 | MS. ROSEN: So, thank you, Your Honor.

14 | THE COURT: All right.

15 | All right, Mr. Keimbaye, would you like to
16 | join us again on the witness stand while J. brings in the
17 | jury?

18 | MR. KEIMBAYE: Yes, Your Honor.

19 | THE BAILIFF: Please recognize the jury.

20 | (Jury enters at 3:02:25 p.m.)

21 | THE COURT: All right. Welcome back, members
22 | of the jury. Please be seated, everyone.

23 | A couple of things before we resume. First of
24 | all, it probably has not escaped your attention that the
25 | breaks are sometimes considerably longer than 15 minutes. We

1 do want to be very respectful of your time. And I'm working
2 very hard -- and I think everyone here is working very hard
3 to be respectful of your time.

4 The reason that happens is because matters
5 come up that we need to take up in open court on the record
6 but outside of your presence. And we try to confine those as
7 much as possible to breaks so that, you know, we're not
8 coming and going from the courtroom. So that's the reason.
9 And, again, we're going to work very hard to be respectful of
10 your time.

11 The second thing is this trial is somewhat
12 unusual in trials generally because we have a witness who is
13 testifying not in response to questions asked by an attorney
14 but is -- is offering his testimony in narrative form.

15 When I have a self-represented party, I don't
16 ask that person to ask himself or herself questions. I find
17 that to be incredibly awkward. I think a few courts maybe do
18 that.

1 But I just -- I think it's really awkward.
2 And it becomes very difficult for them to convey the
3 information that they want to convey to you in support of
4 their case.

5 But that does put counsel for the opposing
6 party in a different position than they would be if there
7 were a lawyer asking the witness questions. Because
8 typically what happens is a lawyer will ask a witness a
9 question, and if the question is legally objectionable for
10 any reason, then opposing counsel will say, objection, before
11 there's ever an answer from the witness. And the Court will
12 get a chance to rule on the objection. And, then, if it's
13 sustained, then the lawyer asks a different question. And if
14 it's overruled, then the witness answers the questions. And
15 that's the way it works when both sides are represented.

16 So in this case, inevitably, Mr. Keimbaye is
17 going to start conveying some information which, if it is
18 legally objectionable, Counsel needs to lodge an objection.

19 And you heard me say at the beginning of the
20 trial, but I'll just repeat, that Counsel have not only the
21 right but often the duty to make objections that they believe
22 are legally appropriate. So it's really important that you
23 not, in any way, shape, or form, hold it against the
24 Defendants or their lawyers for making objections. That's
25 just the way the system works. So I hope that's helpful.

1 All right. Mr. Keimbaye. You can continue
2 with your testimony.

3 **DIRECT TESTIMONY CONTINUED**

4 MR. KEIMBAYE: Thank you, Your Honor.

5 Earlier, I was talking about my communication
6 with my direct supervisor, Mr. John. And so I would like to
7 have Exhibit 014.

8 THE COURT: I have pulled it up now. So that
9 hasn't been admitted yet. So if you could identify what this
10 document is, please.

11 MR. KEIMBAYE: This document is one about
12 what, you know -- some of the communication that, you know, I
13 usually didn't talk to him with my personal phone. And so,
14 on -- on May 10th, that's one of the text messages. I said,
15 hey, Travis, how is it going?

16 THE COURT: No. No. No. Don't read it yet,
17 because it's not admitted in evidence yet.

18 MR. KEIMBAYE: Okay. Okay.

19 THE COURT: All right. So this is a text
20 communication from you and Mr. John and his communications
21 back to you?

22 MR. KEIMBAYE: Yes, Your Honor.

23 THE COURT: All right. Are you offering it
24 into evidence?

25 MR. KEIMBAYE: Yes, Your Honor.

1 THE COURT: Is there an objection?

2 MS. ROSEN: No, Your Honor.

3 (PLAINTIFF'S EXHIBIT 14 RECEIVED INTO EVIDENCE)

4 THE COURT: All right. Exhibit 14 is
5 admitted. So now you can read from it if you wish.

6 MR. KEIMBAYE: Okay. I ask him for help, you
7 know, to help me out with the HR needs. And, instead, he
8 told me back. He said, I will speak to HR and get it cleared
9 up. No worries.

10 And so I replied by saying, appreciate it.

11 But all -- all the communication I've been
12 having him -- having with him, here, he never get back to me
13 after he state this statement that he knows, he would have HR
14 help me out.

15 Then I ask, hey -- on May 10, I said, hey,
16 Travis, how is it going this morning?

17 He replied, it's going. What's up, man?

18 And so I said, will it be okay with you for me
19 to stay in clock at the end of my shift? I want to work on
20 my HealthStream a little bit while waiting for a call back,
21 because I am on call tonight.

22 If we go back again to my work and call back
23 schedule on May, I was scheduled to work on May 10th. And I
24 was begging my supervisor to give me permission so that, you
25 know, I don't get in trouble with, you know, I'm asking so

1 that I can work on my ACLS while waiting for my call back.

2 And he replied back saying, okay, that's fine
3 by me.

4 And I replied back, thank you. I appreciate
5 it.

6 MS. ROSEN: Your Honor. That's not a proper
7 representation of the document.

8 THE COURT: Well -- well, the jury's going to
9 have it. So there was some reading, and then there was some
10 testimony about Mr. Keimbaye's understanding of what was
11 being communicated, I think. And they were a little bit
12 jumbled together. But let's proceed.

13 MR. KEIMBAYE: And, then, one of the
14 communication I have -- I had with my supervisor, Mr. John.
15 I said, running late. Would you mind do the machine check
16 for me, please? Thanks.

17 This is how transparent I was with my
18 supervisor. And he replied back, we will check them out.

19 And, then, on the 31st, he asked me about my
20 BLS certification. And I emailed this BLS certification.
21 And he forwarded this BLS certification. This is not the BLS
22 certification from the online HealthStream. This is the one
23 that I got, you know, from outside before getting the
24 anesthesiologist technician job at Everett.

25 And I emailed him this certification in order

1 for my supervisor to forward that to Ms. Bruner (phonetic) to
2 reduce me for the ACLS courses that I was taking online.

3 Earlier, I was telling you all that the last
4 day I was physically working at Everett was June 8. And that
5 I was sick the night from Monday, June 11, to Tuesday, June
6 12th. I text him around 4:25 a.m. I said, good morning,
7 Travis. I am not feeling well with my migraine. And so I
8 want to let you know that I'm calling in sick.

9 He replied by saying, okay, thanks.

10 By 4:51 that day, that's where he put me on
11 administrative leave. And all the rest of the time I was
12 experiencing, I talked to him over the phone and say that,
13 was it because of the harassment that, you know, I talked to
14 you about it? I asked you that, you know, to help me to file
15 with the HR. Is that the reason you guys are putting me on
16 administrative leave, or is it because of what you are
17 saying; that, you know, oh, because there are some time card
18 issues?

19 And, earlier, I was saying that on June 7th,
20 Amy came to me to ask me for permission that -- if it was
21 okay for them to leave.

22 THE COURT: So I'm going to ask you,
23 Mr. Keimbaye, don't repeat what you've already testified to.

24 MR. KEIMBAYE: Okay.

25 THE COURT: Okay? I mean, if you have

1 something else that you haven't already told the jury, that's
2 fine. But let's not repeat stuff.

3 MR. KEIMBAYE: The reason is because, Your
4 Honor, I would like to talk about Exhibit 043, please.

5 THE COURT: Okay. 43 is admitted, so you can
6 talk about it.

7 MR. KEIMBAYE: So I told -- Travis's question
8 to me about, you know, not being on call on June 7th and
9 deciding on my own to stay to work. So I said, hey, no, I
10 was on call on June 7th. And that, you know, I was there
11 with Amy when they -- they asked me to leave. And I stayed
12 there, you know, to cover their rooms and my rooms.

13 He asked Amy to confirm about. And Amy says
14 here, in her email to Travis, Travis, on Wednesday,
15 June 8th, 2018 --

16 MS. ROSEN: Your Honor, that's Chris
17 Kortendick emailing, not Amy. Just as a point of
18 clarification.

19 MR. KEIMBAYE: Oh. I apologize. It should be
20 the next page.

21 THE COURT: So Exhibit 43 only has one page.

22 MR. KEIMBAYE: I read its number wrong.

23 THE COURT: Oh. Okay. Which exhibit number
24 would you like to talk about?

25 MR. KEIMBAYE: One moment, Your Honor. 44,

1 please.

2 THE COURT: All right. 44 is not in evidence.
3 All right. So this appears to be an email from Ms. Fletcher
4 to Mr. John, which is what you were starting to say earlier.

5 MR. KEIMBAYE: Yes.

6 THE COURT: Is this exhibit objected to?

7 MS. ROSEN: No, Your Honor.

8 (PLAINTIFF'S EXHIBIT 44 RECEIVED INTO EVIDENCE)

9 THE COURT: No? All right. 44 is admitted,
10 then.

11 MR. KEIMBAYE: So, here, on my supervisor was
12 trying to verify whether or not, you know, I was on call or
13 work on June 7th. And Ms. Fletcher says to Travis, "I am
14 just emailing you about Thursday, June 7th. Opal and I left
15 early at 18:30. Dominique was still there -- was still here
16 helping out, still, because he was on call that night." And
17 Opal and I asked Dominique if it was okay for us to leave
18 early, since calls start at 18:30.

19 Now, and he said to me saying that, yes, I
20 believe there was a lot going on at -- at the time. So Opal
21 and Amy left.

22 I had been always transparent communicating
23 with my direct supervisor and telling him exactly, whether he
24 was there with me or not --

25 MS. ROSEN: Your Honor --

1 MR. KEIMBAYE: -- I told him --

2 MS. ROSEN: Object. This is argument.

3 THE COURT: Overruled.

4 MR. KEIMBAYE: I would like to talk about
5 Exhibit 046.

6 THE COURT: Did you want to offer that into
7 evidence?

8 MR. KEIMBAYE: Yes, Your Honor.

9 THE COURT: Is there an objection to Exhibit
10 46?

11 MS. ROSEN: No, Your Honor.

12 (PLAINTIFF'S EXHIBIT 46 RECEIVED INTO EVIDENCE)

13 THE COURT: 46 is admitted.

14 MR. KEIMBAYE: Here, I tried to reach out to
15 my direct supervisor and said, I end up -- because I did not
16 ask him when he was gone, and I want to notify him. And so I
17 said, hey, look, Travis, I end up stay here at the hospital
18 after the call back. And I clock in earlier this morning to
19 take care of my rooms, including room 302. That was later
20 message. And not turn over since 7:00 p.m.

21 And he replied back to tell me that, please be
22 sure to add your standby hours, and the time keeper will
23 subtract the time you were called in. And he went on to say,
24 this is the responsibility of the employee to add their
25 stand-by time. Otherwise, everything looks good to me on

1 your timecard. I did notice an early clock-in. And that's
2 what I was responding to for today.

3 Your Honor, I would like to admit my call-back
4 hours as evidence.

5 THE COURT: I'm sorry. What exhibit number?

6 MR. KEIMBAYE: 016. Or was it already
7 admitted? Okay.

8 THE COURT: Yes.

9 MR. KEIMBAYE: Exhibit 015, was that admitted?

10 THE COURT: 15 is admitted. It was admitted
11 yesterday.

12 MR. KEIMBAYE: And so in the -- in Exhibit 15,
13 here, John is saying that I claimed I was the only tech. But
14 his email with the -- with Ms. Fletcher proved that I was on
15 call --

16 THE COURT: No. I'm sorry. Sorry to
17 interrupt you. But if I don't, I suspect Counsel will.
18 Don't tell us what things prove, please. That's argument.
19 You're just testifying as a witness right now as to facts.
20 So, in terms of what you think the significance of something
21 is, please save that for closing argument. Thanks.

22 MR. KEIMBAYE: I would like to talk about
23 Exhibit 042.

24 THE COURT: All right. 42 was admitted
25 yesterday.

1 MR. KEIMBAYE: During my meeting with Mr. John
2 and Mr. Roehrich, somewhere around April -- March or April --
3 as I was discussing about, you know, quitting my job, he
4 never handed me the policy for tardiness.

5 A few days later, because I usually did not
6 work on Mondays, and, on Mondays, that's when the
7 department -- the whole entire OR department usually have an
8 in-service. And when I returned to work the next day on
9 Tuesday, somewhere between April to May, I was still at work.

10 I went to the, you know, locker room to have
11 some drink, and I was heading back to the work floor. There,
12 I saw Mr. John and his buddy, he goes by Michael -- goes by
13 Mike. I run into them at the -- at the exit from the locker
14 room. That's when he handed me the policy for tardiness and
15 told me that, hey, you usually work -- you do not work on
16 Mondays. And we had an in-service this past Monday. And the
17 whole department is concerned because everybody was coming to
18 late -- to work late and clocking in and out late. And so
19 because you were not there in that in-service, I save you a
20 copy.

21 And that's where Mr. John handed me copy. And
22 it was around 3:00 p.m., which is the, you know, end of the
23 shift -- his end of the shift. And they were heading inside
24 the locker room to get changed and go home. So he handed me
25 a hardcopy for the policy.

1 And, here, someone else from the department
2 but from the different management is literally micromanaging
3 me by telling John that this is the email from Mr. Cramer.
4 It said, Travis, I have spoken to Dominique about the OT,
5 missed break, and late clock-ins.

6 Let me rephrase this. Travis, have you spoken
7 to Dominique about his OT, missed breaks, and late clock-ins?
8 This Mr. Cramer is saying this to Mr. John. And he said, I
9 just want to make sure he isn't getting pre-approval before
10 staying late. And I have noticed a trend of him claiming
11 missed break.

12 This person, then, clearly is me. I also
13 personally see him arriving late multiple times, multiple
14 occasions. Because I -- I am also rolling in late.

15 The person is so concerned about me, but
16 himself is running late, and telling me my -- my

17 THE COURT: Mr. -- Mr. Keimbaye. Again. No
18 argument, please. Thank you.

19 MR. KEIMBAYE: And so my own supervisor reply
20 back, say I did pull him aside and formally gave him the
21 policy and informed him that one minute past the 6:30 was
22 considered tardy. I also spoke with him about his missed
23 breaks and lunches. I also briefed him again, his behavior
24 with the missed break and lunches.

25 He does not inform his team when he is needing

1 a break or lunch, as he was not -- it was not his habit
2 previously. Anyway, he did agree to work on it. I will
3 track his pattern after this week and go from here.

4 This very supervisor of mine that told me
5 several times that, you know, I had to tell you something,
6 that you are very exceptional because I have been seeing
7 you -- some of your coworkers, even when it's not even, like,
8 you know, close to 30 minutes yet, they did not want to work.
9 They just sit around and get up and go home. But I see you
10 working, and going from room to room to help out, and even
11 stay to take care of the tough remaining cases. And I
12 really, really appreciate the way you work.

13 He appeared to support me and appreciate the
14 hard work that I hoped I was putting. But, behind the scene,
15 was different story that he was -- he was having against me.

16 Your Honor, I would like to talk about
17 Exhibit 022.

18 THE COURT: I'm sorry. Which one? 22?

19 MR. KEIMBAYE: Yes.

20 THE COURT: Yeah. Thank you. Do you want to
21 offer that into evidence, Mr. Keimbaye?

22 MR. KEIMBAYE: Yes, Your Honor.

23 THE COURT: Is there an objection to Exhibit
24 22?

25 MS. ROSEN: It's been previously admitted,

1 Your Honor.

2 THE COURT: Well, it's not on my sheet of
3 admitted exhibits, which is why I asked.

4 MS. ROSEN: Oh. Sorry. I think it was a
5 joint that both parties offered.

6 (PLAINTIFF'S EXHIBIT 22 RECEIVED INTO EVIDENCE)

7 THE COURT: Oh. All right. Well, in any
8 event, Exhibit 22 is admitted.

9 MR. KEIMBAYE: With all that I have done and
10 talked to my supervisor about, here in their notice of
11 discharge, they are now saying, probational dismissal during
12 the probational period -- a probational employee is an
13 employee who has been hired on a full-time or part-time
14 basis, and who has been continuously employed by the employer
15 for at least six months of actual work.

16 This is their policy they are talking about.
17 And, then, they went on to say that, during your probational
18 period, since December 27, 2017, through June 7th, that's
19 exactly -- June 7th to June 8th, that was the last date that
20 I was physically on the work floor, not June 22nd.

21 And they are now saying that I had 51
22 occurrences of reporting late for work in addition to 74
23 occurrence, which are all the times that I spent on my ACLS
24 courses. They recorded all, saying that I did not ask
25 anybody permission of working after the end of your shift

1 without permission from management. That I was coached in
2 March regarding absence and control policy, and expectation
3 to report -- to report late on time.

4 So, here, based on the decision -- they make a
5 decision that I would -- I will not -- I would not be a
6 rehired employee with them or with their allies or
7 affiliates.

8 Your Honor, I would like to talk about
9 Exhibit 025, please.

10 THE COURT: I'm sorry. Say it again?

11 MR. KEIMBAYE: 025.

12 THE COURT: 025 -- 25. All right. Is there
13 objection -- oh. I'm sorry. Are you offering Exhibit 25
14 into evidence?

15 MR. KEIMBAYE: Yes, Your Honor.

16 THE COURT: Any objection to admission of
17 Exhibit 25?

18 MS. ROSEN: Let me just find it, Your Honor.
19 No. I don't have any objection.

20 (PLAINTIFF'S EXHIBIT 25 RECEIVED INTO EVIDENCE)

21 THE COURT: 25 is admitted.

22 MR. KEIMBAYE: So, here, after I met with the
23 HR and the -- you know, for the administrative leave on
24 June 18, my supervisor and manager make their decision, along
25 with the sexual allegation that I -- I was begging Mr. John

1 to help me report it.

2 And, finally, I believe, on June 15th, three
3 days after Mr. John called -- called me on June 12th to put
4 me on administrative leave. And I followed up with Ms. Rice,
5 who was in charge of the investigation -- she was the one
6 that I spoke to about the sexual harassment.

7 And because I begged my supervisor, Mr. John,
8 to help me out, you know -- they took me all the way to the
9 HR office. But they walked me back to the main OR, refusing
10 to tell me that this is the HR office.

11 Surprisingly, on June 18th, when I went to
12 meet with the Mr. Sweeney and Rebecca Cabagol (phonetic),
13 those two, regarding my administrative leave, it was that
14 very same area that they took me to, that I was begging them
15 to try and introduce me so that I can report my harassment
16 concern. They took me to that area. I was there. The
17 office was right there. I didn't know because I was new.

18 But when I went there to meet with them for
19 the administrative leave, I found myself right there where
20 they brought me before.

21 Here, in the Exhibit 25, Mr. Sweeney said,
22 Dominique Keimbaye, as you know, Providence Health and
23 Services has conducted an investigation into your concern.
24 Specifically you have -- you have -- we have investigate your
25 concern of inappropriate conduct. Thank you for bringing

1 your concern to our attention and participating in the
2 investigation. We take matters of this nature very
3 seriously. Please be assured that no adverse employment
4 action will result against you because of your involvement in
5 the investigation or any information that you provide as part
6 of this investigation.

7 During the course of our -- of the
8 investigation, the investigation -- investigators spoke with
9 multiple witnesses to assure a thorough investigation into
10 this complaint. At this time, we have found evidence that a
11 violation of Providence Health and Services policy has
12 occurred and have taken appropriate steps to remediate the
13 situation, and assure that it doesn't happen again.

14 When I was telling my supervisor to do about
15 and what I was going through, he didn't listen to me. He
16 didn't try to help me. He didn't try to put a stop to what I
17 was experiencing. And they, themselves, they did the
18 investigation. And they are confirm it here. And that is
19 torture.

20 Your Honor, I would like to talk about
21 Exhibit 027, please.

22 THE COURT: 27?

23 MR. KEIMBAYE: Yeah.

24 THE COURT: Okay. That's already been
25 admitted.

1 MR. KEIMBAYE: Thank you, Your Honor.

2 So they found in the evidence that I was
3 sexually harassed, and Mr. Sweeney sent me a letter to
4 confirm this. And, all the sudden, on August -- Sweeney was
5 saying this on June 27, 2018. When I was not giving up on
6 my -- my harassment complaint, they tried to justify, on
7 August 21st, 2018, by sending me another email or another
8 letter, trying to disprove that, your claims were not found
9 to be credible.

10 He says here, we have review the concern you
11 raise during the meeting and have re-examined your discharge
12 in light of this concern. In short, the reason stated for
13 your discharge were validated, and your allegation of
14 misconduct were determined to be unfounded. Trying to go
15 back and forth, trying to say that my harassment case --

16 MS. ROSEN: Objection, Your Honor. This is
17 argument.

18 THE COURT: Sustained.

19 MR. KEIMBAYE: Okay. Your Honor, is it okay
20 to make Exhibit 028 and 29 and also --

21 THE COURT: Let's go one at a time. It's just
22 a lot easier.

23 MR. KEIMBAYE: Okay. I apologize.

24 THE COURT: Is there an objection to 28?

25 MS. ROSEN: Yes, Your Honor. I don't see the

1 relevance.

2 THE COURT: This is a form that you completed,
3 Mr. Keimbaye?

4 MR. KEIMBAYE: Yes. With the EEOC. Yes.

5 THE COURT: Right. Well, it's hearsay. The
6 objection is sustained.

7 MR. KEIMBAYE: How about 031?

8 THE COURT: 21?

9 MR. KEIMBAYE: 031.

10 THE COURT: Oh. 31. I'm sorry.

11 MR. KEIMBAYE: Yes.

12 MS. ROSEN: Your Honor, this is subject to
13 motion in limine.

14 THE COURT: Wait a minute. I don't think I'm
15 looking at the right exhibit. Oh. Okay. It just looks
16 similar to a previous exhibit. It's not the same exhibit.
17 Okay.

18 MS. ROSEN: Yeah.

19 THE COURT: Yeah. The objection is sustained.

20 MR. KEIMBAYE: Okay. I will try 032, please.

21 THE COURT: Is there an objection to
22 Exhibit 32?

23 MS. ROSEN: Yes, Your Honor. The same as
24 Exhibit 29.

25 THE COURT: Yeah. The objection is sustained.

1 MR. KEIMBAYE: 33.

2 MS. ROSEN: Zero -- I'm sorry, what?

3 THE COURT: 33. Yeah. This isn't admissible,
4 Mr. Keimbaye. This is a memo to file by, what looks like --
5 it looks like a memo to you from an attorney.

6 MR. KEIMBAYE: Yes. My -- page on
7 (indiscernible).

8 THE COURT: I'm sorry. Did you say another
9 exhibit number? If you did, I missed it.

10 MR. KEIMBAYE: Yes. I would like to see if I
11 can get 034 admitted.

12 THE COURT: 34?

13 MR. KEIMBAYE: Yes. 034. Yes. And this is
14 in regard to my hiring pay.

15 THE COURT: So I think this is one of those
16 exhibits that has just a bunch of different things that
17 aren't --

18 MR. KEIMBAYE: It's all --

19 THE COURT: -- obviously related to one
20 another.

21 MR. KEIMBAYE: It's all related to --

22 THE COURT: And on the exhibit list, it's
23 not -- the nomenclature in the clerk's description, which I'm
24 sure she took from the party, isn't even an accurate
25 description of this.

1 So is there an objection?

2 MS. ROSEN: Yes, Your Honor.

3 THE COURT: Yeah. I can't admit this in its
4 present form, Mr. Keimbaye.

5 MR. KEIMBAYE: Your Honor, this is in regard
6 to Plaintiff complaint for poor pay and wage -- wage upgrade.

7 THE COURT: So it's a bunch of different
8 things.

9 MR. KEIMBAYE: It's --

10 THE COURT: It's December 6, 2017, letter
11 welcoming you to employment. And, then, it's a bunch of
12 emails from January of 2018.

13 MR. KEIMBAYE: Yes. Those emails is in regard
14 to my seniority explanation.

15 THE COURT: Right. Yeah. Like I said, this
16 exhibit contains a whole bunch of different things. And
17 that's not -- I can't admit it in this form.

18 MR. KEIMBAYE: Thank you, Your Honor.

19 Let's look at Exhibit 035, please.

20 THE COURT: 35 is already admitted.

21 MR. KEIMBAYE: Okay. And, here, after sending
22 Plaintiff notice of discharge, supervisor and managers state
23 here that rehire eligibility, not eligible to be rehired.
24 And they are stating here that my last day of work is on
25 June 6th, 2022. But it's not true. I was physically at work

1 on June 8, 2018. That was the last date that I was at work,
2 not June 2022.

3 June 2022, I remember driving there to just
4 pick up my belongings from the locker room. But, before
5 that, on June 18, because of their request for me to meet
6 with my -- my supervisors and managers, I was driving to the
7 administrative leave meeting on June 18th. And right after
8 Kirkland, I got rear-ended so badly in a collision vehicle.
9 I ended up having a broken bone on my fifth metatarsals.

10 I shouldn't have experienced that. I
11 shouldn't be on the road at that time. Because of my
12 supervisor, they put me in that situation for me to get into
13 a very serious motor vehicle accident.

14 I pull over to call that I would be running
15 late to exchange information with the other driver that
16 collided to my vehicle. And I managed to continue on all the
17 way to the meeting.

18 You have no idea what you put me through.

19 Your Honor, I would like to see if I can get
20 036 admitted.

21 THE COURT: 36 is already admitted,
22 Mr. Keimbaye.

23 MR. KEIMBAYE: Okay.

24 Even though my supervisor and the OR manager
25 were trying to -- going back and forth, dismissing my case,

1 here; in their corrective action against Ms. Lonon, he says,
2 you admitted during the investigation, meaning that you, in
3 January 2018, did grab and coil your legs around Dominique
4 Keimbaye and held him, which is a violation of policy. And
5 it's signed by Mr. John.

6 And even after all of this, that person was
7 not terminated from her job. But I was.

8 Your Honor, I would like to admit Exhibit 037.

9 THE COURT: Is there objection to Exhibit 37?

10 MS. ROSEN: Yes, Your Honor. Relevance and
11 prejudice.

12 THE COURT: So this appears to be a corrective
13 action dated May 29th of 2019, which would have been almost a
14 year after you left Providence.

15 MR. KEIMBAYE: The reason why, Your Honor, is
16 credible --

17 MS. ROSEN: Your Honor, I really am worried
18 about what --

19 THE COURT: No.

20 MS. ROSEN: -- he's going to say.

21 THE COURT: No. I understand. But, you know,
22 propensity. This exhibit is not admissible under ER 404(b).

23 MR. KEIMBAYE: How about Exhibit 039?

24 THE COURT: 039?

25 MR. KEIMBAYE: Yes, Your Honor.

1 MS. ROSEN: Same objection, Your Honor.

2 THE COURT: Yeah. Not admissible.

3 MR. KEIMBAYE: This is about Mr. Kortendick,
4 Your Honor.

5 THE COURT: I know. It's long after your
6 experiences at Providence Everett. Let me just double check.
7 Yeah.

8 MR. KEIMBAYE: Well --

9 THE COURT: It's from 2019.

10 MR. KEIMBAYE: Well, may I say something?

11 THE COURT: No. Let's move on to something
12 else. And we're going to be recessing in about three
13 minutes. If you want to make an argument outside the
14 presence of the jury, I'll give you an opportunity to do
15 that. But not right now.

16 MR. KEIMBAYE: Thank you. Your Honor, when is
17 the right time to -- to discuss about Exhibit 049?

18 THE COURT: Not now. That's a deposition of a
19 witness.

20 MR. KEIMBAYE: How about Exhibit 047?

21 THE COURT: Well, that's your complaint that
22 you filed in this case. That's not something that should be
23 coming into evidence. Those are -- that's just the list of
24 the claims that you made.

25 MR. KEIMBAYE: Yes. Your Honor, it summarizes

1 everything that I have been talking about.

2 THE COURT: I understand. But it's not
3 admissible.

4 All right. It's -- it's 4:05. We do need to
5 recess. Unfortunately, I can't go long today.

6 MR. KEIMBAYE: Okay. Okay.

7 THE COURT: I have another matter. So go
8 ahead and step down for right now, Mr. Keimbaye. You can
9 finish your testimony tomorrow.

10 (Witness excused.)

11 THE COURT: Members of the jury, please allow
12 me to remind you the importance of keeping your minds open,
13 not exposing yourself to any information that might relate to
14 this case from outside the courtroom, not communicating about
15 the case in any form. Hopefully, you can relax this evening.

16 Please be back tomorrow morning, where --
17 where and when, J. tells you, and we should be finishing up
18 Mr. Keimbaye's testimony. And I think there's a couple of
19 other witnesses who are going to be available tomorrow, as
20 well.

21 Have a really nice evening.

22 THE BAILIFF: All please rise.
23 (Jury exits at 4:06:08 p.m.)

24 DISCUSSION RE WITNESS AND EXHIBITS

25 THE COURT: And, Tonja, can you send me an

1 updated exhibit list?

2 THE CLERK: Yes and no. I believe it's
3 massive. So I'm going to get that to you --

4 THE COURT: Tomorrow morning before we start
5 court is fine. Will that work for you okay?

6 THE CLERK: Oh, that's fine.

7 THE COURT: Okay. Great.

8 THE CLERK: I'll just -- yeah. I'm just
9 having trouble making changes.

10 THE COURT: Okay. I don't care about
11 formatting as long as it's --

12 THE CLERK: Okay. They were all -- they're
13 gone for the day. Thank you.

14 THE COURT: -- readable. Are they gone?
15 Okay. Thank you.

16 Real quick. Unfortunately, I have to be out
17 of here by about 4:25, so that's unusual for me.

18 Has Defense Counsel had an opportunity to do
19 your due diligence with respect to Ms. Husted?

20 MS. ROSEN: No, Your Honor. We filed a motion
21 with regard to that, that Ms. Burnham is prepared to argue,
22 if you could like to hear argument?

23 THE COURT: No. I guess I'll take a look at
24 the motion when I get back from my appointment.

25 MS. ROSEN: Then maybe tomorrow morning 8:30.

1 THE COURT: I guess we better convene at 8:30
2 again.

3 MS. ROSEN: Okay.

4 THE COURT: All right. We'll convene at 8:30
5 again.

6 Mr. Keimbaye, was there something that you
7 wanted to say about one of the exhibits that I ruled not
8 admissible? I think you wanted to talk about
9 Mr. Kortendick's --

10 MR. KEIMBAYE: Yes, Your Honor.

11 THE COURT: -- evaluation in 2019?

12 MR. KEIMBAYE: Yes, Your Honor. It would make
13 sense for the jury to see the character of the -- the type of
14 person that was mistreating me -- Plaintiff in this case.

15 THE COURT: So here's the thing. The type of
16 person that Mr. Kortendick is, is not admissible into
17 evidence. What is relevant to the jury is what he did or
18 didn't do with respect to you; his behaviors that form a
19 basis of your claims. But, you know, the fact that somebody
20 did something bad at some other time, or somebody was just a
21 nasty, rotten person is just -- Evidence Rule 404, you should
22 read that and take a look at that. It doesn't allow that
23 kind of evidence.

24 You know, otherwise, you know, people in all
25 kinds of cases -- let's say an automobile accident case,

1 somebody could get up and cross-examine and say, isn't it
2 true you drowned a kitten once? Well, it has nothing to do
3 with the case. I made that up.

4 But the point is that bad things that people
5 did in other aspects of their lives -- or allegedly bad
6 things that people did in other aspects of their lives are
7 typically not admissible in evidence.

8 So the fact that he got criticized for
9 something that he did in 2019 isn't something the jury should
10 be hearing about when they're considering what he did or
11 didn't do with respect to you in 2017 or 2018. Okay?

12 MR. KEIMBAYE: Thank you.

13 THE COURT: Sure.

14 MS. ROSEN: Just one more thing, Your Honor.
15 Just timing for witnesses tomorrow.

16 THE CLERK: I didn't -- we didn't catch if it
17 was admitted, Plaintiff's Exhibit 32, admission yesterday.
18 And it was about 11:40 yesterday. So that exhibit was
19 admitted.

20 THE COURT: 32 was admitted?

21 THE CLERK: 32.

22 THE COURT: I don't think so. I think that's
23 an error.

24 THE CLERK: I'll double check.

25 THE COURT: Oh. That's the dismissal and

1 notice of rights? Oh. Was that something that was an agreed
2 exhibit --

3 MS. ROSEN: I think it was, actually

4 THE COURT: -- that was pre-admitted? Okay.
5 Well, then, 32 is admitted.

6 MS. BURNHAM: It was -- no.

7 THE COURT: No?

8 MS. BURNHAM: Sorry, Your Honor. That was
9 a -- it was supposed to be 22. It was a typo in our email, I
10 think, to the Court. 22 was the one that was pre-admitted
11 yesterday -- in open court. I thought it was 22, not 32.

12 THE COURT: All right. Yeah. Because I don't
13 know what the relevance is of EEOC complaints or actions or
14 lack of actions.

15 MS. ROSEN: Agreed.

16 THE COURT: So it was -- it should have been
17 22 and not 32.

18 THE CLERK: It was stated 32.

19 THE COURT: So 32 is not admitted.

20 THE CLERK: Thank you, Your Honor.

21 THE COURT: Yeah.

22 THE CLERK: I'll make sure I handle that.

23 THE COURT: Thanks for clarifying that.

24 THE CLERK: Thank you.

25 DISCUSSION RE WITNESS LIST

1 THE COURT: Yeah. Let's talk about witnesses
2 tomorrow.

3 MS. ROSEN: So Travis John is flying in. So
4 we would need to have him tomorrow at some point. But we can
5 put -- push Chris Kortendick until Monday. But --

6 THE COURT: Oh. Okay.

7 MS. ROSEN: So but -- so I don't know how much
8 longer Mr. Keimbaye thinks -- my cross of Mr. Keimbaye is
9 probably about an hour-and-a-half.

10 THE COURT: About 90 minutes?

11 MS. ROSEN: Yeah.

12 THE COURT: Okay. How much more do you have
13 in your own testimony on direct, Mr. Keimbaye?

14 MR. KEIMBAYE: It depends, Your Honor.

15 THE COURT: I'm sorry. I can't hear you, sir.

16 MR. KEIMBAYE: I'm not certain, but it
17 depends. Probably at least two hours.

18 THE COURT: How much?

19 MR. KEIMBAYE: At least two hours.

20 THE COURT: That's an awfully long time. Are
21 you sure you need that much time? Because we have to get
22 Mr. John on and off the stand tomorrow. Because, is he
23 leaving -- he's leaving, yeah.

24 MS. ROSEN: Yeah.

25 THE COURT: Because then we're recessed until

1 Monday.

2 MS. ROSEN: Yeah.

3 THE COURT: So I'd like you to wrap up your
4 direct, at least. Can you get it done in an hour?

5 MR. KEIMBAYE: I'll try.

6 THE COURT: Okay. Yeah. Do some homework
7 tonight, and just go through your exhibit notebooks and
8 figure out what you haven't talked about yet that you still
9 want to talk about, and that you think is important for the
10 jury to know about the basis for your claims, about any
11 damages that you're claiming. Okay?

12 And, then, unless Defense Counsel objects,
13 maybe we could put Mr. John on before cross.

14 MS. ROSEN: Yeah. We could do that.

15 THE COURT: Okay. I just -- I don't want you
16 to have to do that before Mr. Keimbaye finishes his direct.

17 MS. ROSEN: Well, I think it will depend on
18 how long his -- his direct is.

19 THE COURT: Okay.

20 MS. ROSEN: Yeah.

21 THE COURT: Well, how long are you expecting
22 to ask Mr. John questions?

23 MR. KEIMBAYE: I could try an hour-and-a-half
24 or something like that.

25 THE COURT: Okay. And then you need about,

1 what, an hour-and-a-half for cross?

2 MS. ROSEN: It's only about an hour.

3 THE COURT: Friendly cross. Okay. But
4 that's -- that's the whole afternoon.

5 MS. ROSEN: Yeah.

6 THE COURT: So.

7 MR. KEIMBAYE: I will give it a try within an
8 hour.

9 THE COURT: I think we better put him -- I
10 think we better put him on in the morning.

11 MR. KEIMBAYE: Okay.

12 THE COURT: So I'll ask you to finish your
13 direct, and then let's put Mr. John on.

14 MR. KEIMBAYE: Okay.

15 THE COURT: And, then, once we get his
16 testimony done -- and this is important, because Mr. John
17 is -- I'm guessing is not going to be a friendly witness to
18 you, since he's a managing agent for Providence -- or at
19 least he was at the time.

20 You can ask him leading questions. But you
21 may not testify. Okay? You're examining a witness.

22 MR. KEIMBAYE: Yes.

23 THE COURT: And so you need to examine a
24 witness the same way that a lawyer would examine the witness.
25 All right? It's okay to ask him leading questions. But it's

1 not okay to sort of give a long speech and then say, isn't
2 that true, or something. I mean, you can ask him, isn't that
3 true, but keep it short. For each --

4 MR. KEIMBAYE: Okay.

5 THE COURT: For each question, okay?

6 MR. KEIMBAYE: Okay.

7 THE COURT: And if you hear an objection, then
8 stop and give me a chance to make a ruling. Do you have any
9 questions about that?

10 MR. KEIMBAYE: No question right now, Your
11 Honor.

12 THE COURT: Okay, Mr. Keimbaye. Thank you.
13 Have a very nice evening, then.

14 MR. KEIMBAYE: Thank you.

15 MS. ROSEN: Your Honor, once concern I do have
16 about having Mr. John go first is, then, that Mr. Keimbaye
17 could modify his answers on cross based on what Mr. John
18 says.

19 THE COURT: Well, you know, that is always a
20 risk when you have a party who's testifying.

21 MS. ROSEN: Right.

22 THE COURT: Because parties have a right to be
23 here. I mean, Mr. John has a right to be here throughout the
24 trial, too. He's chosen not to exercise that right.

25 Actually, no.

1 MS. ROSEN: He's not a party.

2 THE COURT: Mr. Kortendick certainly has a
3 right to be here throughout the trial.

4 MS. ROSEN: Yeah, he does.

5 THE COURT: And has chosen not to exercise
6 that right. So I'm not really sure what to do about that. I
7 mean, if you think you can get cross done --

8 MS. ROSEN: I'll try to get it done in the
9 morning.

10 THE COURT: Okay.

11 MS. ROSEN: I will look at it tonight and try
12 to get it done.

13 THE COURT: Okay.

14 MS. BURNHAM: And just for -- sorry. Just for
15 my own clarity. So we will tell Chris Kortendick to be here
16 Monday --

17 THE COURT: I think -- I don't --

18 MS. BURNHAM: -- and we're free to release him
19 for tomorrow?

20 THE COURT: -- see any reasonable likelihood
21 that we're going to get through the rest of Mr. Keimbaye's
22 testimony and all of Mr. John's testimony --

23 MS. BURNHAM: Right.

24 THE COURT: -- and still get to --

25 MS. BURNHAM: I just don't want to waste

1 anybody's time by not having him here. So.

2 THE COURT: No. I think you're right.

3 MS. BURNHAM: Okay. Okay. I just wanted to
4 make sure that was everybody's understanding.

5 THE COURT: Yes, Mr. Keimbaye. I see your
6 hand up.

7 MR. KEIMBAYE: Yes, Your Honor. Based on, I
8 believe, one of the motions, I am allowed 16 hours --

9 THE COURT: Yep.

10 MR. KEIMBAYE: Is the Court keeping track on
11 it for me, or is it my responsibility?

12 THE COURT: I'm keeping track.

13 MR. KEIMBAYE: Okay. Okay. And, so, did I
14 use four hours already today?

15 THE COURT: You used up -- let's see.

16 MR. KEIMBAYE: More than four.

17 THE COURT: Half-an-hour for open. So I have
18 to add it up. I haven't added it up yet.

19 MR. KEIMBAYE: Okay.

20 THE COURT: So --

21 MR. KEIMBAYE: That would help me plan my next
22 phase.

23 THE COURT: Yep. You're a little over four
24 hours now.

25 MR. KEIMBAYE: Okay.

1 THE COURT: Okay?

2 MR. KEIMBAYE: All right.

3 THE COURT: Cross-examination is going on
4 their clock, not your clock.

5 MR. KEIMBAYE: I see. I see.

6 THE COURT: Okay. We'll see everybody
7 tomorrow.

8 MS. ROSEN: Thank you, Your Honor.

9 MS. BURNHAM: Thank you, Your Honor.

10 (Proceedings adjourned at 4:17:42 p.m., to recommence on
11 September 7, 2023.)

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1 SEATTLE, WASHINGTON

2 THURSDAY, SEPTEMBER 7, 2023

3 MORNING SESSION - 8:39:32 A.M.

4 JURY TRIAL (DAY 3):

5 (The following proceedings were held outside the presence of
6 the jury:)

7 THE BAILIFF: The Honorable Judge Jarvis
8 presiding.

9 THE COURT: Thanks very much. Please be
10 seated. Good morning, everybody.

11 MS. ROSEN: Good morning, Your Honor.

12 MS. BURNHAM: Good morning, Your Honor.

13 THE COURT: All right. I did take a look at
14 the brief that Defense Counsel filed yesterday. At some
15 point, it wasn't in e-working papers yet, but I found it in
16 the electronic court file.

17 MS. BURNHAM: Thank you.

18 THE COURT: And I reviewed that.

19 Did you get that, Mr. Keimbaye?

20 MR. KEIMBAYE: Yes, Your Honor.

21 THE COURT: Okay. Very good. Did you want to
22 put any argument very briefly on the record with respect to
23 that?

24 MS. BURNHAM: Yes, Your Honor.

25 THE COURT: Okay.

1 MS. BURNHAM: Very briefly.

2 THE COURT: Yes.

3 DISCUSSION RE HUSTED DEPOSITION

4 MS. BURNHAM: Plaintiff has not submitted
5 admissible evidence in support of his request to use
6 Ms. Husted's deposition in lieu of testimony. Under Civil
7 Rule 32, it's his burden to prove she's unavailable. The
8 texts he submitted were not produced in discovery, were never
9 supplemented, despite this Court's local rule requiring
10 supplementation to be completed 49 days before trial.

11 And the local rule specifically states that,
12 quote, "Nothing in this rule shall modify a party's
13 responsibility to seasonally -- seasonably supplement
14 responses to discovery requests or otherwise to comply with
15 discovery prior to the cutoff."

16 This Court has already ruled on Motion in
17 Limine Number 29, that documents not produced in discovery
18 are inadmissible. And we specifically requested those text
19 messages in discovery, pursuant to our request for production
20 number 14.

21 THE COURT: So it's not clear to me that you
22 did. And I'm sorry. I don't have that right in front of me
23 on my bench. Let me see if I can pull it up.

24 MS. BURNHAM: I have it, Your Honor. Would
25 you like me to read it out loud?

1 THE COURT: No, that's all right.

2 MS. BURNHAM: Okay.

3 (Pause in proceedings.)

4 THE COURT: Just takes me a moment to pull it
5 up.

6 MS. BURNHAM: No worries.

7 THE COURT: Or it might be more than a moment.
8 I'm assuming my computer is going to cooperate. Here it is.
9 I don't know why it took so long.

10 So what you're -- all right. This is messed
11 up. What your discovery request said -- I think it's in a
12 footnote; is it not?

13 MS. BURNHAM: In the one that we filed
14 yesterday, Your Honor, it's on page 3 in the middle of the
15 page.

16 THE COURT: Page 3. I'm unable to make this
17 smaller. And so it's gigantic and it fills my screen. I
18 don't know what the problem is. It's not showing me page
19 numbers. Let me try to pull this up again. There's
20 something about the file that my computer didn't like.
21 There, that's a little better.

22 Okay. Page 3 in the middle. Okay. Yeah. So
23 documents referring to, relating to, or reflecting any
24 communications you had with anyone about the facts related to
25 your claims, including your damages. These communications

1 with Ms. Husted and the person who said he was her husband
2 don't relate to Mr. Keimbye's claims. They relate to social
3 greetings with one another, How are you doing? In the course
4 of that, she indicates that she has moved to Florida and that
5 her father is ill.

6 So I don't know that these -- that a
7 reasonable person, even an attorney -- and I assume attorneys
8 are reasonable people -- would interpret that to mean every
9 communication you had with every witness, even if it's not
10 about your claims, needs to be turned over pursuant to that
11 discovery request, even assuming the duty to supplement.

12 MS. BURNHAM: Your Honor, I was looking at
13 request for production number 14, not for request for
14 production number 4, specifically, which also relates to his
15 claim. So I understand --

16 THE COURT: Yeah.

17 MS. BURNHAM: -- that your reasoning would be
18 similar.

19 THE COURT: Yeah.

20 MS. BURNHAM: However, I respectfully
21 disagree, certainly to the extent that Ms. Husted is being
22 asked to appear for court, that relates directly to his
23 claims before this Court, and that she will be used to
24 substantiate his version of -- I assume what he thinks will
25 be his version of the story, which relates to his claim. If

1 -- if it didn't relate to his --

2 THE COURT: Well, he's seeking to use his
3 deposition, which certainly substantiates some portions of
4 Mr. Keimbaye's claims.

5 MS. BURNHAM: So it directly relates to his
6 claims, Your Honor, because --

7 THE COURT: Right.

8 MS. BURNHAM: -- it wouldn't be relevant if
9 it --

10 THE COURT: Now, I think -- I think that's a
11 stretch. That's not an argument that I'm accepting.

12 I did some research last night. I didn't have
13 a whole lot of time because by the time I got home from my
14 appointment, it was well after eight. And I get up a little
15 after five. So I have -- I had a fairly narrow window. But
16 there is a really interesting tension and, to some extent,
17 incompatibility between ER 804 and CR 32(a). I will note
18 that the authorities that the Defense was relying on in their
19 brief, *Sutton v. Shufelberger*, in particular, was not relying
20 on 32(a)(3)(B), but on 32(a)(3)(D), that the party was
21 unavailable.

22 But (B) specifically authorizes use of the
23 deposition if the witness resides out of the county and more
24 than 20 miles from the place of trial, unless it appears that
25 the absence of the witness was procured by the party offering

1 the deposition.

2 It does appear that CR 32 was last amended in
3 2015, while ER 804 was last amended in 2013. But I didn't
4 have time to research which portions were amended. And so, I
5 can't speak to that. I will also note that *Burch v. Brewer*,
6 which is a 1982 case from the Supreme Court, indicated that
7 the unavailability of a deponent is to be determined at the
8 time his deposition is offered into evidence, and that the
9 requirements of CR 82(a)(3)(B) are met when a witness lives
10 out of the county and more than 20 miles away.

11 I, however, agree with Defense Counsel that
12 actual testimony from a witness is certainly superior to the
13 reading of a deposition.

14 So I'm going to ask Mr. Keimbaye, have you
15 reached out to Ms. Husted to find out if she can testify in
16 this trial by Zoom from Florida?

17 MR. KEIMBAYE: I -- I -- I have that
18 conversation as well, but the only reply I got is like, you
19 know, will not be available for trial.

20 THE COURT: Well, I know. You got that from
21 her husband or the -- we don't even know who -- who responded
22 to you. It was a person claiming that he was her husband.
23 And it was from the phone number that you used to communicate
24 with Ms. Husted. Have you actually picked up a phone and
25 tried to talk to her?

1 MR. KEIMBAYE: Only through text message
2 unless, you know, she call me directly.

3 THE COURT: Okay. I'm going to ask you --

4 MR. KEIMBAYE: Yes.

5 THE COURT: -- because we've got three days
6 coming up when we won't be in trial. I'm going to ask you to
7 make a diligent attempt to reach her by phone, so you can
8 speak to her, rather than texting back and forth, and find
9 out if she can testify either by Zoom or by phone. Zoom
10 would be superior. And, you know, you can let her know that
11 as long as she has a computer, even a laptop or a tablet,
12 downloading Zoom is free. In a pinch, she could use a
13 smartphone for Zoom as well. It's a little less than ideal,
14 but it's better than -- than phone.

15 If she can't do any of those things, if she
16 just doesn't have any electronics that she can use for that,
17 she could potentially testify by phone. And if -- and if the
18 answer is no, then find out why. Okay?

19 MR. KEIMBAYE: Yes, Your Honor. And I've been
20 doing it since my last text message on page 3. Right after I
21 submit it, I stop texting and I keep on trying to call. And
22 no answer whatsoever.

23 THE COURT: All right. Well, keep trying.

24 MR. KEIMBAYE: Okay.

25 THE COURT: Okay. I'm instructing

1 Mr. Keimbaye to do this because if the witness can be made
2 available to testify virtually or by phone at trial, it's
3 still a superior way for the -- the -- the jury to get her
4 testimony. However, I am not convinced that ER 804 bars use
5 of her deposition when CR 32(a) is pretty clear that the
6 deposition can be used at trial.

7 I will agree that I'm not aware of any cases
8 that sort of compare and contrast the analysis between the
9 two rules. But I will point out that CR 32 says -- I'm
10 looking at 33. Sorry. Hold on.

11 CR 32 says at the trial, any part or all of a
12 deposition, so far as admissible under the Rules of Evidence,
13 applied as though the witness were then present and
14 testifying, may be used against any party who was present or
15 represented at the taking of the deposition, or who had
16 reasonable notice in accordance with the following
17 provisions.

18 And then the relevant one here would be
19 (3) (B), that the witness resides out of the county or more
20 than 20 miles from the place of trial, unless it appears that
21 the absence of the witness was procured by the party offering
22 the deposition.

23 That seems pretty clear. And the rule
24 contemplates that we are to treat this testimony as though
25 the witness were present and testifying at trial. However,

1 as I said, it would be far preferable if she could testify
2 live either via Zoom or by phone.

3 MS. BURNHAM: Your Honor, may I just add one
4 thing? I wasn't quite done.

5 THE COURT: Sure.

6 MS. BURNHAM: Thank you. I would also just
7 note for the record that her -- the text messages
8 Mr. Keimbaye submitted to the Court are -- contain double
9 hearsay. We don't know who the unidentified husband is.
10 Actually, to the extent that anything in there is purportedly
11 from Yulia, Yulia states can I -- can I do it by Zoom? So
12 the idea that she says that she's unavailable is not
13 supported by anything in the record, other than some
14 unidentified person claiming to be her husband saying that
15 she's unavailable.

16 THE COURT: Well, I can ask Mr. Keimbaye to
17 consider himself still under oath and inquire about that. Or
18 you can inquire about that, if you wish.

19 MS. BURNHAM: Well, to the extent that that
20 was what was submitted in -- with his motion to have this
21 meet the CR 32 standard, I just note that it's double
22 hearsay, Your Honor.

23 THE COURT: Okay. I understand the objection.

24 All right. Anything else before we bring in
25 our jurors?

1 MS. ROSEN: Only the timing concern, Your
2 Honor, because Travis John did fly in.

3 THE COURT: Yeah.

4 MS. ROSEN: So only that issue.

5 THE COURT: Yeah. So Mr. Keimbaye, I -- I
6 think committed to finishing up his direct examination in an
7 hour. And then you indicated you didn't think you had more
8 than 90 minutes of cross. So --

9 MS. ROSEN: That should -- if that's the way
10 it's going to go, that should be fine.

11 THE COURT: Yeah. I mean, we may be able to
12 get him on the stand this morning even, hopefully.

13 MS. ROSEN: Yeah.

14 THE COURT: All right. Okay. Thank you.

15 THE CLERK: Off the record, Your Honor.

16 THE COURT: Thanks, Tonja.

17 (Recess at 8:53:08 a.m., recommencing at 9:03:11 a.m.)

18 (The following proceedings were held outside the presence of
19 the jury:)

20 THE COURT: All right. Thank you very much.
21 I assume we're ready for the jury. Please be seated.

22 And, Mr. Keimbaye, if you wanted to, you could
23 just take the witness stand while the jury is coming in.

24 MR. KEIMBAYE: I will wait there.

25 THE COURT: All right.

1 MR. KEIMBAYE: Thank you, Your Honor.

2 THE COURT: Of course.

3 (Pause in proceedings.)

4 THE BAILIFF: Please recognize the jury.

5 (Jury enters at 9:04:10 a.m.)

6 THE COURT: Good morning, members of the jury.

7 Please be seated. We are going to proceed at this time with

8 Mr. Keimbaye's direct examination of himself.

9 Mr. Keimbaye, please consider yourself still
10 under oath.

11 MR. KEIMBAYE: Yes, Your Honor.

12 (Witness summoned.)

13 **DOMINIQUE KEIMBAYE,**

14 Plaintiff, having been previously sworn, testified
15 as follows:

16 **DIRECT TESTIMONY CONTINUED**

17 MR. KEIMBAYE: Members of the jury, Counsel,
18 and the Court, good morning. Right after my termination, on
19 June 22, 2022, and while I was still reeling with the
20 injuries from my motor vehicle accident on June 18 -- from
21 June 18, I continuously sick for work throughout the Seattle
22 Metro --

23 MS. ROSEN: Objection, Your Honor. Relevance.

24 THE COURT: Sustained.

25 THE WITNESS: From prior Providence, my

1 supervisor have no idea about what they have -- had put me
2 through. Had I not had been put on administrative leave and
3 had to meet with the HR business partner, Mr. Sweaney, and
4 his team, on June 18, 2018, I would not have to be on the
5 road at that time, around the 1:00 p.m., on June 18, and
6 experiencing a motor vehicle accident, which lead to a
7 serious injury to my right foot, a broken bone.

8 Have I had been still employed and end up
9 experiencing a motor vehicle accident, I would have been able
10 to receive medical leave from my employer for any
11 compensation that I would be qualified for. Because of what
12 they have -- they had put me through, and experiencing a
13 motor vehicle accident, the injuries from the motor vehicle
14 accident put me away from seeking to get back in the job
15 market and be able to support myself.

16 After the termination, it took me almost two
17 years before I was able to get a job, because throughout the
18 medical hospitals here --

19 MS. ROSEN: Objection, Your Honor. Relevance
20 and motion in limine.

21 THE COURT: Sustained.

22 THE WITNESS: So I was unable to get a job
23 from 2000 -- from June 2018 up until October 7, 2019. And I
24 had to apply for a job outside of the state in Portland,
25 Oregon.

1 MS. ROSEN: Objection, Your Honor. Again,
2 relevance.

3 THE COURT: Sustained.

4 THE WITNESS: Emotional damage that this
5 Defendants caused me are monumental. I have been having
6 estranged relationship with my friends, my family. Have no
7 social life because I need time to spend to research and
8 reply --

9 MS. ROSEN: Your Honor.

10 THE COURT: Sustained.

11 THE WITNESS: It has been more than five --
12 more than five years. I don't know -- I don't remember if I
13 had the chance to sleep more than three hours per day. I
14 don't remember throughout -- the sleep throughout --
15 throughout the night, throughout the day, constantly
16 reflecting on what I have been going through and fighting for
17 -- to get here in front of you, members of the jury.

18 Right after June 2018, along with the COVID, I
19 have not seen my mom. I talked to her, but I haven't been
20 able to see her in person. When I talked to her, as mothers,
21 she can detect that there's something bothering me, but I've
22 been unable to explain to her. The amount of agony and
23 torment I cannot describe. I didn't believe then, but I do
24 believe now that the sudden growth in my chest that is
25 pushing against my lungs is certainly from the emotional

1 | distress and torment that I have been going through, because
2 | I could not -- I have been unable to be able to breathe
3 | normally. And it was discovered right after my motor vehicle
4 | accident.

5 | And then strangely, I left my home on October,
6 | in downtown Bellevue. I live 12 -- 112th Street and 8th in
7 | downtown Bellevue, walking to Hyatt Hotel, because they have
8 | a nice restaurant there. And I love martial arts. And on
9 | that day, there was a UFC fight that I decided to go. That
10 | restaurant is called Suite inside Hyatt Hotel, to get
11 | something to eat and watch the fight, because they were
12 | displaying over there.

13 | I went there to eat something. And then as I
14 | was heading out, walking through the crowd, heading home, a
15 | group of four Russians that I don't even know start attacking
16 | me. And as they were talking, I was literally quietly
17 | walking away. Suddenly, one of them knocked me out
18 | completely. I was unconscious on the floor inside the Hyatt
19 | Hotel.

20 | Thankfully, it happened that the whole entire
21 | group of police officers in downtown Bellevue were inside the
22 | hotel, including the chief. And they rush in to find me on
23 | the floor unconscious, revived me and called the ambulance to
24 | take me to take me to Overlake Medical Center. That's why --
25 | that's where they have done all the diagnosis from the head

1 to -- to -- to my waist down and discovered that I have
2 growth pushing against my left lung.

3 I do believe now that if anything like that
4 is -- is happening, it's due to the -- the most indescribable
5 distress and torment that I have been going through.

6 On top of this, they have ruined my six years
7 relationship with the most caring, loving woman, that she
8 doesn't deserve what I have put her through, through this
9 process. She went through hell. I believe she -- she's the
10 one that was -- is the most devastated through what I have
11 been going through here. She was so supportive of me. But
12 in the end, we couldn't understand each other needs time.
13 And it ended in August 2022. It's been a year today.

14 Defendants are liable for what I have been
15 going through. They are liable. Whether it's for the
16 emotional distress from my motor vehicle accident or for
17 anything else that happened after, they are liable. I should
18 have been able to seek for treatment of anything that would
19 help me. But because I have to stay with this and have to
20 have a job to survive, I am unable to seek a treatment for
21 emotional struggles and distress. And I am holding tight to
22 get to the bottom of this before I can seek medical
23 treatment.

24 I believe they know that they are wrong for
25 their decision-making.

1 MS. ROSEN: Your Honor, this is argument.

2 THE COURT: Sustained.

3 Mr. Keimbaye, what you believe they believe is
4 speculation.

5 THE WITNESS: The only -- I would have -- I
6 would have given up long time ago on this and get back with
7 the life. My ex told me that -- she always encouraging me
8 and told me that I never see a strong man like you. You can
9 do anything. And I keep that voice inside my mind to talk to
10 me, in my mind, that I can -- I can get through this. And
11 that's the reason why I will never give up until I get to the
12 bottom of this. And I will try to move on and take care of
13 myself and my health.

14 And so, thank you for listening, members of
15 the jury.

16 THE COURT: Thank you very much, Mr. Keimbaye.
17 Are you finished with your direct?

18 THE WITNESS: Yes, Your Honor.

19 THE COURT: Thank you, sir.

20 Cross-exam.

21 MS. ROSEN: I think I'm --

22 May I approach, Your Honor?

23 THE COURT: You may.

24 MS. ROSEN: Mr. Keimbaye, I'm going to be
25 referring to some exhibits.

1 So can I put these binders up with
2 Mr. Keimbaye?

3 THE COURT: Yeah.

4 MS. ROSEN: Is there a place to put them?

5 THE COURT: And, Mr. Keimbaye, you can just
6 put -- put your yellow binder -- yeah. That's perfect.
7 Thank you.

8 MS. ROSEN: Okay.

9 So, Mr. Keimbaye, this is when I -- these are
10 the exhibits that start at 100. So if I say something is
11 100, it's in that binder. And this is your exhibits under
12 100. Sorry. I don't -- yeah. I don't know where we can sit
13 those.

14 THE COURT: Yeah. We'll -- we had one
15 earlier, but it was a trial with many lawyers per side. And
16 they brought in a bunch of equipment, and apparently they
17 brought in a little table. And I didn't realize it was
18 there. So it's no longer here. I will try to get one from
19 the county, so that we can have one available later, but I
20 don't know how long that's going to take.

21 MS. ROSEN: Okay. Thank you, Your Honor.

22 **CROSS-EXAMINATION**

23 BY MS. ROSEN:

24 Q. Mr. Keimbaye, I'm sorry. This is a little
25 unwieldy. I just want to start a little bit, Mr. Keimbaye,

1 with what you're -- what you're currently doing for work.

2 You're currently employed by Intel; is that right?

3 A. Yes.

4 Q. And you work there as a manufacturing equipment
5 technician; is that right?

6 A. Manufacturing engineering technician.

7 Q. Okay. Thank you. Thank you. And can you briefly
8 describe for the jury what that job entails?

9 A. I'm not sure with the Intel restriction law, I will
10 be able to describe in detail.

11 Q. Okay. It's a little -- it's a little confusing to
12 someone who doesn't do that job?

13 A. No. It's the -- because of the company policies.

14 Q. Oh, okay.

15 A. Yes. Yes.

16 Q. Okay.

17 A. It's a technology company. So they are very strict
18 about sharing too much about --

19 Q. What -- fair enough. I get it.

20 THE COURT: Can -- can all the members of the
21 jury hear Mr. Keimbaye okay?

22 Because you're much further from the
23 microphone than you were. I just want to make sure. Thank
24 you, sir.

25 MS. ROSEN: And can everyone hear me okay? I

1 | tend to have a louder voice. So -- thank you.

2 | BY MS. ROSEN:

3 | Q. Okay. And how long have you worked at Intel,
4 | Mr. Keimbaye?

5 | A. I started on January 6, 2020.

6 | Q. Thank you. I want to talk to you now about when
7 | you first started out at Providence Everett. And when I say
8 | Providence throughout my questioning of you, I mean
9 | Providence Everett. Can we agree on that?

10 | A. Yes.

11 | Q. Okay. Thank you. So you started at Providence
12 | Everett on December 27, 2017. Does that sound right?

13 | A. That sounds right.

14 | Q. Yeah. I think earlier you might have said 2018.
15 | And it's easy to get confused, because you started right
16 | before 2018. But just so the jury is clear, it was December
17 | 27, 2017, right?

18 | A. That is correct.

19 | Q. And you spoke with Travis John before you were
20 | offered the job, correct?

21 | A. I might or may not, but I can't recall.

22 | Q. Okay. And do you remember speaking with him at any
23 | point about the job?

24 | A. Maybe after I spoke with the recruiter, Mr. Bach.

25 | Q. And who was it that actually offered you the job?

1 A. Actually, the recruiter.

2 Q. Okay. And do you remember having a conversation
3 with Travis John about the job prior to when you started?

4 A. It'd be probably when the schedule the -- for the
5 new employee orientation and probably by phone, I think.

6 Q. Yeah.

7 A. I'm not -- I'm not -- I'm not so sure. But there
8 is possibility I spoke with Mr. Bach and Mr. John over the
9 phone about where to go for a new employee orientation.
10 There's a possibility.

11 Q. Okay. And did you tell Mr. John in that
12 introductory conversation with him that you were from Africa?

13 A. I can't remember.

14 Q. So prior to starting your job at Providence, you
15 didn't speak to anybody except maybe the recruiter, Nicholas
16 Bach, or Mr. John; is that accurate?

17 A. To my knowledge, most of my conversation is -- was
18 with Mr. Bach. And there is some possibility that, you know,
19 when the -- I speak -- I spoke with him. He made mention of
20 something for someone else, that I will be expecting a call
21 from someone else. There might be a chance to get a phone
22 call from Mr. John. Yes.

23 Q. And you didn't speak with Chris Kortendick at all
24 before you started your job at Providence, correct?

25 A. No.

1 Q. You did not speak with him?

2 A. No, I did not.

3 Q. Okay. And Mr. John made the decision to hire you?
4 Is that your understanding?

5 A. That decision of probably -- it was two ways,
6 maybe, because I did not hear that directly from Mr. John,
7 but Mr. Bach, I believe he told me that -- I think, you know,
8 the team in Everett likes you, and they want to hire you.
9 Probably get that information from Mr. Bach.

10 Q. Okay. Let's go ahead and look at Exhibit 109,
11 which has already been preadmitted. And so, Mr. Keimbaye,
12 you have the right binder. You want to go to tab 109.

13 A. Yes.

14 Q. And can you tell us what this document is?

15 A. This is the job offer and position and pay stub.

16 Q. Okay. So this is the offer letter that was sent to
17 you to offer you the position at Providence, correct?

18 A. That is correct.

19 Q. Yeah. Okay. And who -- and Mr. Travis John is
20 listed as your supervisor, correct?

21 A. Yes. Yes.

22 Q. Okay. It doesn't say that Chris Kortendick is your
23 supervisor, correct?

24 A. No. No, not in this --

25 Q. When you -- when you first started -- and you

1 alluded to this a little bit during your testimony -- but you
2 asked to be paid at a higher rate than you were initially
3 offered, correct?

4 A. Could you repeat one more time, please?

5 Q. Sure. So you asked to be paid at a higher rate
6 than initially was offered to you in this letter, correct?

7 A. Based on my seniority, yes.

8 Q. And did you, in fact, get that higher rate of pay?

9 A. I have -- through extra length explaining, from
10 when I started, you know, at the Providence Portland Medical
11 Center, on the East Side of downtown Portland, and then
12 because of -- I was a full-time student from Portland
13 Community College to Portland State University -- Portland
14 State University. So I stopped working temporary because
15 sometimes I feel like I'm -- I was failing on my grades. So
16 I have to give up on work and focus on my school.

17 Q. Thank you, Mr. Keimbaye. I was just asking if you
18 eventually received the higher rate of pay from --

19 A. Yes. I am getting to there, because I have to
20 explain to them that I work at Providence Portland before
21 moving to Providence Stevenson [sic] and so adding all
22 together, it would be nine years not none.

23 Q. So you received the higher rate of pay?

24 A. Yeah. They adjusted later on, probably in April
25 somewhat. Something like that.

1 Q. And Mr. John made the decision to pay you at the
2 higher rate of pay, correct?

3 A. It wasn't Mr. John. I believe I communicate in
4 length with Mr. Bach. And then Mr. Bach has to reach out
5 to -- if I may, do you have information here? Because some
6 of the exhibit that I was about to talk about yesterday, that
7 person that made the adjustment I believe, Dawn or -- I'm not
8 -- I'm not sure. I can't recall. But it was between the
9 recruiter and the person in charge of the payroll. Yes,
10 payroll department.

11 Q. You testified in your deposition, didn't you, that
12 Mr. John was warm and welcoming when you first started?

13 A. That is correct.

14 Q. And you went through an orientation when you first
15 started, correct?

16 A. The HR orientation, yes.

17 Q. If you would, Mr. Keimbaye, if you can turn to
18 Exhibit 110 in the binder. And do you recognize this
19 document?

20 A. Acknowledgement of commitment?

21 Q. Yes.

22 A. Yes.

23 Q. And is that your signature on the document?

24 A. Yes.

25 MS. ROSEN: Okay. Your Honor, I move to admit

1 Exhibit 110.

2 THE COURT: Any objection, Mr. Keimbaye?

3 MR. KEIMBAYE: No objection, Your Honor.

4 THE COURT: All right. Exhibit 110 is
5 admitted.

6 (DEFENDANT'S EXHIBIT 110 RECEIVED INTO EVIDENCE)

7 BY MS. ROSEN:

8 Q. So you signed this document and agreed to review
9 the standards of conduct, correct?

10 A. That is correct.

11 Q. And you agreed to abide by the standard of conduct,
12 correct?

13 A. That is correct. Yeah.

14 Q. And it says on this document that failure to do so
15 is grounds for disciplinary action, correct?

16 A. That's what -- that's what it sounds.

17 Q. Then let's go ahead, Mr. Keimbaye, if you would
18 look at Exhibit Number 159, which has been preadmitted. This
19 is a copy of the standards of conduct, correct?

20 A. That is correct.

21 Q. This is a copy of the document that you agreed to
22 abide by, correct?

23 A. I suppose, yes.

24 Q. And in the document, it provides, under the heading
25 of Dependability, it says, (Reading):

1 "Our patients and coworkers depend on us to
2 be at work as scheduled. Regular and predictable
3 attendance is an essential function of all of our
4 jobs. While absence and lateness is sometimes
5 unavoidable, it may create hardships on others."

6 Correct?

7 A. That's what it says.

8 Q. When you first started at Providence and throughout
9 your time there, you were assigned to work a ten-hour shift,
10 correct?

11 A. Correct. Yes.

12 Q. And your hours were 6:30 to -- 6:30 a.m. to 5:00
13 p.m., Monday through Thursday; is that right?

14 A. Correct.

15 Q. And you needed to be at work at 6:30 a.m. because
16 that's when the huddle started, correct?

17 A. That is correct.

18 Q. And the huddle filled employees in on the surgeries
19 of the day and what had happened overnight, correct?

20 A. Would you mind repeating that again, please?

21 Q. Sure. So the huddle -- the purpose of the huddle
22 was to fill the anesthesia techs in on what had happened
23 overnight of surgeries and what surgeries were planned for
24 that day, correct?

25 A. That is correct. But during -- during my time,

1 they never had a huddle whatsoever before the -- especially
2 for the anesthesia tech team. We came in and look at the
3 board where -- to look for our assigned rooms. And when you
4 work nights, that, you know, you are assigned to this room,
5 this room, you know.

6 You jump in and go from the rooms that you are
7 assigned to, to make sure that, you know, the anesthesia
8 machine is calibrated, check and ready to supply medication
9 and oxygen to patient and also check the anesthesia drop cart
10 to make sure that all the supplies that are needed for the
11 patients are there. And also look at the screen to kind --
12 make sure that, you know, if any of my rooms are, you know --
13 need, you know, arterial line or central line or anything
14 like that, I need to set it out before the patient comes in
15 the room.

16 Q. Thank you, Mr. Keimbaye. When you first started,
17 Opal Lonon and Gus Ramos and court -- Chris Kortendick all
18 provided training to you, correct?

19 A. At the beginning, I started with Mr. Kortendick.

20 Q. But then Gustavo Ramos and Opal also provided
21 training to you, correct?

22 A. I never get trained by Mr. Ramos.

23 Q. Okay. So Ms. Lonon provided training to you,
24 though?

25 A. When the -- it wasn't -- it was due to the

1 beginning of my employment. So when my primary trainer,
2 Mr. Kortendick, is off from job, he -- he would recommend me
3 to try to shadow Ms. Lonon, to find my way around. And if I
4 need something for my rooms, then I would ask her. So
5 basically, when Mr. Kortendick is off, I am assigned to
6 rooms, but I would rely on Ms. Lonon to ask her for help if I
7 need to.

8 Q. And when you were working at Providence, there were
9 four lead anesthesia technicians; is that right?

10 A. No.

11 Q. Okay. How many lead anesthesia technicians were
12 there?

13 A. Mr. Kortendick.

14 Q. Mr. Ramos was not a lead technician?

15 A. No.

16 Q. Ms. Lonon was not a lead technician?

17 A. No. They called themselves proctor.

18 Q. A preceptor?

19 A. Preceptor, yes. Yeah, but not the lead. The main
20 lead, a supervising lead and, you know, trainer, is
21 Mr. Kortendick.

22 Q. As an anesthesia technician, you were part of the
23 Union, correct?

24 A. Yes, that is correct.

25 Q. And the anesthesia technicians that sometimes work

1 as leads were also part of the Union, correct?

2 A. I am not an expert to know about that.

3 Q. Okay. Mr. Kortendick didn't hire you, correct?

4 A. No.

5 Q. We have a double negative. Mr. Kortendick did not
6 have anything to do with your hiring; is that right?

7 A. He does not have anything to do with my hiring, but
8 he was directed by my employer to -- he was recommended and
9 directed by my employers to oversee my job functions.

10 Q. Yes. I understand that that's your position. I
11 asked you if he had anything to do with your hiring?

12 A. No.

13 Q. And I believe you said no. Okay. Mr. Kortendick
14 was not the one that fired you, correct?

15 A. No. It was Mr. Sweaney.

16 Q. Mr. Kortendick never disciplined you, correct?

17 A. Not on paper, but he may -- you know, recommended,
18 you know, to my higher ones, like Mr. John or to the HR,
19 because I was under his supervision. So whatever opinion or
20 decision, he would be the reason they handed me to him -- was
21 for him to relay, you know, information to them, you know,
22 about, you know, my job functions. And so I --

23 Q. Do you have any evidence, Mr. Keimbaye, that
24 Mr. Kortendick ever recommended to anyone that you be
25 disciplined?

1 A. Well, I will say this. My employer recommended him
2 to direct me and oversee my job functions. And so he has to
3 get the feedback to my employer to make the decision.

4 Q. Yeah. I understand that's your position,
5 Mr. Keimbaye. What I'm asking is do you have any evidence
6 that Mr. Kortendick ever recommended to anyone at Providence
7 that they discipline you?

8 A. No.

9 Q. Mr. Kortendick did not decide whether you got a
10 raise, correct?

11 A. No.

12 Q. Did he ever decide whether you got a raise?

13 A. No.

14 Q. When you needed to be absent, you told Mr. John and
15 not Mr. Kortendick, correct?

16 A. That is correct, because right after my new
17 employee orientation with HR, my direct supervisor, Mr. John,
18 spoke to me in length and encouraged me to communicate with
19 him anytime. And so my communication is with my long commute
20 or anything that now I need is with Mr. John.

21 Q. When you were tardy, you told Mr. John and not
22 Mr. Kortendick, correct?

23 A. That is correct.

24 Q. Okay. And Mr. John was the one who you went to if
25 you wanted to have overtime approved; is that correct?

1 A. Correct, yes.

2 Q. And Mr. John was the one who made the schedule with
3 Christina Maddy's help, right?

4 A. That I wouldn't say with certainty because
5 sometimes when Mr. John is not there, Mr. Kortendick is the
6 one that, you know, work with Ms. Maddy to come up with the
7 schedule, a daily schedule, or you know, when Mr. John is on
8 vacation, it's -- Mr. Kortendick can -- Chris Maddy took care
9 of the schedule.

10 Q. And do you have personal knowledge of that,
11 Mr. Keimbaye?

12 A. Yes, because Mr. John -- Mr. Kortendick is the one
13 that will communicate to the anesthesia team that this is
14 your schedule. And also in the morning, when we come in, you
15 know, to work, he would be assign each anesthesiologist
16 technicians, you know, rooms and responsibility.

17 Q. But do you know whether he was making like the
18 weekly schedule, who would work which days?

19 A. Yes. Yes.

20 Q. You would agree that it's important for an
21 anesthesia technician to be on time, correct?

22 A. That is correct.

23 Q. And do you think a long commute was a reason to be
24 tardy?

25 A. Say again.

1 Q. You talked a lot about the fact that you were tardy
2 in this case because you had a long commute. And I'm just
3 asking you, do you think that that is a justifiable reason to
4 be tardy?

5 A. That was the concern because I was new to that
6 route from Bellevue to Everett. I -- when they -- I was
7 hired, I did not search to understand how far Everett was,
8 you know, from Bellevue. And it was my first time ever on
9 that day, on December 27th, to drive from Bellevue to
10 Everett. And so the traffic from 405 all the way to
11 Bellevue, I don't -- I don't know what time of the day you
12 can, you know, find a easy way to kind of, like, quickly get
13 to Everett from Bellevue. And so right -- right on that day,
14 after the new employee orientation, it was concern for me.

15 So I brought it out directly, you know, to
16 Mr. John, that I have to let you know that, you know, this is
17 going to be a serious concern for me every single day to
18 drive here, because I left, you know, two hours, and I still,
19 you know, came late for the -- for the new employee
20 orientation.

21 Q. I understand that, Mr. Keimbaye. What I asked you
22 is did you think a long commute was a reason to be tardy?

23 A. No.

24 Q. And throughout your almost six months of employment
25 with Providence, you were tardy 51 times, correct?

1 A. Well, I -- I -- I -- I -- my first day of
2 employment, you know, I put my employer and my supervisor on
3 notice that this is going to be a struggle for me every
4 single day. And so, yes, I was -- I was a little late
5 sometimes. Yes. Not like more than, you know, 15 or 20 or
6 30 minutes. But somewhere around the -- either sometimes,
7 you know, like, you know, five minutes, ten minutes,
8 somewhere around there, yes.

9 Q. And could you have left earlier?

10 A. I set my clock at 4:45 a.m. And by 5:00 a.m., I
11 was always -- I was already on the road driving to get there
12 by 6:30 a.m.

13 Q. Mr. John spoke with you about your tardiness in
14 February 2018, correct?

15 A. That -- I don't have any recollection of that
16 conversation.

17 Q. Okay. Well, let's -- and do you have a
18 recollection of the conversation where he spoke with you
19 about your tardies in March?

20 A. Are you saying in person or in a meeting?

21 Q. In person.

22 A. I don't have any recollection of that. The only
23 time that, you know, he called me over the, you know, work
24 phone and told me to meet with him at Mr. Roehrich's office,
25 that was the only time that, you know -- and at that time, I

1 was already, you know, experienced all the, you know,
2 hostility.

3 Q. Sir, we'll talk about that meeting.

4 A. Okay.

5 Q. But so we don't confuse the jury, I'm just asking
6 you, do you remember him talking with you about tardiness in
7 March 2018? And I think you said you don't remember that,
8 correct?

9 A. It might happen, but I don't remember exactly.

10 Q. Okay. Let's look at -- and this is going to
11 require you to go to your notepad.

12 A. Okay.

13 Q. I'm sorry.

14 A. Oh, my notebook.

15 Q. Which is Exhibit 42. It's been admitted. Let me
16 know when you get there, Mr. Keimbaye.

17 MS. ROSEN: I need readers all of a sudden.
18 I'm at that age where I'm like woah, I can't read that.

19 BY MS. ROSEN:

20 Q. Are you there, Mr. Keimbaye?

21 A. Yes.

22 Q. Okay. And this is an email from Travis John to
23 Megan Bershon, dated March 3, 2018, correct?

24 A. March 3rd, yes.

25 Q. And Mr. John -- oh -- and to Kyle Cramer. I'm

1 | sorry. It's also to Kyle Cramer. And Mr. John says in this
2 | email that he pulled you aside informally and gave him the
3 | policy and informed him that one minute past his 30 was
4 | considered tardy. Do you see where it says that?

5 | A. This communication is -- Mr. John never had it with
6 | me face-to-face, except, you know, what I was stating
7 | yesterday, when I was leaving the scrub room heading back to
8 | the work floor. And he run into me with his fellow friend
9 | and coworker, Mike. That's where he handed me a tardiness
10 | policy that you usually don't work on Mondays and that they
11 | had in service, because the whole department was having
12 | concern that everybody was running late or coming late to
13 | work. And so because you are not there on Monday, I save you
14 | a copy.

15 | Q. Well, sir, if you look at that email on the bottom
16 | of this, this is Kyle Cramer raising the fact that you seem
17 | to be tardy, correct?

18 | A. That is correct. That is --

19 | Q. And then -- then Travis John replied by saying he
20 | pulled you aside, correct?

21 | A. That -- that -- that's what herein say. But, you
22 | know, I don't have any clear recollection that, you know, he
23 | pulled me aside to have a conversation with me. I remember
24 | correctly, you know, whatever communication I have -- I had
25 | with, you know, with Mr. John, I -- I -- the only -- the only

1 communication that I have with him, and then, you know, he
2 was encouraging me to please don't -- don't -- don't leave or
3 don't quit your job.

4 The HR was looking into Mr. Kortendick behavior,
5 and that they want me here. And he encouraged me that I know
6 you're committing [sic], you know, far away to work. But
7 please, you know, try to leave early, or if you want to, you
8 can move to the Everett location.

9 Q. Sir, so are you saying that this never happened?

10 A. In person, no.

11 Q. Okay. And then -- because there's no mention in
12 this email about an in-service or giving everybody a
13 tardiness policy, correct?

14 A. That is correct, yes.

15 Q. And then did you continue to be tardy after March
16 3, 2018?

17 A. I mean, I -- I constantly, you know, communicate
18 with him. Even with my latest text message, you know, in
19 May, I -- I texted him to say that, Hey, Travis, I'm running
20 late. Would you please, you know, check my rooms, you
21 know --

22 Q. So --

23 A. -- for me.

24 Q. So you did continue to be tardy?

25 A. Yes. Yes.

1 Q. And then you've been referencing an email you
2 had -- I'm sorry -- a meeting you had with Mr. John and
3 Mr. Warrick (phonetic) in April 2018, correct?

4 A. Yes. That's the -- that's the meeting that the --
5 I was -- I was talking about, you know, a few minutes ago.

6 Q. Right. And Mr. John called that meeting, correct?

7 A. Yes.

8 Q. Okay. And if you would turn in -- to Exhibit 121
9 in the notebook that you're looking at?

10 A. 121?

11 Q. Yes.

12 A. Okay.

13 Q. And this is an email from Mr. John, correct?

14 A. Yes, that's correct.

15 MS. ROSEN: Okay. Your Honor, I move to admit
16 Exhibit 121.

17 THE COURT: Any objection, Mr. Keimbaye?

18 MR. KEIMBAYE: No objection, Your Honor.

19 THE COURT: No objection. 121 is admitted.

20 (DEFENDANT'S EXHIBIT 121 RECEIVED INTO EVIDENCE)

21 MS. ROSEN: Thank you. Move to publish.

22 THE COURT: You may publish.

23 MS. ROSEN: Thank you.

24 BY MS. ROSEN:

25 Q. This is Mr. John's summary of the conversation he

1 had with you during the April 2018 meeting, correct?

2 A. It looks like. And I'm not sure if I have receive
3 this policy in the -- in the email or -- because I --
4 regularly, I did not check my -- my work email when I -- when
5 I get to work. And so --

6 Q. So this email says it's from Travis John to you
7 with a cc to a number of folks. And it says, (Reading):

8 "Hello Dominique. You and I have discussed
9 the quantity of missed breaks and lunches up to
10 this point. And you have done well to address that
11 this week. The other part of our discussion on
12 4/3/18 was your clock-in time. I understand you're
13 commuting from a distance. But going off of your
14 timecard, if you left ten minutes early, you would
15 be on time when you clock in. You have a great
16 work ethic, and you do an excellent job in the
17 rooms. I need you to put more effort into being on
18 time, in accordance with wholly absence and
19 lateness policy that I gave you."

20 And then he goes on to say, you know, that, Your
21 timesheet is here, and that, Remember, one minute past
22 clock-in time is considered tardy.

23 Do you see that?

24 A. I see that, yeah.

25 Q. Do you remember getting this email?

1 A. Like I was saying earlier, you know, I don't
2 regularly check my email. And so I might have received, but
3 not been aware that, you know, it was -- it was attachment,
4 you know, of the policy and the statement made here.

5 Q. And so it looks like the absence and lateness
6 policy was attached. Is that what you're saying?

7 A. That's what he says. It says attachment here.

8 Q. Yeah. All right. And let's look at the absence
9 and lateness policy. It hasn't been admitted, though. So if
10 you can look at Exhibit 106, Mr. Keimbaye.

11 THE COURT: I'm sorry. Which number?

12 MS. ROSEN: 106.

13 THE COURT: 106. Thank you.

14 THE WITNESS: Okay.

15 BY MS. ROSEN:

16 Q. And, Mr. Keimbaye, is this a copy of the absence
17 and lateness policy for Providence Everett?

18 A. That is correct.

19 MS. ROSEN: Okay. Your Honor, move to admit.

20 THE COURT: Any objection?

21 MR. KEIMBAYE: No objection. But may I make a
22 statement?

23 THE COURT: No.

24 MR. KEIMBAYE: Okay.

25 THE COURT: That's not -- this isn't the time

1 for that.

2 MR. KEIMBAYE: Okay.

3 THE COURT: There being no objection, Exhibit
4 106 is admitted.

5 (DEFENDANT'S EXHIBIT 106 RECEIVED INTO EVIDENCE)

6 MS. ROSEN: Thank you. Move to publish, Your
7 Honor.

8 THE COURT: You may.

9 MS. ROSEN: Thank you.

10 BY MS. ROSEN:

11 Q. So this policy says lateness occurs when an
12 employee reports for work after his or her scheduled start
13 time one minute or more, correct?

14 A. That is correct.

15 Q. And it says frequent absences and lateness,
16 however, regardless of how justified, are disruptive to
17 departmental operations, affect the PR and CE's ability to
18 provide quality patient care and affect the safety,
19 productivity, and morale of coworkers, correct?

20 A. That's what it says.

21 Q. Do you agree with that statement?

22 A. Yes.

23 Q. And you continued to be tardy after you had that
24 meeting with Mr. John in April, correct?

25 A. I continued to stay in communication with my

1 supervisor when I -- I was still, you know, running late to
2 work.

3 Q. But my question was, though, you continued to be
4 tardy after you received this email, correct?

5 A. That is -- that is correct.

6 Q. Okay. And Mr. Kortendick was not involved in any
7 conversations with you about your tardiness, correct?

8 A. No.

9 Q. He was not involved, correct?

10 A. Say again.

11 Q. Sorry. I don't want -- I want to make sure we
12 don't have a double negative. So he was not involved in any
13 discussions with you about your tardiness, correct?

14 A. I said no. No, he was not.

15 Q. Okay. I want to talk a little bit about some of
16 the testimony we've heard about staying after your shift. If
17 you needed to work after your shift ended at five, did you
18 have to get permission from Mr. John?

19 A. Mr. John, yes. He always encouraged me to -- call
20 me anytime or come to my office anytime if -- if you need
21 time to work on your -- your online training. And so my
22 communication is always with Mr. John.

23 Q. And you communicated with him typically through
24 phone calls and texts; is that right?

25 A. In person, the work phones, and a few with my

1 personal phone because the work phone doesn't have text
2 message.

3 Q. Okay. Let's look at Exhibit 14, which has already
4 been admitted. And I'm sorry. You're going to have to
5 change binders, Mr. Keimbaye. It's a little unwieldy.

6 THE COURT: That's 14?

7 MS. ROSEN: Yes, Your Honor.

8 THE WITNESS: Okay.

9 MS. ROSEN: Can we publish it, Your Honor?

10 THE COURT: Yeah.

11 MS. ROSEN: It's been admitted.

12 THE COURT: This is in evidence.

13 MS. ROSEN: Yeah.

14 THE COURT: Yeah.

15 MS. ROSEN: Looks like we may be having some
16 technical difficulties.

17 BY MS. ROSEN:

18 Q. This -- Mr. Keimbaye, this is a text from you to
19 Mr. John asking if you can stay after the end of your shift,
20 correct?

21 A. Yes. I say, Hey, Travis. How is it going? And
22 then I ask him, Will it be okay with you for me to stay in
23 clock at the end of the shift? Yes.

24 Q. And this is the only text message of that kind that
25 you produced for us in discovery, correct?

1 A. That's the -- that's the only text message, you
2 know, I text him via my personal phone.

3 Q. And you clocked out after your shift was supposed
4 to end 74 times during your six months of employment at
5 Providence, correct?

6 A. There is -- there is the times I spent on my --

7 Q. I'm not --

8 A. -- ACLS training. Yes.

9 Q. Okay. And you received overtime when you clocked
10 out after 5:00 p.m., correct?

11 A. Well, basically, in order to complete the training,
12 it has to be on a -- on a work schedule, during work --

13 Q. I understand, Mr. Keimbaye.

14 A. -- and after work.

15 Q. All I'm asking you is did you receive overtime when
16 you worked after 5:00 p.m.

17 A. That is correct.

18 Q. Okay. And when you were on call, you were supposed
19 to clock in at 7:00 p.m., correct?

20 A. I believe it's 1830.

21 Q. Or 6:30 or seven?

22 A. Yes.

23 Q. Okay. And each shift has an anesthesia tech
24 assigned on call, correct?

25 A. That is correct, including June 6th, where Ms. Myra

1 was scheduled and I went there because I --

2 THE COURT: I'm so --

3 THE WITNESS: Yes?

4 THE COURT: -- sorry, Mr. Keimbaye. I'm going
5 to --

6 THE WITNESS: Okay.

7 THE COURT: -- interrupt just -- just so we
8 can use our time -- trial time productively.

9 THE WITNESS: Okay.

10 THE COURT: If you could just listen carefully
11 to the questions that Ms. Rosen is asking you.

12 THE WITNESS: Uh-huh.

13 THE COURT: And answer the question and only
14 the question.

15 THE WITNESS: Okay.

16 THE COURT: If she wants you to give more of
17 an explanation, she'll ask you for that. If you can fairly
18 answer a question yes or no, please just answer yes or no.

19 THE WITNESS: I will do that.

20 THE COURT: And then, again, if we need more
21 explanation, one of two things will happen. Either she will
22 ask you or you can provide one on your redirect. Okay?

23 THE WITNESS: Thank you, Your Honor.

24 THE COURT: Thank you, sir.

1 BY MS. ROSEN:

2 Q. So, Mr. Keimbaye, we were just talking, there's
3 only one anesthesia technician assigned to call per shift,
4 correct?

5 A. That is correct.

6 Q. Okay. And call goes from 6:30 p.m. to 6:30 a.m.?

7 A. That is correct.

8 Q. Could you please direct your attention,
9 Mr. Keimbaye, to Exhibit 129?

10 A. Yes.

11 Q. And this is an email to you and --

12 MS. ROSEN: I don't think this has been
13 admitted yet.

14 THE COURT: No.

15 MS. ROSEN: So we have to take it down.

16 BY MS. ROSEN:

17 Q. This is an email -- I'm sorry -- between Travis
18 John and Dan Warrick. Do you see that?

19 A. Yeah. I see them.

20 MS. ROSEN: Okay. Your Honor, I move to admit
21 Exhibit 129.

22 THE COURT: Is there an objection to Exhibit
23 129?

24 MR. KEIMBAYE: No objection, Your Honor.

25 THE COURT: All right. 129 is admitted.

1 (DEFENDANT'S EXHIBIT 129 RECEIVED INTO EVIDENCE)

2 BY MS. ROSEN:

3 Q. So in this email exchange -- and I know you already
4 testified about Myra and the shift. So I really just want
5 you to answer my questions, if you can.

6 A. I will do that.

7 Q. In this email exchange, Travis John is telling
8 Mr. Warrick that you were not on call when you said you were,
9 correct?

10 A. No, I wasn't on that day.

11 Q. You were not on call?

12 A. No, I wasn't.

13 Q. And did you say you were on call when you were not?

14 A. I asked for permission. That's what I said.

15 Q. No. I'm asking, did you tell Ernie that you were
16 on call when you were not on call?

17 A. I don't know if I spoke to Ernie. I spoke to Rosie
18 or Rosalyn, the charge nurse at the front desk. I spoke
19 to --

20 Q. Sir, my only question was, did you tell Ernie or
21 anyone at Providence that you were on call when you were not
22 on call?

23 A. I don't know who Ernie is. So I haven't spoken to
24 Ernie.

25 Q. Okay. Go ahead, if you would, Mr. Keimbaye, and

1 look at Exhibit 132.

2 A. Okay.

3 Q. This is an email between Travis John and Christina
4 Maddy, correct?

5 A. That is correct.

6 MS. ROSEN: Move to admit, Your Honor.

7 THE COURT: Any objection to the admission of
8 Exhibit 132, Mr. Keimbaye?

9 MR. KEIMBAYE: No, Your Honor.

10 THE COURT: 132 is admitted.

11 (DEFENDANT'S EXHIBIT 132 RECEIVED INTO EVIDENCE)

12 MS. ROSEN: Move to publish.

13 THE COURT: You may publish.

14 BY MS. ROSEN:

15 Q. So, Mr. Keimbaye, in this email, Ms. Maddy says you
16 told her you were on standby when you were not. Do you see
17 that?

18 A. In an email to Ms. Maddy or -- or verbally?

19 Q. Ms. Maddy's email to Mr. John, she says, He told me
20 he was on standby when he wasn't and told me his standby
21 started earlier than everyone else. Do you see where it says
22 that?

23 A. After --

24 Q. Sir, I'm just asking if you see where it says that.

25 A. Can you --

1 Q. It's in the -- if you look at the email, the one
2 on -- it's on the first page.

3 A. Okay.

4 Q. And it's -- it starts on the email from Ms. Maddy
5 to Travis John. And it starts in the second line of text.
6 Do you see where it says you told -- you told her that you
7 were on call when you were not?

8 A. Standby or --

9 Q. Or standby.

10 A. -- on call?

11 Q. Standby, when you were not?

12 A. Standby meaning that, you know, after, you know, I
13 ask Mr. John, you know, to stay and work on --

14 Q. Sir, I'm just asking if you told Ms. Maddy that you
15 were on standby when you were not?

16 A. I -- I -- I -- I don't remember correctly and
17 clearly that conversation.

18 Q. Okay. Mr. John informed you you were being put on
19 administrative leave on June 12, 2018, so Providence could
20 investigate your timekeeping, correct?

21 A. That is -- that is correct. After I text him to
22 be --

23 Q. Okay. And after you were put on administrative
24 leave on June 13, 2018, you contacted your Union to complain
25 about Ms. Lonon, correct?

1 A. That is correct, because my complaint about the
2 sexual harassment is directly --

3 Q. Sir, like the Judge said, I was just asking if you
4 actually contacted the Union on June 13, 2018?

5 A. That is correct.

6 Q. Okay. And that was the first time you ever
7 contacted the Union about any alleged harassment, correct?

8 A. That is correct, because I --

9 Q. How did the Union respond to your complaint?

10 A. I don't remember correctly the conversation.

11 Q. And then after you complained to the Union on June
12 13, 2018, you called the integrity line on June 15, 2018,
13 correct?

14 A. Yes. That's when -- yeah, I believe, one of the -
15 I believe it was Mr. John or something, provide me with the
16 1-800 number of my phone conversation with him on June 12th.

17 Q. Okay. So Mr. John gave you the phone number for
18 the integrity line?

19 A. I believe so.

20 Q. Okay. And that was the first time you had ever
21 called the integrity line during your employment at
22 Providence ever, correct?

23 A. That is correct. And after that, I spoke with
24 Ms. Rice.

25 Q. And when you -- when you called the integrity line,

1 | you made an anonymous complaint; is that right?

2 | A. Well, because of the terms -- the terms from the
3 | integrity line, you can remain anonymous if you want to make
4 | a complaint, those kind of stuff. So I wasn't -- I wasn't so
5 | sure, you know, which way, you know, I would go. So I may
6 | have decided to do that.

7 | Q. Okay. And do you remember what you told the
8 | integrity line representative? Would it be helpful to look
9 | at your complaint to the integrity line?

10 | A. Yes.

11 | MS. ROSEN: Okay. Your Honor, it hasn't been
12 | an exhibit, but I'd move to admit it. We have a copy of it
13 | ready to go.

14 | THE COURT: Well, it needs to be marked --

15 | MS. ROSEN: Okay.

16 | THE COURT: -- so that we have an exhibit
17 | number to record.

18 | MS. ROSEN: Yeah. Let me grab it.

19 | THE COURT: So judging from the clerk's list,
20 | it looks like the next exhibit number would be 171.

21 | THE CLERK: Yes, Your Honor.

22 | THE COURT: Yeah.

23 | THE CLERK: Thank you.

24 | (Pause in proceedings.)

25 | MS. BURNHAM: Do I write it on here?

1 MS. ROSEN: No.

2 MS. BURNHAM: Okay.

3 THE CLERK: Defendant's Exhibit 171 marked for
4 identification.

5 (DEFENDANT'S EXHIBIT 171 MARKED FOR IDENTIFICATION)

6 MS. ROSEN: May I approach, Your Honor?

7 THE COURT: You may.

8 MS. ROSEN: Your Honor, I'd move to admit
9 Exhibit 171, the integrity line complaint.

10 THE COURT: Mr. Keimbaye, do you have any
11 objection to the admission of Exhibit 171?

12 MR. KEIMBAYE: No objection, Your Honor.

13 THE COURT: All right. 171 is admitted.

14 (DEFENDANT'S EXHIBIT 171 RECEIVED INTO EVIDENCE)

15 MS. ROSEN: Permission to publish, Your Honor?

16 THE COURT: Yeah. And if you could provide a
17 bench copy at some point. It doesn't have to be --

18 MS. ROSEN: We have it.

19 THE COURT: -- right this second.

20 MS. ROSEN: Yeah, here.

21 THE COURT: Unless you have a spare one.

22 MS. ROSEN: We're all about paper.

23 THE COURT: Thank you.

24 BY MS. ROSEN:

25 Q. Okay. So, Mr. Keimbaye, this is a copy of your

1 integrity line complaint that you called in on Ms. Lonon,
2 correct?

3 A. Yeah. That's the conversation I was having with
4 the integrity line over the phone.

5 Q. Okay. And if you look at the top of the document,
6 it says open 6/15/2018. Is that consistent with your
7 recollection of when you called the integrity line?

8 A. That's correct.

9 Q. Okay. And then on the next page, if you look, it
10 says please identify persons engaged in this behavior. And
11 you told them Opal Lonon, correct?

12 A. That is correct.

13 Q. Okay. You didn't mention anything about
14 Christopher Kortendick when you called the integrity line,
15 correct?

16 A. No.

17 Q. You didn't mention anything about Mr. Usoltsev --
18 or Dr. Usoltsev when you called the integrity line, correct?

19 A. No.

20 Q. You didn't mention anything about Dr. Mansoor when
21 you called the integrity line, correct?

22 A. No.

23 Q. You didn't mention anything about Dr. Porterfield
24 when you called the integrity line, correct?

25 A. No.

1 Q. Okay. So the only person that you called the
2 integrity line to complain about was Opal Lonon, correct?

3 A. That is -- that is correct, because she was the one
4 that write the complaint --

5 Q. Sir, that was my -- my question, was just whether
6 or not you complained about anybody other than Opal Lonon.

7 If you would go ahead and read it, and we'll call
8 this out, where it says details. And I'll let -- hopefully,
9 the -- we'll make it big so the jury can read this.

10 Is this an accurate summary of what you told the
11 integrity line representative? And you can take a minute to
12 read it.

13 (Pause in proceedings.)

14 THE WITNESS: There's some typing stuff, you
15 know, may not respond to my exact statement.

16 BY MS. ROSEN:

17 Q. Would you say, though, this is a fair summary of
18 what you told the integrity line representative?

19 A. Yes.

20 Q. Okay. And you didn't tell the integrity line
21 representative that Opal Lonon put her hand up your shirt,
22 did you?

23 A. Say again.

24 Q. You did not tell the integrity line representative
25 that Opal Lonon put her hand up your shirt, did you?

1 A. That -- I was -- I did not, but I was overwhelmed
2 with, you know -- and also nervous, you know, about, you
3 know --

4 Q. Sir, that -- my question was did you tell the
5 integrity line representative that Opal Lonon put her hand up
6 your shirt?

7 A. I did not.

8 Q. Okay.

9 A. But --

10 Q. Did you tell the integrity line representative that
11 Opal Lonon told you that she loves men with hairy chests?

12 A. No.

13 Q. Did you tell the integrity line representative that
14 Opal Lonon kissed you on the neck?

15 A. I mean the conversation was so short. So I --

16 Q. Sir, my question is whether you told the integrity
17 line representative that?

18 A. No.

19 Q. Okay. And you didn't tell the integrity line
20 representative that Mr. John said someone is wanted for sex
21 to you, correct?

22 A. No.

23 Q. And when you made your report to the Union
24 representative, you didn't tell them anything about
25 Mr. Kortendick, correct?

1 A. My conversation with the Union, no.

2 MS. ROSEN: Your Honor, it might be a good
3 place to stop for a break, because I have kind of a break
4 right now, if you like.

5 THE COURT: Okay. All right. No. It's
6 10:25. So that's not bad.

7 So, members of the jury, please allow me to
8 remind you keep your minds open. Don't communicate about the
9 case. I'll have you back here after the break to hear more
10 cross-examination.

11 THE BAILIFF: All please rise.
12 (Jury exits at 10:25:22 a.m.)

13 THE COURT: All right. Feel free to step
14 down, Mr. Keimbaye.

15 DISCUSSION RE EXHIBITS

16 THE COURT: Briefly, before we recess, neither
17 the clerk or I have a record of 159 having been admitted.
18 And Ms. Rosen brought it up as having been admitted. And it
19 really wasn't up very long. And it was so far away from the
20 jury that unless somebody had eagle eyes, I doubt they could
21 read it. But it wasn't offered into evidence because counsel
22 was under the impression it had been admitted.

23 MS. ROSEN: Okay. Let me look, Your Honor.
24 Oh, Standards of Conduct. Yeah, I have it as admitted.

25 THE COURT: No.

1 MS. ROSEN: Okay.

2 MS. BURNHAM: I think --

3 THE COURT: I spent a few minutes looking at
4 my notes to see which ones were sort of preadmitted right
5 after we did peremptory challenges. And those were confined
6 to 109, 131, and 145. So -- that's okay. You can -- you can
7 move to admit it later. I just --

8 MS. ROSEN: Okay.

9 THE COURT: Or do you want to move to admit it
10 now?

11 MS. ROSEN: Sure.

12 THE COURT: Okay. 159.

13 Mr. Keimbaye, I think you were asked a
14 question about this. This is the Providence Medical Center
15 policy on dependability and resources and recordkeeping, but
16 it includes the -- this stuff about timely -- being timely.
17 Absence and lateness control is a few pages in there. Do you
18 have any objection to this exhibit being admitted?

19 MR. KEIMBAYE: No objection, Your Honor.

20 THE COURT: All right. Then 159 will be
21 admitted at this time.

22 (DEFENDANT'S EXHIBIT 159 RECEIVED INTO EVIDENCE)

23 MS. ROSEN: Okay. Thank you, Your Honor.

24 THE COURT: Yeah.

25 MS. ROSEN: Sorry about that.

1 THE COURT: All right. Anything else we need
2 to take up before we take a recess?

3 MS. ROSEN: I don't think so.

4 THE COURT: All right. Thank you. We will
5 resume at 10:45.

6 Mr. Keimbaye, please make sure you're here at
7 least a minute before then, okay?

8 MR. KEIMBAYE: I'm not going anywhere.

9 THE COURT: Thank you very much.

10 All right. And that goes for everybody else
11 too.

12 (Recess at 10:27:48 a.m., recommencing at 10:44:17 a.m.)

13 (The following proceedings were held outside the presence of
14 the jury:)

15 THE BAILIFF: Court is again in session.

16 THE COURT: Thank you very much. Please be
17 seated. And I appreciate everybody being on time. Thank you
18 for that. Are we ready for the jury?

19 MS. ROSEN: Can I get up there, Your Honor?
20 Or should I wait right here for the jury?

21 THE COURT: Whatever makes you most
22 comfortable.

23 MS. ROSEN: Okay. I'll go ahead and go up.

24 THE COURT: All right.

25 THE BAILIFF: Please recognize the jury.

1 (Jury enters at 10:45:15 a.m.)

2 THE COURT: Welcome back, everyone. Please be
3 seated. Get comfortable.

4 Welcome back, Mr. Keimbaye.

5 MR. KEIMBAYE: Thank you, Your Honor.

6 THE COURT: Ms. Rosen.

7 MS. ROSEN: Thank you, Your Honor.

8 **CROSS-EXAMINATION CONTINUED**

9 BY MS. ROSEN:

10 Q. Mr. Keimbaye, if you could direct your attention to
11 Exhibit 138, please.

12 A. 38. Thank you. Thank you.

13 Q. This is an email from Ms. Rice to you, correct?

14 A. That is correct.

15 MS. ROSEN: Your Honor, move to admit Exhibit
16 138.

17 THE COURT: Any objection?

18 MR. KEIMBAYE: No objection, Your Honor.

19 THE COURT: 138 is admitted.

20 (DEFENDANT'S EXHIBIT 138 RECEIVED INTO EVIDENCE)

21 MS. ROSEN: Thank you. Move to publish 138.

22 THE COURT: You may.

23 MS. ROSEN: Thank you.

24 BY MS. ROSEN:

25 Q. So this is an email from Ms. Rice, asking you to

1 | contact her to discuss your complaint against Opal Lonon,
2 | correct?

3 | A. That is correct.

4 | Q. And she sent this to you four days after you called
5 | the integrity line, correct?

6 | A. That is correct.

7 | Q. And that was when you were on administrative leave,
8 | correct?

9 | A. That's correct.

10 | Q. Ms. Rice interviewed you about your allegations
11 | against Ms. Lonon, correct?

12 | A. I believe the -- that is correct. That was the
13 | previous one you displayed.

14 | Q. I believe that was your integrity line complaint.
15 | And we'll go ahead and look at Exhibit 40 in a minute, but it
16 | hasn't been admitted yet. You read from it yesterday. But
17 | if you could -- I'm sorry -- get your notebook and look at
18 | Exhibit 40 for me.

19 | A. Okay.

20 | Q. And this is a -- the investigation report that
21 | Ms. Rice did summarizing her investigation into your
22 | complaint, correct?

23 | A. That is correct.

24 | MS. ROSEN: Okay. And, Your Honor, move to
25 | admit Exhibit 40, which I believe was discussed yesterday but

1 not admitted.

2 THE COURT: All right.

3 Any objection to admission of Exhibit 40?

4 MR. KEIMBAYE: No objection, Your Honor.

5 THE COURT: Thank you. Exhibit 40 is
6 admitted.

7 (DEFENDANT'S EXHIBIT 40 RECEIVED INTO EVIDENCE)

8 BY MS. ROSEN:

9 Q. Let's start by looking at the chart that is in the
10 front of Exhibit 40, which I believe you read from yesterday.
11 Is this chart a fair summary of what you told Ms. Rice about
12 Ms. Lonon?

13 A. Some, yes.

14 Q. Okay. And looking at this chart, you didn't tell
15 Ms. Rice that Opal Lonon put her hand up your shirt, did you?

16 A. I did not, but I -- I -- I --

17 Q. Okay. You didn't tell her that Opal Lonon said she
18 loves men with hairy chests, did you?

19 A. It was a short conversation. And so I must -- I
20 must have, you know, left out --

21 Q. You didn't tell her that Opal Lonon kissed you on
22 the neck, did you?

23 A. I mean, during a coiling of her legs around --
24 that's -- I mean that's part of all that, you know, I was
25 mentioning yesterday.

1 Q. Right. But you didn't tell Ms. Rice that, did you?

2 A. No.

3 Q. Okay. And you didn't tell Ms. Rice anything about
4 Chris Kortendick harassing you, correct?

5 A. No, because the focus was on the sexual harassment.

6 Q. Okay. And you didn't tell Ms. Rice anything about
7 Mr. John saying someone is wanted for sex, referring to
8 Ms. Lonon, correct?

9 A. No.

10 Q. And you didn't tell Ms. Rice anything about
11 Dr. Usoltsev allegedly punching you in the groin?

12 A. No.

13 Q. You didn't tell Ms. Rice anything about
14 Dr. Porterfield making comments to you about where you're
15 from or where you got your training, correct?

16 A. No, because this one is all about sexual harassment
17 statement that she was asking me.

18 Q. Okay. And you didn't tell Ms. Rice anything about
19 Dr. Mansoor, correct?

20 A. No.

21 Q. Okay. This issue of Dr. Usoltsev punching you in
22 the groin, were there any witnesses to this?

23 A. It was during the procedure. So they -- an open
24 heart surgeon that was already, you know, proceeding with the
25 operation, on my left side of the -- on my left side and the

1 left side of the patient was a physician assistant. And then
2 there are several nurses and circulators. So we were in the
3 room, at least eight to nine personnel -- or personnels in
4 there.

5 And because the surgeons raised the surgery table
6 up, and on the side of the anesthesia provider, we have the
7 large blue drape that covered the -- the head of the patient.
8 And we were under it to provide the intubation to the
9 patient. So pretty much we -- anybody that was standing on
10 the -- on the left side of the patient cannot see exactly the
11 assault of it that occurred.

12 But I scream. And you know, some of the -- the
13 staff, you know, look around. Are you guys okay? And
14 because I -- I -- somehow, I maintained my coolness from --

15 Q. Sir, I just was asking if there were any witnesses?

16 A. No witness except the person that assault me and
17 myself.

18 Q. And did you seek medical treatment?

19 A. No.

20 Q. You were bleeding from your groin, correct?

21 A. I hold on to -- to complete the -- the support
22 that, you know, he need. And then after that, you know, I
23 said if he was good with, you know, his setup and, you know,
24 what he need from me. And then he shake his head. And so I
25 head out through the double door and straight where, you

1 know, there was a restroom adjacent to -- to the OR room, and
2 I went straight there to kind of look at -- check and use the
3 restroom. And that's where I saw the blood coming through
4 the urine.

5 Q. And you didn't seek medical treatment?

6 A. No, I did not.

7 Q. Okay. And why do you believe that him punching you
8 in the groin allegedly was a result of your race, national
9 [sic], religion, or sex?

10 A. I believe he's close friends with Mr. Kortendick.
11 They talk regularly. When I was being trained and supervised
12 by Mr. Kortendick, we always set up his room. And while even
13 being there working with them, I could see, you know, how
14 they talk and, you know, mark about, you know, the -- the
15 things that, you know, I do -- I did, you know, to help out.
16 Would laugh about my accents. And they talk a lot about, you
17 know, hunting deer, you know, where to go to hunt for deer,
18 all those kinds. So they -- they are very close friends.

19 And I do believe that with Mr. Kortendick
20 influence, he -- he clearly dislike, you know, the way -- the
21 way I am.

22 Q. So you believe Mr. Kortendick was good friend with
23 Dr. Usoltsev and influenced him such that he punched you in
24 the groin?

25 A. I mean -- I mean, they talk a lot about, you know,

1 the things that they did to -- they do together. And since
2 I -- I was experienced, you know, about treatment from
3 Mr. Kortendick. And he's a good friend to -- to the -- to
4 the provider, what else he -- he would, you know, tell that
5 person, you know, about -- about me. And the person is -- is
6 like, you know, every single time when I read the -- the
7 physician -- his body language was like he -- sometimes he
8 would not even, you know, read back, you know, my greeting to
9 the person.

10 Q. Does it offend you, Mr. Keimbaye, when people ask
11 where you're from?

12 A. Not at all. Not -- not, you know, in a mean way.

13 Q. Providence made the decision to terminate your
14 employment, correct?

15 A. Say again, please.

16 Q. Providence made the decision to terminate your
17 employment, correct?

18 A. That is correct.

19 Q. Okay. And let's look at Exhibit 22 if you would,
20 which has already been admitted.

21 MS. ROSEN: Move to publish, Your Honor.

22 THE COURT: You may.

23 BY MS. ROSEN:

24 Q. We looked at this yesterday. This is your notice
25 of discharge. I'm sorry. I'll give you a second to get

1 there.

2 A. Yes. Go ahead.

3 Q. This is your notice of discharge, correct?

4 A. That is correct.

5 Q. And who was in the meeting when your employment was
6 terminated?

7 A. At the HR office?

8 Q. Yes.

9 A. Okay. It was Mr. Sweaney. His first name is Erich
10 Sweaney.

11 Q. Yes.

12 A. And then Rebecca Carbajal. That's the -- one of
13 the OR managers. And then it was Union rep. I believe her
14 first name or last name is Keagan.

15 Q. And the Union --

16 A. And myself.

17 Q. I'm sorry. I didn't mean to cut you off. And
18 yourself. Thank you. And Chris Kortendick was not in that
19 meeting, correct?

20 A. No.

21 Q. Did you believe you had any responsibility for your
22 termination from Providence?

23 A. No.

24 Q. And it was your understanding, based on this
25 notice -- I'm sorry -- that you were being terminated for

1 excessive tardiness and working unauthorized overtime,
2 correct?

3 A. Say again.

4 Q. Was it your understanding, based on this notice,
5 that Providence was terminating you for excessive tardies?
6 It says 51 tardies and 74 occurrences of working after the
7 end of your shift without permission. Was that your
8 understanding of why you were being terminated?

9 A. That's what they are assuming.

10 Q. Prior to working for Providence Everett, you worked
11 for Kaiser in Portland, correct?

12 A. Kaiser in Bellevue.

13 Q. Okay. I'm sorry. Kaiser in Bellevue. I'm sorry.
14 And you believed while you were at Kaiser in Bellevue, that
15 you were discriminated against based on your race and
16 national origin, correct?

17 A. That is correct, because while I was working as a
18 anesthesiologist technician over there, one of the provider
19 who's -- is a she -- Romanian, went on a link in her email
20 describing -- kind of emailing a bunch of stuff, including
21 our manager, that I have a -- at that time, it's a different
22 accusation, that I had a poor performance issue, and that she
23 would like the OR manager to terminate my employment because
24 if they allowed me to continue to stay, I would cause a
25 sentinel event, meaning I would cause a patient to die.

1 And when I was working there, I was not a direct
2 provider to a patient. And for her to make that huge
3 allegation -- and I was the only one certified anesthesia
4 technician in that department. But she has two country
5 sisters or countrymen, the term -- that are from Montenegro
6 and one from her -- her country. Those two females don't
7 have a certification to perform anesthesia technician. Every
8 single time when they assign me to assist her with procedures
9 in her room, she would prefer those two -- any of those two
10 females only in her room, but not me. So she was extremely
11 selective about having me in her room. And it makes it
12 difficult for -- for my performance.

13 It led to the -- the manager to close the door --
14 to schedule a meeting with me, close the door -- I believe he
15 -- the door was open, but write out -- write out a
16 resignation letter. The OR manager write out a resignation
17 letter on her own and state that if you don't sign this
18 resignation letter, I will terminate you, and you will never
19 get a job again through the Kaiser organization.

20 And I was freshly over there. I got up on my feet
21 and said -- I said I'm not signing it. I'll -- I would like
22 to -- you know, to talk to my Union. She got up, blocked the
23 door from me, from, you know, passing through. And so I made
24 a judgment, and I signed the letter. And the next day, I
25 called the Union, and the Union took over. And the Union has

1 -- had very long meetings and conversation with them, that
2 what they did is wrong, and all those kinds of stuff. So in
3 the end, the Union give up, because I was still a Kaiser new
4 employee, a provisional employee. So the Union gave up, and
5 I persuade to file the lawsuit.

6 And I have no -- the reason why I decide to file
7 the lawsuit is because I have been a hard worker, very
8 committed person, and very respectful. And for somehow I
9 continue to experience abuse. And so I decide that enough is
10 enough. I need to take a legal choice and see if someone
11 could hear me. And that was the reason that, you know, I
12 file lawsuit again. Back then, it was Group Health before
13 the transition to Kaiser Permanente.

14 So now, being knowledgeable with the laws and
15 everything, I filed with the federal government and
16 mistakenly served the Defendants myself. And that's how my
17 case was denied and dismissed with prejudice.

18 Q. Okay. So you filed a lawsuit against Kaiser for
19 the time you worked in Kaiser Bellevue for discrimination
20 based on your race and national origin, correct?

21 A. Basically, that is correct.

22 Q. And you rep -- you ended up representing yourself
23 in that lawsuit as well, correct?

24 A. Well, I tried, you know, calling everywhere. And
25 so, if I cannot -- I could not, you know, get any help

1 anywhere else. I have to give a chance to myself and see
2 anybody can hear me.

3 Q. And you filed a lawsuit against Kaiser two months
4 before you started at Providence, correct?

5 A. I -- I -- I don't remember, you know, when -- when
6 I filed it. But if I go through my paper, I may -- I may be
7 able, you know, to -- to see exactly when I filed.

8 Q. Okay. We'll look at the lawsuit in a minute. So
9 your first lawsuit was dismissed. So then you filed a second
10 lawsuit against Kaiser Group Health, correct?

11 A. It's the -- it's the same case. The first
12 dismissal, it was with -- without prejudice. And so I
13 renewed. It was not like two different case.

14 Q. Thank you for clarifying. And then in that case,
15 were you claiming emotional distress damages from what
16 happened at Kaiser?

17 A. I might -- I might have stated. I mean in a
18 employee discrimination, there's always emotional distress,
19 of course. But not to the extent of, you know, what I
20 experienced, you know.

21 Q. Okay. Can you turn to Exhibit 154, please,
22 Mr. Keimbaye?

23 A. Okay.

24 Q. Is this a copy of the second lawsuit that you filed
25 against Kaiser?

1 A. That is after the -- they deny without prejudice.
2 And so, I renew it, yes.

3 MS. ROSEN: Okay. Your Honor, I move to admit
4 Exhibit 154.

5 THE COURT: Any objection?

6 MR. KEIMBAYE: No objection, Your Honor.

7 THE COURT: 154 is admitted.

8 (DEFENDANT'S EXHIBIT 154 RECEIVED INTO EVIDENCE)

9 MS. ROSEN: Permission to publish.

10 THE COURT: You may.

11 BY MS. ROSEN:

12 Q. So, Mr. Keimbaye, in this lawsuit, if you look at
13 page 6, lines 13 to 14, you claimed that a doctor asked your
14 coworkers which part of Africa you were from, correct?

15 A. Yes, she state that.

16 Q. And you believe that to be discriminatory?

17 A. The way she asked me, it was, you know, after, you
18 know, she was making those allegations against me. And the
19 way she asked me, it was in front of, you know, her sisters,
20 the two coworkers that I work with. And as she was asking
21 me, all of them started, you know, laughing and start talking
22 in their language. And it was pretty tough to try like to
23 understand the way she was asking me about, you know, the --
24 my origin and all those kinds.

25 Q. And when you say her sisters, they weren't

1 | literally her sisters, were they?

2 | A. I mean they speak same -- somehow, same language.

3 | Q. And so why do you refer to them as her sisters?

4 | A. Because she treat them very well, as, you know, her
5 | own sister in -- you know, in a very respectful way compared
6 | to me.

7 | Q. Okay. If you can go ahead and look at page 5,
8 | Mr. Keimbaye, lines 6 through 12, you said she -- is this
9 | what you're referring to as her sisters?

10 | A. Yes.

11 | Q. Okay. And you keep saying that -- that they're
12 | Romanian. Why is that important?

13 | A. Because between Romanian, Moldavian, and I believe
14 | that one of -- one of -- one of the female is from Ukraine, I
15 | believe. Somehow, they speak same language. I believe it
16 | was Romanian or Moldavian of some sort. And because they are
17 | from the same area, she respect them and, you know, treat
18 | them way better than the way she treated me.

19 | I mean, when I -- when I go into the -- came into
20 | work, even like a greeting, good morning, Dr. Stuffy [sic],
21 | it's like I'm greeting a tree not a human being. She would
22 | never respond to it.

23 | Q. Was there anyone else at Kaiser, other than her,
24 | that you thought was engaging in discriminatory behavior
25 | towards you or harassing you?

1 A. It's solely -- solely her. She was very, very rude
2 and disrespectful toward me. And I discover, you know, her
3 email statement about recommendation to remove me from the
4 OR, because if I continue to stay, I would cause a sentinel
5 event. And she went on to dramatize to the point where she
6 was going fully on for -- for -- for the OR to get me out.
7 And I learned all of those information from the Union,
8 because when the -- the Union took over, the Union went an
9 extra length to get all of the email communications. And
10 that's how I learned.

11 MS. ROSEN: Okay. Thank you.

12 You can take that down.

13 BY MS. ROSEN:

14 Q. Prior to working for Kaiser Bellevue, you've
15 mentioned this a couple times, you worked for Providence in
16 Portland on two different occasions, correct?

17 A. That is correct.

18 Q. Okay. And the first time that you worked at
19 Providence in Portland, you worked as a patient transporter;
20 is that right?

21 A. Pretty much because -- that is correct. Pretty
22 much, because while I was a full-time student at -- at -- at
23 the school, I was planning to get into a physician assistant
24 program. And so my first job -- by the way, my first job in
25 U.S., it was with the United States Postal Services as a --

1 THE COURT: I'm very sorry, Mr. Keimbaye, but
2 I'm --

3 THE WITNESS: Okay.

4 THE COURT: -- going to step in again --

5 THE WITNESS: Yeah.

6 THE COURT: -- because time is wasting.

7 THE WITNESS: Okay.

8 THE COURT: Please just answer counsel's
9 question. And don't provide a bunch of explanation or
10 biological information, please.

11 THE WITNESS: Thank you.

12 THE COURT: I'm sorry. I didn't mean
13 biological. Biographical information. Sorry about that.

14 BY MS. ROSEN:

15 Q. Mr. Keimbaye, you have a bachelor's degree from
16 Portland State University, correct?

17 A. That is correct.

18 Q. Okay. What is your bachelor's degree in? That was
19 a mouthful.

20 A. Organismal -- organismal biology/molecular cell --
21 cell biology.

22 Q. So while you were working at Providence Portland,
23 you were disciplined for tardiness twice, correct?

24 A. Twice because I -- yes, because I was a full-time
25 student at the university and taking molecular biology lab

1 and organic chemistry labs.

2 THE COURT: So I'm sorry, but I need to
3 interrupt again. Please just answer the question. If you
4 can answer it yes or no, just answer it yes or no.

5 THE WITNESS: Okay.

6 THE COURT: And please --

7 THE WITNESS: Okay.

8 THE COURT: -- don't explain unless counsel
9 asks you to explain. And, again, if explanations are needed,
10 you'll have an opportunity during redirect.

11 THE WITNESS: Appreciate it.

12 THE COURT: Thank you.

13 MS. ROSEN: Okay. Thank you.

14 BY MS. ROSEN:

15 Q. Mr. Keimbaye, would you please look at Exhibit 102
16 for me?

17 THE COURT: And I'm sorry. Did you say 102?

18 MS. ROSEN: Yes, Your Honor.

19 THE COURT: Uh-huh.

20 BY MS. ROSEN:

21 Q. And is this a copy of a disciplinary notice you
22 received for tardiness while you were at Providence Portland?

23 A. That is correct.

24 MS. ROSEN: Okay. Move to admit Exhibit 102,
25 Your Honor.

1 THE COURT: Any objection?

2 MR. KEIMBAYE: No objection, Your Honor.

3 THE COURT: All right. Thank you. Exhibit
4 102 is admitted.

5 (DEFENDANT'S EXHIBIT 102 RECEIVED INTO EVIDENCE)

6 MS. ROSEN: Permission to publish 102?

7 THE COURT: You may.

8 MS. ROSEN: Thank you.

9 BY MS. ROSEN:

10 Q. I'm not going to spend a lot of time on this,
11 Mr. Keimbaye. But this is just a corrective action notice
12 for tardiness while you were -- while you were working at
13 Providence Portland, correct?

14 A. Correct.

15 Q. Okay. And it says that your excessive occurrences
16 of absenteeism --

17 MS. ROSEN: It's down a little bit more.
18 Yeah.

19 BY MS. ROSEN:

20 Q. -- are degrading the ability of patient
21 transportation to provide consistent quality service. Do you
22 see where it says that?

23 A. Yes.

24 MS. ROSEN: Okay. And you can go ahead and
25 take that down.

1 BY MS. ROSEN:

2 Q. If you would turn your attention to Exhibit 103,
3 please, Mr. Keimbaye. That's 103. And this is a second
4 disciplinary notice from Providence Portland regarding
5 tardies, correct?

6 A. That is correct.

7 MS. ROSEN: Okay. Your Honor, move to admit
8 Exhibit 103.

9 THE COURT: Any objection?

10 MR. KEIMBAYE: No objection, Your Honor.

11 MS. ROSEN: Okay.

12 THE COURT: Thank you. 103 is admitted.

13 (DEFENDANT'S EXHIBIT 103 RECEIVED INTO EVIDENCE)

14 MS. ROSEN: Thank you. Permission to publish?

15 THE COURT: You may publish.

16 MS. ROSEN: Thank you.

17 BY MS. ROSEN:

18 Q. So, again, this is just another warning about
19 tardiness. Do you agree that you had excessive tardiness
20 while you were at Providence Portland?

21 A. No.

22 Q. Oh, you don't?

23 A. Say again.

24 Q. I said do you agree that you had excessive tardies
25 while you were at Providence Portland?

1 A. No.

2 Q. I want to move on a little bit to talk about your
3 claim for --

4 MS. ROSEN: And we can take that down.

5 BY MS. ROSEN:

6 Q. -- for emotional distress in this case. And I -- I
7 want -- I know it's a sensitive subject. If you need a break
8 or anything like that, just please let me know. I'm happy to
9 take a break. And I'm not trying to, you know, open wounds
10 for you, but we do need to talk about it, because you're
11 requesting that the jury consider that.

12 So you've never consulted a medical provider
13 regarding what you say happened to you at Providence Everett,
14 correct?

15 A. No.

16 Q. You've never seen a therapist about this alleged
17 emotional distress, correct?

18 A. No.

19 Q. You've never taken any medication to treat this
20 alleged emotional distress?

21 A. No.

22 Q. Okay. And you filed the Kaiser lawsuit two months
23 before you started at Providence. We talked about that,
24 correct?

25 A. Correct.

1 Q. Okay. And you were seeking emotional distress
2 damages in that case for what you say happened at Kaiser,
3 correct?

4 A. Yes, if I succeed. Yeah.

5 Q. Yeah. And was it -- was it stress -- was it
6 emotionally distressing to you to go through the Kaiser
7 litigation?

8 A. Say again.

9 Q. Was it emotionally distressing for you to go
10 through the Kaiser litigation?

11 A. Not to the extent of what I'm experiencing after
12 leaving Providence Everett.

13 Q. You talk about your car accident that you were in
14 on June 18, 2018, correct?

15 A. Correct.

16 Q. Okay. And you broke a piece of bone in your foot;
17 is that right?

18 A. Yeah. My fifth metatarsal on my right -- right
19 foot.

20 Q. And what other injuries did you sustain as a result
21 of that car accident? Let me -- let me rephrase that.
22 Thanks. What other injuries did you have as a result of that
23 car accident?

24 A. I mean, because -- because I was obligated, you
25 know, to go to the administrative leave meeting, and I was on

1 my way to there, and then on top of that, I have to
2 experience a motor vehicle accident on my way to that
3 meeting, I wouldn't have to had that injury had I not been on
4 the road on that day to Providence Everett for the meeting.
5 And so the emotional distress from having to struggle to be
6 on the road for the meeting and was the result of the --
7 the -- the emotional -- so that, you know, I am getting, you
8 know, from the motor vehicle accident. And so I was dealing
9 with emotional distress and pain due to the broken bone on
10 my -- my foot.

11 Q. Right. And I was asking what other injuries you
12 got. I know you broke a bone in your foot. It also said you
13 injured your back; is that right?

14 A. Yes, because it was a busy traffic. And the
15 traffic come to a full stop. And I was -- I remember
16 correctly. I was sitting in my car behind a Tesla car in
17 front of me. And all of a sudden, you know, I saw -- it
18 turned out to be a criminal defense lawyer rushing to her
19 trial court -- trial case in -- it's like Snoqualmie, I
20 believe.

21 Q. Snoqualmie?

22 A. Yes.

23 Q. Yeah. That's a --

24 A. And so she was coming from Renton, running late for
25 her court case. And so she was on the phone as well and from

1 50 to 60 miles per hour. It was busy traffic. So there was
2 no other way around for me to escape to the express line or
3 to the -- to the middle line. I was right next to the
4 express line.

5 And so, because I was sitting --

6 Q. Mr. Keimbaye, I -- I -- I appreciate the
7 description, but I -- we want to know -- I want to know what
8 injury you got as a result of that car accident.

9 A. My back, yes. My back, yes.

10 Q. And then I -- you had -- you were suffering from
11 severe migraines as a result of the car accident; is that
12 right?

13 A. My migraine, it's a -- it's a migraine. I have
14 migraine here and there before. But then after the car
15 accident, it was constant and through the -- all the
16 emotions. So the migraine -- after leaving my job from
17 Everett, the migraines pretty much three to four times per
18 week.

19 Q. And the driver who hit you was ruled to be the one
20 at fault, right? In other words, she was at fault. You were
21 not?

22 A. Yes. Yes. She and her insurance, they -- they
23 accept 100 percent liability in their statement.

24 Q. And you ended up suing her, correct?

25 A. Because they were literally trying not to cover all

1 my damages claim. And so I have to take legal action, you
2 know, in order to claim, so that, you know, I can get a
3 proper compensation.

4 Q. And you represented yourself in that lawsuit as
5 well, correct?

6 A. That is correct.

7 Q. And you actually tried that case, correct?

8 A. That is correct.

9 Q. And were you awarded damages?

10 A. Yes.

11 Q. How much were you awarded?

12 A. They awarded 20,000, but, you know, they left out
13 all the claim for pain and suffering or, you know, wage
14 losses, all those kinds of stuff. So I -- I -- I complain
15 about it, and I appeal it.

16 Q. And you were claiming damages for emotional
17 distress in that lawsuit, correct?

18 A. I had to, yes.

19 Q. Mr. Keimbaye, if you look at Exhibit 156, please.

20 THE COURT: I'm sorry. Say the number one
21 more time.

22 MS. ROSEN: 156, Your Honor.

23 THE COURT: 156.

24 THE WITNESS: Okay.

1 BY MS. ROSEN:

2 Q. And is this a copy of the lawsuit you filed against
3 the driver of the car?

4 A. Yes.

5 MS. ROSEN: Your Honor, move to admit Exhibit
6 156.

7 THE COURT: It's a very long exhibit. Are all
8 the attachments part of the complaint?

9 MS. ROSEN: Yes.

10 THE COURT: Okay.

11 Mr. Keimbaye, do you have any objections to
12 admission of Exhibit 156?

13 MR. KEIMBAYE: No, Your Honor.

14 THE COURT: 156 is admitted.

15 (DEFENDANT'S EXHIBIT 156 RECEIVED INTO EVIDENCE)

16 MS. ROSEN: Okay. Permission to publish 156.

17 THE COURT: You may publish.

18 BY MS. ROSEN:

19 Q. Okay. Mr. Keimbaye, if you look at -- I know this
20 is a long exhibit. But if you'd look at page 3 of the
21 exhibit for me. It's actually on the complaint part. So
22 it's complaint page 3. Are you on that page?

23 A. Yes.

24 Q. Okay. And you were -- you were making plans for
25 emotional and financial suffering due to the collision,

1 correct?

2 A. Yes.

3 Q. And because of the collision, you were unable to
4 work, correct?

5 A. Well, I have -- I had a broken bone on my feet.

6 Q. Right.

7 A. But --

8 Q. I'm assuming you can't be an anesthesia tech if you
9 can't stand, right?

10 A. I wouldn't say that I -- I can't stand.

11 Q. Okay.

12 A. But --

13 Q. Looking at page 5 of the complaint, if you would
14 turn your attention to that.

15 A. Yes.

16 Q. You, again, asked for -- oh, no. I'm sorry. Yeah,
17 page 5. You asked for emotional distress damages, correct?

18 A. Yes. I mentioned earlier. Yes.

19 MS. ROSEN: Okay. Thank you.

20 You can take that down.

21 BY MS. ROSEN:

22 Q. You talked a little bit about what happened to you
23 at the Hyatt Hotel earlier.

24 A. True.

25 Q. And I just want to go over that briefly.

1 A. Yeah.

2 Q. So that was in October 2018, correct?

3 A. October 7.

4 Q. Okay.

5 A. Yeah.

6 Q. So that was roughly four months after you left
7 Providence?

8 A. Say again.

9 Q. Was that -- was the incident at the Hyatt Hotel
10 roughly around four months after you left Providence?

11 A. Something like that.

12 Q. Okay. And you were also injured in that assault,
13 correct?

14 A. I was knocked out unconscious, yes. I have -- I
15 have the video.

16 Q. You had a concussion, correct?

17 A. True.

18 Q. And you had a collapsed lung; is that right?

19 A. Say again.

20 Q. You had a collapsed lung?

21 A. At the beginning, that's -- that's -- that's
22 what -- it felt like it. But then after they conduct -- they
23 did a CT scan first, and they realized that, you know, I may
24 have something like that, yes.

25 Q. And you mentioned earlier that you have a mass in

1 your lung; is that right?

2 A. Yes. It's -- it's -- it's -- that's that -- after
3 the CT scan, that's what that's -- that's when they discover.
4 And it was not, you know, from the assault.

5 Q. Has -- have you been diagnosed with anything as a
6 result of the mass in your lung?

7 A. Yes.

8 Q. What?

9 A. It was thymoma.

10 Q. I'm sorry. Can you --

11 A. Thymoma.

12 Q. Okay. Do you -- can you -- and you -- because
13 you're in the medical field, can you explain to us what that
14 is?

15 A. It's -- have you heard about thymus gland?

16 Q. No.

17 A. Thymus gland.

18 Q. Oh, thymus gland?

19 A. Yes.

20 Q. Okay.

21 A. Yeah. So the cancer is -- part of it is called
22 thymoma.

23 Q. Oh. So you've been diagnosed with cancer?

24 A. Yes.

25 Q. And what kind of cancer?

1 A. That's the -- that's the name I'm calling, thymoma.

2 Q. Oh, okay. And have you received any treatment for
3 the cancer?

4 A. The only recommendation was to have a -- an open
5 heart surgery. And so I told them that I would -- I would
6 need to wait on this, because I don't have my mom here and my
7 sister here, anybody. And so this is a -- this is something
8 that, you know, I cannot decide on my own. And why if I
9 decide to go through and not having my -- my own mother
10 around to care for me while in bed, it will be a challenge
11 for me. So it --

12 Q. So you were diagnosed with this cancer in 2018?

13 A. Right after the assault, yes.

14 Q. Okay. And you have not had it treated?

15 A. I've been constantly, you know, checking in with
16 the providers. Yes. And they have been suggesting, you
17 know, for me to do chemotherapy of some sort.

18 Q. Okay. And you sued the person that -- that hit you
19 in the Hyatt, correct?

20 A. That is correct. Yes.

21 Q. Okay. And you claimed as a result --

22 A. Actually, the city of Bellevue sued the person
23 first.

24 Q. Right. But then you brought a civil lawsuit
25 against him, right?

1 A. Well -- well, yes, because I have to attend the
2 city, you know, lawsuit against him first and then file mine
3 later.

4 Q. And you're representing yourself in that lawsuit as
5 well?

6 A. Well, I -- I was represented by a law firm first.

7 Q. But are you now representing yourself?

8 A. Oh. The case is actually over, because the -- the
9 individual did not even appear or responded to my -- to my
10 complaint. And so this -- one of the judges from this --
11 this court rule in favor of the -- of my case as default
12 judgment. Yes.

13 Q. Okay. Go ahead and look at Exhibit 157, please.

14 A. 157.

15 Q. Yes. And is this a copy of your lawsuit against
16 the individual who hit you?

17 A. Yes. This is the copy against Mr. Bagdasarov.

18 MS. ROSEN: Okay. Your Honor, move to admit
19 Exhibit 157.

20 THE COURT: Any objection, Mr. Keimbaye?

21 MR. KEIMBAYE: No objection, Your Honor.

22 THE COURT: Exhibit 157 is admitted.

23 (DEFENDANT'S EXHIBIT 157 RECEIVED INTO EVIDENCE)

24 MS. ROSEN: Thank you. Permission to publish.

25 THE COURT: You may.

1 BY MS. ROSEN:

2 Q. Mr. Keimbaye, can you look at the second page of
3 your lawsuit?

4 A. Okay.

5 Q. I'm sorry. Actually, if you could look at the
6 first page, where it says Complaint For. Did you believe
7 that this individual assaulted you based on your race and
8 national origin?

9 A. I thoroughly believe so, because when the
10 conversation or their aggressiveness started toward me, they
11 were literally making monkey sounds toward me, woo-woo-woo,
12 before starting talking to me. And it was uncomfortable.
13 And so I recognize one individual, which is the one that I
14 mentioned here. Where I live in downtown Bellevue, on our
15 first floor, there's a coffee shop in there. It's called a
16 French bakery.

17 And sometimes, when I came down to the first floor
18 to go to the patio here, you know, sitting outside or, you
19 know, getting my car, driving somewhere, I -- I recognize the
20 individual, you know, coming to the coffee shop sitting
21 there, you know, using his laptop and doing some work there.
22 And shocking that when I was there at that restaurant, at the
23 Suite, at the Hyatt Hotel, he was there with his buddies.
24 And it turned out on that night, one of the UFC gets -- is it
25 okay to explain?

1 Q. You know, I -- we're running a little short on
2 time. I was just asking you if you thought -- if you thought
3 the assault was motivated by your race and national origin?

4 A. It is motivated, because all of them were like --
5 you know, after, you know, the --

6 Q. Okay. And as a result of that assault, you said
7 you had chest pains, migraine, and unstable blood pressure
8 and a collapsed lung, and a concussion, right?

9 A. The assault happened when I was not aware that, you
10 know, the individual would assault me. And so I was fairly
11 unconscious. And as you know, inside the hotel, it's a
12 concrete floor. I hit my head against the ground.

13 Q. Okay. Let's look at page 3 of your complaint. And
14 you were asking, again, for emotional suffering damages,
15 correct?

16 A. Of course, I -- I should have. I should.

17 Q. And you indicate this person was a member of the
18 Russian mafia?

19 A. No. I was describing it. They act -- they act
20 like it, because when they -- when they show up at the French
21 bakery next to my building, I mean you cannot describe, you
22 know, what exactly they're doing. But you know, it's --
23 every single time, it's a group -- group of, you know, ten to
24 15 people there, but you don't know -- you know, every single
25 day, you have no idea that what kind of business they're

1 doing here, and smokings and, you know, doing all sort of
2 kind of things that, you know -- that's -- that's how I was
3 describing.

4 Q. Okay. Mr. Keimbaye, I don't have any further
5 questions.

6 A. Thank you.

7 MS. ROSEN: Thank you.

8 THE COURT: Okay.

9 Mr. Keimbaye, was there anything else that you
10 wanted to testify to the jury about based on the questions
11 that Ms. Rosen asked you during your cross-examination?

12 THE WITNESS: I believe, you know, I should be
13 able to clarify about the tardiness, the two tardiness that
14 was entered into evidence.

15 THE COURT: Go ahead.

16 **DIRECT TESTIMONY CONTINUED**

17 MR. KEIMBAYE: During that time, you know,
18 I -- I had -- I had extra length communication with my
19 supervisor for the first -- for the first and second
20 correction that -- for tardiness that, you know, Ms. Rosen
21 was talking about. I was taking -- I was a full-time
22 student, more than 12 credits because -- because I have to
23 stay strong to get educated, so that, you know -- I had an
24 opportunity, and I am so thankful, to legally move to this
25 country.

1 And I was taking the opportunity to improve my
2 education even though I had a degree back home. It's
3 not -- it's not worth it here. I have to start everything
4 from -- from square, taking English, because a second
5 language. Go through English first at the Portland Community
6 College. Get into general science. The goal was to get into
7 a physician assistant program or pharmacy -- pharmacy school.

8 And so I was full time. But at some time, I
9 have to survive. So I got that job at the hospital as a
10 patient transporter to familiarize myself with the medical
11 settings. And so I was full time dealing with, you know --
12 it's like curriculum of the classes from 7:00 a.m. to 2:00
13 p.m. And then right after getting out from -- from school, I
14 have to rush to work. And my school is far away from my
15 workplace. And so, my start time is only 30 minutes, 2:30,
16 that I have to start with -- have to be on the job at 2:30.
17 And I got out from school at 2:00 p.m.

18 And so the struggle is there with, you know,
19 commute, you know, to get there on time. And I put them on
20 notice. But because of the policy, you know, you know, even
21 if, you know, you explain in length, you know, your
22 struggles, nobody would believe you about the -- would side
23 with -- side with you because, you know, of your struggle,
24 you know, to -- to get there on time from school, you know,
25 and get to work. And that's the reason why I have a few

1 tardiness.

2 But the -- you know, they mentioned that I
3 have two absence. So I mean I'm not sure if that --
4 they -- they -- they mentioned that correctly, because I
5 would never, you know, decide on my own not showing up or
6 communicate with my -- my workplace at all and not showing up
7 for work. And so I -- I saw two. And it's pretty tough to
8 kind of like, you know, convince anyone about, you know,
9 they -- what they put on my -- on my list.

10 And on top of that, the whole department, when
11 I get to work, they should appreciate, you know, what I have
12 done for them, because they schedule people that -- I mean, a
13 bunch of people, like eight anesthesia technician, schedule
14 them from 6:30 to 2:00 p.m. 2:00 p.m. That's mid --
15 actually, slightly midday. But when I get there at -- at --
16 at -- at 2:30, the whole OR rooms and department is under my
17 -- my charge. Everybody else, you know, get off -- get off
18 from their shift at -- at 2:30.

19 How can one individual cover 25 rooms or 30
20 rooms -- 30 operation rooms by himself? I'm a workaholic. I
21 have done a lot, a lot, a lot throughout my time at
22 Providence Portland and Providence Stevenson. But for them,
23 to not be able to see through that I was doing my best to
24 stay in school and work to make living and then make those
25 judgments, I understand.

1 This one man that -- this one man that brought
2 me to life. And I am so thankful of his education and
3 teaching. My dad would tell us real men need to work through
4 thirst and hunger. If you want to be a real man, and you put
5 food first and break, you would have all kind of issue in
6 your entire life. And I have -- I have worked side by side
7 with my dad as young boy. We would work tirelessly. And
8 that habit stayed with me.

9 But here, in America culture, you have to take
10 your break. You have to take your lunch break. And even
11 though you are doing it with passion, commitment, and you
12 keep on working, not taking your break or taking your lunch
13 on time, it's an issue. And that's why I'm getting all kind
14 of those blames. But I am taught and educated to work. And
15 when I work, I -- when I'm at work, I might be, you know,
16 heading to the break room for water, snack, and get back to
17 it. And that's the habit I have. I'm not a lazy person.

18 And I am so thankful that I received that
19 teaching. And it is the result of what I'm experiencing
20 right now, because I am able to provide for myself and take
21 care of myself, because I don't stay on the corner of the
22 street to sell any sort of, you know, basic stuff, you know,
23 to make a living off. I work hard to -- to earn my living.
24 And I'm happy. I'm happy. I don't depend on anybody else.
25 And I have hard time asking for help myself. That's who I

1 am. Thank you.

2 THE COURT: Thank you, Mr. Keimbaye. Is that
3 it?

4 THE WITNESS: Yes, Your Honor.

5 THE COURT: All right. Thank you, sir. Feel
6 free to step down.

7 THE WITNESS: Thank you.

8 (Witness excused.)

9 THE COURT: All right. Mr. Keimbaye, do you
10 have another witness you wish to call? I understand Mr. John
11 is here. I haven't seen him in the courtroom, but defense
12 counsel indicate that he's here.

13 MS. ROSEN: He is here. I wonder if, though,
14 since we're ten minutes to lunch, if we should just come back
15 a little early from lunch. Or what do you want to do, Your
16 Honor?

17 THE COURT: Let me check my schedule. I might
18 be able to do that if I don't have a meeting. Yeah, I think
19 we can do that.

20 All right. Will that be a problem for any of
21 the jurors if we resume at 1:15 instead of resuming at 1:30?
22 All right. So we'll go ahead and take the recess at this
23 time then. And if you all could please be back about ten
24 minutes early, and J. will give you that -- those directions.
25 Have a good lunch.

1 Please remember to keep your minds open.
2 Don't communicate about the case or expose yourself to
3 information related to the case.

4 THE BAILIFF: Court stands in recess.
5 (Jury exits at 10:47:50 a.m.)

6 THE COURT: All right. Anything before we got
7 off the record? All right. Thanks, everybody.

8 MS. ROSEN: Thank you.

9 THE COURT: We'll see you back at 1:15.
10 (Recess at 11:48:50 a.m., recommencing at 1:08:28 p.m.)

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1 SEATTLE, WASHINGTON

2 THURSDAY, SEPTEMBER 7, 2023

3 AFTERNOON SESSION - 1:15:45 P.M.

4 JURY TRIAL (DAY 3):

5 (The following proceedings were held outside the presence of
6 the jury:)

7 THE COURT: Thank you very much. Please feel
8 free to sit. Are we ready for our jurors?

9 MS. ROSEN: I think so, Your Honor.

10 THE COURT: Very good.

11 Are you ready, Mr. Keimbaye?

12 MR. KEIMBAYE: Yes, Your Honor.

13 THE COURT: Very good.

14 THE BAILIFF: Please rise for the jury.

15 (Jury enters at 1:16:28 p.m.)

16 THE BAILIFF: One more juror, Your Honor.

17 THE COURT: Okay.

18 All right. Welcome. Please be seated,
19 members of the jury. Good afternoon.

20 Mr. Keimbaye, are you ready to call your next
21 witness?

22 MR. KEIMBAYE: Yes. I would like to call
23 Defendants' witness, Mr. John.

24 (Witness summoned.)

25 THE COURT: Okay. Good afternoon, Mr. John.

1 I'm Judge Darvas. And you've been called as a witness. So
2 if you could come up here, this is the witness chair. But,
3 before you sit down, I need to swear you in. So, sir, if you
4 could raise your right hand for me, please.

5 Do you swear or affirm that the testimony you
6 will give in this matter will be the truth, the whole truth,
7 and nothing but the truth?

8 MR. JOHN: I do.

9 **TRAVIS JOHN,**

10 called as a witness for the Plaintiff, having been
11 duly sworn, testified as follows:

12 THE COURT: Thank you. Have a seat, please.
13 And feel free to adjust that microphone so it's close to your
14 mouth.

15 And, Mr. Keimbaye, you may begin.

16 MR. KEIMBAYE: Thank you, Your Honor.

17 **DIRECT EXAMINATION**

18 BY MR. KEIMBAYE:

19 Q. Mr. John?

20 A. Yes.

21 THE COURT: Oh. I'm sorry. I know you
22 probably haven't had too much practice at this. Please start
23 by asking the witness to state and spell his name, and to
24 give us his mailing address. Okay? And then please proceed
25 with your questions.

1 MR. KEIMBAYE: Thank you, Your Honor.

2 BY MR. KEIMBAYE:

3 Q. Would you please state and spell your full name and
4 your mailing address?

5 A. Yes, I will. My name is -- first name is Travis,
6 T-r-a-v-i-s, last name John, J-o-h-n. And my address is -- I
7 just moved, so it's 5218 Bellflower Boulevard, Lakewood,
8 California, 90713.

9 Q. Mr. John, do you recognize hiring and working with
10 Mr. Keimbaye?

11 A. Yes, I do.

12 Q. You have met Mr. Keimbaye after his new employee
13 orientation with the HR team on December 27th, 2027 [sic]?

14 A. The 27th? Yes, I do.

15 Q. You then took him to the main surgery floor to give
16 him a tour and introduced him to his anesthesia tech, Tim,
17 and coworkers?

18 A. Yes. I do remember that.

19 Q. Soon after Mr. Keimbaye met with his team, you
20 pulled him out from the anesthesia tech room and handed him
21 off to Mr. Kortendick?

22 A. Yes.

23 Q. There, you stated to Mr. Keimbaye that
24 Mr. Kortendick was going to -- to be his main supervisor and
25 trainer from now on going forward?

1 A. Not specifically, no.

2 Q. What was your statement?

3 A. So our anesthesia department was arranged to have
4 rotating preceptors. So all the anesthesia technicians have
5 various skills to bring to the table and to teach the new
6 hires. So the precepting orientation and training would be
7 assigned on a rotational basis.

8 Q. So you had not stated that Mr. Kortendick was going
9 to be anesthesia tech lead supervisor and training for the
10 new employees?

11 A. Yeah.

12 MR. KEIMBAYE: Your Honor, was he under oath?
13 Did he swear in?

14 THE COURT: I swore him in exactly the same
15 way I swore you in, Mr. Keimbaye.

16 MR. KEIMBAYE: When was that?

17 THE COURT: Just before he sat down on the
18 witness stand.

19 BY MR. KEIMBAYE:

20 Q. Didn't you say to Mr. Keimbaye that Mr. Kortendick
21 is going to be his main supervisor and trainer?

22 MS. ROSEN: Objection, Your Honor. It's been
23 asked and answered.

24 THE COURT: I'll allow it.

25 THE WITNESS: No. I did not state that.

1 BY MR. KEIMBAYE:

2 Q. You state to Mr. Keimbaye -- thereafter that
3 conversation, you state to Mr. Keimbaye that you usually
4 dealt with the front office management because the OR
5 administrator and manager, Mr. Roehrich, was retiring?

6 A. So I floated back and forth at that point with
7 Mr. Roehrich -- with Dan Roehrich -- Mr. Roehrich, as he was
8 the interim OR manager, but I was the anesthesia technician
9 supervisor at that time.

10 Q. But you were -- you were dealing with the front
11 office management as well?

12 A. No. I was over day-to-day operations of the
13 department, specifically anesthesia.

14 Q. Soon after Mr. Keimbaye start with his own job
15 orientation and employment, Mr. Keimbaye brought immediately
16 to your attention that he was new to a long drive to work,
17 and that he would -- he would be commuting late to work
18 because he lived in downtown Bellevue, about 40 miles from
19 Everett?

20 A. What was the question, though? I apologize.

21 Q. Yes. Mr. Keimbaye brought immediately to your
22 attention about -- to your attention that he was new to a
23 long drive to work, and that he was going to come in late to
24 work because he lived in downtown Belleville, about 40 miles
25 away from Everett; is that correct?

1 A. I remember you mentioning your -- where you live
2 currently.

3 Q. So that's the -- that was the correct statement,
4 yes?

5 A. No. So you mentioned that you lived in Bellevue
6 and had a long commute, and I acknowledged that.

7 Q. At the same time, Mr. Keimbaye stated it was going
8 to be a challenge for him to get to work on time, yeah?

9 A. And I believe I encouraged you to, you know, learn
10 the commute and adjust your departure time accordingly, to
11 ensure that you were on time.

12 Q. Let's move on. From there on, you then told
13 Mr. Keimbaye not to worry about it, but to call you anytime
14 if he was going to run late to work?

15 A. I told you to --

16 Q. So that the -- you would --

17 THE COURT: So, I'm sorry, Mr. Keimbaye. I
18 think this will go a lot better if you ask shorter questions,
19 because you're asking questions with multiple parts --

20 MR. KEIMBAYE: Okay.

21 THE COURT: -- and it can make it hard for the
22 witness to respond accurately when you do that.

23 MR. KEIMBAYE: Okay. Appreciate it, Your
24 Honor. Thank you.

25 BY MR. KEIMBAYE:

1 Q. You then told Mr. Keimbaye not to worry about his
2 long commute, but to call you right away if he was -- he was
3 going to show up late?

4 A. I told you to let me know if you were having
5 challenges, and I could assist you with your departure time.

6 Q. And that you would be able to get his room checked
7 out for him?

8 A. No.

9 Q. Let me rephrase this. If Mr. Keimbaye was going to
10 run late -- more than 15 minutes late, he should contact you
11 so that, you know, you can have -- have his coworkers prep
12 his room for him?

13 A. It's a matter of patient safety. If the room is
14 not set up for OR start time, then, yes, we need to be aware
15 if you're not going to be present. And that way, we can make
16 sure that the room is prepped.

17 Q. You then told Mr. Keimbaye you could see yourself
18 in Plaintiff's situation because your wife had been commuting
19 from Everett to Bellevue to work as a cook or chef?

20 A. So what I explained was that my wife was a chef and
21 worked in Bellevue and had to work in the opposite direction.
22 And to ensure that she arrived on time, she utilized Google
23 Maps and was able to map from home to her destination
24 accordingly and track down her estimated arrival time and
25 base her departure on the estimated arrival time. And I

1 demonstrated these tools, actually, to assist, because a
2 longer commute --

3 Q. Mr. John, this is a yes or no, not an explanation
4 about this statement.

5 A. Well, could you repeat the statement one more time,
6 please?

7 Q. You then told Mr. Keimbaye you could see yourself
8 in Mr. Keimbaye's situation because your wife had a long
9 commute from Everett to downtown Bellevue to work as a chef?

10 A. I mentioned that my wife had a long commute.

11 Q. And your wife had been commuting for about one to
12 two hours late to work at the Microsoft building in Bellevue?

13 A. No.

14 Q. You then state that you were -- you were so
15 thankful that her coworkers and managers didn't care because
16 they love her?

17 A. No. I never said that.

18 Q. You later told Mr. Keimbaye that he shouldn't worry
19 about his timecard clocks because you would review and
20 approve it?

21 A. No.

22 Q. During your conversation with Mr. Keimbaye, you
23 demonstrate and portrayed yourself as a supportive coworker
24 and supervisor?

25 A. Yes.

1 Q. And you appear to be easy to communicate with and
2 honest?

3 A. Yes.

4 Q. On one occasion, we were all standing in the
5 anesthesia workroom, and you show up to stand probably six
6 feet from Mr. Keimbaye, and along with Mr. Kortendick,
7 Mr. Ramos, and Anthony, do you remember that?

8 A. There were numerous times that I worked with
9 everyone in the anesthesia workroom. It would have to be a
10 specific example.

11 Q. Do you remember telling Plaintiff why he move
12 from -- to Seattle, Bellevue area?

13 A. No. I don't remember that.

14 Q. Do you remember Plaintiff telling you he moved from
15 Portland, Oregon to Seattle area?

16 A. You mentioned that during the interview, I believe.
17 Yes.

18 Q. But not in the workroom to you personally?

19 A. I don't remember a specific example of this,
20 Dominique. I'm sorry. Mr. Keimbaye, I'm sorry.

21 Q. During your -- your conversation with Mr. Keimbaye
22 in the anesthesia workroom, you stated you went to Portland,
23 Oregon for ASATT, which stands for American Society of
24 Anesthesia Technologists & Technicians meeting at OHSU?

25 A. No. The only ASATT meeting I've attended was in

1 | Denver, Colorado. It was at the children's hospital --
2 | University of Denver Children's.

3 | Q. So you never stated that you went to Portland,
4 | Oregon at the OHSU for ASATT meeting between the 26th in
5 | 2017?

6 | A. No. I never did.

7 | Q. With Mr. Kortendick?

8 | A. No. I never did.

9 | Q. You never had that conversation with Mr. Keimbaye
10 | at all?

11 | A. No. I did not.

12 | Q. In that anesthesia workroom, you state that you and
13 | your buddy, Mr. Kortendick, went to Portland somewhere around
14 | 2016, 2017 for ASATT meeting, and that you loved the city of
15 | Portland?

16 | A. I said that I love Portland. But I have never been
17 | to Portland for an ASATT meeting.

18 | Q. Have you ever been to Portland?

19 | A. Yes.

20 | Q. When was that?

21 | A. 2019 was the last time I was there.

22 | Q. Was that the first time you -- you have been to
23 | Portland?

24 | A. No.

25 | Q. So when was the first time you went to Portland?

1 A. I've -- my dad's from Oregon, so I've gone to
2 Portland many, many times, starting from the age of three.

3 Q. In the anesthesia workroom, you stated that you and
4 your buddy Mr. Kortendick attended ASATT regional meeting for
5 credit toward your recertification as an anesthesiologist
6 technician; am I correct?

7 A. No.

8 Q. In that -- in that trip, you and your buddy,
9 Mr. Kortendick, along with Megan Rich (phonetic), all three
10 of you guys went to that meeting?

11 A. No.

12 MS. ROSEN: Your Honor, at this point, I
13 believe he's badgering the witness. He's already said he
14 never went to the meeting.

15 THE COURT: He said he didn't attend that
16 meeting, Mr. Keimbaye. So I'm not sure how much utility
17 there is for you to keep asking him the same question.

18 BY MR. KEIMBAYE:

19 Q. Do you agree that you and Mr. Keimbaye were
20 constantly in contact via work phone and in-person
21 conversation?

22 A. We maintained open lines of communication. Yes, I
23 agree.

24 Q. Do you agree that you were well-aware Mr. Keimbaye
25 was authorized by you to take ACLS courses?

1 A. No.

2 MR. KEIMBAYE: Your Honor, let's look at
3 Exhibit 50.

4 THE COURT: 50? I think this is in evidence.
5 Let me double-check. I have the clerk nodding to me that --

6 MR. KEIMBAYE: It was admitted.

7 THE COURT: -- indeed it is in evidence. So,
8 yeah. That's fine.

9 MS. ROSEN: Do you want me to bring the
10 notebooks up to Mr. John?

11 THE COURT: That would probably be easier --

12 MS. ROSEN: Yeah.

13 THE COURT: -- because I don't know that
14 Mr. Keimbaye has the ability to put it on the screen.

15 MS. ROSEN: That's fine. So, Travis, they
16 want you to look at Exhibit 50, which is in this notebook.
17 So everything under 100 is in here.

18 THE WITNESS: Okay.

19 MS. ROSEN: And everything over 100 is in
20 here.

21 THE WITNESS: Excellent.

22 MS. ROSEN: Sorry.

23 THE COURT: Feel free to put that aside. I
24 wish we had a little table there.

25 THE WITNESS: No worries.

1 THE COURT: We're going to try to get one, one
2 of these days.

3 THE WITNESS: I know how that goes. No
4 problem at all.

5 BY MR. KEIMBAYE:

6 Q. Have you seen it?

7 A. Yes, I have.

8 Q. Do you remember receiving that email from
9 Ms. McLaren?

10 A. I don't, honestly, Dominique. I'm sorry.

11 Q. She addressed it to you?

12 A. Yes.

13 Q. And you did not receive it?

14 A. I should explain. At that point, I was getting two
15 to 300 emails a week, and it was impossible for me to
16 acknowledge and answer all of them. So I did not respond to
17 this one, I don't think. And I don't see any response to it.

18 Q. She was asking for your approval in order to
19 register Mr. Keimbaye to take ACLS courses, wasn't she?

20 A. That appears what it is in the email, yes.

21 MR. KEIMBAYE: Your Honor, if it please the
22 Court to display Exhibit 40 so the --

23 THE COURT: I don't have the ability to
24 display an exhibit for you.

25 MR. KEIMBAYE: Okay.

1 THE COURT: If you -- if you want to publish
2 it, it can be taken out of the notebook and passed around to
3 the jurors, although it's really short. So it might be
4 faster to just read it.

5 MS. BURNHAM: Your Honor, we're happy to
6 display it for Mr. Keimbaye.

7 THE COURT: Oh. You want to do that?

8 MS. ROSEN: Yeah.

9 THE COURT: Okay.

10 MS. BURNHAM: We're happy to do that.

11 THE COURT: All right.

12 MS. BURNHAM: We'll put it up for you.

13 MR. KEIMBAYE: Appreciate it. Thank you.

14 THE COURT: All right. Thank you very much.

15 BY MR. KEIMBAYE:

16 Q. There, Ms. McLaren say, good morning. Dominique
17 would like BLS, ACLS, and PALS, RQI assignment in
18 HealthStream. Before I make those assignment, I need copies
19 of her current ACLS, BLS, and PALS, if any.

20 So is she required to have all precertification for
21 job requirement? She was addressing it to you, and you
22 haven't received it?

23 A. I -- clearly, it was in my inbox, but I did not
24 respond to it, nor did I see it, nor do I have recollection
25 of seeing it. I'm sorry.

1 Q. You do know that you're under oath?

2 A. I'm aware. Thank you.

3 MR. KEIMBAYE: Your Honor, let's move on to
4 Exhibit 21. It was not admitted, I believe.

5 THE COURT: No. 21 is not in evidence.

6 BY MR. KEIMBAYE:

7 Q. Right after that email you received from
8 Ms. McLaren, you asked Mr. Keimbaye to email you, look at
9 the -- my apologies -- of the -- this is probably like page
10 5, down in the bottom of the page 5.

11 THE COURT: I'm sorry. Are you still
12 referring to Exhibit 20, Mr. Keimbaye?

13 MR. KEIMBAYE: 21. 21. Yes.

14 THE COURT: 21?

15 MR. KEIMBAYE: Yes.

16 THE COURT: Okay.

17 MS. ROSEN: It hasn't been admitted, Your
18 Honor.

19 THE COURT: I know.

20 MR. KEIMBAYE: Yes.

21 THE COURT: So it's not admitted. So we're
22 not going to talk about what's in here. You can ask the
23 witness to identify it if he's familiar with it. But we're
24 not going to talk about what's in this exhibit unless it's
25 admitted into evidence.

1 MR. KEIMBAYE: Okay. Thank you, Your Honor.

2 BY MR. KEIMBAYE:

3 Q. That is page 5, down at the bottom of the -- of the
4 page.

5 THE COURT: So I think, Mr. Keimbaye, these
6 aren't numbered one through five, but they do have stamped
7 Bates numbers in the bottom right-hand corner?

8 MR. KEIMBAYE: Yes.

9 THE COURT: It would probably be most clear --

10 MR. KEIMBAYE: Okay.

11 THE COURT: -- if you tell us which Bates
12 stamp number you'd like the witness to be looking at.

13 MR. KEIMBAYE: Okay. Bates PRMCE --

14 THE COURT: Just the last four digits.

15 MR. KEIMBAYE: Okay. 001132.

16 THE COURT: Okay.

17 BY MR. KEIMBAYE:

18 Q. Are you there?

19 A. Yes, I am.

20 Q. There, Mr. Keimbaye emailed you and said, Hello,
21 Travis, here is --

22 THE COURT: No. No. Don't -- don't read from
23 it because it's not admitted in evidence.

24 MR. KEIMBAYE: Your Honor?

25 THE COURT: Yes.

1 MR. KEIMBAYE: I'd like this exhibit to be
2 admitted.

3 THE COURT: Is there an objection?

4 MS. ROSEN: No, Your Honor.

5 (PLAINTIFF'S EXHIBIT 21 RECEIVED INTO EVIDENCE)

6 THE COURT: All right. Exhibit 21 is
7 admitted. Now you can read from it.

8 MR. KEIMBAYE: Appreciate it.

9 BY MR. KEIMBAYE:

10 Q. After you received the email from Ms. McLaren,
11 Mr. Keimbaye emailed you his BLS certification. Can you see
12 that?

13 A. Hello, Travis. Here's the BLS certification. Yes.
14 I see that. Thank you.

15 Q. Mr. Keimbaye also emailed that same BLS to Karla
16 Brunner on -- my apologies.

17 Let's look at that same page, the top of the page.
18 Mr. Keimbaye emailed Ms. Brunner and said, My BLS is not due
19 until November 2019. And stated, why should I renew it now
20 or do the new assignment, mannequin [sic] that you just
21 posted on HealthStream? And Mr. Keimbaye say, Can I please
22 complete the last two questions to finish my ACLS
23 certification? Do you see that?

24 A. Yes, I do.

25 Q. Let's look at 001133.

1 A. Yes.

2 Q. You -- earlier, you said you're not aware that
3 Mr. Keimbaye was taking the ACLS?

4 MS. ROSEN: Objection, Your Honor. That
5 misstates his prior testimony.

6 THE COURT: Well, just ask a question, please,
7 Mr. Keimbaye.

8 BY MR. KEIMBAYE:

9 Q. Do you agree now that Mr. Keimbaye was taking ACLS?

10 A. I was under the impression you were taking ACLS
11 through a third-party provider, not provided by the health
12 system -- by Providence.

13 Q. So you didn't approve it?

14 A. I did not.

15 Q. But you had received a request from Ms. McLaren to
16 approve it?

17 A. Yes. But that was never responded to.

18 Q. The only way she could register Mr. Keimbaye was to
19 get an approval from you, isn't it?

20 A. Correct.

21 Q. You and Mr. Keimbaye were aware that he could only
22 study and complete his ACLS during work hours or after work
23 hours?

24 A. What was the -- I'm sorry, can you clarify that for
25 me? I'm sorry.

1 Q. You and Mr. Keimbaye were taught by Ms. Bruner that
2 he could only take ACLS during his work hours or after work
3 hours?

4 A. No. I was not aware of that.

5 Q. Do you remember getting a text messages from
6 Mr. Keimbaye from his personal phone, asking him to stay and
7 work on his ACLS courses?

8 A. I don't recall it mentioning ACLS courses.

9 MR. KEIMBAYE: Your Honor, if -- if Plaintiff
10 can take a look at Exhibit 14, please -- 014.

11 THE COURT: That's in evidence.

12 MR. KEIMBAYE: Counsel, if you wouldn't
13 mind --

14 MS. BURNHAM: You want to pull it up?

15 MR. KEIMBAYE: Yes, please.

16 MS. ROSEN: Mr. Keimbaye, would you like me to
17 hold this up, since it's kind of -- it's a cord issue. I can
18 hold it up for you.

19 THE COURT: I doubt they'll be able to read
20 it.

21 MR. KEIMBAYE: I can read it from here as
22 well.

23 THE COURT: Okay. Do you have a question,
24 Mr. Keimbaye, for the witness?

25 MR. KEIMBAYE: Yes.

1 BY MR. KEIMBAYE:

2 Q. On May 10 -- front page, on May 10, in that text
3 message, Mr. Keimbaye addressed, Hey, Travis, how is it going
4 this morning?

5 You reply, it's going. What's up, man?

6 Mr. Keimbaye said, Will it be okay with you for him
7 to stay in clock at the end of his shift, and say, I want to
8 work on my HealthStream a little bit while waiting for a call
9 back, because I'm on call tonight.

10 Do you remember receiving that text message?

11 A. Yes, I do.

12 Q. And you were aware that he was taking ACLS courses?

13 A. No. So, to elaborate on this, I want to work on my
14 HealthStream a little bit. Certain HealthStreams are
15 required. ACLS was not. Certain HealthStreams are required
16 to be done at a certain deadline, and certain allowances were
17 made at times if there were busy times. So, yeah, I was
18 aware there was an RQI issue with BLS. But that's it. And I
19 apologize. I don't remember what RQI stands for, the
20 acronym.

21 MS. ROSEN: Mr. Keimbaye, are you done asking
22 questions about this?

23 MR. KEIMBAYE: Yes. Yes, please. Thank you.

24 THE COURT: I'll bet your arms are getting
25 tired.

1 MS. ROSEN: I was like, they were getting
2 lower and lower.

3 THE COURT: Well, it can be passed around as
4 well --

5 MS. ROSEN: Oh.

6 THE COURT: -- although, I mean, Mr. Keimbaye
7 just got done reading it. So I don't know if he wants to do
8 that or whether he wants to move on to something else.

9 MR. KEIMBAYE: I'm trying to stay there for a
10 little bit. Sorry. So one minute as I'm trying to go back
11 and forth here.

12 Let's look at the Exhibit 2, please.

13 BY MR. KEIMBAYE:

14 Q. Did you receive an email from Mr. Sweaney asking
15 you, did you approve -- assign Dominique to complete ACLS on
16 work time?

17 A. Yes. I received that email.

18 Q. And you have not approved with Ms. McLaren to
19 complete his registration at all?

20 A. I did not approve it with McLaren to -- to further
21 ACLS courses. Is that what you're asking? I'm sorry.

22 Q. The only way Ms. McLaren would register
23 Mr. Keimbaye to take BLS is to get the approval from his
24 anesthesia supervisor; don't you agree?

25 A. Yes. It probably would have to be approved.

1 Q. Thank you. Do you agree Mr. Keimbaye regularly
2 talked to you in person, on the work phone, or by text
3 message?

4 A. Yes.

5 Q. Do you recall telling Mr. Keimbaye that he was an
6 amazing and hardworking anesthesia technician?

7 A. Yes. I encouraged you many times.

8 Q. Say again what you said?

9 A. Yes. I encouraged you many times.

10 Q. No. That's not the -- that's not what I was saying
11 here. You told Mr. Keimbaye that he was an amazing and a
12 hardworking anesthesiologist technician?

13 A. Yes.

14 Q. And that you appreciate his willingness to complete
15 any remaining anesthesia or surgery cases?

16 A. I don't recall the specifics of conversations. I'm
17 sorry, Dominique -- or Mr. Keimbaye, sorry.

18 Q. Let me rephrase this. You told Mr. Keimbaye that
19 you appreciate his willingness to complete the remaining
20 tasks before leaving his shift?

21 A. I'm not -- like I said, I don't remember making
22 these exact statements. Again, it's been years ago. I
23 apologize.

24 Q. But you appreciate Mr. Keimbaye was willing to
25 complete what he was doing before leaving work?

1 A. Yeah. I always appreciate anyone completing their
2 assigned tasks for the day. Yes.

3 Q. Do you agree you told Mr. Keimbaye he's -- he was a
4 hardworking anesthesia technician that you need here at
5 Everett?

6 A. Again, I don't recall specific conversations. And
7 I apologize, Mr. Keimbaye.

8 Q. Do you remember scheduling a meeting with
9 Mr. Keimbaye at Mr. Roehrich's office?

10 A. Yes, I do.

11 Q. In that meeting, do you remember hearing
12 Mr. Keimbaye stating that he was having a hard time with
13 Mr. Kortendick?

14 A. I do not remember that.

15 Q. In that same meeting, have you ever hear
16 Mr. Keimbaye saying that he would resign or leave?

17 A. No. I don't remember that.

18 Q. Do you agree that Mr. Keimbaye performs his
19 anesthesia job competently?

20 A. I believe you have a good grasp of the basic skill
21 set to be an anesthesia technician. Yes.

22 Q. You and Mr. Kortendick, including Mr. Keimbaye,
23 were with him in the anesthesia workroom when Ms. Lonon was
24 demonstrating that Mr. Keimbaye is missing all of this, like
25 her beauty [sic]?

1 A. What was the last part of that question? Of
2 the -- of the what?

3 Q. Let me rephrase this. You were there in the
4 anesthesia workroom when Ms. Lonon was saying to Mr. Keimbaye
5 or showing her interest to Mr. Keimbaye?

6 A. No. I was not there.

7 Q. You don't recall Mr. Keimbaye, along with your
8 buddy, Mr. Kortendick, walking out from the anesthesia
9 workroom stating, Oh, he's wanted for sex?

10 A. No.

11 Q. You have not heard Mr. Keimbaye complaining about
12 any harassment to you?

13 A. No.

14 Q. Do you remember when Mr. Keimbaye rush out from
15 Ms. -- Dr. Porterfield to speak with you about his rude
16 behavior?

17 A. No. I have no recollection of that.

18 Q. You never told Mr. Keimbaye that you would have
19 talk with Dr. Porterfield?

20 A. No.

21 Q. When Mr. Keimbaye was asking you to introduce him
22 to the HR office, you and your buddy, Mr. Kortendick, took
23 Plaintiff to -- to HR, Mr. Sweaney's office; do you recall
24 that?

25 A. During your orientation day? Yes. I took you on a

1 full tour of the hospital, including the HR office.

2 Q. Are you sure you took Mr. Keimbaye to the HR
3 office?

4 A. Yes, I am.

5 Q. When was that?

6 A. During your orientation day.

7 Q. Do you remember meeting with the Plaintiff right
8 after his new -- new employee orientation?

9 A. Yes, I do.

10 Q. Where was it?

11 A. I believe I -- I believe I met you outside of the
12 orientation room, to escort you to the cafeteria for lunch.

13 Q. And right after the cafeteria, where did you take
14 Mr. Keimbaye to?

15 A. I took you on a tour of the hospital to show you
16 the different offices. And, yeah, there were several things,
17 including the view from the tenth floor, which was shell
18 space at that time, as well as the HR office lab, and the
19 education office and things like that.

20 Q. What was on the tenth floor said, again?

21 A. The view. It was a shell space at that time and
22 had a beautiful view of the entire Puget Sound and Whidbey
23 Island. It was one of my favorite things.

24 Q. Probably that's the first time I've heard this. So
25 you have never taken Mr. Keimbaye to -- you have never heard

1 Mr. Keimbaye asking you to take him to the HR office for his
2 complaint?

3 A. No. I don't recall that.

4 THE COURT: Mr. Keimbaye, do you have any
5 other questions for Mr. John?

6 MR. KEIMBAYE: Yes, Your Honor.

7 BY MR. KEIMBAYE:

8 Q. Do you remember being on the third floor by the
9 anesthesia workroom?

10 A. Many times.

11 Q. And do you remember being there checking the out
12 date on one of the anesthesia drug cart by -- by the
13 anesthesia workroom?

14 A. Again, this is something I did quite often. Yes,
15 so.

16 Q. And do you remember Plaintiff coming out from the
17 open-heart surgery to meet you there to have a conversation
18 with you?

19 A. It would have to be something specific there, so.

20 Q. So you never have -- you haven't heard
21 Plaintiff -- let me rephrase this.

22 You had not told Plaintiff that Mr. -- that
23 Dr. Porterfield can be rude sometimes?

24 A. No.

25 Q. You never stated to Mr. Keimbaye that you would

1 have a talk with him and get back to Mr. Keimbaye?

2 A. Regarding what? I'm sorry.

3 Q. Regarding his behavior toward Mr. Keimbaye?

4 A. I don't recall this.

5 Q. When Mr. Keimbaye was assaulted by Dr. Usoltsev,
6 Mr. Keimbaye come straight from the restroom to meet with you
7 on the third floor and raise his concern with you. Do you
8 recall Mr. Keimbaye having that conversation with you?

9 A. No. I do not.

10 Q. And you don't remember stating to Mr. Keimbaye that
11 you would have a talk with Mr. Usoltsev?

12 A. No. I do not remember.

13 MR. KEIMBAYE: Your Honor?

14 THE COURT: Yes, Mr. Keimbaye?

15 MR. KEIMBAYE: Can we take a few --

16 THE COURT: I'm sorry?

17 MR. KEIMBAYE: Can we take a break?

18 THE COURT: All right. All right. It's a
19 little early for the afternoon break, but yeah. We'll take a
20 break.

21 So, members of the jury, remember please keep
22 your minds open. Don't talk about the case. We'll have you
23 back here after the break.

24 THE BAILIFF: All please rise.

25 (Jury exits at 2:22:03 p.m.)

1 DISCUSSION RE EFFICIENT USE OF TIME

2 THE COURT: Feel free to step down, Mr. John.

3 THE WITNESS: Thank you.

4 THE COURT: Okay. Is there -- Mr. Keimbaye,
5 is there anything you need to address with the Court before
6 our break?

7 MR. KEIMBAYE: I hope the most recent exhibit
8 is admitted. I believe it's --

9 THE COURT: I don't know which --

10 MR. KEIMBAYE: -- 21.

11 THE COURT: -- most recent exhibit you're
12 talking about. Exhibit 2, I think, was the last one you were
13 talking about. And that had, I believe --

14 MR. KEIMBAYE: 21.

15 THE COURT: -- already been admitted. 21?
16 21, hold on. Yeah. 21 was admitted during Mr. John's
17 testimony.

18 MR. KEIMBAYE: Thank you.

19 THE COURT: Okay. Are you -- are you going to
20 be done with his testimony at this time?

21 MR. KEIMBAYE: After the break. Yeah.

22 THE COURT: Yeah.

23 MR. KEIMBAYE: Yeah. After the break.

24 THE COURT: How much more time do you need?
25 I'm asking because he may not be available after today.

1 Defense Counsel will need an opportunity to ask him
2 questions.

3 MR. KEIMBAYE: Yes.

4 THE COURT: And your examination is taking a
5 very long time because we're pausing for a minute or two --

6 MR. KEIMBAYE: Well --

7 THE COURT: -- between many, many, many of
8 your questions. So I want you to be able to ask him the
9 questions that you want to ask him. But I'm just concerned
10 about how much wasted time there is between your questions to
11 him and his answers.

12 MR. KEIMBAYE: I appreciate that, Your Honor.
13 But it's unfortunately a one-man show. So I have to go back
14 and forth without any help. You know, I have to --

15 THE COURT: I know. That's why I asked you
16 yesterday in preparation for examining Mr. John that you make
17 an outline of the questions you want to ask him, so that we
18 can move along instead of your having to stop and think
19 about, gee, what else do I want to ask this person?

20 MR. KEIMBAYE: I understand.

21 THE COURT: So use the break to do that so we
22 can be a little more efficient, please.

23 MR. KEIMBAYE: Yes. Yes. That's the reason
24 why --

25 THE COURT: Okay.

1 MR. KEIMBAYE: -- I need the break. Yeah.

2 THE COURT: All right. Thank you, sir.

3 MR. KEIMBAYE: Thank you.

4 THE COURT: I appreciate that.

5 MR. KEIMBAYE: Yes.

6 THE COURT: Anything from Defense Counsel?

7 MS. ROSEN: No. I just was wondering when
8 Mr. Keimbaye thought he would be done after the break.

9 THE COURT: Yeah.

10 MS. ROSEN: How much longer do you think you
11 have of questions for Mr. John?

12 MR. KEIMBAYE: At least 30 or 45 minutes.

13 MS. ROSEN: Okay.

14 THE COURT: Is that good? All right.

15 MS. ROSEN: Well, I'll -- we'll do our best.

16 THE COURT: All right. I mean, you guys may
17 need to bring him back for your case if you want to do that,
18 either physically or via Zoom.

19 MS. ROSEN: Okay.

20 THE COURT: Because, you know, we're not going
21 to go until five tonight.

22 MS. ROSEN: No. I understand, Your Honor.

23 THE COURT: I know.

24 MS. ROSEN: But, to your point, the minute or
25 two-minute pauses are really --

1 THE COURT: They're eating up a lot of time,
2 which is why I said something.

3 MS. ROSEN: Yeah.

4 THE COURT: Okay. Let's resume at 2:40.

5 MS. ROSEN: Okay.

6 (Recess at 2:25:19 p.m., recommencing at 2:40:06 p.m.)

7 (The following proceedings were held outside the presence of
8 the jury:)

9 THE COURT: Please be seated.

10 Before we bring in the jury, I do want to talk
11 about scheduling a little bit.

12 Mr. Keimbaye, have you given some thought to
13 how much more time you need to ask Mr. John questions?

14 MR. KEIMBAYE: Yes.

15 THE COURT: Well?

16 MR. KEIMBAYE: Probably 30 or -- 30 or 40
17 minutes.

18 THE COURT: All right. I don't see any way we
19 can get done with him today, especially since we need to make
20 time for jury questions.

21 I did not invite the jury to ask Mr. Keimbaye
22 questions for two reasons. One, frankly, I think I was
23 concerned about the time, that it was not in the forefront of
24 my mind. But, second of all, he's going to be here
25 throughout the trial, so we can give them an opportunity to

1 do that on Monday.

2 But, you know, I think we need to do whatever
3 we can to finish Mr. John's testimony today, and then to make
4 him available either in person or via Zoom next week for any
5 additional questions from Defense Counsel, as well as for
6 jury questions.

7 MS. ROSEN: Okay. Well, we haven't talked to
8 him about his availability next week, but we will.

9 THE COURT: Okay. I mean, he has an
10 obligation to be here. The CR 43 notice to attend trial was
11 effective as to him.

12 MS. ROSEN: Right, Your Honor. We just were
13 supposed to get 48 hours notice. We got 48 hours notice
14 today was the day. So that's why we made him -- we had him
15 here.

16 THE COURT: I know. But we kind of knew, at
17 least as of yesterday, that we might run into problems
18 finishing up Mr. Keimbye's testimony. And you, frankly,
19 didn't want to start Mr. Travis' -- I'm sorry, Mr. John's
20 testimony before Mr. Keimbye completed his testimony, which
21 was an option that I floated the other day. So I think we're
22 just stuck with the timing that we have now.

23 MS. ROSEN: Yeah. I just can't represent what
24 he's doing on Monday yet. So I'll have to talk to him.

25 THE COURT: Well, Monday or Tuesday, whenever.

1 MS. ROSEN: Yeah.

2 THE COURT: Okay. All right. Great. Thanks.

3 Yes, Mr. Keimbaye.

4 MR. KEIMBAYE: Your Honor?

5 THE COURT: Yes.

6 MR. KEIMBAYE: I will try my best with 25
7 minutes worth to complete it.

8 THE COURT: You know, I want you to do your
9 best.

10 MR. KEIMBAYE: Yes.

11 THE COURT: But I don't want you to feel
12 rushed, either.

13 MR. KEIMBAYE: Okay.

14 THE COURT: Okay? So we'll make this work one
15 way or another.

16 MR. KEIMBAYE: Okay.

17 THE COURT: Okay. Thank you.

18 MR. KEIMBAYE: Thank you.

19 THE COURT: All right. Let's bring in the
20 jury.

21 THE BAILIFF: Please recognize the jury.

22 (Jury enters at 2:43:10 p.m.)

23 THE COURT: Welcome back, members of the jury.
24 Please be seated. Someone has stepped out to bring Mr. John
25 back into the room, and here he is.

1 Welcome back, Mr. John. Come on up and join
2 us, and please consider yourself still under oath.

3 I know some of the jurors were wondering about
4 proposing questions for Mr. Keimbaye. We skipped over that,
5 largely because, as you heard, Mr. John no longer lives
6 locally, and so we wanted to get him on the stand and try to
7 get him done this afternoon. I'm no longer confident we'll
8 be able to do that. So some arrangements may need to be made
9 for him to complete his testimony next week, either in person
10 or via Zoom.

11 But since Mr. Keimbaye's going to be here
12 every single day that we're here in trial, we will definitely
13 make sure you have an opportunity to ask him questions about
14 his testimony at a later time. And ditto for proposing
15 questions for Mr. John once his testimony is complete.

16 All right. Mr. Keimbaye, are you ready to
17 proceed?

18 MR. KEIMBAYE: Yes, Your Honor.

19 THE COURT: Okay.

20 MR. KEIMBAYE: May we look at the Exhibit 15,
21 please?

22 THE COURT: And you said 15?

23 MR. KEIMBAYE: Yes, Your Honor.

24 THE COURT: Okay. I'm sorry. It sounded a
25 little like 15 and a little bit like 50, so I wasn't

1 positive.

2 THE WITNESS: I need the other book back.

3 THE COURT: And that's admitted into evidence
4 already.

5 **DIRECT EXAMINATION CONTINUED**

6 BY MR. KEIMBAYE:

7 Q. Do you remember receiving that email from
8 Mr. Sweaney?

9 A. Yes, I do.

10 MR. KEIMBAYE: Let's move to -- Your Honor, is
11 that exhibit admitted to --

12 THE COURT: It's been admitted.

13 MR. KEIMBAYE: Okay. Let's move on to Exhibit
14 16, please.

15 THE COURT: That's not 15.

16 MS. BURNHAM: He said 16.

17 MS. ROSEN: 16.

18 THE COURT: Oh. He wanted to move on to 16?

19 MR. KEIMBAYE: Yes.

20 THE COURT: Oh. I'm sorry. All right. I
21 apologize. 16.

22 BY MR. KEIMBAYE:

23 Q. Do you see Ms. Mayer (phonetic) was scheduled to
24 work on June 6th?

25 A. Correct.

1 Q. And do you see Mr. Keimbaye -- Mr. Keimbaye was
2 scheduled to work on June 7th?

3 A. Yes. You were scheduled for standby.

4 MR. KEIMBAYE: Okay. Let's move on to Exhibit
5 43, please.

6 BY MR. KEIMBAYE:

7 Q. Do you remember receiving that email from
8 Mr. Kortendick?

9 A. Yes, I do.

10 Q. Mr. Kortendick was saying here that Mr. Keimbaye
11 was talking to the charge nurse, or was at the -- at the
12 charge nurse office?

13 A. Yes. You were talking to the charge RN.

14 Q. Okay. Is it accurate to say that Mr. Keimbaye was
15 there to ask for permission to work?

16 MS. ROSEN: Objection. Calls for speculation.

17 THE COURT: So, I'm sorry. Are you -- what
18 are you asking the witness?

19 MR. KEIMBAYE: I'm saying is it okay to say
20 that Mr. Keimbaye was there to ask for permission from the
21 charge nurse.

22 THE COURT: So the objection is sustained.

23 BY MR. KEIMBAYE:

24 Q. In this email, Mr. Kortendick was saying
25 Mr. Keimbaye was at the front desk talking to the charge

1 nurse still in scrubs; do you agree?

2 A. That's what the email states.

3 Q. Do you agree that Mr. Keimbaye worked throughout
4 the night on that day?

5 A. I don't -- I don't remember this at all. I
6 apologize. So I'm not sure exactly what you're asking. I
7 apologize, Mr. Keimbaye, but if we could have some
8 clarification on --

9 Q. Do you agree that Mr. Keimbaye work on that day,
10 overnight?

11 A. You were apparently there late. Yes.

12 Q. And you do believe that Mr. Keimbaye would choose
13 to work without permission?

14 A. Yes. That is -- that is something you would do.
15 Yes.

16 MR. KEIMBAYE: Let's look at Exhibit 44,
17 please.

18 BY MR. KEIMBAYE:

19 Q. Mr. Keimbaye show you on his work schedule for on
20 calls, and it state that Ms. Myra (phonetic) was the one
21 supposed to work on June 6; do you agree?

22 A. Yes. Myra was on standby for June 6th.

23 Q. I do believe you asked Ms. Fletcher whether or not
24 she saw Mr. Keimbaye on -- on June 6th?

25 A. Difficult to say the context of why I asked, this

1 email. If I knew it was an early clock-out, this is
2 something that I would probably ask to clarify in this
3 scenario. And that appears what that is -- what this is.

4 Q. Well, Ms. Fletcher was clear to say here, I was
5 just emailing you about Thursday.

6 A. Uh-huh.

7 Q. Basically, she was saying you have a conversation
8 about Mr. Keimbaye's work schedule on Thursday -- on
9 Thursday. And she went on to say, Just Opal and I had met
10 early at 18:30. Dominique was here helping out still because
11 he was on call that night. And Opal and I asked Dominique if
12 it was okay for us to leave early, since call started at
13 18:30.

14 Now, he said, yes, and I believe there wasn't much
15 going on that night. So Opal and her left.

16 A. What is the question, exactly, on this?

17 Q. Is she approving that Mr. Keimbaye was still
18 working there?

19 A. She mentions that you're still there. Yes.

20 Q. And so would you disagree if Mr. Keimbaye was still
21 there working and continue working throughout the night with
22 permission from the front office?

23 A. I don't see anything from the front office here.
24 This is an explanation of why they left early.

25 MR. KEIMBAYE: Let's move on to Exhibit 42.

1 THE COURT: Did you say --

2 BY MR. KEIMBAYE:

3 Q. Do you remember --

4 THE COURT: Did you say 42?

5 MR. KEIMBAYE: 42, Your Honor.

6 THE COURT: We've already talked -- oh, I'm
7 sorry. 43 or 42?

8 MR. KEIMBAYE: 42.

9 THE COURT: Okay. We've already talked about
10 this during Mr. John's testimony. Did you have a different
11 question to ask him about that?

12 MR. KEIMBAYE: No. Previously was 43. 43,
13 44, and now is 42.

14 THE COURT: So. Okay. Well --

15 MS. ROSEN: I don't think we've talked about
16 it, Your Honor.

17 MS. BURNHAM: I don't think we've talked about
18 it, Your Honor.

19 THE COURT: All right. Okay. Well, I'm sorry
20 about that, then. I think you're right. I think that was
21 during Mr. Keimbaye's testimony. So sorry about that.

22 THE WITNESS: No worries.

23 BY MR. KEIMBAYE:

24 Q. Do you remember we having this conversation with
25 Mr. Cramer?

1 A. Yes, I do.

2 Q. Is Mr. Cramer -- let me rephrase this. Was
3 Mr. Cramer supervising Mr. Keimbaye as well?

4 A. Kyle Cramer was my counterpart for the operating
5 room. He was another supervisor for the department.

6 Q. Based on your absence policy, are you okay to hear
7 Mr. Cramer saying, I've been personally seeing him arriving
8 late on multiple times because I am also rolling in late?

9 A. Yeah. It's what he's stating. Yes.

10 Q. So was it okay for Mr. Cramer to rolling in late
11 anytime without concern?

12 A. So Kyle Cramer was an exempt employee, a
13 supervisor, salaried. And, again, my counterpart. And so he
14 would come in at seven o'clock or so, and I would cover for
15 him for the morning report out or vice versa. That way, one
16 of us was covering a later time in the day.

17 MR. KEIMBAYE: Your Honor, I have no more
18 questions.

19 THE COURT: All right. Thank you.

20 Ms. Rosen?

21 **CROSS-EXAMINATION**

22 BY MS. ROSEN:

23 Q. Good afternoon, Mr. John.

24 A. Good afternoon.

25 Q. Are you currently employed?

1 A. Yes, I am.

2 Q. Who are you employed by?

3 A. Providence, formerly known as Providence Health and
4 Services.

5 Q. What is your current title?

6 A. Strategic sourcing manager.

7 Q. Can you just describe for us a little bit about
8 what that title does? Because I have no idea.

9 A. I'm thinking the title was recently shortened.
10 Basically, I source agreements and contracts for implantable
11 devices for the surgical services throughout the system --
12 the entire Providence system.

13 Q. How long have you been employed by Providence?

14 A. 2015, eight years now.

15 Q. And what position did you start in at Providence?

16 A. Anesthesiology technician.

17 Q. How long were you in that position?

18 A. Three months.

19 Q. And then what position did you take after the
20 anesthesia technician position?

21 A. The anesthesia technician supervisor position.

22 Q. And so in 2018, what was your title?

23 A. Anesthesia technician supervisor.

24 Q. And what location did you work out of?

25 A. Providence Regional Medical Center in Everett.

1 Q. How long were you in the anesthesia technician
2 supervisor position?

3 A. Three years.

4 Q. And after you left the anesthesia technician
5 supervisor position, what position did you accept?

6 A. The operating room business manager position.

7 Q. And who took over the anesthesia technician
8 supervisor position after you left?

9 A. Anthony Berwald.

10 Q. Not Chris Kortendick?

11 A. No.

12 Q. Why did you move jobs?

13 A. It was a good step up and allowed me to have some
14 part in the day-to-day operations within the operating room.

15 Q. What hours did you work when you were an anesthesia
16 technician supervisor?

17 A. 6:30 until five.

18 Q. How would you describe the culture of the
19 anesthesia department at Providence Everett?

20 A. It was a respectful team and a collaborative team,
21 definitely.

22 Q. How many people reported to you as the anesthesia
23 technician supervisor?

24 A. So this varied at times. It was roughly 14.

25 Q. And what were the titles of the positions that

1 reported to you?

2 A. Anesthesiology technicians, surgical service
3 assistances -- or orderlies is the other name -- and then
4 CRNAs, which are certified registered nursing assistants.

5 Q. Are anesthesia technicians members of a union?

6 A. Yes, they are.

7 Q. What union?

8 A. UFCW 21.

9 Q. Are you a member of the union?

10 A. No, I was not.

11 Q. Were you a member of the Union when you were the
12 anesthesia technician supervisor?

13 A. No, I was not.

14 Q. Why not?

15 A. Leadership team is not a member of the Union.

16 Q. We've talked a lot about anesthesia techs, but I
17 don't know that we've ever had any testimony about what they
18 actually do. So, Mr. John, can you just explain to the jury
19 a little bit about what an anesthesia technician does?

20 A. Sure. So an anesthesia technician functions as an
21 extension of the anesthesiologists. They're key players for
22 patient safety in the room. They allow the anesthesiologist
23 to focus on the patient, and the anesthesia technician
24 attends to the ancillary components of the procedure. So
25 we're talking stocking the carts, ensuring the room is

1 | cleaned, assisting in patient positioning. Again, I
2 | mentioned assisting room turnovers; making sure the room is
3 | cleaned up; and also checking the machine -- the anesthesia
4 | machine itself. They have to run that daily and between each
5 | case.

6 | Q. When you worked at Everett, how many shifts were
7 | there for anesthesia technicians?

8 | A. There were two shifts.

9 | Q. And can you tell me the hours of both -- of the
10 | shifts?

11 | A. Certainly. There were two shifts. There was a
12 | 12-hour shift and a ten-hour shift. The 12-hour shift went
13 | from 6:30 until seven, and the ten-hour shift went from 6:30
14 | until five.

15 | Q. Can you walk us through a typical anesthesia
16 | technician shift starting with the huddle?

17 | A. Sure thing. So, starting with the huddle, that was
18 | at 6:30 in the morning, there would be a quick recap of the
19 | night before and the night after -- or, sorry, the day that
20 | was coming, that day, so let them know what kind of complex
21 | cases might be coming in that might need additional
22 | attention. This is also important for them to understand
23 | what was going on the night before. So it was a matter of
24 | patient safety, let them know what rooms have been hit
25 | especially hard and used where they might need to pay a

1 little more attention to restocking.

2 From there, they would go into the rooms and check
3 the cart stock, make sure the room was cleaned, and then they
4 would start the leak test on the anesthesia machines. This
5 was just a quick sequence that was built into the machine,
6 but it required some different functions for the circuit to
7 establish the machine was safe to use for the day.

8 And then, at that point, they would go into the
9 rooms, and they would start with the anesthesiologist in the
10 complex cases, assisting with the intubations, and assist as
11 needed throughout the case, help with the transport if
12 needed.

13 And, then, they would go into the room turnovers,
14 assisting with cleaning the room, getting it ready to get the
15 anesthesia machine tested again, circuit hooked up.

16 And so that was pretty much the routine throughout
17 the day at that point was restocking, leak testing, and
18 making sure things were clean. You know, assisting in cases.

19 Q. How long did the huddle typically last?

20 A. It varied based on the night before. This is a
21 five to ten-minute quick report out.

22 Q. What was the impact of somebody missing the huddle?

23 A. Again, it was a matter of patient safety. If you
24 missed the huddle, you didn't know what went on the night
25 before. You didn't really know what rooms needed additional

1 attention. You didn't know if there was an emergency that
2 might still be ongoing in one of the rooms.

3 And it also, you wouldn't know what to expect for
4 the day coming. There were, you know, multiple cases per
5 day. And some of these had, you know, comorbidities that
6 needed additional attention. These were additional factors
7 that made their care a little more complex. And this is
8 important for the anesthesia tech to know.

9 Q. Were anesthesia techs assigned to be on what we
10 heard referred to as standby or call?

11 A. Yes, they were.

12 Q. Can you explain how that works?

13 A. Certain. So standby is essentially being within 15
14 minutes of the hospital at all times while you're on standby,
15 and obviously not drinking so you have a clear head when you
16 go in.

17 Q. When does standby start?

18 A. It starts at seven o'clock, to the best of my
19 knowledge. Yeah. Seven o'clock.

20 Q. And is there only one person that's ever assigned
21 standby?

22 A. Unless they're a new hire. But, yes, it is
23 typically one person. And then if it's a new hire that needs
24 to be oriented on call, then there will be two people. But,
25 for the most part, yes, it's one person.

1 Q. Can you explain what BLS is?

2 A. Basic Life Support.

3 Q. And are anesthesia techs required to have a BLS
4 certification as part of their job?

5 A. Yes, they are.

6 Q. Can you explain what ACLS is?

7 A. Advanced Cardiac Life Support.

8 Q. And are anesthesia technicians required to have
9 ACLS certification as part of their jobs?

10 A. They are not. No.

11 Q. Are they allowed to study or complete ACLS modules
12 while on the clock and being paid by Providence?

13 A. No, they are not.

14 Q. Would you ever approve someone to accrue overtime
15 to take ACLS training?

16 A. No, I would not.

17 Q. Did you ever approve overtime for Mr. Keimbaye to
18 stay late to do ACLS training?

19 A. No, I did not.

20 Q. Are anesthesia technicians allowed to take ACLS
21 training voluntarily on their own personal time?

22 A. Yes, they are.

23 Q. Okay. If you could direct your attention to -- and
24 that's the correct binder -- Exhibit 2? It has already been
25 admitted. Do you see Exhibit 2?

1 A. Yes, I do.

2 Q. Okay. And so there's an email from Erich Sweaney
3 to you saying, did you approve or assign Dominique to
4 complete ACLS on work time? Do you see that?

5 A. Yes. I see that.

6 Q. And then you respond by saying, Not on June 6th.
7 Back in May, I allowed it one time, but I was not aware it
8 was ACLS. Do you see where it says that?

9 A. I do see that.

10 Q. And so we looked at a text message from
11 Mr. Keimbaye asking you for permission to stay after his
12 shift ended to work on a HealthStream module, correct?

13 A. Correct.

14 Q. And you assumed that that was for BLS and not ACLS,
15 correct?

16 A. Yes. That is correct.

17 Q. Did anesthesia technicians work overtime?

18 A. Yes. At times and with approval.

19 Q. In what circumstances?

20 A. These were situations where they were
21 short-staffed, we have numerous call-outs, or additional
22 large patient volume that required extra care after the end
23 of their shift. This is when we would ask to voluntary
24 overtime to ensure that that gap was covered and the patients
25 received the care they needed.

1 Q. Did overtime need to be approved in advance?

2 A. Yes, it did.

3 Q. By who?

4 A. OR leadership, myself, or anyone in leadership in
5 the OR.

6 Q. How does the lead technician role differ from a
7 technician role, if at all?

8 A. It really is not much different. The lead
9 anesthesia technician, they function as a bit of a gap
10 filler, if you will. It's odd wording, I know. But,
11 basically, if the anesthesiologist or anesthesia techs were
12 assigned to a certain set of rooms, they weren't able to make
13 it into a room or they had two complex cases going at once,
14 the -- the lead anesthesia technician would go in and fill in
15 for them in those rooms. So they provided that extra safety
16 net for the anesthesia techs.

17 They also carried the main phone, which was -- what
18 I mean by that is if an anesthesia tech missed a call from a
19 room, it would get forwarded after a few rings to that main
20 phone. We jokingly referred to it as the magic phone, so.

21 Q. Is the lead technician a member of the Union?

22 A. Yes, they are.

23 Q. How many leads reported to you during 2018?

24 A. So it was an assigned and rotating role. And there
25 were four, I believe.

1 Q. And who were they?

2 A. Chris Kortendick, Gustav Ramos, Opal Lonon, and
3 Anthony Berwald. Sorry.

4 Q. Is there a lead assigned to each shift?

5 A. Yes, there is.

6 Q. Okay. And even when you're working, there's a lead
7 assigned?

8 A. Yes, there is.

9 Q. Does the same person act as the lead for every
10 shift?

11 A. No. It rotates through.

12 Q. What is a preceptor?

13 A. A preceptor is a trainer.

14 Q. And are there preceptors that are not leads?

15 A. Yes, there are.

16 Q. Did Mr. Keimbaye have a preceptor?

17 A. Yes, he did.

18 Q. Who was assigned to Mr. Keimbaye as a preceptor?

19 A. So it varied, again. This was rotation -- rotated
20 through, so it was Chris Kortendick, Opal Lonon, Anthony
21 Berwald, Gustav Ramos, and, at times, Amy Fletcher.

22 Q. What, if any, power do leads have to fire a
23 caregiver?

24 A. They don't have any.

25 Q. Do they have power to hire a caregiver?

1 A. No.

2 Q. Do they have power to discipline a caregiver?

3 A. No. That's only for me.

4 Q. Do they have power to give a raise to a caregiver?

5 A. That's not part of their role.

6 Q. Do they have power to transfer a caregiver?

7 A. None.

8 Q. Do leads have a power to approve absences for a
9 caregiver?

10 A. No. That's only for myself -- my role.

11 Q. Do leads have the power to approve tardies for a
12 caregiver?

13 A. That is not part of their job description.

14 Q. Do leads have the power to approve overtime for a
15 caregiver?

16 A. Not at all.

17 Q. Do lead have power to approve training for a
18 caregiver?

19 A. No. Again, that's something I would do.

20 Q. Do leads make the work schedule?

21 A. No.

22 Q. Who makes the work schedule?

23 A. That would be the time keeper, Chris Maddy.

24 Q. Christina Maddy?

25 A. Christina Maddy. Yes.

1 Q. Did you interview Mr. Keimbaye for the anesthesia
2 technician position?

3 A. I did. Yes.

4 Q. And where did that interview take place?

5 A. That was over the phone. It was done over the
6 phone.

7 Q. How many times did you interview him?

8 A. I interviewed him once. And I believe our
9 recruiter did a prescreening on him as well.

10 Q. Did Chris Kortendick interview him?

11 A. No. Chris did not.

12 Q. Did Mr. Keimbaye tell you about himself during the
13 interview?

14 A. Yes, he did.

15 Q. What did he say?

16 A. He talked significantly about his work background,
17 his qualifications, his experience. Additionally, he told me
18 a lot about himself, as well as where he was from and what he
19 had been doing and such.

20 Q. Where did he tell you that he was from?

21 A. Originally, he said he was from Africa.

22 Q. Who made the decision to hire him?

23 A. I did.

24 Q. Was Mr. Kortendick involved in any way in that
25 decision?

1 A. He was not. No.

2 Q. And when Mr. Keimbaye started, who did he report
3 to?

4 A. Myself.

5 Q. And did that change at any point during his
6 employment?

7 A. No.

8 Q. Did Mr. Keimbaye go through an orientation when he
9 first started?

10 A. Yes, he did.

11 Q. How long was that orientation?

12 A. That orientation is roughly 12 hours. And it is
13 broken up over two days, an eight hour one day, and then four
14 hour the next.

15 Q. Did you review any policies with Mr. Keimbaye when
16 he first started?

17 A. I did. Yes.

18 Q. What policies did you review with him?

19 A. The absence and lateness policy, the time keeping
20 policy, and the Union handbook.

21 Q. Do you review those policies with all new
22 employees?

23 A. Yes, I do.

24 Q. And why is that?

25 A. It sets a precedent right off the start and shows

1 the expectations for the position.

2 Q. Did you receive training while you were at
3 Providence on the antiharassment policy?

4 A. Yes, I did.

5 Q. How often?

6 A. It is a once-a-year annual training.

7 Q. How long did it last?

8 A. It's four hours broken up over four days.

9 Q. Did you feel comfortable as to what to do if an
10 employee reported any kind of allegedly harassing behavior to
11 you?

12 A. Yes, I did.

13 Q. What?

14 A. It would be reported to human resources.

15 Q. During the time Mr. Keimbaye was employed at
16 Providence Everett, did anyone ever report any allegedly
17 harassing contact to you?

18 A. No. That did not happen.

19 Q. Did Mr. Keimbaye ever report any allegedly
20 harassing contact to you?

21 A. No.

22 Q. When did Mr. Keimbaye start working for you?

23 A. December 27th, 2017.

24 Q. When did you first become aware of his tardiness?

25 A. I believe this was early in February -- I want to

1 say February 3rd.

2 Q. Who reviewed the timecards?

3 A. Christina Maddy.

4 Q. So how did you become aware of Mr. Keimbaye's
5 tardiness?

6 A. So any irregularities are flagged for my review by
7 Christina Maddy.

8 Q. Would you please turn to Exhibit 114, which is in a
9 different notebook? Is this a copy of an email that you
10 received from Christina Maddy?

11 A. Yes, it is.

12 MS. ROSEN: Your Honor, I move to admit
13 Exhibit 114.

14 THE COURT: Any objection, Mr. Keimbaye?

15 MR. KEIMBAYE: No objection, Your Honor.

16 MS. ROSEN: He said, no objection.

17 THE COURT: Oh. I thought he said, just a
18 moment.

19 MR. KEIMBAYE: No objection. No objection.

20 THE COURT: I'm so sorry. You're a little
21 soft-spoken sometimes, Mr. Keimbaye. And I'm old, and my
22 ears don't work as well as they --

23 MR. KEIMBAYE: I apologize.

24 THE COURT: -- did 20 years ago.

25 MR. KEIMBAYE: I apologize. Thank you.

1 THE COURT: All right. There being no
2 objection, Exhibit 114 is admitted.

3 (DEFENDANT'S EXHIBIT 114 RECEIVED INTO EVIDENCE)

4 MS. ROSEN: Permission to publish, Your Honor?

5 THE COURT: You may.

6 MS. ROSEN: Thank you.

7 BY MS. ROSEN:

8 Q. So is this a copy of the email that you received
9 from Christina Maddy, putting you on notice of the tardies?

10 A. Yes, it is.

11 Q. And who is Christina Maddy?

12 A. The timekeeper for the department.

13 Q. What's her role?

14 A. She reviews and approves all the timecards and
15 assists with the scheduling in the operating room.

16 Q. Is being on time important for an anesthesia
17 technician?

18 A. Yes, it is. It's a matter of patient safety.

19 Q. When you became aware of the tardiness from this
20 email, what did you do?

21 A. I pulled him aside for an informal coaching, just a
22 quick talk to him about -- about the scenario.

23 Q. What did you tell him?

24 A. I reminded him about the absence and lateness
25 policy and told him that he needed to -- to improve this,

1 because this is a pattern, unfortunately.

2 Q. What did he say?

3 A. He acknowledged that it was a challenge. He
4 mentioned the long commute from Bellevue and the variables
5 that traffic could be -- it could cause.

6 Q. Did you ever tell Mr. Keimbaye it was okay for him
7 to be tardy?

8 A. I did not.

9 Q. After you spoke to him about the tardies, did they
10 improve?

11 A. No, they did not.

12 Q. If you could direct your attention to the binder
13 Exhibit 116. Let me know, are you there?

14 A. I am there. Yes.

15 MS. ROSEN: Okay.

16 THE COURT: And, I'm sorry, exhibit number
17 again?

18 MS. ROSEN: 116.

19 THE COURT: 116. Thank you.

20 BY MS. ROSEN:

21 Q. Is this a copy of another email you received from
22 Ms. Maddy?

23 A. Yes, it is.

24 MS. ROSEN: Your Honor, we move to admit
25 Exhibit 116.

1 THE COURT: Any objection, Mr. Keimbaye?

2 MR. KEIMBAYE: No, Your Honor.

3 THE COURT: Thank you. Exhibit 116 is
4 admitted.

5 (DEFENDANT'S EXHIBIT 116 RECEIVED INTO EVIDENCE)

6 MS. ROSEN: Permission to publish?

7 THE COURT: You may publish.

8 MS. ROSEN: Thank you.

9 BY MS. ROSEN:

10 Q. So is this a copy of an email you received from
11 Ms. Maddy on February 18th, 2018, making you aware that
12 Mr. Keimbaye continued to be tardy?

13 A. Yes, it is.

14 Q. What did you do after you received this email?

15 A. Again, I elected to give him a coaching.

16 Q. And if you could turn your attention to
17 Exhibit 117, please.

18 A. I'm there.

19 Q. And this is a copy of your response to that email
20 to Ms. Maddy, correct?

21 A. That is correct.

22 MS. ROSEN: Your Honor, move to admit Exhibit
23 117.

24 THE COURT: Any objection, Mr. Keimbaye?

25 MR. KEIMBAYE: No, Your Honor.

1 THE COURT: Thank you. 117 is admitted.

2 (DEFENDANT'S EXHIBIT 117 RECEIVED INTO EVIDENCE)

3 MS. ROSEN: Permission to publish?

4 THE COURT: You may.

5 BY MS. ROSEN:

6 Q. So on this email, you tell Ms. Maddy that you're
7 going to bring Mr. Keimbaye in again and give him the policy,
8 correct?

9 A. That is correct.

10 Q. And did you, in fact, do that?

11 A. I did. Yes.

12 Q. And let's look at Exhibit 42, which has already
13 been preadmitted. And then is this a summary of a
14 conversation you had with him after you talked to him about
15 the tardiness the second time?

16 A. It is. Yes.

17 Q. And what did Mr. Keimbaye say when you talked to
18 him about the tardiness the second time?

19 A. Again, he acknowledged the issue and agreed that it
20 was something he would need to work on. He brought up his
21 long commute again, as well as the variables that traffic
22 introduced.

23 Q. So after the second time you spoke to him about his
24 tardies, did they improve?

25 A. They did not.

1 Q. And how did you become aware for the third time
2 that he was struggling with tardies?

3 A. Chris Maddy brought this to my attention.

4 Q. All right.

5 A. Christina Maddy. Sorry.

6 Q. Would you please look at Exhibit 120 in the binder?

7 A. And I'm there. Thank you.

8 Q. Okay. And this is an email from Chris Maddy to you
9 on March 26, 2018, correct?

10 A. Correct.

11 MS. ROSEN: Your Honor, I move to admit
12 Exhibit 120.

13 THE COURT: Any objection?

14 MR. KEIMBAYE: No, Your Honor.

15 THE COURT: 120 is admitted.

16 (DEFENDANT'S EXHIBIT 120 RECEIVED INTO EVIDENCE)

17 MS. ROSEN: Okay. Move to publish 120.

18 THE COURT: You may publish 120.

19 BY MS. ROSEN:

20 Q. So this is a copy of the email you received from
21 Ms. Maddy letting you know Mr. Keimbaye was still struggling
22 with tardiness?

23 A. Yes, it is.

24 Q. What did you do after you received this email?

25 A. So, at this point, we elected to give him a verbal

1 warning.

2 Q. And did you meet with him to present that warning?

3 A. Yes, I did.

4 Q. Will you please direct your attention to
5 Exhibit 121?

6 A. I'm there.

7 Q. Is this the email you sent to Mr. Keimbaye
8 summarizing that meeting?

9 A. Yes, it is.

10 MS. ROSEN: Your Honor, move to admit Exhibit
11 121.

12 THE COURT: Any objection?

13 THE CLERK: It's admitted.

14 MR. KEIMBAYE: No objection.

15 MS. ROSEN: Oh. I'm sorry.

16 THE COURT: Oh. It's already admitted?

17 MS. ROSEN: My apologies.

18 THE COURT: Never mind.

19 MS. ROSEN: My apologies. Permission to
20 publish?

21 THE COURT: You may.

22 MS. ROSEN: Okay. Thank you.

23 BY MS. ROSEN:

24 Q. So this is a copy of the email that you sent
25 Mr. Keimbaye summarizing your conversation with him, correct?

1 A. That is correct.

2 Q. Okay. And who else was present in your meeting
3 with him to talk about tardiness the third time?

4 A. Dan Roehrich.

5 Q. Why was Mr. Roehrich present?

6 A. He was there to witness -- just witness the
7 conversation that took place.

8 Q. What was his title at the time?

9 A. He was the business manager and the interim
10 operating room manager.

11 Q. What did Mr. Keimbaye say in that meeting?

12 A. Again, he acknowledged the issues, the challenges
13 he faced. And he mentioned, again, the long commute and the
14 variables of traffic were -- caused.

15 Q. Did he ever say anything in that meeting about
16 Mr. Kortendick?

17 A. No. He did not.

18 Q. Was Mr. Kortendick involved in any conversations
19 with Mr. Keimbaye about his tardiness?

20 A. No. He was not.

21 Q. Why not?

22 A. Chris Kortendick's not a part of the leadership
23 team.

24 Q. Did Mr. Keimbaye raise any concerns to you and
25 Mr. Roehrich during that meeting about any alleged

1 harassment?

2 A. No. He never did.

3 Q. Did you become aware of other issues with
4 Mr. Keimbaye's timekeeping?

5 A. Yes, I did.

6 Q. How did you become aware of that?

7 A. There were again flagged by Christina Maddy.

8 Q. Would you direct your attention, Mr. John, to
9 Exhibit 124? And this is an email, again, from Chris Maddy
10 to you; is that right?

11 A. That is correct.

12 MS. ROSEN: Your Honor, move to admit
13 Exhibit 124.

14 THE COURT: 124, right?

15 MS. ROSEN: Yes.

16 THE COURT: Any objection?

17 MR. KEIMBAYE: No objection, Your Honor.

18 THE COURT: Thank you, Mr. Keimbaye. 124 is
19 admitted.

20 (DEFENDANT'S EXHIBIT 124 RECEIVED INTO EVIDENCE)

21 MS. ROSEN: Permission to publish?

22 THE COURT: You may publish.

23 MS. ROSEN: Thank you.

24 BY MS. ROSEN:

25 Q. Is this the email that Ms. Maddy sent you, that put

1 | you on notice of other timekeeping issues?

2 | A. Yes, it is.

3 | Q. Did Opal Lonon ever report any issues to you with
4 | regard to Mr. Keimbaye's timekeeping?

5 | A. No. She did not.

6 | Q. What was the issue that Ms. Maddy was reporting to
7 | you here?

8 | A. This would be the accrual of unapproved overtime.

9 | Q. What did you do when you learned about this issue?

10 | A. Again, I started to look into this a little bit
11 | more, just to determine the cause. I wanted to understand
12 | the nature of it and why there seemed to be a regular accrual
13 | that we were noticing here.

14 | Q. Did Mr. Keimbaye ever tell anyone that he was on
15 | call when he was not?

16 | A. Yes.

17 | Q. Did you make the decision to put Mr. Keimbaye on
18 | administrative leave?

19 | A. I did. Yes.

20 | Q. Why?

21 | A. It's according to policy, when there's -- when
22 | there's an issue like this -- when there's a potential policy
23 | violation, the care worker is placed on administrative leave
24 | pending investigation.

25 | Q. And did you inform him he was being put on leave?

1 A. I did. Yes.

2 Q. What was his reaction?

3 A. He was very quiet, accepted it, and then mentioned
4 that, you know -- I just gave him the instructions on who
5 to -- wait, to contact him for further direction.

6 Q. Were you involved in the investigation of his
7 timekeeping irregularities?

8 A. Yes, I was.

9 Q. How so?

10 A. Did a few things on that to determine the exact
11 cause. I used -- I worked with the security team to obtain
12 his badge swipes, which told us where he was badging into,
13 specifically the parking garage. I also contacted IT to
14 determine the nature of his computer usage. And then I also,
15 obviously, had Christina Maddy pull a full report of his
16 timecard for full review.

17 Q. What did you discover as a result of that
18 investigation?

19 A. There were irregularities noted, specifically with
20 his badge-ins. There were times where he would badge in ten
21 to 15 minutes past the clock-in time of 6:30 in the parking
22 garage. And yet the timecard reflected a clock-in time of
23 6:30.

24 Q. And what, if anything, did you find with regard to
25 his time on the computer?

1 A. That there were nonwork-related activities being
2 done on work computers and kiosks in the recovery room.

3 Q. While he was on the clock?

4 A. Yes. That is correct.

5 Q. Were you involved in the decision to terminate
6 Mr. Keimbaye's employment?

7 A. Yes, I was.

8 Q. Was anyone else involved in that decision?

9 A. Yes. Human Resources made the decision, and --
10 recommended the decision, and then I adopted their
11 recommendation.

12 Q. Did Chris Kortendick have any role in the decision
13 to terminate Mr. Keimbaye's employment?

14 A. No, he did not.

15 Q. Was Chris Kortendick consulted on the decision to
16 terminate Mr. Keimbaye's employment?

17 A. No. He was not.

18 Q. Did Mr. Keimbaye ever tell you he felt he was being
19 harassed?

20 A. No. He never mentioned that.

21 Q. Did Mr. Keimbaye ever tell you he was being
22 harassed by Opal Lonon?

23 A. No. He never mentioned that, either.

24 Q. Did he ever complain to you about anything having
25 to do with Ms. Lonon?

1 A. No.

2 Q. Did Mr. Keimbaye ever tell you about Opal Lonon
3 making comments of a sexual nature to him?

4 A. No. I was never told about that.

5 Q. What would you have done if you were told about
6 that?

7 A. I would have reported it to Human Resources as
8 something that needed to be investigated.

9 Q. Did Mr. Keimbaye ever tell you anything about Opal
10 Lonon touching him?

11 A. No. He never mentioned that.

12 Q. Did you ever witness Opal Lonon make any comments
13 of a sexual nature toward Mr. Keimbaye?

14 A. No. I did not.

15 Q. Did you ever witness Opal Lonon touch Mr. Keimbaye?

16 A. No. I did not.

17 Q. Did you ever witness any behavior by Opal Lonon
18 against anyone that you thought was inappropriate?

19 A. No, I did not.

20 Q. Did Mr. Keimbaye ever tell you that he felt that
21 Chris Kortendick was harassing him?

22 A. No. He did not.

23 Q. Did he ever complain to you about anything having
24 to do with Mr. Kortendick?

25 A. Yes. There was one time where he did.

1 Q. What did he complain to you about?

2 A. He complained that Chris was sabotaging his
3 anesthesia equipment in the operating room, as well as the
4 monitor -- a display monitor for vitals.

5 Q. And what did you do when you received that
6 complaint?

7 A. I looked into it to determine the nature of that
8 complaint and if there was any credibility to it.

9 Q. What did you find?

10 A. There was not. So -- and if I may explain on that?

11 Q. Sure. Yeah.

12 A. Okay. In the heart room on the third floor of the
13 operating room, there were hanging monitors that had an
14 exposed back end to the room. And so during room turnovers,
15 a lot of times, like, equipment would hit them or the brooms
16 hanging from the ceiling would hit them and could potentially
17 damage the back of the monitor. These were very expensive
18 monitors and difficult to replace.

19 But that generally caused damage and -- where the
20 auxiliary ports plugged in had to be repaired by Biomed. So
21 this is a documented issue and was a regular occurrence,
22 actually, in that room. And they just required some
23 finagling to get them to display the vitals properly on the
24 wall. Again, this was something I was familiar with how to
25 fix.

1 And then as far as the anesthesia machine goes,
2 these were a -- this specific anesthesia machine that's being
3 used at that facility has many points of failure -- potential
4 failure, I should say -- that are exposed to being knocked
5 loose by circuits, shoulders, arms, elbows, and things like
6 that.

7 And I believe what was in question in this scenario
8 was the O2 sensor being moved slightly off. And it's set
9 into a small slot and was, again, easy to bump. And that
10 would cause a machine failure during a leak test. And it was
11 just something that was required to be checked. There was no
12 indication of intentional sabotage.

13 Q. Did Mr. Keimbaye ever complain to you that he was
14 being treated differently by anesthesiologists as a result of
15 issues with those machines?

16 A. No. He did not.

17 Q. Did Mr. Keimbaye ever tell you that Chris
18 Kortendick had commented on his skin color?

19 A. No. He never did.

20 Q. Did he ever tell you that he was offended by Chris
21 Kortendick asking where he was from?

22 A. No. He did not.

23 Q. Did you ever witness Chris Kortendick ask
24 Mr. Keimbaye where he was from?

25 A. That didn't happen.

1 Q. Did you ever witness Mr. Kortendick comment on
2 Mr. Keimbaye's skin color?

3 A. No. I did not.

4 Q. Did Mr. Keimbaye ever tell you that Dr. Usoltsev
5 punched him in the groin?

6 A. No. He never did.

7 Q. Did Mr. Keimbaye ever tell you that Dr. Porterfield
8 made comments to him about where he was from or about his
9 training?

10 A. No.

11 Q. Did Mr. Keimbaye ever tell you that Dr. Mansoor
12 yelled at him for using an overnight room?

13 A. No.

14 Q. Did you ever tell Mr. Keimbaye that someone is
15 looking for sex, or words to that effect, when referring to
16 Ms. Lonon?

17 A. No.

18 Q. When did you first learn that Mr. Keimbaye was
19 accusing Ms. Lonon of inappropriate behavior?

20 A. It was after the investigatory meeting was done on
21 his tardiness and lateness.

22 Q. So sometime in June 2018?

23 A. Yeah. So it was mid -- towards the end of June.

24 Q. And you're the one that gave Mr. Keimbaye that
25 integrity line phone number?

1 A. Yes, I was.

2 Q. When did you first learn that Mr. Keimbaye was
3 accusing Mr. Kortendick of inappropriate behavior?

4 A. It was after the lawsuit was filed.

5 Q. Was there an investigation into Mr. Keimbaye's
6 complaint about Opal Lonon?

7 A. Yes, there was.

8 Q. Who conducted it?

9 A. Marilyn Rice.

10 Q. Were you interviewed as a part of that
11 investigation?

12 A. I was.

13 Q. Did you ever witness Mr. Keimbaye being treated
14 inappropriately by any of the doctors in the hospital?

15 A. No, I did not.

16 Q. Were you informed of the results of the
17 investigation?

18 A. Yes, I was.

19 Q. What were the results?

20 A. That a policy had been violated.

21 Q. Did you discipline Ms. Lonon?

22 A. Yes, I did.

23 Q. What was the discipline?

24 A. It was a final written warning.

25 Q. Let's go ahead and look at Exhibit 14, which is

1 already admitted.

2 At the top, it says -- I just want to direct your
3 attention just to the top part where it says, I will speak to
4 HR and get it cleared up. Do you see where it says that?

5 A. Yes, I do.

6 Q. Okay. So the top part of the text is cut off,
7 correct?

8 A. Yes, it is.

9 Q. So we don't know what was said on the top?

10 A. That is correct.

11 Q. Do you know what this is referring to?

12 A. Honestly, this is -- no, I don't. Well, there's a
13 chance that it was actually pertaining to his pay
14 increase -- that he needed a pay increase. And this was
15 something that I was working with HR to correct.

16 MS. ROSEN: Okay. Thank you, Mr. John.

17 No further questions.

18 THE COURT: Mr. Keimbaye, do the questions and
19 answers on cross-examination prompt any further redirect
20 questions from you?

21 MR. KEIMBAYE: Yes. I do have questions, Your
22 Honor.

23 THE COURT: All right.

REDIRECT EXAMINATION

BY MR. KEIMBAYE:

Q. Mr. John, while you were under oath and declared that Mr. Keimbaye was not improving in your answers --

A. Yes?

Q. Is that correct?

A. That is correct. Yeah. He was not improving.

Q. That Mr. Keimbaye was not improving on his clock-in times?

A. That is correct.

Q. Okay. Let's look at Exhibit 19, please. Bates 001173, I believe.

MS. ROSEN: It's refused, Your Honor.

THE COURT: I'm sorry. What?

MS. ROSEN: It is refused. It was not admitted.

MS. BURNHAM: I thought it was not admitted.

MS. ROSEN: That's what we show it.

MS. BURNHAM: That's what it says on the list.

THE COURT: What -- I'm sorry. What exhibit number? I thought I heard 19. Maybe I misheard.

MR. KEIMBAYE: 19, Your Honor. And if it may please --

THE COURT: Hold on.

MR. KEIMBAYE: Thank you.

1 THE COURT: 19. Oh. It was refused. Yeah.
2 Because it's an exhibit that has a bunch of different things
3 all mixed up together. So it's not admitted in evidence.

4 MR. KEIMBAYE: Your Honor, it is important.

5 THE COURT: It may be, but it's not
6 admissible. If you want to -- you can use anything to
7 refresh a witness' recollection. So if you want him to look
8 at a page and ask him if it --

9 MR. KEIMBAYE: Okay.

10 THE COURT: -- refreshes his recollection, you
11 can do that.

12 MR. KEIMBAYE: Yes. Yes.

13 THE COURT: But you can't read what was on the
14 page into the record.

15 MR. KEIMBAYE: Okay.

16 THE COURT: Okay?

17 BY MR. KEIMBAYE:

18 Q. Would you turn to page 001173 regarding your email
19 to Chris Maddy? Did you make that statement about
20 Mr. Keimbaye?

21 THE COURT: That's -- no. Not whether he made
22 the statement. Whether it refreshes --

23 MR. KEIMBAYE: Okay.

24 THE COURT: -- his recollection about
25 something you just asked him about.

1 BY MR. KEIMBAYE:

2 Q. Does this refresh your memory?

3 A. About? Regarding what? I apologize, Mr. Keimbaye.

4 Q. About Mr. Keimbaye improving his clock-in times?

5 A. We mentioned that there was no improvement.

6 Q. But on page 001173, does this page -- are you on
7 top of page 001173?

8 A. Yes. I'm on the page.

9 Q. Do you see your statement there?

10 A. Yes. I see a statement there.

11 Q. Is it -- is that a statement --

12 A. So --

13 THE COURT: So, I'm sorry, what's the
14 question?

15 MR. KEIMBAYE: Earlier, Your Honor, witness
16 response --

17 THE COURT: No. You don't have to tell me
18 what earlier he did. What's your question?

19 MR. KEIMBAYE: My question -- my question is
20 that the witness was lying under oath.

21 THE COURT: No. No. No. No. No. That's
22 not a question. That's a statement the jury should
23 disregard. What's the question for the witness?

24 MR. KEIMBAYE: If the witness recalled making
25 this statement.

1 THE WITNESS: This was done in email, so.

2 BY MR. KEIMBAYE:

3 Q. So do you believe your statement in the email is
4 not exactly what --

5 MS. ROSEN: Objection, Your Honor. I don't
6 understand these questions, and he hasn't established that it
7 refreshes his recollection.

8 THE COURT: Yeah. I mean, if you're using it
9 to refresh his recollection, then it either does or it
10 doesn't.

11 MR. KEIMBAYE: Yeah. Your Honor, it would be
12 prejudicial to exclude this admission --

13 THE COURT: So --

14 MR. KEIMBAYE: -- when --

15 THE COURT: So, hold on. Mr. Keimbaye, you
16 can't make these kinds of statements in front of the jury.
17 And I'm not allowed to advise you about the Rules of Evidence
18 or how to get an exhibit into evidence.

19 MR. KEIMBAYE: Yes. I would --

20 THE COURT: I did offer that you could use
21 something that's not admitted to refresh a witness'
22 testimony. But the exhibit, in its current form, is not
23 admissible. And what you want to do with that is up to you.

24 MR. KEIMBAYE: If it would please the Court to
25 admit it into evidence, Your Honor.

1 THE COURT: I'm not going to admit it into
2 evidence for the reasons I gave earlier. It's full of a
3 bunch of different documents that aren't related to one
4 another.

5 MS. ROSEN: Your Honor, we're okay with it
6 coming in if Mr. Keimbaye wants to ask about it. It's really
7 not a big deal.

8 MS. BURNHAM: Yeah.

9 THE COURT: Well, I mean, we could mark that
10 page as a separate exhibit.

11 MS. ROSEN: Yeah. That's fine.

12 MR. KEIMBAYE: Yes, Your Honor. Please.

13 MS. BURNHAM: That's fine.

14 THE COURT: All right.

15 MR. KEIMBAYE: Thank you.

16 THE COURT: All right. So this will be
17 Plaintiff's -- what's the last Plaintiff's exhibit?

18 THE CLERK: Looks like 62.

19 THE COURT: Yeah. This would be -- yeah. 62
20 wasn't used. So this would be Exhibit 62. Okay. So just
21 this one page?

22 MR. KEIMBAYE: Yes, Your Honor. One page.

23 THE COURT: Actually, it looks like this email
24 string consist of --

25 MR. KEIMBAYE: Oh. I'm sorry.

1 THE COURT: -- two pages.

2 MR. KEIMBAYE: Yes. Two pages.

3 THE COURT: Right? 1173 and 1174?

4 MR. KEIMBAYE: Yes, Your Honor.

5 THE COURT: All right. So that'll be Exhibit
6 62. And I heard Defense Counsel say they are not objecting
7 to its admission.

8 MS. ROSEN: That's correct, Your Honor.

9 THE COURT: So 62 is admitted. So now you can
10 ask questions about 62.

11 (PLAINTIFF'S EXHIBIT 62 RECEIVED INTO EVIDENCE)

12 BY MR. KEIMBAYE:

13 Q. Mr. John?

14 A. Yes.

15 Q. Earlier, you were answering a question to your
16 Counsel. You state that Mr. Keimbaye, after having numerous
17 warnings conversation with Mr. Keimbaye, he was not
18 improving. And you also, under oath, that he was not
19 improving?

20 A. Yes.

21 MR. KEIMBAYE: Okay. Your Honor, what is the
22 exhibit number again for this?

23 THE COURT: 62.

24 MR. KEIMBAYE: 62? Yes.

1 BY MR. KEIMBAYE:

2 Q. Let's look at Exhibit 62 here. You state to Chris
3 Maddy, Hey, Dominique, is he improving, lol?

4 A. Yes.

5 Q. And Chris Maddy replied back to you, That's very
6 true. Nice work.

7 A. Yes.

8 Q. You do know you're lying under oath?

9 MS. ROSEN: Your Honor.

10 THE COURT: Sustained. That is -- that is --

11 MS. ROSEN: This is the third time he's said
12 something like that.

13 THE COURT: That's not a proper question,
14 Mr. Keimbaye. I don't want to hear it again.

15 MR. KEIMBAYE: Thank you.

16 THE COURT: Do you have any more questions?

17 MR. KEIMBAYE: Yes, I do.

18 THE COURT: Okay.

19 MR. KEIMBAYE: Let's look at Exhibit 036.

20 THE COURT: I'm sorry. Zero? Which exhibit
21 number again?

22 MR. KEIMBAYE: 036.

23 THE COURT: 36? Okay.

24 MR. KEIMBAYE: Yes.

1 BY MR. KEIMBAYE:

2 Q. Mr. John?

3 A. Yes.

4 Q. You already answered to the Counsel, Ms. Lonon
5 never state to you that she have coiled her legs around
6 Mr. Keimbaye?

7 A. Yes. That's what I stated. I never witnessed it.

8 Q. So -- so you do believe that -- at that time, you
9 do believe that Ms. Opal was telling you the truth that
10 Mr. Keimbaye was lying?

11 MS. ROSEN: Object to the form.

12 THE COURT: Sustained. And, frankly, when you
13 say, at that time, it's not clear what time you're referring
14 to, Mr. Keimbaye.

15 BY MR. KEIMBAYE:

16 Q. When Ms. Lonon was telling you that Mr. Keimbaye's
17 testimonies were false, do you believe Ms. Lonon?

18 MS. ROSEN: Objection, Your Honor. It's
19 hearsay. And I don't -- he's talking about something that
20 hasn't been established.

21 THE COURT: Sustained.

22 BY MR. KEIMBAYE:

23 Q. If Ms. Lonon told you she did not coil her legs
24 around Mr. Keimbaye and hug him, why would you take a
25 correctional action against her?

1 THE COURT: So I'm assuming this is the same
2 objection?

3 MS. ROSEN: Yeah.

4 THE COURT: Mr. Keimbaye, your question
5 presumes a fact that no one has testified to. You're
6 presuming that Ms. Lonon made certain statements to Mr. John.
7 And there has been no testimony from any witness that that
8 occurred.

9 MR. KEIMBAYE: Let's move on -- yes. Let's
10 move on to Exhibit 25, please.

11 THE COURT: 25?

12 MR. KEIMBAYE: Yes.

13 THE COURT: What's the question?

14 BY MR. KEIMBAYE:

15 Q. Do you agree that --

16 THE COURT: You want him to read it into the
17 record? Are you asking the witness, you said, would you read
18 that? Do you want him to read it out loud to the jury?

19 MR. KEIMBAYE: No. No. I did not say that,
20 Your Honor.

21 THE COURT: Oh. Okay. Then what's your
22 question about this exhibit for Mr. John?

23 BY MR. KEIMBAYE:

24 Q. Will you agree that this statement proved that
25 Ms. Lonon sexually harassed Mr. Keimbaye?

1 MS. ROSEN: Objection, Your Honor.

2 THE COURT: Sustained in the form of the
3 question.

4 BY MR. KEIMBAYE:

5 Q. Mr. John, do you remember being with Mr. Keimbaye
6 all along with the other anesthesia technician when Leena
7 (phonetic) made the accusation of sexual harassment against
8 Mr. Kortendick?

9 MS. ROSEN: Objection. Objection, Your Honor.
10 This is subject of a motion in limine. And --

11 THE COURT: That is sustained, and the jury
12 should disregard the question.

13 MR. KEIMBAYE: No more questions, Your Honor.

14 THE COURT: All right. Is there recross?

15 MS. ROSEN: Just one question, Your Honor.

16 **RECROSS-EXAMINATION**

17 BY MS. ROSEN:

18 Q. Mr. John, in -- in the email that you sent, where
19 you said Mr. Keimbaye was initially improving, did he
20 continue to improve?

21 A. No. He did not.

22 MS. ROSEN: Thank you.

23 No further questions.

24 THE COURT: All right. Do members of the jury
25 have any questions for Mr. John? Okay. We don't have J. in

1 here. Would you --

2 THE BAILIFF: I'm right here.

3 THE COURT: Oh. We do. Okay. You were
4 listening. All right. If you could collect the jurors'
5 questions, please. We have several. All right. Is there
6 another one?

7 THE BAILIFF: So, Your Honor, would you like
8 to start, and I'll collect the rest?

9 THE COURT: Oh. There's more coming? Yes.
10 Let's do that. That's a good use of our time.

11 So I'm going to ask Defense Counsel and
12 Mr. Keimbaye please join me in chambers here, to go over the
13 questions.

14 (Recess at 3:50:45 p.m., recommencing at 4:02:41 p.m.)

15 (The following proceedings were held inside the presence of
16 the jury:)

17 THE COURT: I just want to make sure I have
18 everyone. All right. I'm not asking these questions in any
19 particular order. And, remember, all of them are not going
20 to get asked, some for Rules of Evidence reasons and other
21 reasons, but I'll do my best. There was some overlap, too.
22 So I'll do my best not to be repetitive.

23 **EXAMINATION BY THE JURY**

24 THE COURT: Okay. This is about the BLS and
25 ACLS courses. Can ACLS and BLS courses be provided to -- or

1 | could they be provided to Mr. Keimbaye without a supervisor's
2 | formal approval?

3 | THE WITNESS: No. They could not.

4 | THE COURT: Were ACLS or BLS courses provided
5 | to Mr. Keimbaye in the Providence system through
6 | HealthStream?

7 | THE WITNESS: So BLS was provided for him
8 | because it's required. And, honestly, I'm not sure how ACLS
9 | ended up on there.

10 | THE COURT: Okay. Did you approve for
11 | Mr. Keimbaye to do BLS training on company time?

12 | THE WITNESS: Yes, I did.

13 | THE COURT: If tardiness is a violation of the
14 | code of conduct, do you know why Ms. Maddy didn't raise it
15 | with you until several of those violations had occurred?

16 | THE WITNESS: This was to establish a
17 | pattern -- a deliberate pattern of tardiness rather than --
18 | it was our attempt to give the benefit of the doubt,
19 | essentially. We wanted to establish a pattern that needed to
20 | be addressed rather than, you know, an instance of one or two
21 | times.

22 | THE COURT: All right. Was it ever made clear
23 | to Mr. Keimbaye that he might be terminated if he continued
24 | to be tardy?

25 | THE WITNESS: Yes.

1 THE COURT: Okay. I'm going to be jumping
2 around by topics a little bit just because there's so many of
3 these. I apologize.

4 THE WITNESS: No worries.

5 THE COURT: Do charge nurses have the
6 authority to move shifts for an anesthesia tech who is on
7 call?

8 THE WITNESS: They can't really move shifts.
9 What they can do is they can initiate a callback from
10 standby. So shifts are approved by the supervisor and
11 manager, and charge nurse works within those approvals.

12 THE COURT: Okay. I'm going to try to hold
13 onto this one because there's some other questions on the
14 same topic. All right.

15 Exhibit 14, which is in the green binder, I
16 believe.

17 THE WITNESS: I'm grabbing that, Your Honor.
18 14 you said?

19 THE COURT: Yeah.

20 THE WITNESS: Thank you.

21 THE COURT: That, I believe, is the text
22 exchange, where there was a mention from you about checking
23 with HR. Do you know why the text exchange was cut off?

24 THE WITNESS: I don't. This is not from my
25 phone.

1 THE COURT: All right. So we have a question,
2 why did you wait for six months to take action regarding
3 Mr. Keimbaye's chronic tardiness?

4 THE WITNESS: So this was addressed
5 progressively through coaching, another coaching, and then a
6 verbal warning for the tardiness. And, at that point, the
7 situation became where there were additional -- there was
8 overtime being accrued that wasn't unauthorized, and it
9 appeared deliberate by nature. And that's where -- that's
10 where we became very concerned.

11 THE COURT: Okay. Did Mr. Keimbaye get paid
12 for his on-call hours?

13 THE WITNESS: Yes, he did.

14 THE COURT: How many times was Mr. Keimbaye
15 given the tardiness policy?

16 THE WITNESS: For sure, I can say two times.
17 Once upon hire, after he completed his orientation, and then
18 once again during the second time, I coached him. The first
19 time I read it to him, but I don't think -- I don't recall
20 the particulars of that one. So I'll say for sure two times.

21 THE COURT: Do you know whether -- I'm going
22 to pull up the exhibit so we're all clear on which exhibit
23 we're talking about. The juror question references
24 Exhibit 121, which is in the white binder. It's good that
25 they're different colors because it makes it easier to keep

1 track.

2 So all right, that's an email from you to
3 Mr. Keimbaye, dated April the 5th of 2018, about the missed
4 breaks and the clock-in times and so forth.

5 The question is, do you know whether there was
6 read receipt for this email that you sent?

7 THE WITNESS: I believe there was, but I do
8 not see one here, Your Honor.

9 THE COURT: Okay. Did you have any personal
10 interactions with Mr. Kortendick outside of work?

11 THE WITNESS: Yes, I did.

12 THE COURT: Okay. Did you coach Mr. Keimbaye
13 after each of his -- I'm sorry, I'm having trouble reading
14 this -- after each of his tardies, or did you do that weekly?

15 THE WITNESS: So I coached him after these
16 were brought to my attention by Chris Maddy. I didn't review
17 the timecards unless they were flagged and sent to my desk to
18 review.

19 THE COURT: Okay. How are preceptors or leads
20 selected?

21 THE WITNESS: So this is based on skill and
22 seniority -- and a mix of them, honestly. So we did have a
23 couple of techs that came through as part time or per diem
24 that were not used as preceptors because their -- they were
25 good staff, but at the same time, they didn't feel

1 comfortable passing those skills along.

2 So this is something we talk to each of our
3 team about. And if they wanted to precept and train, and
4 they felt comfortable in their role, and they felt confident
5 in their skills that they could assist and help provide that
6 training to new hires, then they were put into a circulating
7 pool.

8 And leads were mainly based on the skills and
9 availability level because there was some troubleshooting
10 that they would be required to do that required advanced
11 knowledge of anesthesia machines or advanced airways and
12 equipment setup in the rooms. So it was important that a
13 strong tech was put in that position every day.

14 THE COURT: Thank you. Do the preceptors or
15 the leads get any special training?

16 THE WITNESS: They do get additional -- no.
17 Actually, they don't get additional training. No. They
18 don't.

19 THE COURT: Okay. We have a request that
20 relates to your testimony about investigating the timekeeping
21 issues that had been brought to your attention. And we're
22 asking for a clarification about the badge swipe in the
23 garage and the timecard swipe having some discrepancy with
24 one another. And the question is, how would something like
25 that happen?

1 THE WITNESS: Yeah. So the -- when you badge
2 into our parking garages, you had to actually scan your
3 badge's RFID. And it would pop the gate open, and you can
4 pull in. But that was recorded in our security system.

5 Now, there are two ways to clock in -- there's
6 one way, according to policy, to clock in. You use the time
7 clock that's mounted on the wall. That being said, there was
8 also a way for them to go into their own Kronos card and edit
9 and make that edit after the fact on the computer. So it
10 could be manually entered in at that time.

11 And so that was how they kind of -- that was
12 how they -- that was how something like that would occur,
13 where they wouldn't actually swipe in on the wall. They
14 would do it via computer and just type in the time they were
15 there.

16 THE COURT: Okay. All right. So this
17 question refers to your testimony about Mr. Keimbaye
18 reporting to you that he believed that Mr. Kortendick was
19 sabotaging his equipment. And the question is, did you
20 document that claim that Mr. Keimbaye made or did you raise
21 that with HR?

22 THE WITNESS: No. I did not.

23 THE COURT: Did you document the -- your
24 conclusion after you investigated the claim?

25 THE WITNESS: No. I did not.

1 THE COURT: Okay. During the time that
2 Mr. Keimbaye was employed with Providence, how many of the
3 people who were under your supervision were people of color?

4 THE WITNESS: I believe there were three.

5 THE COURT: Okay. All right. Then we have a
6 question asking, after the investigation into Mr. Keimbaye's
7 reports of having been sexually harassed by Ms. Lonon, what
8 was the determination as to what policy was violated?

9 THE WITNESS: So, honestly, that -- that
10 investigation was done by Marilyn Rice after the fact, and I
11 was not aware of it until after I returned and was informed,
12 actually. And it was one of those things that caught me by
13 surprise, to be honest with you, and completely frank. And
14 I'm actually unclear on the exact policy that was violated.
15 I apologize for that. But because -- okay. Thank you.

16 THE COURT: Oh. All right. Another question
17 about the allegations of sabotage. How, specifically, did
18 you confirm that there was no intentional sabotage of the
19 machines that Mr. Keimbaye was charged with maintaining,
20 based on the allegations that he made to you?

21 THE WITNESS: Okay. So on the monitors, these
22 were -- this was a documented issue by Biomed that there were
23 ports that had been damaged by either mop handles or
24 brooms -- we're unclear on which. And so this was something
25 that I was aware of had a fix. Just -- you had to basically

1 | trick the monitor into reading that port. It's kind of like
2 | the lines appearing on this screen. Basically, lines would
3 | not show up on that screen. And so you had to basically
4 | trick it, plug it into one, and then plug it into the other,
5 | and it would start reading that cable.

6 | It's unfortunate that it was doing that.
7 | These screens cost -- you know, I hate to get into the
8 | specifics on this sort of thing -- but these screens cost
9 | around \$15,000 each. These were a capital item, meaning that
10 | they required approval by a committee to purchase and
11 | replace. And so the reason they continually failed and had
12 | to be adjusted continuously was because we were unable to
13 | approve capital for a year -- around a year or so.

14 | And so it was just that was the nature of
15 | those. And that was how I was aware that was a pattern,
16 | nothing intentional. And it was, again, the same fix that
17 | I've always done to get the monitor to read correct.

18 | The anesthesia machine that was allegedly
19 | sabotaged is -- and I'll get very specific with this
20 | one -- the Draeger Fabius. It is a -- it's a good machine,
21 | but it's a very old design. The new anesthesia machines
22 | encapsulate everything internally. It's a cartridge you pull
23 | out. So I really hope I'm not boring you.

24 | So the Fabius machine is an older model. And
25 | all the hoses, all the pressure system for it that operates

1 with the lungs of the patient, are exposed on the back. And
2 then the O2 sensor, instead of being recessed in, sat on top.
3 So it was a continued issue with those machines. They would
4 fail regularly. And it could be due to any number of things.
5 There's no way to point to sabotage.

6 This was something that was done between every
7 case. That's why -- sorry. Testing the machine was done
8 between every case to ensure that they worked. And many
9 times they didn't between cases, and they would have to be
10 trouble shot and repaired.

11 THE COURT: Okay. All right. So back to the
12 question regarding Ms. Lonon, if she received a final verbal
13 warning after Ms. Rice's investigation into Mr. Keimbaye's
14 allegations, does that imply that Ms. Lonon had prior policy
15 violations?

16 THE WITNESS: No, actually. So, based on
17 human resources recommendation, a final written was given.
18 This was based on their own findings and their
19 recommendation. As a supervisor, I adopted their -- I
20 accepted and adopted their recommendation and provided her
21 with a final written.

22 THE COURT: All right. Thank you. I think
23 I've made my way through all of these now.

24 Mr. Keimbaye, it's getting really late. But
25 if you have any burning questions for Mr. John based on his

1 answers to the questions from the jurors, I'll give you an
2 opportunity to ask those.

3 **FURTHER REDIRECT EXAMINATION**

4 BY MR. KEIMBAYE:

5 Q. Why wasn't Ms. Lonon terminated?

6 A. Again, this is something that I adopted from human
7 resources and their recommendation based on their
8 investigation.

9 Q. You state earlier you documented regarding your
10 investigation for Mr. Kortendick sabotaging or damaging
11 Mr. Keimbaye's rooms. Why didn't you file it with the HR?

12 A. Again, because there was no evidence of any
13 sabotage or harassment. There was no policy violated.

14 Q. As a supervisor, when there is a serious concern
15 regarding some sort of sabotaging anesthesia machine or
16 creating a huge liability against Mr. Keimbaye, wouldn't that
17 be a correct action for you to file that -- that report to
18 the HR?

19 A. If the nature of the failure was unique and
20 deliberate, then yes, that would have been deliberate -- that
21 would have been reported to HR. Since the nature of the
22 failure of the equipment was routine -- I hate to say
23 routine, but it was something that was not unexpected and
24 regularly occurred with all anesthesia techs, it was not
25 deemed appropriate to report that to human resources.

1 Q. So do you believe that any issue regarding patient
2 safety should not be reported to the HR?

3 MS. ROSEN: Objection, Your Honor. What's
4 the --

5 THE COURT: Sustained.

6 MS. ROSEN: -- relevance?

7 THE COURT: Do you have another question,
8 Mr. Keimbaye?

9 MR. KEIMBAYE: No further questions, Your
10 Honor.

11 THE COURT: All right. Thank you.

12 Ms. Rosen, do you have any further questions?

13 MS. ROSEN: I don't, Your Honor.

14 THE COURT: All right. Okay.

15 Thank you, everybody, for hanging in there a
16 little later than we normally would.

17 Feel free to step down, Mr. John.

18 THE WITNESS: Thank you. Thank you, Your
19 Honor.

20 (Witness excused.)

21 THE COURT: All right. Members of the jury,
22 so we're going to take our first long break because
23 tomorrow's Friday, so we will not be in session. And,
24 obviously, we won't be in session over the weekend.

25 Please remember the rules about not

1 communicating about the case in any form, not exposing
2 yourself to any information that might relate to the case.
3 Hopefully, you'll be able to relax and enjoy the next three
4 days. Please be back Monday morning, usual place and time.
5 And we'll have another witness for you at that time.

6 Actually, you know what? We will probably
7 give you an opportunity to propose written questions for
8 Mr. Keimbaye and then have another witness for you.

9 Have a lovely weekend.

10 THE BAILIFF: All please rise.

11 (Jury exits at 4:23:23 p.m.)

12 UNIDENTIFIED SPEAKER: Anything special for
13 9/11?

14 THE COURT: Oh. No.

15 UNIDENTIFIED SPEAKER: Okay. I just wondered.

16 THE COURT: No. It's -- you know, it's not a
17 holiday yet. So, yeah. Just business as usual. God
18 willing, business as usual.

19 There's the juror questions.

20 THE CLERK: Thank you.

21 THE COURT: That includes the ones I didn't
22 ask. Oh. One more. There you go.

23 I don't know when that door's going to open,
24 and jurors are going to start coming out. But anything that
25 should go on the record before then?

1 DISCUSSION RE MOTION IN LIMINE VIOLATION

2 MS. ROSEN: Yes, Your Honor. We're very
3 concerned about Mr. Keimbaye bringing up an issue that was a
4 subject of a motion in limine about Chris Kortendick. We
5 think it may be the grounds for a mistrial. And he
6 purposefully did that. He knew that was a subject of a
7 motion in limine.

8 THE COURT: Mr. Keimbaye, you want to address
9 that?

10 MR. KEIMBAYE: Your Honor, this is a serious
11 concern and prejudicial to Plaintiff because Defendants
12 constantly want to take any opportunity to impose a sanction
13 on -- on --

14 THE COURT: So here's the thing. That was not
15 a question that was permitted. You knew that was a question
16 that was not permitted. It was a subject of an order in
17 limine. It wasn't even a question that had been posed to the
18 witness in direct or cross or redirect or recross.

19 And if a party or a lawyer does something that
20 violates court orders on purpose, then the Court can properly
21 consider a sanction. So it's not because it's prejudicial to
22 you. Frankly, that question was prejudicial to the Defense,
23 and unfairly so.

24 MR. KEIMBAYE: May I make a statement?

25 THE COURT: Yes.

1 MR. KEIMBAYE: I was present when the
2 complainant made a -- made an accusation against them.

3 THE COURT: I'm sorry. What?

4 MR. KEIMBAYE: I was present --

5 THE COURT: Yes?

6 MR. KEIMBAYE: -- when the --

7 THE COURT: The fact that you were present has
8 nothing to do with it. This isn't a hearsay objection.

9 All right. We have jurors coming out.

10 MS. ROSEN: Are they gone?

11 MS. BURNHAM: They're gone.

12 MS. ROSEN: And, Your Honor, he repeatedly
13 said the witness was lying, he's under -- I mean --

14 THE COURT: Yeah. You can't do that.

15 MS. ROSEN: Really, really inappropriate
16 prejudicial stuff.

17 THE COURT: Yep. You can't -- you can't do
18 that.

19 MS. ROSEN: Don't stare at me like that.
20 You've accused me of so many terrible things in this case
21 that have no basis whatsoever.

22 MR. KEIMBAYE: I'm sorry.

23 THE COURT: I don't want to hear -- I will
24 consider giving the jury a curative instruction if Defense
25 Counsel want to propose one on Monday.

1 Mr. Keimbaye, I don't want to hear you
2 accusing people of lying. If you want to get up in closing
3 argument and tell the jury why they shouldn't believe
4 something a witness said, you can do that. But this isn't
5 TV. This isn't the movies. You know, we don't accuse
6 witnesses of lying because we don't like the answer that they
7 gave to a question. Okay?

8 If you have material with which to impeach a
9 witness, that's fair game. But don't accuse people of
10 perjury unless you have rock solid proof. And, so far, I
11 haven't seen any.

12 MS. ROSEN: I mean, Your Honor, he is going to
13 keep doing this unless he gets sanctioned. He's already
14 proven that.

15 THE COURT: Well, I'm not going to sort of
16 *sua sponte* impose a sanction at this point, other than I'm
17 happy to give a curative instruction if Defense Counsel
18 thinks it will do more good than harm.

19 MS. ROSEN: Okay. Well, we'll consider over
20 the weekend whether we want to move for a mistrial.

21 THE COURT: Sure. Okay. Well, you can do
22 that, too.

23 Anything else?

24 MS. ROSEN: On Monday, I would -- we will see
25 if we want to pose a curative instruction. But we would like

1 | you to instruct the jury, as you said, about there not being
2 | a wrongful termination claim in this case.

3 | THE COURT: Okay.

4 | MS. ROSEN: Because I think there's -- even
5 | though we've said it, I think there's a lot of confusion
6 | about that.

7 | THE COURT: All right. You might want to
8 | propose an instruction on that, too, just so that
9 | Mr. Keimbaye has a chance to look at that and lodge any
10 | approach objections.

11 | MS. ROSEN: We have one in our jury
12 | instructions.

13 | THE COURT: Oh. Okay. Okay. And I haven't
14 | looked at those yet, to be honest with you.

15 | MS. ROSEN: Okay.

16 | THE COURT: All right. Anything else?

17 | MR. KEIMBAYE: Your Honor, if it may please
18 | the Court, Plaintiff would like that, you know, all his
19 | exhibits be published.

20 | THE COURT: I'm sorry. What?

21 | MR. KEIMBAYE: Exhibit -- admitted exhibits to
22 | be published.

23 | THE COURT: Do you understand what published
24 | means?

25 | MR. KEIMBAYE: Like --

1 THE COURT: Published just means they can be
2 shown to the jury.

3 MR. KEIMBAYE: Yes. Exactly.

4 THE COURT: That's all it means.

5 MR. KEIMBAYE: Yes.

6 THE COURT: And we've shown many of them to
7 the jury. Any admitted exhibit can be published to the jury,
8 and all admitted exhibits will be available to the jury
9 during their deliberations.

10 MR. KEIMBAYE: Thank you.

11 THE COURT: Of course. Anything else?

12 MR. KEIMBAYE: That's it, Your Honor.

13 MS. ROSEN: So are you reserving ruling on
14 sanctioning him, Your Honor?

15 THE COURT: Yes.

16 MS. ROSEN: Okay. Thank you.

17 THE COURT: Okay. I need somebody -- I don't
18 much care who -- to make a copy so that we have an official
19 Exhibit 62 and a bench copy and a copy --

20 MS. ROSEN: Okay.

21 THE COURT: -- for each party.

22 MS. ROSEN: Okay. We'll make one.

23 THE COURT: Okay. I'll hand down my two
24 pages, here. But --

25 THE CLERK: And I'll get that from you.

1 THE COURT: Thank you. Okay. Perfect. Thank
2 you.

3 MS. ROSEN: Can we leave our exhibit notebooks
4 back here, Your Honor?

5 THE COURT: I don't see why not. Sure.

6 MS. ROSEN: Okay.

7 THE COURT: Yeah. I mean, I have --

8 MS. ROSEN: It's not going to --

9 THE COURT: -- a few things going on tomorrow
10 but nothing that's going to require the shelf.

11 MS. BURNHAM: Okay.

12 MS. ROSEN: Okay. Thank you.

13 (Proceedings adjourned at 4:31:08 p.m., to recommence on
14 September 11, 2023.)
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1 SEATTLE, WASHINGTON

2 MONDAY, SEPTEMBER 11, 2023

3 MORNING SESSION - 9:01:45 P.M.

4 JURY TRIAL (DAY 4):

5 (The following proceedings were held outside the presence of
6 the jury:)

7 THE BAILIFF: Superior Court for the State of
8 Washington in and for King County is now in session. The
9 Honorable Judge Darvas presiding.

10 THE COURT: Thank you very much. Please be
11 seated.

12 Do you have the jurors?

13 THE BAILIFF: No. I heard walking, but it
14 wasn't the jurors. They're on their way up, Your Honor.

15 THE COURT: Okay. Just give us a warning.
16 Thank you.

17 Please be seated, everyone. Good morning, and
18 happy Monday.

19 MR. KEIMBAYE: Good morning.

20 MS. BURNHAM: Good morning, Your Honor.

21 THE COURT: All right. I just had a chance to
22 very rapidly read the Defendant's renewed motion to dismiss.

23 Was that what you wanted to talk about before
24 we start with, I assume, Mr. Kortendick's testimony this
25 morning?

1 MS. BURNHAM: Yes, Your Honor. We wanted to
2 talk about that, and then also to get clarification from you,
3 if we are moving for a directed verdict, when you would like
4 us to argue that. And then also --

5 THE COURT: When Plaintiff rests.

6 MS. BURNHAM: Okay. And then also when will
7 we be doing Plaintiff's questions from the jury? We're just
8 trying to get an idea for timing because we've got our
9 witnesses now.

10 THE COURT: Yeah. We should probably do that
11 first.

12 MS. BURNHAM: Okay. That's --

13 MS. ROSEN: Well, can we have Mr. Kortendick
14 testify first because he has to fly out tonight for a work
15 obligation.

16 MS. BURNHAM: Yeah.

17 THE COURT: All right. Well, we interposed
18 Mr. John, so we may as well interpose Mr. Kortendick as well.

19 MS. BURNHAM: And then also, Your Honor, if we
20 do need to do some recross of Mr. Keimbaye, when would you
21 like us to do that?

22 THE COURT: I'm sorry?

23 MS. BURNHAM: If we needed to do some recross
24 of Mr. Keimbaye, when would you like us to do that?

25 THE COURT: You finished your cross, right?

1 So if you want to recall him in your case,
2 then after he rests, you could do that.

3 MS. BURNHAM: Okay.

4 MS. ROSEN: Okay. That's what we wanted to
5 know.

6 MS. BURNHAM: That's fine, Your Honor.

7 THE COURT: Yeah. I mean, I think that's sort
8 of the normal progression of things.

9 MS. BURNHAM: Okay. But yes, we certainly
10 would like to talk about the renewed motion to dismiss as
11 well.

12 DIDSCUSSION RE DEFENSE'S RENEWED MOTION TO DISMISS

13 THE COURT: All right. Briefly. I did read
14 it. I didn't get a chance to read your declaration. On the
15 other hand, you're referring to events that are pretty
16 recent, so I think I remember reasonably well.

17 Do you happen to have a black pen down there
18 somewhere that I could steal? Thank you. They all seem to
19 have walked away from the bench. Thank you.

20 MS. BURNHAM: So, Your Honor, we renewed our
21 motion to dismiss under Civil Rule 41(b). We remind the
22 Court of the requirement that it hold Mr. Keimbaye to the
23 same standard as an attorney.

24 The behavior last week was extremely
25 concerning for Defendants and highly prejudicial in what was

1 raised right before we all left on Thursday and acknowledged
2 by Your Honor in chambers.

3 As you know, we previously filed a motion to
4 dismiss based on the fact that Mr. Keimbaye had stated under
5 penalty of perjury he had served us with motions that were
6 never served upon us and then for violating this Court's
7 orders on his order to pay sanctions in response to that
8 motion.

9 As you know, you stated that was too much of a
10 nuclear remedy, and you also --

11 THE COURT: Well, you quoted me in the brief,
12 but I think I did say that.

13 MS. BURNHAM: You did. You also gave
14 Mr. Keimbaye additional time to pay the sanctions.

15 THE COURT: So I think what I said, just to be
16 clear, at least that's what I intended to say, was that the
17 Defense could ask the Court to reduce the award of sanctions
18 to judgment if you wish to do that. I don't know that I said
19 that you had to wait until after the trial, but if I did, I'm
20 sorry. That wasn't specifically my intention.

21 Go ahead.

22 MS. BURNHAM: Okay. And then following that,
23 we got your ruling that same day on the motions in limine.
24 My cocounsel, Ms. Rosen, then sent Mr. Keimbaye a cheat
25 sheet, if you will, of what was your rulings, just to make

1 | sure all the parties were on the same page to avoid what
2 | happened last week.

3 | We sent that to Mr. Keimbaye. He basically
4 | responded by saying he was not planning to follow those
5 | orders. We addressed this issue with the Court on Monday
6 | before trial got started -- or, excuse me, Tuesday. Last
7 | week was a holiday. And, again, you reminded Mr. Keimbaye
8 | to -- he had to abide by the Court's orders. He was to be
9 | treated the same as an attorney. You agreed with that and --

10 | THE COURT: Well, even if you weren't an
11 | attorney.

12 | MS. BURNHAM: Right.

13 | THE COURT: I mean, court orders are court
14 | orders.

15 | MS. BURNHAM: Court orders are court orders.
16 | I like it.

17 | So, one of the things that was in that email
18 | was rumors and innuendo regarding Mr. Kortendick, and we
19 | directly put that in the email.

20 | We also talked to you about having you review
21 | his opening in-camera review to avoid some of these issues as
22 | well because we foresaw the possibility of a mistrial.

23 | In his opening -- it was not reviewed
24 | beforehand, and in his opening, he did raise his dismissed
25 | claims throughout his opening. You stopped him and reminded

1 him -- which also reminds me to ask you to, again, instruct
2 the jury, as you stated last Thursday that you would do, in
3 terms of he is not here arguing a claim for wrongful
4 discharge.

5 So that happened, and that was a violation of
6 motions in limine for his opening for him to discuss his
7 dismissed claims.

8 And then, of course, when Travis John was up
9 on the stand, he called him a liar numerous times. Even
10 after being told by Your Honor to not do so, he continued to
11 do so, causing us to object. And there's some good case law
12 in the brief in terms of how that is misconduct after you've
13 been told not to do something and you continue and
14 persistently ask questions that you've already been told by
15 Your Honor not to do.

16 He also discussed his alleged comparators in
17 violation of Motion in Limine Number 18. He talked about how
18 Opal Lonon was treated differently for a policy violation
19 than he was, which is a direct comparator argument. He also
20 talked about his tardiness in comparison to Kyle Cramer's
21 tardiness. Again, a comparator argument in violation of
22 Motion in Limine Number 18.

23 We also continue to have concerns about his
24 behavior towards Defense Counsel. After voir dire on
25 Tuesday, Mr. Keimbaye continuously interrupted me when I was

1 speaking to Your Honor, and I asked that I be allowed to
2 finish. He continued to speak over me without any
3 interjection by the Court. The next day --

4 THE COURT: Well, I don't think that's
5 entirely accurate. Forgive me for interrupting. I think he
6 was admonished more than once.

7 MS. BURNHAM: Not during voir dire,
8 Your Honor, respectfully.

9 THE COURT: Oh. You mean in the presence of
10 the jury?

11 MS. BURNHAM: It was outside of the presence
12 of the jury. It was afterwards, right before the end of the
13 day last Tuesday, Your Honor. And I asked that I be allowed
14 to finish, and he spoke over me and continued to speak over
15 me through the rest of the day. Then in court, when he was
16 speaking over Ms. Rosen, you did admonish Mr. Keimbaye.

17 And finally, we have a concern about his
18 continued testimony about evidence of a lost relationship he
19 supposedly suffered due to -- I guess, due to his time at
20 Providence. Not only was that information not disclosed in
21 discovery, we had a specific request for that information,
22 and for any witnesses that would speak to his emotional
23 distress. He failed to ever provide that information or to
24 supplement with the name of his supposed partner.

25 But also, there is a motion in limine in terms

1 of bringing in evidence that was not disclosed in discovery,
2 and in fact, that was Plaintiff's motion that you granted.

3 So for all of those reasons, Your Honor, we
4 renew our motion to dismiss under CR 41(b), at a minimum due
5 to the extremely prejudicial -- he also spoke about a sexual
6 harassment claim against Mr. Kortendick at the end of Travis
7 John's testimony, which is, of course, extremely prejudicial,
8 and I think I already mentioned Your Honor acknowledge that
9 in chambers.

10 But to the extent that that was mentioned at a
11 minimum, we ask that Chris Kortendick be dismissed from this
12 case as he is -- we can't unring the bell at this point, and
13 he was prejudiced by that comment that should have never been
14 heard by the jury.

15 THE COURT: All right. Thank you. When was
16 Mr. Keimbaye provided with a copy of the Defense brief?

17 MS. BURNHAM: Yesterday, Your Honor.

18 THE COURT: I assume you all filed it over the
19 weekend.

20 MS. BURNHAM: Yesterday, Your Honor.
21 Yesterday, Your Honor.

22 THE COURT: Yesterday. Okay.

23 ORAL ARGUMENT BY THE PLAINTIFF

24 Mr. Keimbaye, I assume then you've had time to
25 read the Defense motion. Did you want to respond to it?

1 MR. KEIMBAYE: Your Honor, only I have been
2 doing the whole entire time that they get involved with the
3 Defendant employer is complaining, sanction, complaining,
4 sanction, complaining, sanction. There's nothing -- there's
5 wrong that, you know, Plaintiff has done.

6 THE COURT: No. There's a lot wrong that
7 you've done.

8 MR. KEIMBAYE: Well --

9 THE COURT: That's not the issue. The issue
10 is what the remedy for that ought to be.

11 Do we have jurors that you need to bring in?
12 Okay. Let's suspend things for just a moment while J.
13 (phonetic) brings in our jurors.

14 THE BAILIFF: Please acknowledge the jury.
15 (Pause in proceedings.)

16 THE COURT: Thanks, J..

17 All right. So, Mr. Keimbaye, if you read
18 Ms. Burnham's motion, she lists the things that you did that
19 were in violation of orders or persisting in asking questions
20 after I had sustained objections. And she just went through
21 them again in open court this morning.

22 So we were all here when you did those things.
23 I'm not going to listen to argument that you didn't do them.
24 The question is, again, she's asking me to dismiss the case.
25 I'd like to hear from you as to why that would or would not

1 be an appropriate thing to do at this point.

2 MR. KEIMBAYE: It would not be appropriate to
3 dismiss Plaintiff case because this is a serious civil right
4 violation. Plaintiff hasn't done anything wrong. He was
5 fully mistreated. And because Plaintiff is an immigrant, he,
6 instead of speaking out, he allowed, you know, abusers to
7 abuse him because he was afraid of, you know, losing his job.

8 THE COURT: Now, wait a minute. We're talking
9 about your conduct in court. That's what we're talking
10 about. We're not talking about what happened on your job.

11 MR. KEIMBAYE: Oh. Your Honor, my conduct in
12 court, it came from their provocation because --

13 THE COURT: What provocation?

14 MR. KEIMBAYE: Ms. Rosen constantly, you know,
15 tried to intimidate Plaintiff and act like, you know, she's
16 not the counsel, but, you know, second judge for this case.

17 And you were in your office last Tuesday when
18 we finished with the day. They were talking at the table
19 over there. I was standing, looking at their direction,
20 listening to -- only listening to all that she was saying.

21 She started yelling at me. Don't look at me
22 like that. Don't look at me like that.

23 THE COURT: Okay. What does that have to do
24 with your --

25 MR. KEIMBAYE: I mean -- I mean --

1 THE COURT: What -- I'm sorry, Mr. Keimbaye,
2 but what does that have to do with your not following court
3 orders while we're in trial? I mean, you are a grown-up.
4 You're not a child. You're not a teenager. You are a
5 grown-up. And if people, when we're not on the record, are
6 making snide remarks, no, that's not right, but you have to
7 behave like a mature person and not violate court orders
8 because you find them offensive or you find them annoying.

9 You can bring it up to the Court outside the
10 presence of the jury, but it doesn't give you license to ask
11 witnesses questions and to make statements in front of the
12 jury that have been barred by the Court. So, yes, you did
13 some things that were wrong.

14 And again, I'll circle back. What do you
15 think the appropriate remedy should be?

16 MR. KEIMBAYE: I mean, I am new to the legal
17 system.

18 THE COURT: No, you're not.

19 MR. KEIMBAYE: I am --

20 THE COURT: No, you're not. You tried a whole
21 case. You tried a whole case, a whole motor vehicle tort
22 case on your own, and apparently you've litigated at least
23 two other cases. So, no, you're not a lawyer; I get that,
24 but Ms. Burnham is right. I'm supposed to treat you as
25 though you were a lawyer.

1 And the truth of the matter is, I've been
2 giving you some slack because you're not. But there are
3 severe limits as to how much slack I can give you. I want
4 you to have a fair trial, but that doesn't mean that the
5 Defendants don't get a fair trial. They are just as entitled
6 to a fair trial as you are. And if they were violating court
7 orders, you'd be asking me for severe sanctions.

8 So what do we do about you violating court
9 orders?

10 MR. KEIMBAYE: I will -- I am learning, and I
11 will follow your instructions, Your Honor, going forward.

12 MS. BURNHAM: Your Honor?

13 THE COURT: All right.

14 Yes.

15 MS. BURNHAM: May I just --

16 THE COURT: Yeah. Of course.

17 MS. BURNHAM: May I respond?

18 THE COURT: I was going to give you an
19 opportunity for rebuttal.

20 REBUTTAL ARGUMENT

21 MS. BURNHAM: What I just heard Mr. Keimbaye
22 say is he took no -- the first thing out of his mouth was, I
23 have done nothing wrong.

24 THE COURT: I know.

25 MS. BURNHAM: We've done this before where

1 | you've asked him to follow the court orders. In fact, we've
2 | done this more than I think I've ever seen it where we've
3 | asked and asked and asked and he continues to violate your
4 | orders.

5 | He also continues to say very terrible and
6 | malicious things about us as defense counsel, not only to
7 | Your Honor, but in writing. For example, over the weekend,
8 | we put together the jury instructions per Bailiff Ware's ask.
9 | We did that as a favor to Mr. Keimbaye.

10 | His allegation that we're provoking him in any
11 | way is simply false. We put it all together and just sent it
12 | in -- his direct ones that he sent us -- put them in, put
13 | which ones were agreed to, which ones were ours, submitted
14 | them. And then he sent the Court an email saying that we're
15 | being unethical again because we withheld some of his stuff.

16 | This is a continuous pattern.

17 | THE COURT: Okay. I don't think I've seen
18 | that.

19 | MS. BURNHAM: It came in over the weekend.

20 | THE COURT: Okay. I saw something about that
21 | there wasn't a verdict form. That was the only thing I saw.

22 | MS. BURNHAM: And that will be filed this
23 | morning, Your Honor.

24 | And in terms of the sanction concern, you
25 | know, you've already sanctioned him for violating CR 11. He

1 continues to not pay that sanction.

2 We continue to hear that he's taking no
3 accountability for his behavior and that he says, okay, I'm
4 learning, I'm learning. But at some point, this is -- I
5 mean, it's too late for learning. He needs to start doing
6 this, and you telling him to do it has not changed anything
7 throughout this trial.

8 We have no -- I mean, we are pretty positive,
9 just as we were before this trial, that no matter what you
10 instruct him to do, he's going to continue to violate your
11 orders as he's continued to show, even during live testimony
12 of Mr. John.

13 THE COURT: All right. I'm going to reserve
14 on the motion at this time.

15 Mr. Keimbaye, you're skating on thin ice.

16 MR. KEIMBAYE: I'm sorry, Your Honor?

17 THE COURT: I'm sorry, that was an idiom.

18 I said you are skating on thin ice. What that
19 means is I'm not going to tolerate additional behavior from
20 you, like accusing a witness of lying when you're
21 cross-examining them or asking questions about any other
22 accusations against Mr. Kortendick or any of the other things
23 that you were ordered not to do as part of the court orders
24 in this case, to include the motions in limine.

25 With respect to the issue of the wrongful

1 termination and the breakup of the relationship with the
2 girlfriend, those can be addressed in the jury instructions,
3 I believe, and the Court will instruct the jury that
4 Mr. Keimbaye's claim for wrongful termination is not before
5 them. I think I've told them that already, but we can put it
6 in the written jury instructions as well.

7 And they can be advised that they are not to
8 award damages for an alleged destruction of a relationship
9 because it had not been disclosed in discovery.

10 Mr. Keimbaye, are you claiming that you did
11 disclose this harm to your relationship with your girlfriend
12 in discovery to the Defendants? Because they say that they
13 heard about it for the first time in your opening statement
14 or maybe your trial brief. I forget which.

15 MR. KEIMBAYE: I believe that during my
16 deposition, I mentioned the struggle with my relationship.

17 MS. ROSEN: No.

18 MS. BURNHAM: No.

19 MR. KEIMBAYE: And then I --

20 THE COURT: Find it in the transcript and show
21 it to me.

22 MR. KEIMBAYE: And I -- there's a possibility
23 she ask me about my relationship and mention something like
24 that, and then it lead all the way to last year on August
25 2022. That's where, you know, the relationship ended.

1 THE COURT: Okay. So if you disclosed it to
2 them, show me where in the discovery -- not right this
3 second, but at some point -- show me where in the discovery
4 you provided that information to them.

5 MR. KEIMBAYE: Not in discovery, Your Honor.

6 THE COURT: Well, is it in the transcript of
7 your deposition?

8 MS. ROSEN: No.

9 MR. KEIMBAYE: I will -- I will read through
10 that. It's --

11 THE COURT: Okay. Read through that and show
12 it to me. Defense Counsel is saying not. I don't have any
13 reason not to believe them, but I want to give you an
14 opportunity to correct the record if, in fact, there is
15 something in there, okay?

16 But otherwise, you're not going to be able to
17 argue to the jury that they should award you damages for the
18 breakup of this relationship.

19 MR. KEIMBAYE: Your Honor, may I question the
20 witness regarding anything that the witness told me in the
21 group in the anesthesia workroom? Is it okay to us?

22 THE COURT: I don't -- I don't know what
23 you're asking me exactly.

24 MR. KEIMBAYE: Like, the conversation that I
25 had with the witness during my time over there at work, that

1 I -- I --

2 THE COURT: With Mr. Kortendick?

3 MR. KEIMBAYE: Yes.

4 THE COURT: Yes, but not if it refers to any
5 accusations against Mr. Kortendick for sexual harassment or
6 any other form of harassment of anyone other than you.

7 MR. KEIMBAYE: No. It has nothing to do with
8 harassment or accusation.

9 THE COURT: Okay.

10 MS. BURNHAM: Your Honor, also, if we could
11 get a clear ruling also on anger management because that was
12 also part of that directed -- that motion in limiting ruling.
13 There's this rumor about anger management.

14 THE COURT: Yeah. You're not going to ask
15 them about anger management, either.

16 MR. KEIMBAYE: No, no. No, Your Honor.

17 THE COURT: Because they made a motion in
18 limine and you didn't oppose it.

19 MR. KEIMBAYE: No, no. I did not ask that.

20 THE COURT: Okay.

21 All right. Anything else before we bring in
22 the jury?

23 We'll start with Mr. Kortendick; is that
24 correct? Is that what the parties want to do?

25 MS. BURNHAM: Yeah. If we could do that.

1 THE COURT: And I will explain to the jury why
2 we're doing that and that they'll still get an opportunity to
3 propose questions for Mr. Keimbaye.

4 MS. BURNHAM: I appreciate that, Your Honor.
5 Thank you.

6 (Jury enters at 9:22:21 a.m.)

7 THE BAILIFF: Please recognize the jury.

8 THE COURT: It's an obstacle course there.
9 Sorry about that. All right. Good morning. Please be
10 seated, members of the jury.

11 All right. Members of the jury, we're still
12 going to have you propose questions for Mr. Keimbaye, but we
13 have another witness here who's also a party, Mr. Kortendick,
14 who is also from out of state and flew in, and we want to
15 make sure he gets a chance to fly out again today.

16 So as we did with Mr. John, we're going to
17 take his testimony first, and then we'll come back to
18 questions for Mr. Keimbaye.

19 So you're calling Mr. Kortendick at this time
20 in your case; is that right, Mr. Keimbaye?

21 MR. KEIMBAYE: Yes, Your Honor.

22 THE COURT: All right. Come on up,
23 Mr. Kortendick. And you can kind of move that screen out of
24 the way for now, and then before you sit, I need to swear you
25 in.

1 (Witness summoned.)

2 THE COURT: Sir, do you swear or affirm that
3 the testimony you will give in this matter will be the truth,
4 the whole truth, and nothing but the truth?

5 MR. KORTENDICK: Yes.

6 THE COURT: Thank you. Have a seat please.

7 **CHRISTOPHER KORTENDICK,**

8 called as a witness for the Plaintiff, having been
9 duly sworn, testified as follows:

10 MS. BURNHAM: Your Honor, may I just approach
11 with the exhibits first?

12 THE COURT: Oh. Sure. Of course.

13 MS. BURNHAM: So just so you know, this
14 is -- if it's over 100, it's going to be in the white binder.

15 MR. KEIMBAYE: Okay.

16 MS. BURNHAM: Under 100, yellow, green binder.

17 MR. KEIMBAYE: Okay.

18 THE COURT: All right. Mr. Keimbaye, you may
19 enquire.

20 **DIRECT EXAMINATION**

21 BY MR. KEIMBAYE:

22 Q. Mr. Kortendick, please --

23 THE COURT: Oh. You have to start with asking
24 him his name and asking him to spell his name and to give his
25 address, and then go ahead with your questions.

1 MR. KEIMBAYE: Yes, yes. Yes, Your Honor.

2 BY MR. KEIMBAYE:

3 Q. Mr. Kortendick, please state your full name and
4 address and spell it -- spell them for the record.

5 A. Sure. Full name is Christopher Scott Kortendick.
6 K-o-r-t-e-n-d-i-c-k. My address is 2431 Blackcraig Street,
7 Henderson, Nevada.

8 Q. You are still working for Providence, yes or no?

9 A. No.

10 Q. You have watched Mr. Keimbaye's testimony before
11 you come in here, yes or no?

12 A. Say it again?

13 Q. You have watched Mr. Keimbaye's testimony --

14 A. No.

15 Q. -- before you come in here, yes or no?

16 A. No. You were coached to testify today, yes or no?

17 MS. BURNHAM: Objection, Your Honor.

18 THE COURT: So that's sustained.

19 MR. KEIMBAYE: Okay.

20 THE COURT: You can't ask a party about his
21 communications with his lawyers. That's privileged.

22 MR. KEIMBAYE: Okay. Thank you.

23 BY MR. KEIMBAYE:

24 Q. You are here to say whatever it takes for
25 Providence and you to win, yes or no?

1 A. No.

2 Q. This mean cover up what you might have done wrong,
3 yes or no?

4 MS. BURNHAM: Objection, Your Honor.

5 THE COURT: Sustained.

6 MR. KEIMBAYE: Okay.

7 BY MR. KEIMBAYE:

8 Q. You were honest with what you do or did for
9 Providence, yes or no?

10 A. Can you repeat that?

11 Q. You were honest with what you do or did for
12 Providence, yes or no?

13 A. Yes.

14 Q. You took one full week pay by Providence to attend
15 ASA meeting in Portland, Oregon in 2016, yes or no?

16 A. No.

17 Q. This trip was arranged and fabricated by Ms. Maddy
18 and John (phonetic), correct?

19 A. There was no trip.

20 Q. You and Mr. John were in this trip, yes or no?

21 A. There was no trip.

22 Q. You said in the anesthesia workroom you and Travis
23 John took Megan Rich (phonetic), your per diem anesthesia
24 tech, with you in this trip, yes or no?

25 A. No.

1 Q. That your trip, that your ASA trip meeting, was for
2 Friday and Saturday only, correct?

3 A. There was no trip.

4 Q. But that you lie to the OR managers to cover up
5 your trip, pay, and hotels, yes or no?

6 MS. BURNHAM: Objection, Your Honor.

7 THE COURT: Sustained.

8 BY MR. KEIMBAYE:

9 Q. You later said that you did not even show up at the
10 meeting, yes or no?

11 A. What meeting is this?

12 Q. The ASA meeting in Portland.

13 A. I never went to an ASA meeting in Portland. I
14 never scheduled one.

15 Q. In this trip to Portland you had, you said you had
16 your buddy at the meeting fill in your attendance for you,
17 yes or no?

18 MS. BURNHAM: Your Honor, objection.

19 THE COURT: Sustained.

20 MS. BURNHAM: He's now asked about the trip
21 that he said hasn't happened several times.

22 THE COURT: The objection is sustained.

23 Can we move to a different subject, please,
24 Mr. Keimbaye?

1 BY MR. KEIMBAYE:

2 Q. You told Mr. Keimbaye in the anesthesia -- in the
3 anesthesia room that he was the darkest man you haven't seen,
4 yes or no?

5 A. No.

6 Q. And while laughing tirelessly about his darkened
7 skin, you then asked where in Africa Mr. Dominique is from,
8 yes or no?

9 A. No. I asked, Where did you come -- where are you
10 from, because you were new. We were getting to know you,
11 just like I ask every other new employee.

12 Q. I asked yes or no.

13 A. No.

14 Q. You later were surprised and said you thought
15 Mr. Keimbaye was from Sudan, yes or no?

16 A. No.

17 Q. From there you became rude toward Mr. Keimbaye
18 whenever he asked for help and anything, yes or no?

19 MS. BURNHAM: Objection, Your Honor.

20 THE COURT: I'll let this one go.

21 You can answer.

22 THE WITNESS: No.

23 BY MR. KEIMBAYE:

24 Q. You also ignore Mr. Keimbaye's presence when he
25 talked to you, yes or no?

1 A. No, I did not.

2 Q. You dislocated anesthesia parts when Mr. Keimbaye
3 would need them for patient care, yes or no?

4 A. No, I did not.

5 Q. You damaged and altered Mr. Keimbaye assigned
6 rooms, yes or no?

7 A. No, I did not.

8 Q. Mr. Keimbaye confronts you in his open-heart
9 surgery room where you admitted changing anesthesia screen
10 monitor, yes or no?

11 A. No, I did not.

12 Q. In that room, Dr. Porterfield was the
13 anesthesiologist assigned to care for the patient, and there
14 you were behind the double door watching and laughing when
15 Dr. Porterfield verbally denigrate Mr. Keimbaye in front of
16 eight other OR staff members, yes or no?

17 A. No.

18 Q. When Dr. Porterfield told Mr. Keimbaye to get the
19 hell out of his room, Mr. Keimbaye -- to get the hell out of
20 his room, you walk in with laugh, and high five
21 Dr. Porterfield, yes or no?

22 A. No.

23 Q. You continue -- from there, you continue to
24 collaborate with your best friend, Christina Maddy, to drum
25 up about Mr. Keimbaye tough times.

1 MS. BURNHAM: Objection, Your Honor, to the --
2 THE COURT: Sustained.
3 BY MR. KEIMBAYE:
4 Q. You were looking at others' time logs in
5 Ms. Maddy's office when Mr. Keimbaye walk in to look for you,
6 yes or no?
7 A. No.
8 Q. You always spend half of your ten-hour shift in
9 Ms. Maddy's office, yes or no?
10 A. No.
11 Q. You tend to be in a close relationship with
12 Ms. Maddy, yes or no?
13 A. A close relationship? No.
14 Q. When you are in Ms. Maddy's office, you always
15 close the door on you, yes or no?
16 A. Say again?
17 Q. When you are in Ms. Maddy's office, you always
18 close the door on you, yes or no?
19 A. No.
20 Q. At one point in the anesthesia workroom, you state
21 Ms. Maddy hook you up with the standby call-back hours to
22 make -- to make over six figure in 2017, yes or no?
23 A. No.
24 Q. You state and mock some anesthesiologists that you
25 made more as a tech positive tech here compared to those

1 MS -- MF's; yes or no?

2 A. No.

3 Q. You state in the anesthesia workroom that nobody
4 mess with you in the entire OR here, yes or no?

5 A. No.

6 Q. And that you would get that person fired no matter
7 what, yes or no?

8 A. No.

9 Q. You state that anesthesiologists were even afraid
10 of you, yes or no?

11 A. No.

12 Q. And that you got some of them fired before, yes or
13 no?

14 A. No.

15 Q. You later said you always pull your rifle from your
16 truck to point at the --

17 MS. BURNHAM: Objection, Your Honor.

18 MR. KEIMBAYE: -- to point at and scare slow
19 drivers.

20 THE COURT: So --

21 MS. BURNHAM: Objection, Your Honor, this
22 is --

23 THE COURT: That's sustained.

24 MS. BURNHAM: And, Your Honor, that's --

25 THE COURT: Could you please confine your

1 questions to things that are relevant to your claim for
2 workplace harassment and hostile workplace?

3 BY MR. KEIMBAYE:

4 Q. During Mr. Keimbaye employment, you were authorized
5 and recommended to direct Mr. Keimbaye job roles and
6 functions, yes or no?

7 A. No.

8 Q. You were allowed and authorized to lead
9 Mr. Keimbaye training and on-job functions, yes or no?

10 A. I was authorized to help train, yes.

11 MR. KEIMBAYE: Thank you. I'll heel back,
12 Your Honor.

13 THE COURT: I'm sorry? You're done?

14 MR. KEIMBAYE: Yes, Your Honor.

15 THE COURT: Oh. okay.

16 Cross-exam?

17 MS. BURNHAM: Thank you, Your Honor.

18 THE COURT: Oh. We can get you a microphone.

19 MS. BURNHAM: It's okay. I can speak louder.

20 THE COURT: All right.

21 **CROSS-EXAMINATION**

22 BY MS. BURNHAM:

23 Q. Good morning, Mr. Kortendick.

24 A. Morning.

25 Q. Mr. Kortendick, are you currently employed?

1 A. Yes, I am.

2 Q. And who's your employer?

3 A. Masimo.

4 Q. How long have you worked for Masimo?

5 A. About three years.

6 Q. And just for us that aren't familiar, what is
7 Masimo?

8 A. It's a medical device company. We specialize in
9 monitoring.

10 Q. And at some point before you worked for Masimo, did
11 you work for Providence?

12 A. Yes, I did.

13 Q. And what position did you hold when you worked for
14 Providence?

15 A. Anesthesia technician.

16 Q. When did you work as an anesthesia technician for
17 Providence?

18 A. Between 2009 to 2019.

19 Q. So roughly ten years?

20 A. Yeah.

21 Q. And why did you leave Providence?

22 A. I moved out of state, moved down to Nevada to be
23 closer to my dad, who was dying.

24 Q. And before we talk about your time at Providence,
25 can you tell the jury why you have not been here in court

1 with us throughout this trial?

2 A. Because I live out of state and I have a family and
3 I can't afford to take the time off to be up here for two
4 weeks.

5 Q. And how has this case impacted your life?

6 A. It's been a stressful -- about what, three years?

7 Q. Mr. Kortendick, I just want to talk a little bit
8 about your time at Providence in 2018, okay?

9 A. Okay.

10 Q. So at that time you were an anesthesia technician;
11 is that right?

12 A. Yes, ma'am.

13 Q. And can you please provide the jury with just a
14 short explanation of what your job duties were as an
15 anesthesia technician?

16 A. As an anesthesia technician, our primary job is to
17 assist the anesthesiologist in performing intubations. We'll
18 do the leak tests on the machines. We'll stock their carts.
19 We'll help run and grab the basic drugs that they need for
20 intubations or any other emergency airway equipment and work
21 devices.

22 Q. And Mr. Kortendick, when you were an anesthesia
23 technician for Providence, did you have an ACLS
24 certification?

25 A. No, I did not.

1 Q. Why did you not have an ACLS certification?

2 A. It was not required.

3 Q. Was it required for any anesthesia technician that
4 you worked with?

5 A. No, it was not.

6 Q. And how many anesthesia technicians did you work
7 with?

8 A. Anywhere from three others to twelve.

9 Q. Okay. And who did the anesthesia technicians
10 report to?

11 A. Towards the end of our time, it was Travis John.

12 Q. And just for clarity purposes, what's "the end of
13 our time"?

14 A. The last -- well, I guess, the last five years.

15 Q. Okay, so in 2018, Travis John was who the
16 anesthesia technicians reported to?

17 A. Yes.

18 Q. And at any point were you a supervisor of the
19 anesthesia technicians?

20 A. No, I was not.

21 Q. What, if any, authority did you have to hire
22 employees?

23 A. I did not have any. I --

24 Q. When, if ever, did you recommend hiring employees?

25 A. I didn't.

1 Q. What, if any authority, did you have to transfer
2 employees?

3 A. Didn't have the authority.

4 Q. When, if ever, did you recommend transferring
5 employees?

6 A. Never.

7 Q. What, if any, authority did you have to suspend
8 employees?

9 A. None.

10 Q. When, if ever, did you recommend suspending
11 employees?

12 A. Never.

13 Q. This is starting to sound like a song, so I'm
14 sorry, but what, if any, authority did you have to fire or
15 discharge employees?

16 A. Never.

17 Q. What, if any, authority -- or when did you ever
18 recommend discharging employees?

19 A. Never.

20 Q. What, if any, authority did you have to reward or
21 promote employees?

22 A. Never.

23 Q. When, if ever, did you recommend rewarding or
24 promoting employees?

25 A. Never.

1 Q. What, if any, authority did you have to discipline
2 employees?

3 A. None.

4 Q. Did you ever recommend disciplining employees?

5 A. No.

6 Q. What, if any, authority did you have to schedule
7 employees?

8 A. Didn't.

9 Q. What, if any, authority did you have to assign
10 employees?

11 A. Never.

12 THE COURT: I'm sorry. What was the last
13 question?

14 MS. BURNHAM: Assign employees. Sorry.

15 THE COURT: Assign. Thank you.

16 MS. BURNHAM: I'll speak up louder.

17 BY MS. BURNHAM:

18 Q. And when, if ever, did you recommend scheduling or
19 assigning employees?

20 A. Never.

21 Q. All right. Mr. Kortendick, do you know
22 Mr. Keimbaye?

23 A. I do.

24 Q. And in 2018, what was Mr. Keimbaye's position?

25 A. Anesthesia technician.

1 Q. And were you Mr. Keimbaye's supervisor?

2 A. No, I was not.

3 Q. How long did you work with Mr. Keimbaye?

4 A. Roughly six months.

5 Q. And during those six months, during some shifts,
6 were you the lead anesthesia technician?

7 A. Yes.

8 Q. Can you give the jury just a short description of
9 what the lead anesthesia technician is?

10 A. Yes. As the lead you carry -- we call it,
11 basically, the magic phone. So if one of the other
12 anesthesia techs did not answer their phone or was unable to
13 answer their phone, it would ring over to this phone, which
14 the lead would carry.

15 And all we were there for was to help assist
16 whenever we could. We'd help coordinate with any emergency
17 cases that were coming in or emergencies that happened to
18 happen in the ORs itself.

19 Q. And how many other lead technicians were there in
20 2018?

21 A. Three to four.

22 Q. So what's the difference between a lead anesthesia
23 technician and a supervisor in the anesthesia department?

24 A. A lead -- again, we just kind of help coordinate.
25 The supervisors, they did all the hiring, the firing, the

1 investigations, all the disciplinary actions.

2 Q. And remind me, who was the supervisor?

3 A. Travis John.

4 Q. Mr. Kortendick, were you a part of the union in
5 2018?

6 A. Yes, I was.

7 Q. What was that union?

8 A. UCFW.

9 Q. And was Mr. Keimbaye also part of that union to the
10 best year understanding?

11 A. I believe so.

12 Q. What about your supervisor, Travis John? Was he in
13 the union?

14 A. No. He could not be.

15 Q. I want to focus on your personal experiences with
16 Mr. Keimbaye and your work as an anesthesia technician.

17 What was the shift you worked in 2018?

18 A. I worked Monday through Wednesday, 6:30 a.m. to
19 7:00 p.m.

20 Q. And did Mr. Keimbaye work that same shift?

21 A. No, he did not.

22 Q. What was his shift?

23 A. I believe he did Monday through Thursday, four
24 tens.

25 Q. Okay. Do you know what time he was supposed to be

1 at work in the morning?

2 A. 6:30 to five, I believe.

3 Q. How many shifts per week did you normally or on
4 average work with Mr. Keimbaye?

5 A. Two to three.

6 Q. And when you worked with Mr. Keimbaye, how were
7 anesthesia technicians assigned for rooms?

8 A. It was based off of a rotation. So if you started
9 in the downstairs front hall that week, the following week
10 you'd be in the back hall and then the week after that you'd
11 go upstairs to the front hall of that and then just kind of
12 rotate through those areas.

13 Q. And I heard you mentioned earlier something
14 about -- you said something about being on call. What does
15 it mean to be on call?

16 A. So if you're on call, you were to be 30 minutes or
17 less away from the hospital to be available to respond if
18 they had any emergency cases or machine failures.

19 Q. And the jury's heard a lot about "standby" and "on
20 call." Is there a difference, and if so, can you explain
21 them?

22 A. Yeah. So if you're on standby, it's basically
23 you're just sitting around waiting. When you're on -- if you
24 get called in, it's because the front desk, they're calling
25 you because there's lots of cases or they have an emergency

1 case or they have a trauma and you have to go in.

2 Q. And so if you're on standby and you get called in,
3 is there any type of incentive for you to get called in or a
4 certain way that you're paid for that time?

5 A. Yes. In the contract, it was stated that if you
6 get called in, you get paid three hours of overtime
7 regardless of how many hours you were there.

8 Q. Okay. And so regardless of if you worked five
9 minutes, you get the three hours pay?

10 A. Correct.

11 Q. If you reported that you were called back?

12 A. Correct.

13 Q. And how was standby assigned?

14 A. Standby was assigned by -- we would sign up every,
15 I think it was, like, couple months.

16 MS. BURNHAM: All right. I'd like to take a
17 look at Plaintiff's Exhibit Number 16, which was previously
18 admitted.

19 Your Honor, may I move to publish?

20 THE COURT: You may.

21 MS. BURNHAM: Thank you.

22 Oh. Yeah.

23 THE WITNESS: I'm sorry.

24 MS. BURNHAM: All right. So this is
25 Plaintiff's Exhibit Number 16.

1 And if we can go to the last page of this
2 exhibit, please, Erica. Pull that up just a little bit for
3 the jury.

4 THE COURT: I can.

5 BY MS. BURNHAM:

6 Q. All right. So I see a lot of handwritten names on
7 this document. Do you see those, Mr. Kortendick?

8 A. Yes, ma'am.

9 Q. All right. And what is this?

10 A. This looks like our sign-up sheet.

11 Q. Okay. And I see your name on there on the 14th.
12 Looks like you also like Mondays. Is that your handwriting?

13 A. Yes.

14 Q. To the best of your knowledge, is this everybody's
15 own handwriting on here?

16 A. Yes.

17 Q. All right. And if we go up a little bit to the
18 first or second page -- either one will work, I see that we
19 have typed versions.

20 A. Yes.

21 Q. So why is there a typed version?

22 A. The typed version is, like, the final copy that
23 comes out after everybody signs up.

24 Q. And were you required to sign up for standby?

25 A. Yes.

1 MS. BURNHAM: All right. And, Erica, you can
2 take that down.

3 BY MS. BURNHAM:

4 Q. Did you ever hear Mr. Keimbaye complain about
5 working standby?

6 A. Yes.

7 Q. Tell me about that.

8 A. He complained. He didn't like it. He lived too
9 far, and it was hard for him to be there within 30 minutes.

10 Q. And speaking of what you remember of Mr. Keimbaye,
11 do you have any memories of working with Mr. Keimbaye that
12 stand out to you?

13 A. I do.

14 Q. How many do you have that really stick out to you?

15 A. About two.

16 Q. Okay. Tell me about the first one.

17 A. The first one was I get a call from Dr. Porterfield
18 and Dr. Kincossus (phonetic) thoraces room immediately. I
19 get up there, and there was trouble with the camera that goes
20 onto the scope so that way they couldn't do the first part of
21 a thoracotomy where they look into the lungs.

22 And Dominique had put on the wrong camera head. I
23 told him it was fine; it was not that big of a deal. I got
24 the right camera head. We got it going.

25 When we left the room after they got settled, his

1 attitude, demeanor just changed. He seemed very angry
2 and -- kind of hard to explain. Just -- it was like a switch
3 that went off. He was quite reserved before, but this time
4 it was a lot of anger and hate.

5 Q. Why does that memory stand out to you?

6 A. Because in all my time I've never had that
7 experience before.

8 Q. And what is your best estimate of when that
9 happened?

10 A. Maybe about a month after he started.

11 Q. February 2018 sound about right to you?

12 A. Yeah.

13 Q. Somewhere around there.

14 How would you describe your working relationship
15 with Mr. Keimbaye before that incident?

16 A. It was okay. He was very quiet and kind of
17 standoffish, but it wasn't uncommon with as many people as we
18 were getting. We were training a lot of new people and
19 students.

20 Q. How would you describe your working relationship
21 with Mr. Keimbaye after that incident?

22 A. Very different. It was very hostile. He
23 was -- never would want to answer, never wanted me to talk to
24 him, and any time that he would ask me for anything, it was
25 very aggressive.

1 Q. You said earlier you had two memories. Let's go to
2 the second memory. Tell us about that one.

3 A. It was in the evening. I was getting ready to
4 leave. Dominique was on call. We had one case already
5 going. I was -- they were fine with me leaving. They ended
6 up -- it turned into an emergency case, and then at the same
7 time, we had an emergency vascular case coming in.

8 I asked the on-call -- or the anesthesiologist
9 on call that night and the charge nurse if they wanted the
10 call person to come in. They said yes. I asked if they can
11 call them. They said they would while I took care of those
12 two rooms and got them going.

13 During that time, the charge nurse forgot to
14 call Dominique in with him being busy. I asked him if they
15 ever got a hold of him. He said no; I forgot. Please go
16 ahead and call him for me; I'm landing the patient into the
17 room.

18 I called Mr. Dominique in, and when I called
19 him, he was very angry and asked me why I was calling him.
20 And he said I was not supposed to call him; I was not allowed
21 to call him. If there was any cases going on, the charge
22 nurse was supposed to call. I explained to him that he
23 forgot and he needed me to call.

24 Once he got in, I was in the vascular room
25 getting it turned over while he had transported it. He comes

1 back and he was very aggressive. He was very mad. He was
2 yelling at me. And he was confronting me and asking why I
3 called him. I was not allowed to call him.

4 The behavior was so off that the charge nurse
5 happened to see it on the viewing cameras that we have at the
6 front desk and actually came into the room and had him leave
7 to go to another room.

8 Q. This may be obvious, but why does that memory stick
9 out to you?

10 A. Because I never had an employee or coworker ever
11 want to fight because they got called in.

12 Q. I want to talk a little bit about Opal Lonon. Do
13 you remember Opal Lonon?

14 A. I do.

15 Q. And who is Opal Lonon?

16 A. She is one of the anesthesia techs.

17 Q. And was she an anesthesia tech in 2018?

18 A. Yes.

19 Q. How often in 2018 did you work on the same shift
20 with both Opal Lonon and Mr. Keimbaye?

21 A. Two to three days.

22 Q. Two to three days per week?

23 A. Yes.

24 Q. And in those two to three times per week that you
25 worked with both Opal and Mr. Keimbaye, when, if ever, did

1 | you see Opal touch Mr. Keimbaye?

2 | A. Never.

3 | Q. When, if ever, did you see Opal make sexual jokes
4 | towards Mr. Keimbaye?

5 | A. I didn't.

6 | Q. When, if ever, did you see Opal ever act in a way
7 | that you felt was inappropriate towards Mr. Keimbaye?

8 | A. Never.

9 | Q. When, if ever, did you see Opal treat anyone
10 | inappropriately?

11 | A. Never have.

12 | Q. When, if ever, did you talk to Travis John about
13 | Mr. Keimbaye and Opal's interactions?

14 | A. Never.

15 | Q. Did you ever joke with Mr. John about Opal and
16 | Mr. Keimbaye's interactions?

17 | A. No, I did not.

18 | Q. Did you ever talk to Travis John about Opal and
19 | Mr. Keimbaye at all?

20 | A. No.

21 | Q. Did you ever see Mr. Keimbaye flirt with anyone in
22 | the anesthesia department?

23 | A. Yes.

24 | Q. Tell me about that.

25 | A. She was a student. She was going through her

1 | clinicals. And you could see him flirting and talk about
2 | going out on dates.

3 | Q. And who was that student?

4 | A. Yulia.

5 | Q. And tell me -- you said that you saw him flirting.
6 | Tell me about what you remember from that interaction.

7 | A. I saw Yulia being more of the flirtatious one, but
8 | Dominique also kind of flirting back a little bit.

9 | Q. All right. And did you ever hear Yulia otherwise
10 | talk about her relationship with Mr. Keimbaye with anyone
11 | else in the department?

12 | A. Yes.

13 | Q. Tell me about that.

14 | A. I heard Yulia and Opal actually talking about them
15 | going out on date over the weekend.

16 | Q. "Them" being Yulia and Opal or --

17 | A. Yulia and Dominique.

18 | Q. Yulia and Dominique were going on a date over the
19 | weekend?

20 | A. Yeah.

21 | Q. According to what you heard?

22 | A. Yes.

23 | Q. All right. Mr. Keimbaye asked you some questions
24 | about your conversation in regards to where he was from. So
25 | I just want to ask you a little questions about that.

1 Did you ever ask Mr. Keimbaye where he was from?

2 A. Yes.

3 Q. And why did you ask him?

4 A. To get to know him.

5 Q. And what do you remember about that conversation?

6 A. I just asked him, and he did reply. I don't
7 remember exactly what -- what he said. I was just trying to
8 build up some comradery. And I told him that I did have a
9 really close family friend that was from Sudan.

10 Q. And what was your purpose of telling him you had a
11 friend from Sudan?

12 A. Just building the team. Just trying to be nice.

13 Q. Did you ever comment on Mr. Keimbaye's accent?

14 A. No.

15 Q. Did you ever joke about his accent?

16 A. No.

17 Q. Did you ever hear Travis John comment about
18 Mr. Keimbaye's accent?

19 A. No.

20 Q. Mr. Kortendick, did you ever hide parts of
21 Mr. Keimbaye's anesthesia machine so he couldn't find them?

22 A. No.

23 Q. Did you ever hide parts of anyone's anesthesia
24 machine so they couldn't find them?

25 A. No.

1 Q. Did you ever change Mr. Keimbaye's anesthesia
2 machine in the operating room?

3 A. No.

4 Q. Did you ever admit to Mr. Keimbaye that you changed
5 his anesthesia machine?

6 A. No, I did not.

7 Q. Did you ever change anyone's anesthesia machine in
8 the operating room?

9 A. No.

10 Q. Mr. Kortendick, did you ever comment on
11 Mr. Keimbaye's skin color?

12 A. No, I did not.

13 Q. Looking back on your relationship, working
14 relationship with Mr. Keimbaye in 2018, was there ever a time
15 that you felt that you treated him inappropriately?

16 A. No.

17 Q. Okay. I want to talk a little bit about
18 Mr. Keimbaye's termination. Do you have an understanding of
19 why Mr. Keimbaye was terminated?

20 A. I do.

21 Q. What's your understanding?

22 A. Time card fraud.

23 Q. Do you have any personal knowledge of whether
24 Mr. Keimbaye committed time card fraud?

25 A. No.

1 Q. Did you ever send any communications about
2 Mr. Keimbaye staying after the end of his shift?

3 A. Yes.

4 MS. BURNHAM: All right. I'd like to look at
5 Exhibit 43, which was previously admitted.

6 Move to publish, Your Honor?

7 THE COURT: Yes.

8 MS. BURNHAM: Thank you.

9 All right. We're just going to blow that
10 email, that bottom email up a little bit.

11 BY MS. BURNHAM:

12 Q. So, Mr. Kortendick, this looks like an email from
13 you to Travis John with the subject "June 6, 2018." Do you
14 see that?

15 A. I do.

16 Q. What are you reporting to Travis John in this
17 email?

18 A. I was reporting some suspicious activity. He
19 typically leaves at five. I worked until seven, and I had
20 not seen him since he -- his end of his shift.

21 And when me and Jacqueline were finished up turning
22 over a bunch of rooms and I was outside the room marking on
23 the whiteboard to let the rest of the team know what was
24 done, what was not done for in the morning, I heard
25 Jacqueline talking, and I thought -- I assumed it was her

1 boyfriend that she was on the phone with. I opened the door
2 and there was Dominique standing there, and he looked
3 surprised that I was walking through the door. I think we
4 both kind of surprised each other.

5 Q. And I'm sorry, who's Jacqueline?

6 A. Jacqueline was an anesthesia tech.

7 Q. Another anesthesia technician?

8 A. Yes.

9 Q. Okay. And you said you both look surprised; you
10 surprised each other. Tell me why you think you surprised
11 each other.

12 A. I was not expecting to see Dominique. Dominique
13 was not on call that night nor was there a reason for him to
14 be there.

15 Q. And how do you know there was not a reason for him
16 to be there?

17 A. Because I was there working and he wasn't on call.

18 Q. So I think you just said this, but just for
19 clarity, was Mr. Keimbaye on call on June 6th?

20 A. No, he was not.

21 Q. Why did you not discipline Mr. Keimbaye in the
22 moment when you saw him there past the end of the shift and
23 you were still there?

24 A. Because I'm not a supervisor.

25 Q. Who had the authority to address Mr. Keimbaye

1 staying past the end of the shift?

2 A. Travis.

3 Q. Did anyone ask you to write this email?

4 A. No.

5 Q. Did you have any other conversations or emails with
6 Travis John about Mr. Keimbaye's whereabouts or about him
7 staying past the end of the shift besides this email?

8 A. No.

9 Q. What role, if any, did you play in the decision to
10 terminate Mr. Keimbaye?

11 A. None.

12 Q. Did Travis John ask you for your opinion?

13 A. No, he did not.

14 Q. Did anyone ask you for your opinion or your
15 recommendation on whether Mr. Keimbaye should be terminated?

16 A. No.

17 Q. All right. I want to ask you a little bit about
18 some other allegations that Mr. Keimbaye has made in this
19 case.

20 Did you ever work with anesthesiologist Dr. Nikolay
21 Usoltsev?

22 A. Yes, I have.

23 Q. Did you ever witness Dr. Usoltsev hit Mr. Keimbaye?

24 A. No.

25 Q. Did Mr. Keimbaye ever report to you that he was hit

1 by Dr. Usoltsev?

2 A. No.

3 Q. Did you ever witness Dr. Usoltsev be violent
4 towards anyone?

5 A. No.

6 Q. And you talked earlier about Dr. Porterfield. Did
7 you ever witness Dr. Porterfield make comments about where
8 Mr. Keimbaye was from?

9 A. No, I did not.

10 Q. What about comments about where he received his
11 training from?

12 A. No.

13 Q. Any inappropriate comments about Mr. Keimbaye in
14 general from Dr. Porterfield?

15 A. No.

16 Q. Did Mr. Keimbaye ever report that he felt
17 Dr. Porterfield's behavior towards him was inappropriate to
18 you?

19 A. No.

20 Q. Did you ever work with an anesthesiologist
21 Dr. Sobia Mansoor (phonetic)?

22 A. Yes, I have.

23 Q. Did Dr. Mansoor act inappropriately towards
24 Mr. Keimbaye?

25 A. No.

1 Q. Did Mr. Keimbaye ever report any concerns about
2 Dr. Mansoor to you?

3 A. No.

4 Q. Did you ever ignore Mr. Keimbaye when he asked you
5 for help finding tools for his position?

6 A. No.

7 Q. Is that something you would do?

8 A. No, it's not.

9 Q. Why not?

10 A. Because that involves patient safety, and I'm not
11 risking patients' lives.

12 Q. Did Mr. Keimbaye ever ask you for HR's phone
13 number?

14 A. No.

15 Q. If he had asked you, would you have provided it?

16 A. Yes.

17 Q. And if Mr. Keimbaye needed to contact HR, how would
18 he do that?

19 A. On the front page of our website for the employees,
20 there's a section in there where you can contact HR. And
21 also, I believe that there is some HR information up at the
22 front desk and then also in the break room.

23 Q. But you were never asked for that information.

24 A. No.

25 MS. BURNHAM: Thank you, Mr. Kortendick. I

1 don't have any further questions.

2 THE COURT: Mr. Keimbaye, do you have any
3 follow-up questions?

4 MR. KEIMBAYE: Yes, Your Honor.

5 THE COURT: All right.

6 **REDIRECT EXAMINATION**

7 BY MR. KEIMBAYE:

8 Q. Mr. Kortendick, let's look back to Exhibit 43. You
9 saw Mr. Keimbaye in the anesthesia workroom on June 7th, yes
10 or no?

11 A. Say it again?

12 Q. You said earlier you saw Mr. Keimbaye in the
13 anesthesia workroom on June 7th, yes or no?

14 A. You mean the 6th?

15 Q. June 7th.

16 A. No. June 6th.

17 Q. Okay. On June 6th, were you not assigned to a GI
18 room on that day on June 6th?

19 A. I couldn't tell you if I was or not.

20 Q. When you came up to the anesthesia workroom and
21 found Dominique in the anesthesia workroom, he told you that
22 he got a call from GI to remove anesthesia equipment from GI
23 to the second floor, yes or no?

24 A. No.

25 Q. And that those equipment anesthesia were brought

1 down to the GI room because you were assigned in the GI room
2 on that day, on June 6th, yes or no?

3 A. No.

4 Q. Later on, when you said you are going home with
5 the -- supposing Jacqueline -- I don't remember working with
6 her or meeting her, you said you're going home, I follow you
7 guys alone to the locker room, yes or no?

8 A. I couldn't answer that.

9 Q. From there, you walk into the locker room. I went
10 to the front desk because I was on call that day. I was not
11 on `call that day, but I had one open-heart case.

12 MS. BURNHAM: He's testifying, Your Honor.

13 THE COURT: Sustained.

14 So, Mr. Keimbaye, this is not a time for you
15 to be testifying. You're not under oath right now.

16 MR. KEIMBAYE: Thank you. Thank you.

17 THE COURT: So just ask -- if you have
18 questions for the witness, please just ask questions.

19 MR. KEIMBAYE: Yes.

20 BY MR. KEIMBAYE:

21 Q. So based on your email here, when you came out from
22 the -- on the locker room, did you see Mr. Keimbaye at the
23 front desk, yes or no?

24 A. No.

25 Q. Well, he says here, in your email, clearly, he

1 says, I observed Mr. Keimbaye in the anesthesia workroom at
2 18:50, I believe, yes. I was unaware that he was
3 still -- and he was still here and thought that he had left
4 at 17:00. When I walk into the workroom, he seems to be
5 surprised to see me. I asked him if he was on call. He told
6 me that he was not on call and that he was taking care of the
7 GI. At that point, all three of us, Jacqueline, Dominique,
8 and myself, were walking out of the OR going to go home.

9 Wasn't that what I said, that I was following you
10 guys to the locker room, yes or no? And you said no.

11 When I got out --

12 MS. BURNHAM: Your Honor, he continues -- he's
13 continuing to testify and argue.

14 THE COURT: So do you have a question in here
15 somewhere? This is -- just ask a question if you have a
16 question, please.

17 MR. KEIMBAYE: Yes. Okay, okay. Yes. Yes,
18 Your Honor.

19 BY MR. KEIMBAYE:

20 Q. When I got out of the locker room, he was at the
21 front desk talking to the charging nurse.

22 Don't you think the reason Mr. Keimbaye was at the
23 front desk to talk to the charge nurse is to take care of the
24 remaining open-heart case?

25 MS. BURNHAM: Objection, Your Honor. Form of

1 the question. Calls for speculation.

2 THE COURT: Sustained. Calls for speculation.

3 BY MR. KEIMBAYE:

4 Q. Let's move on to the next step here.

5 You were in the anesthesia workroom one Thursday
6 morning taking care of your rooms when Mr. Keimbaye walked
7 into the anesthesia workroom, yes or no?

8 A. On a Thursday?

9 Q. Yes.

10 A. Can I get more information?

11 Q. Okay. On that day, you were grabbing stuff for
12 your room while Mr. Keimbaye was grabbing stuff for his room.

13 A. I'm sure it happened. We typically all do.

14 Q. Yes. Okay. While Mr. Keimbaye was turning around
15 to go to the main OR, Ms. Lonon walked in to hug him so tight
16 with legs around him in your presence, yes or no?

17 A. No.

18 Q. And there you were standing by the door and raised
19 your eyebrow at Dominique as stunning and surprising, yes or
20 no?

21 A. No.

22 Q. Later on, when Mr. John came into the workroom, all
23 three of us were in the anesthesia workroom. You
24 say -- while we were walking out from the anesthesia
25 workroom, you say, Someone is wanted for sex, yes or no?

1 A. No.

2 Q. Concerning your allegation of Dominique being so
3 angry at you regarding fiber optic, wasn't Mr. Keimbaye
4 following you for training during that time, yes or no?

5 A. Which time? I feel like there's like two different
6 events that you're referring to, so I just want
7 clarification.

8 Q. You testified earlier about one of the event that
9 Mr. Keimbaye got angry at you in February.

10 A. Okay.

11 Q. You know well that in February, Mr. Keimbaye was
12 not allowed to set up or was not assigned to any room by
13 himself, yes or no?

14 A. That's not true.

15 Q. On that day, Mr. Keimbaye called you to come into
16 the anesthesia workroom to help him set up the fiber optic in
17 Room 12, yes or no?

18 A. No.

19 Q. You refused to answer to Mr. Keimbaye phone call on
20 that day, yes or no?

21 A. No.

22 Q. And because Mr. Keimbaye was only shadowing you or
23 following you to get the understanding of his work, you
24 refused to answer to his phone call on that -- on that day to
25 set up the fiber optic.

1 MS. BURNHAM: Your Honor, objection. He
2 continues to argue.

3 THE COURT: Sustained.

4 BY MR. KEIMBAYE:

5 Q. When Mr. Keimbaye asked for help from Mr. Ramos
6 (phonetic) to help him set up this fiber optic, you walked
7 into the -- to that room, yes or no?

8 A. I don't recall.

9 Q. And from there, you said that why didn't
10 Mr. Keimbaye call you to -- to have me help him, yes or no?
11 Didn't you say that?

12 A. No.

13 Q. Do you ever call Mr. Keimbaye's phone number when
14 he was off at home?

15 A. Your cell phone?

16 Q. Yes.

17 A. Yes.

18 Q. Okay. Let's go back on the day that Mr. Keimbaye
19 was assigned on call. Can you tell me what day was that you
20 called Mr. Dominique -- Mr. Keimbaye?

21 A. I don't remember what day it was.

22 Q. Let's look at the Exhibit 16. Can you remember
23 what day exactly from the working schedule on call for
24 Mr. Dominique that you called him for his on call?

25 A. No.

1 THE COURT: Do you have another question,
2 Mr. Keimbaye?

3 BY MR. KEIMBAYE:

4 Q. You should know the only phone call Mr. Keimbaye
5 received for his entire --

6 MS. BURNHAM: Your Honor, Your Honor --

7 THE COURT: No, no. Mr. Keimbaye, questions.
8 If you have questions, please ask the witness questions, but
9 please don't -- you're not under oath. You're not testifying
10 right now.

11 MR. KEIMBAYE: No more questions, Your Honor.

12 THE COURT: Fair enough. Any redirect?

13 MS. BURNHAM: No redirect, Your Honor.

14 THE COURT: All right. Do members of the jury
15 have any questions you'd like to have asked of
16 Mr. Kortendick?

17 I think I've been mispronouncing your name
18 this whole time.

19 THE WITNESS: It's okay. It happens a lot.

20 THE COURT: It looks like we do.

21 Grab any sheets from jurors for questions they
22 want to have proposed. Thank you.

23 Oh, there she is. I think at least some are
24 ready.

25 THE BAILIFF: If you're ready, go ahead and

1 raise your --

2 Thank you so much.

3 If Your Honor want to start?

4 THE COURT: Yeah.

5 MS. BURNHAM: Your Honor, would you like us to
6 go back with you?

7 THE COURT: Yes, please.

8 Mr. Keimbaye, if you'd join us in chambers for
9 just a moment?

10 MR. KEIMBAYE: Thank you.

11 (Recess at 10:16:33 a.m., recommencing at 10:22:54 a.m.)

12 (The following proceedings were held inside the presence of
13 the jury:)

14 THE COURT: All right. Members of the jury,
15 I'll just mention this: Some of these questions I'm not
16 going to ask for a variety of reasons, but an important one
17 being they're outside the scope of what the witness testified
18 about, which is just a fancy legal way of saying nobody asked
19 Mr. Kortendick about some of the subjects that you wanted to
20 have questions about.

21 And typically we don't ask juror questions
22 about things that are outside the scope of what either the
23 Plaintiff or Defense Counsel asked about, but there are a
24 number of questions I will be asking.

EXAMINATION BY THE JURY

THE COURT: So Mr. Kortendick, you described an incident where you described Mr. Keimbaye as getting very angry and aggressive towards you. Did you tell anyone about that incident or report it to anyone during the time that Mr. Keimbaye actually worked at Providence?

MR. KORTENDICK: I just talked to the charge nurse, who had witnessed it. No, I did not record it.

THE COURT: All right. Did you confront or ask Mr. Keimbaye about this angry and aggressive behavior that you've described for him to explain it to you or to clear it up in some fashion between the two of you?

MR. KORTENDICK: No, because there was no talking. He was just very angry and aggressive and did not want to hear anything that I was saying.

THE COURT: All right. Did the hostility between you and Mr. Keimbaye that you've described, did it ever subside?

MR. KORTENDICK: No.

THE COURT: About the second incident that you described when -- which you said that the nurse at the front desk saw on the camera, what did you mean when you referred to Mr. Keimbaye as wanting to fight?

MR. KORTENDICK: His posturing. He was puffing his chest, he was filling his arms, and just being

1 very forward aggressive.

2 THE COURT: All right. Thank you.

3 So I think I asked you a question about
4 whether you reported this incident to anyone. Did you
5 describe it or discuss it with Travis John or with anyone
6 else at Providence?

7 MR. KORTENDICK: No.

8 THE COURT: Switching subjects a little bit.
9 I might come back to this, though.

10 That email, I think it was Exhibit 43, that
11 you wrote on June 12th, 2018, about having seen Mr. Keimbaye
12 the week before. Why did you write that email?

13 MR. KORTENDICK: It just felt that there was
14 something going on. It just seemed really fishy, and I just
15 felt that I needed to send that email.

16 THE COURT: Oh. So, question on that same
17 email: Why did you wait for six days after the incident on
18 June 6th to report that -- what seemed fishy to you that you
19 described to Mr. John?

20 MR. KORTENDICK: Why did I wait?

21 THE COURT: Uh-huh.

22 MR. KORTENDICK: Because it was towards the
23 end of my shift and the end of the week, so then I had to
24 wait four days at minimum, and then I forgot to send it on
25 Monday.

1 THE COURT: All right. I think of the
2 questions that were going to be asked, I have covered all of
3 those, so I'll turn back to Mr. Keimbaye.

4 Do you have any further questions to ask
5 Mr. Kortendick based on the juror questions that he answered?

6 **FOLLOW-UP EXAMINATION**

7 BY MR. KEIMBAYE:

8 Q. Mr. Kortendick, during Mr. Keimbaye employment,
9 Mr. Keimbaye was -- was Mr. Keimbaye the quiet and respectful
10 coworker over there in the anesthesia workroom?

11 A. At first.

12 Q. During his six months of employment, did
13 Mr. Keimbaye ever provide his personal phone number to you?

14 A. His personal what?

15 Q. Personal phone number.

16 A. No. It's up at the front desk on the call log.

17 Q. So when was the day you called Mr. Keimbaye cell
18 phone?

19 A. The day that I needed to get you to come in to
20 relieve me for the -- because you were on call.

21 Q. Okay. What day was that date that Mr. Keimbaye was
22 put on call?

23 MS. BURNHAM: Your Honor, he already asked
24 this.

25 THE COURT: Sustained.

1 MR. KEIMBAYE: That's the following question
2 regarding what he said.

3 THE COURT: I know, but you asked him that
4 earlier, and he answered that question earlier, so the
5 objection is sustained.

6 Anything else?

7 MR. KEIMBAYE: No more question, Your Honor.

8 THE COURT: All right. Any redirect -- or
9 recross? Sorry.

10 MS. BURNHAM: Not with me, Your Honor.

11 THE COURT: All right. Thank you,
12 Mr. Kortendick. I think you're finished.

13 And perfect timing. It is now 10:30, so we're
14 going to go ahead and take our morning recess, members of the
15 jury. Please continue keeping your minds open. Don't look
16 anything up or communicate about the case, and we'll have you
17 back after the break for what comes next.

18 And actually, I think what's going to come
19 next is probably the questions that you want to propose to
20 Mr. Keimbaye.

21 (Jury exits at 10:31:07 a.m.)

22 THE COURT: And, Mr. Kortendick, you can feel
23 free to step down.

24 THE WITNESS: Thank you.

25 THE COURT: Thank you.

1 MS. BURNHAM: And, Your Honor --

2 THE COURT: One second.

3 MS. BURNHAM: I'll wait. Yeah.

4 THE COURT: I figured if they hear me telling
5 him, he could step down, it's like --

6 MS. BURNHAM: Yeah, sorry. I got excited. I
7 didn't look over before I thought.

8 And, Your Honor, I assume Mr. Kortendick is
9 excused unless there's --

10 THE COURT: Any reason not to excuse
11 Mr. Kortendick?

12 MR. KEIMBAYE: Your Honor, I don't have any
13 more question to ask.

14 THE COURT: Okay.

15 MS. BURNHAM: I just wanted to make sure
16 before I put him on a flight home.

17 THE COURT: Yeah. We can excuse him. That's
18 fine.

19 MS. BURNHAM: Thank you.

20 MR. KORTENDICK: Thank you.

21 (Witness excused.)

22 THE COURT: Okay. I'm not sure I've seen jury
23 instructions from the Plaintiff. I know you all sent the
24 Word-format ones, which -- actually, I mean, the order on our
25 pretrial conference was for the jury instructions to be

1 provided in Word format because I can't edit PDFs,
2 or -- sometimes I can, and sometimes I can't, and I cannot
3 figure out why, but it obviously has something to do with
4 formatting, whereas Word, no problem.

5 So I know I got some -- let me see. This
6 is -- okay. This is labeled "Plaintiff's Jury Instructions,"
7 so it looks like maybe I did get some from Mr. Keimbaye.

8 And you all can feel free to sit if you want
9 to.

10 MS. BURNHAM: Okay. Thank you.

11 MR. KEIMBAYE: Thanks.

12 THE COURT: Oh. Actually, you know what? I
13 should just let you take your break.

14 MS. BURNHAM: Okay.

15 MS. ROSEN: I have to go to the bathroom
16 really bad.

17 THE COURT: So, yeah. Let me do that. Let's
18 resume at 10:50.

19 MS. BURNHAM: Okay.

20 MS. ROSEN: Okay.

21 THE COURT: And maybe -- let me know how you'd
22 like to proceed. I did promise them they could ask
23 Mr. Keimbaye questions.

24 MS. ROSEN: Yeah.

25 THE COURT: And then there's certainly a

1 possibility that we just excuse the jury until this
2 afternoon.

3 MS. ROSEN: Yeah. Our witness is ready to go
4 at 1:30.

5 THE COURT: Well, we still have to talk about
6 the admissibility or lack thereof of the deposition
7 testimony. I think that's the last thing of Plaintiff's case
8 that we need to talk about.

9 Okay.

10 MS. ROSEN: Okay.

11 THE COURT: All right. I will pass these
12 down. We'll be at recess.

13 MS. BURNHAM: Thank you, Your Honor.

14 (Recess at 10:33:54 a.m., recommencing at 10:51:14 a.m.)

15 (The following proceedings were held outside the presence of
16 the jury:)

17 THE BAILIFF: Court is again in session.

18 THE COURT: Thank you very much. Please be
19 seated.

20 All right. Mr. Keimbaye, --

21 But we're going to need a minute before you
22 bring in the jury, J..

23 MS. BURNHAM: Thank you, Your Honor.

24 THE COURT: Mr. Keimbaye, what other evidence
25 do you propose to present in your case, or are you finished?

1 MR. KEIMBAYE: I remember producing my tax
2 return to --

3 THE COURT: I'm sorry. Can you speak a little
4 bit louder?

5 MR. KEIMBAYE: Yes, yes. I remember producing
6 my tax return and gave it to the defense counsel.

7 THE COURT: But you -- well, regardless of
8 whether it's admissible, you didn't testify about it when you
9 testified. So it's not relevant to anything right now.

10 Is there other evidence you wanted to present?

11 DISCUSSION RE FURTHER EVIDENCE AND WITNESSES

12 MR. KEIMBAYE: Well, I am not done testifying,
13 so I can testify on those tax returns.

14 MS. BURNHAM: Your Honor -- yeah.

15 MS. ROSEN: Economic damages aren't at issue
16 in this case.

17 MS. BURNHAM: Yeah. There's no economic
18 damages. You ruled it in the motions in limine.

19 THE COURT: Right. Yeah. So your tax returns
20 aren't relevant to anything because your claim is for
21 non-economic damages, for emotional distress damages.

22 MR. KEIMBAYE: So, Your Honor, over the
23 weekend, since Friday, I reached out to Ms. Husted
24 (phonetic) --

25 THE COURT: Okay. Before you tell me about

1 Ms. Husted --

2 MR. KEIMBAYE: Yes.

3 THE COURT: I want you to consider yourself
4 under oath right now, okay?

5 MR. KEIMBAYE: Okay.

6 THE COURT: Okay. Go ahead.

7 MR. KEIMBAYE: So I reached out to Ms. Husted
8 by phone call starting Friday several times. I tried again
9 on Saturday in the morning, begging for her to call me back,
10 but no answer whatsoever, except that she replied back to my
11 text message saying that she moved to Florida on June 2022
12 and that they are not moving back.

13 And additionally, I beg her, if that is true,
14 can she really text me, you know, her address in case the
15 judge for this case asked, you know, to verify?

16 So she then, you know, text later on, I
17 believe later on Saturday, her address in Florida. And
18 that's all the communication, text communication that I got
19 from her. But I was unable to kind of, like, get to talk to
20 her over the phone or, you know, having her, you know, call
21 me back.

22 THE COURT: Well, she texted you her address.
23 Did she -- did you ask her if she could testify by phone or
24 by Zoom?

25 MR. KEIMBAYE: Yes. I beg her on all of

1 | those, and so she mentioned that she -- I mean, I beg
2 | her -- I beg her all of those through those text message, but
3 | she never mentioned anything about, you know, testifying over
4 | the phone or, you know, via Zoom.

5 | THE COURT: Have you produced those texts?

6 | MS. BURNHAM: No.

7 | MR. KEIMBAYE: I have it here. I can produce
8 | and send it.

9 | THE COURT: What do you mean you have them
10 | here?

11 | MR. KEIMBAYE: I have it on my phone.

12 | THE COURT: Okay. Well, your phone isn't in
13 | evidence.

14 | MR. KEIMBAYE: I can -- Your Honor, I can do
15 | it during our lunch break or anything like that.

16 | THE COURT: All right. Is there any other
17 | evidence you plan to present?

18 | MR. KEIMBAYE: I mean, the evidence I would
19 | like to present is the publication of, you know, her
20 | deposition.

21 | THE COURT: Right. Besides that.

22 | MR. KEIMBAYE: Besides that, you know, I am
23 | hoping to, you know, get, you know, go through my -- my
24 | exhibit, you know, you know, to make sure that I don't skip
25 | anything, and so I'm hoping to kind of, you know, do that

1 during the break.

2 THE COURT: Well, we just had a break.

3 MR. KEIMBAYE: Aren't we having a lunch break
4 today?

5 THE COURT: We are, but what are we going to
6 do between now and the lunch break? The jury will have some
7 questions for you, but I don't think it's going to take an
8 hour.

9 MR. KEIMBAYE: Well, I -- Your Honor, I've
10 been preparing. I am -- I was, like, fully prepared to kind
11 of, you know, following the schedule today regarding the
12 witnesses.

13 THE COURT: I'm sorry. What was the last
14 thing you said?

15 MR. KEIMBAYE: I got an email over the weekend
16 from Ms. Burnham --

17 THE COURT: Yes.

18 MR. KEIMBAYE: -- about the witness, Ms. Rice
19 and Mr. Kortendick.

20 THE COURT: Okay.

21 MR. KEIMBAYE: So I have been fully, you know,
22 over the weekend, preparing to have questions that I would
23 ask them.

24 THE COURT: Okay.

25 MR. KEIMBAYE: And so I am hoping that during

1 the lunch break, I should be able to have some moment to go
2 through my exhibits and refresh my memory and see if I
3 haven't, you know, testified about anything else.

4 THE COURT: All right. Let's do this. Let's
5 bring the jury in for questions for Mr. Keimbaye, and
6 the -- and then I'll excuse the jury because I know the
7 Defense is going to want to argue about the admissibility of
8 the Husted deposition.

9 MS. BURNHAM: Yes, Your Honor.

10 THE COURT: And that'll probably take us to
11 the noon hour.

12 And then I will expect Mr. Keimbaye to rest
13 this afternoon, and then you have Ms. Rice testifying this
14 afternoon?

15 MS. BURNHAM: Correct, Your Honor.

16 THE COURT: Okay.

17 MS. ROSEN: By Zoom, Your Honor.

18 THE COURT: By Zoom?

19 MS. BURNHAM: Yes.

20 MS. ROSEN: Yes.

21 THE COURT: Okay.

22 MR. KEIMBAYE: Who is by Zoom?

23 MS. BURNHAM: Ms. Rice.

24 MS. ROSEN: Ms. Rice.

25 MR. KEIMBAYE: I see. Okay.

1 THE COURT: Okay? All right.

2 So let's bring in the jury.

3 (Jury enters at 10:59:17 a.m.)

4 THE BAILIFF: Please recognize the jury.

5 THE COURT: All right. Welcome back, members
6 of the jury. Please be seated. I know the break lasted a
7 little longer than usual. Mr. Keimbaye and Counsel and I had
8 some things to discuss.

9 And then I think we'll probably be excusing
10 you for lunch a little bit early, too, because we're not
11 quite done discussing what we need to discuss, but we wanted
12 to -- rather than keep you waiting in the jury room, it kind
13 of made sense to just give you a longer lunch break. So, at
14 this time, Mr. Keimbaye, I'm going to invite you back to the
15 witness stand.

16 MR. KEIMBAYE: Sure.

17 THE COURT: And please consider yourself under
18 oath.

19 MR. KEIMBAYE: Okay.

20 And if members of the jury have questions
21 you'd like to have proposed to Mr. Keimbaye, J. will collect
22 those from you.

23 Well, actually, you know what? You don't have
24 to get on the witness stand yet because we're going to look
25 at the questions back in chambers. So we'll do that first,

1 and then we'll have you take the witness stand.

2 MR. KEIMBAYE: Thank you.

3 THE COURT: J., I think there's several who
4 are ready.

5 MS. ROSEN: Do you want us to go ahead and
6 start?

7 THE COURT: May as well. Yep. Thank you.

8 (Recess at 11:01:12 a.m., recommencing at 11:07:21 a.m.)

9 (The following proceedings were held inside the presence of
10 the jury:)

11 THE COURT: All right. Welcome back to the
12 witness stand, Mr. Keimbaye. And again, please consider
13 yourself still under oath.

14 THE WITNESS: Thank you, Your Honor.
15 (Witness summoned.)

16 **DOMONIQUE KEIMBAYE,**
17 Plaintiff, having been previously sworn, testified
18 as follows:

19 **EXAMINATION BY THE JURY**

20 THE COURT: All right. We have a question, if
21 you know.

22 Are there signs outside of the HR office that
23 tells you that or designating it as being HR?

24 THE WITNESS: No, Your Honor.

25 THE COURT: Are there posters that are posted

1 with HR contact information in any of the work spaces that
2 you worked in?

3 THE WITNESS: There might be somewhere near
4 the front desk where the charge person may be working, but I
5 don't see any sign of, you know, HR information in our
6 anesthesia workroom or in the locker room.

7 And beside that, you know, my supervisor never
8 walk me around to kind of, you know, indicating to me if you
9 need, you know, HR information, find it from this poster or,
10 you know, this breakroom or anything like that. I never get
11 informed of any -- any of those things, you know, directly
12 from my supervisor.

13 THE COURT: All right. We have a couple of
14 questions about your testimony about having been hit by a
15 doctor.

16 Why do you think that the doctor hit you
17 intentionally?

18 THE WITNESS: He's close to Mr. Kortendick.
19 And often when -- at the beginning when I started my
20 employment, Mr. Kortendick was authorized, you know, to train
21 me on the job, so we often go to those open-heart rooms, you
22 know, to set up his room and also Dr. Portfield rooms, and
23 sometimes -- I believe, he was in charge of some sort of, you
24 know, training to all of the --

25 THE COURT: So, I'm sorry. I'm going to

1 interrupt you because I don't think you're answering the
2 question that I asked.

3 THE WITNESS: Okay.

4 THE COURT: The question is, with respect to
5 this doctor that you testified struck you or hit you, why do
6 you think it was that you -- that the doctor hit you
7 intentionally or on purpose?

8 THE WITNESS: He intentionally hit me because
9 even way before I came to the workroom to assist him, I
10 greeted him in the hallways, Good afternoon, Dr. Nikolay. I
11 didn't know his last name, so I called Dr. Nikolay. He would
12 never, you know, accepting of my politeness and, you know,
13 respect toward him. He ignored, walking through.

14 And so as he was inserting, you know, the TEE
15 probe into the patient airway to guide the TEE probe,
16 echocardiogram --

17 MS. ROSEN: Your Honor, this isn't answering
18 the question.

19 THE COURT: So again, I want to direct you to
20 the question.

21 THE WITNESS: Okay.

22 THE COURT: You testified that this doctor hit
23 you on purpose. Why do you think it was on purpose?

24 THE WITNESS: It is certainly on purpose
25 because of his -- his feelings toward me for not -- like, you

1 know -- respecting the way I respect him. He did not respect
2 me.

3 And when he asked me, he asked me things with,
4 you know, anger and frustration, and I have no idea what I
5 have done wrong for him to have that kind of feeling toward
6 me. So when I always show up in his room, I politely just,
7 you know, try to, you know, help him out, but he pulled the
8 T -- ET-tube because, you know, we were under the drape.
9 It's a big blue drape tilted toward the anesthesia machine,
10 and all the staff during the surgery are -- all are on the
11 left part of the patient.

12 And he knew what he did because, you know,
13 nobody would see us, so he, like, violently, like, hit me so
14 hard, and then rip off, you know, the ET tube that I was
15 handing him, you know, off from my hands, and I almost fell
16 on my back, hitting my head against the --

17 THE COURT: I'm so sorry, but, again, you're
18 describing the incident, but you're not telling us why you
19 think it was intentional.

20 THE WITNESS: Because he is literally
21 disliking who I am as a person.

22 THE COURT: Okay. Do you think that the
23 doctor might have hit you accidentally?

24 THE WITNESS: No.

25 THE COURT: Okay. All right.

1 Why did you report your allegations at the
2 time that you reported them?

3 THE WITNESS: I reported directly to my
4 supervisor, Mr. John, because he was someone that was easy to
5 talk to over there.

6 And when I started with my employment, I
7 didn't even, like, know for the entire six -- almost six
8 months that I spent over there, I didn't even know he's a
9 direct supervisor. And also --

10 MS. ROSEN: Your Honor --

11 THE COURT: So the question, again, is the
12 timing of your report of allegations.

13 THE WITNESS: Yes.

14 THE COURT: Why did you report them at the
15 time that you did instead of reporting them at an earlier
16 time?

17 THE WITNESS: Because, Your Honor, as an
18 immigrant and also being in a probationary employment, I was
19 so afraid of -- the way they treat me, I was so afraid
20 that --

21 MS. ROSEN: Objection, Your Honor.

22 THE WITNESS: -- by --

23 MS. ROSEN: Your Honor --

24 MS. BURNHAM: Your Honor --

25 THE COURT: So -- sustained.

1 THE WITNESS: May I continue?

2 THE COURT: No.

3 MR. KEIMBAYE: Okay.

4 THE COURT: Not if you're going to testify
5 about being afraid.

6 MR. KEIMBAYE: It was the fear of losing my
7 job.

8 MS. ROSEN: Objection, Your Honor. This is
9 not in evidence at all.

10 THE COURT: Sustained.

11 All right. Let's move on to something else.

12 So this next question has to do with your
13 tardies. Why didn't you leave home earlier for your shift so
14 that you could be sure you were going to arrive on time?

15 THE WITNESS: I did start leaving early for
16 work, but the traffic on 405 before getting on I-5, by the
17 time you get to the I-5, it's unbelievable. It's very slow,
18 and so I always, you know, try to -- if I knew that I was
19 going to come 10 or 15 minutes late, most of the time I call.
20 A few times I text my supervisor, and that's what I did.

21 THE COURT: Okay. Okay. You had testified
22 that Mr. Kortendick was rude and mean to you. Did you ever
23 approach him to try to clear up any misunderstandings or ask
24 him about his behavior toward you?

25 THE WITNESS: I tried to show my good manner

1 and good character by coming in in the morning, greeting him,
2 saying, Good morning, Mr. Kortendick, but his reactions are
3 very turn-off or negative.

4 When you know that, you know, you're trying to
5 be friendly and polite to a person and they're not willing to
6 open up, you know, you have to know that they're not ready
7 yet, and so I have to step back.

8 And whenever he tried to talk to me, I tried
9 to demonstrate that I'm a good person. And I never show my
10 anger or try to, you know, fight with him. Those never
11 happened.

12 And he never, you know, ever, ever called me
13 from -- for my home for on-call. The only person who --

14 THE COURT: No, hold on. That wasn't part of
15 the question.

16 THE WITNESS: Okay.

17 THE COURT: Okay. Okay. Are you finished
18 with your answer to the question about whether you talked to
19 Mr. Kortendick about the hostility that you testified about?

20 THE WITNESS: Is it a new question?

21 THE COURT: I'm just asking you whether you
22 finished your testimony about that.

23 THE WITNESS: Yes, Your Honor.

24 THE COURT: All right. So then we have a
25 question about why is the actual date that Mr. Kortendick

1 called you at home important?

2 THE WITNESS: Your Honor, with all honesty,
3 the only person that called me for the first time during my
4 five months of work at the Providence Everett, it was
5 Mr. John that called me that I testified about it on
6 June 12th that he was going to put me on administrative
7 leave. That was the only phone call I got from Everett
8 Department. No charge nurse call my phone. Nobody called me
9 for any on call. My on-call, I always wait around, ask if I
10 can stay and help with on-call, but nobody calls me from the
11 Everett Department, the OR Department, to drive from Bellevue
12 and go there for my on-call.

13 And so I don't know where he got it from, but.

14 THE COURT: Okay. Thank you.

15 THE WITNESS: Thank you, Your Honor.

16 THE COURT: That, I think, is it.

17 Any recross on any of that?

18 MS. ROSEN: No, Your Honor.

19 THE COURT: All right. Any redirect on any of
20 that, Mr. Keimbaye?

21 THE WITNESS: No, Your Honor.

22 THE COURT: All right. Thank you. You can
23 feel free to step down.

24 THE WITNESS: Thank you.

25 (Witness excused.)

1 THE COURT: I'll hand these to the clerk.

2 All right. Members of the jury, we will go
3 ahead and let you go a little bit early for lunch today.

4 Please continue following the rules you've
5 been following. Keep your minds open. Don't communicate
6 about the case in any form or expose yourself to any
7 information relating to the case.

8 Mr. Keimbaye and Counsel and I will be working
9 on the schedule for presentation and the rest of the trial to
10 you. I think we're still on schedule, so that's good.

11 Please be back usual time in the afternoon, a
12 few minutes before 1:30 so that J. can meet you and have you
13 in the courtroom at 1:30.

14 Have a good break. J.'s on her way, but you
15 know the way to the jury room.

16 THE COURT: And we're letting them go until
17 this afternoon.

18 THE CLERK: Thank you.

19 THE COURT: I'm guessing we're going to be
20 leaving very shortly, so let's wait until the jurors exit.

21 Some of the courtrooms have a jury room
22 outside in the hall, and that's kind of nice because we don't
23 have to wait, but we don't have one of those courtrooms.
24 Okay.

25 (Jury exits at 11:23:15 a.m.)

1 MS. BURNHAM: I think there may be one more
2 juror left, but --

3 THE COURT: Oh. Really? She usually doesn't
4 close the door when --

5 MS. BURNHAM: I thought I heard somebody ask a
6 question. Maybe I'm wrong.

7 THE COURT: Oh, I guess so.

8 THE BAILIFF: All right. That's it.

9 MS. BURNHAM: Oh, okay. Sorry about that.

10 THE COURT: That's okay.

11 MS. BURNHAM: Your Honor, if I may?

12 THE COURT: You may.

13 DISCUSSION RE MOTION TO DISMISS

14 MS. BURNHAM: We -- I mean, we just saw
15 another example of Mr. Keimbaye being instructed to not talk
16 about something in chambers. He comes out -- he heard the
17 instruction from Your Honor, comes out and sits up here and
18 starts testifying about fear and other issues that he never
19 raised during his own examination of himself, nor did he
20 raise on his redirect of himself.

21 We're continuing to be prejudiced by
22 Mr. Keimbaye's behavior and not listening to this Court's
23 rulings. I don't know at what point he's going to start
24 obeying the Court's orders, but we continue to have concerns
25 about what the jury is hearing.

1 THE COURT: Yeah. Mr. Keimbaye, do you recall
2 that we talked about in chambers that there's no retaliation
3 claim, so testimony about being afraid to report, especially
4 since you never mentioned it earlier, was not appropriate in
5 response to a juror question?

6 MR. KEIMBAYE: I mean, the question led me,
7 you know, to answer to -- the question that they asked led me
8 to answer to -- you know, the way they asked.

9 THE COURT: Well, I know that, but it's not
10 something that you made a claim for. And in fact, it's kind
11 of -- it's not really a retaliation claim, though, because
12 retaliation claim is, I reported wrongdoing and I was fired
13 or I was disciplined.

14 This is there was wrongdoing going on and I
15 didn't report it until after I got placed on administrative
16 leave and told I was likely going to get fired.

17 MS. BURNHAM: Your Honor, my concern is we
18 talked about it in chambers. He had the opportunity to raise
19 any issue with it.

20 THE COURT: I know.

21 MS. BURNHAM: He walked out here -- and he's a
22 smart guy. He walked out here and discussed the exact things
23 you told him not to discuss that he knew the jury wanted to
24 know about.

25 When Your Honor instructed him that he cannot

1 talk about fear, we saw reactions on the juror's faces. This
2 continues to prejudice us, and he is not listening to your
3 orders, and we need some type of sanction.

4 Again, we move to dismiss Mr. Kortendick as he
5 has been severely prejudiced by Mr. Keimbaye's discussions in
6 front of the jury.

7 And we ask that you also dismiss --

8 THE COURT: Which discussions?

9 MS. BURNHAM: The discussion last Thursday in
10 terms of the sexual harassment we saw in chambers earlier,
11 Your Honor --

12 THE COURT: Oh. That. Yeah.

13 MS. BURNHAM: -- that obviously that -- the
14 jurors did hear that clearly because we received numerous
15 questions about that.

16 THE COURT: Yep.

17 MS. BURNHAM: And you instructed Mr. Keimbaye
18 again this morning to listen to your orders, and he continues
19 to not.

20 THE COURT: Yep. I understand. Okay.

21 MR. KEIMBAYE: Your Honor?

22 THE COURT: Yes, Mr. Keimbaye?

23 MR. KEIMBAYE: I would like to address --

24 THE COURT: Can you speak a little louder,

25 MR. KEIMBAYE: I would like to address

1 Ms. Burnham about her concern.

2 I answered the question the way they asked. I
3 have no idea whatsoever whether fear is related to
4 retaliation, so I have no clue.

5 MS. ROSEN: We talked about it in chambers.

6 MS. BURNHAM: We talked about it in chambers.

7 THE COURT: Yeah.

8 MS. BURNHAM: Ten seconds before you walked
9 out.

10 THE COURT: We did talk - we did talk about
11 it.

12 MS. BURNHAM: Your Honor told you not to say
13 that and explicitly made a ruling on it, and you walked out
14 and you said it immediately.

15 MR. KEIMBAYE: Well, let Your Honor instruct
16 the jury on that particular jury instruction regarding
17 retaliation.

18 MS. ROSEN: No. That's --

19 MS. BURNHAM: Your Honor, that's not an
20 appropriate sanction here. He's continuing to not take
21 accountability. He's continuing to fight and say that he's
22 not responsible.

23 MR. KEIMBAYE: Well, I am not trained like
24 you. I'm sorry.

25 MS. ROSEN: You could have gotten a lawyer.

1 MR. KEIMBAYE: You know how many -- how many I
2 went through here in Seattle?

3 THE COURT: I don't know, Mr. Keimbaye, but
4 I'll tell you, at least with respect -- it has nothing to do
5 with any ruling in this case, but at least with respect to
6 that auto accident case, I can think of 50 lawyers that would
7 have been happy to represent you on that case.

8 MR. KEIMBAYE: Your Honor, I had attorney
9 representing me for two -- two-plus years.

10 COURT'S RULING RE MOTION TO DISMISS

11 THE COURT: Well, maybe, but you tried it on
12 your own.

13 In any event, I don't even want to go there
14 because it has nothing to do with this case, other than you
15 have a certain level of experience in litigation and trial
16 because you did try that case on your own.

17 All right. I'm still not finding sufficient
18 grounds for the Court to dismiss this case with prejudice.

19 I don't think the Defendants want a mistrial.
20 I haven't heard a motion for a mistrial because a mistrial
21 would result in a new trial with a new jury, which would be
22 significantly expensive for the Defense, and the Defense
23 hasn't moved for that. They're just asking for dismissal or
24 a directed verdict.

25 MS. ROSEN: Or sanctions against him,

1 Your Honor. I mean, he does not listen --

2 THE COURT: And those can be imposed at any
3 time, so that's not an urgent, time-sensitive thing. And
4 frankly, I'm not sure what kind of sanction the Court could
5 impose other than monetary sanctions, which the Court has
6 already imposed and the Defense is complaining that haven't
7 been paid.

8 And I don't know that he's any more
9 likely -- unless you reduce it to judgment and take steps to
10 collect on a judgment, I can't think of any reason why
11 Mr. Keimbaye would be any more likely to pay a monetary
12 sanction imposed at this time.

13 MS. BURNHAM: Your Honor, I mean, I think
14 you're making our point, though, is you've now admonished him
15 several times. We've had this same conversation. He is not
16 changing his behavior despite you asking him over and over
17 and over again to abide by your orders.

18 THE COURT: I know. Okay.

19 MS. BURNHAM: He continues to take no
20 accountability, Your Honor. This is scary. We don't want to
21 have to start over.

22 THE COURT: No.

23 MS. BURNHAM: But we do think that there needs
24 to be a more severe sanction than monetary sanctions here.
25 He clearly didn't -- that didn't change his behavior when you

1 sanctioned him before.

2 THE COURT: Well, what do you have in mind
3 short of dismissing his case, which is the only thing I've
4 been asked to do?

5 MS. BURNHAM: I think Mr. Kortendick should be
6 dismissed.

7 THE COURT: I just -- I don't think we're at
8 that point. I don't think we're at that point.

9 MS. ROSEN: What does he have to do to get to
10 that point? Like, punch me out in court?

11 DISCUSSION RE HUSTED DISPOSITION

12 MS. BURNHAM: Yeah. Respectfully,
13 what -- or --

14 THE COURT: All right. I would like to talk
15 about the admissibility of the, the Husted testimony. And I
16 realize we don't have these texts.

17 Do you want to show them to Defense Counsel?

18 MR. KEIMBAYE: Yes, Your Honor.

19 MS. ROSEN: I mean, Your Honor, he should be
20 barred from introducing this testimony. That's a sanction.

21 He didn't subpoena her. He could have
22 subpoenaed her. He never did.

23 THE COURT: No, he couldn't have. I mean,
24 there's no way to subpoena somebody who lives in another
25 state.

1 MS. ROSEN: Yes, there is.

2 MS. BURNHAM: Yes, there is.

3 MS. ROSEN: You get a commission.

4 THE COURT: Well, I know, but it's almost
5 never done, and the rule doesn't contemplate it.

6 MS. ROSEN: Well, I don't think he should be
7 rewarded for this behavior by being able to introduce this
8 deposition transcript.

9 THE COURT: What behavior?

10 MS. ROSEN: All of the behavior we just talked
11 about.

12 THE COURT: Well, that doesn't relate to the
13 deposition transcript.

14 MS. ROSEN: It relates to him not following
15 the rules.

16 MS. BURNHAM: Including not disclosing any of
17 these text messages and discovery. It's a hearsay text
18 message that he's trying to submit.

19 THE COURT: Okay, let's do this: Show the
20 Defense Counsel the text messages that you had with
21 Ms. Husted since the end of the court day on Friday.

22 MR. KEIMBAYE:: Yes.

23 THE COURT: Or even before then, the ones that
24 you haven't printed out and provided.

25 MR. KEIMBAYE: Yes. The ones I received is

1 starting from last Friday and Saturday.

2 MS. ROSEN: I mean, and these have not been
3 authenticated.

4 THE COURT: I understand, but let's start
5 there.

6 MS. ROSEN: This is -- yeah. I feel this is
7 highly prejudicial toward us in a trial where we've already
8 had so much prejudice toward us.

9 THE COURT: Understood.

10 MS. ROSEN: If we move for a mistrial, would
11 Your Honor grant it?

12 THE COURT: I can't give you an advisory
13 ruling. I'm sorry.

14 MS. ROSEN: Okay.

15 (Pause in proceedings.)

16 MS. ROSEN: What is he doing? Why isn't he
17 showing us the text messages?

18 THE COURT: Yeah. Why aren't you showing them
19 the texts?

20 MR. KEIMBAYE: Yes, yes. I am -- I am
21 emailing right now to the Court and to you guys.

22 THE COURT: You're emailing? I just thought
23 you were going to pull up the text messages on your phone and
24 show them your phone.

25 MS. ROSEN: Yeah. Probably because he said

1 something to her he shouldn't have.

2 THE COURT: Well, anything he sends to the
3 Court goes to the Bailiff. It doesn't go to me.

4 MS. ROSEN: Well, why is he editing the text
5 message right now?

6 THE COURT: I don't know.

7 MR. KEIMBAYE: I am not editing. Taking
8 screenshots so I can email.

9 MS. ROSEN: She said to show it to us.

10 THE COURT: Yeah. Just show it to them.

11 MS. ROSEN: She didn't say, Take screenshots.

12 MR. KEIMBAYE: Alrighty.

13 MS. ROSEN: What is he doing? He's doing all
14 kinds of stuff.

15 THE COURT: What are you doing on your phone?
16 Just pull it up.

17 MS. BURNHAM: He's erasing stuff.

18 MR. KEIMBAYE: Oh --

19 MS. BURNHAM: Your Honor, he just continues --

20 MR. KEIMBAYE: How in the world would I do
21 something like that right in front of you? Erasing
22 something?

23 MS. BURNHAM: You're not right in front of us.
24 You're over there going like this and fiddling with his
25 phone.

1 MR. KEIMBAYE: Okay. The last text message --
2 MS. BURNHAM: If he had just sent them, they
3 would be up, Your Honor.
4 THE COURT: All right. All right. I think
5 Ms. Rosen has the phone now.
6 MR. KEIMBAYE: The last text message that I
7 wanted to submit to the Court is this one. These are the
8 ones starting from last Thursday. That one and going up.
9 MS. BURNHAM: See, there's a text message
10 missing: Okay, are you technically living in Florida?
11 See, there's a text message -- there's text
12 messages missing, Your Honor.
13 MS. ROSEN: There's a text message missing.
14 MR. KEIMBAYE: Which text message is missing?
15 MS. BURNHAM: He's responding -- you can look
16 at it, but there's a text message where he's responding to
17 something, and he says, Okay, are you technically living in
18 Florida?
19 There's -- the text message from Yulia is
20 missing.
21 MR. KEIMBAYE: No, no, no. Nothing is
22 missing.
23 What I was saying, like, you know, Okay,
24 here -- meaning, like, you know, whatever she would say here
25 by Zoom. And so I say, Okay, are you technically in Florida?

1 That's what I said.

2 MS. ROSEN: He's coaching her on what to do.

3 MR. KEIMBAYE: Oh, no, no, no, no, no, no, no.

4 MS. ROSEN: Yes. You said --

5 MR. KEIMBAYE: Let me forward --

6 MS. BURNHAM: Your Honor, you should look at
7 those messages.

8 MR. KEIMBAYE: -- let me forward -- please.

9 THE COURT: All right. If you guys want a
10 record, then you need to speak one at a time, because we're
11 still on the record.

12 MR. KEIMBAYE: Let me send it to the Court,
13 please.

14 THE COURT: Well, I don't really want you to
15 send it to the Court. I wanted you to print it out.

16 MR. KEIMBAYE: Yeah.

17 MS. ROSEN: It does not look complete to me.

18 MS. BURNHAM: He's not -- and he's not
19 prepared, Your Honor. I mean, you told him that this was
20 what was going to happen today. He's not prepared. He's not
21 prepared to rest.

22 MR. KEIMBAYE: I'm not being disrespectful
23 here, but you're being overexaggerating about the situation
24 here.

25 How can someone say, Okay -- meaning that, you

1 know, the testimony is missing?

2 THE COURT: I'm not even understanding what
3 you're saying, Mr. Keimbaye. I'm sorry.

4 MR. KEIMBAYE: May I approach the --

5 THE COURT: No. I don't want to look at the
6 phone. I don't think it's appropriate for me to look at your
7 phone.

8 MR. KEIMBAYE: Thank you.

9 THE COURT: I thought it was appropriate for
10 Defense Counsel to look at your phone.

11 MR. KEIMBAYE: I'm trying to explain myself,
12 but they are making hard. How is it if I'm hiding something
13 from a text message or something?

14 MS. ROSEN: It looks like you are.

15 MR. KEIMBAYE: Why would I jeopardize my case
16 like that?

17 MS. BURNHAM: I'm not sure, but you continue
18 to.

19 THE BAILIFF: You might want to stop talking
20 right now, folks. Silence, please. Thank you.

21 MR. KEIMBAYE: Thank you.

22 THE COURT: I don't know what happened to
23 those text messages that were printed out. I had all my
24 paperwork here, but --

25 THE CLERK: (Indiscernible.)

1 THE COURT: You could look. I doubt they're
2 there. I doubt there's anything there. All right. That's
3 just the voir dire stuff.

4 Oh. Thanks for retrieving that.

5 MS. ROSEN: Your Honor, can I say one thing?

6 THE COURT: Yes, of course.

7 MS. ROSEN: I mean, there's deposition
8 testimony from Mr. Keimbaye saying he does not know if he
9 promised Ms. Husted a reward for testifying for him, that he
10 told her what to say in her deposition. I mean, all kinds of
11 stuff that makes this completely prejudicial to have
12 introduced.

13 THE COURT: So I think the real issue
14 here -- and you can see that I'm struggling with it a little
15 bit.

16 THE CLERK: You're right. I cannot --

17 THE COURT: I didn't think so. I don't know
18 what happened to it.

19 But the real issue, as far as I can tell, the
20 legal analysis is CR 32(a) says the deposition of a witness,
21 whether or not a party, may be used by any party for any
22 purpose if the Court finds, sub (b), that the witness resides
23 out of the county and more than 20 miles from the place of
24 trial unless it appears the absence of the witness was
25 procured by the party offering the deposition.

1 So just looking at CR 32, the question is
2 whether on the record before the Court the Court can make
3 such a finding.

4 And I realize the Defense argument was, well,
5 we also have to analyze it under ER 804, but I'm not sure
6 that that's accurate, you know, given relatively recent case
7 law, certainly within the last 15 years or so. So if you
8 want to address that, I want to give you an opportunity to
9 address that.

10 MS. ROSEN: The other issue, Your Honor, is
11 that the text message is not admissible evidence. I mean, I
12 think to prove that she lives out of the county or the state,
13 he needs admissible evidence, and he doesn't have any.

14 THE COURT: Yeah. Understood.

15 MS. ROSEN: That's the real issue.

16 THE COURT: Well, and that goes directly to
17 the issue of if the Court finds -- you know, what does the
18 Court need in order to make such a finding.

19 MS. ROSEN: Right. Which I would argue they
20 need admissible evidence.

21 THE COURT: Okay.

22 Mr. Keimbaye, do you want to address that?

23 MR. KEIMBAYE: The witness herself, when I
24 begged her throughout the text message, she mentioned that
25 she moved --

1 THE COURT: Yeah.

2 MR. KEIMBAYE: She mentioned that she moved
3 back in June 2022 to Florida.

4 THE COURT: Uh-huh.

5 MR. KEIMBAYE: And so if, you know, like, you
6 know, I begged her so that, you know, Were you technically in
7 Florida, like, trying my best, you know, to hear whether or
8 not she's in the state or she's in Florida, and then later
9 on, she text me, you know, her home address from Florida.

10 THE COURT: Uh-huh.

11 MR. KEIMBAYE: So there's no other way around
12 for me to, you know, to try to kind of, you know, say with a
13 certainty that, you know, she's living here.

14 And even throughout the text messages, Defense
15 is feeling like, you know, I'm kind of like, you know, making
16 this up, and I'm not making anything up. Someone is talking
17 to me through the phone, through their text, through their
18 phone.

19 I cannot make things up, you know, talking to
20 a stranger, you know, when I'm in court -- in court, which is
21 troubling for me to do something like that, for making up,
22 you know, stories.

23 THE COURT: Yeah. But the problem is we don't
24 have a declaration from her saying that she moved to Florida.
25 We don't have a declaration from anyone who actually knows

1 where she's living right now, that she's living in Florida.
2 All we have is you telling the Court that you exchanged text
3 messages with her and that she told you that she's living in
4 Florida. But that is hearsay.

5 MR. KEIMBAYE: At first, Your Honor, she
6 expressed, you know, to kind of, like, you know, either do
7 via Zoom or, you know, phone. And then as, you know, we were
8 approaching, you know, like July and September, I then, you
9 know, tried, you know, to hear back from her so that, you
10 know, I can, you know, tell the Court, you know, if she
11 decided, you know, to do the Zoom or the phone calls so I can
12 provide her with those information.

13 All of a sudden, I get information about now
14 her dad being diagnosed with cancer and, you know, her kids
15 being ill and so.

16 MS. ROSEN: No.

17 THE COURT: Well, I don't know anything about
18 her kids. This is the first time you've mentioned her kids.

19 MS. ROSEN: That's not in the text.

20 MR. KEIMBAYE: That's what --

21 THE COURT: And cancer, I don't think is in
22 the text, just that her father is ill.

23 MR. KEIMBAYE: Yeah, yeah, you know, on the
24 text messages, she mentioned about -- something about her
25 dad, taking care of her dad.

1 THE COURT: I know. That's what you provided
2 before. I don't think there's enough here, Mr. Keimbaye, for
3 the Court to be able to make a finding that the witness does
4 not live -- resides outside the county and more than 20 miles
5 from the place of trial, which is what the rule requires that
6 I find. There's just, there's not enough -- there's no
7 admissible evidence from which the Court can make that
8 finding.

9 MR. KEIMBAYE: Well, you --

10 THE COURT: And given that, the deposition
11 testimony is hearsay. And I certainly spent an awful lot of
12 time going through that transcript and, you know, trying to
13 rule on the objections, and that's kind of tying down the
14 drain at this point.

15 But I'm -- I think the Defense has the correct
16 argument here. Even if I don't do an analysis under
17 Evidence Rule 804, I don't think the requirement of
18 Civil Rule 32(a)(3)(b) has been met. So we're not going to
19 be reading any portion of Ms. Husted's testimony to the jury.

20 I will give you an opportunity to use the noon
21 hour to look through and see if there's any exhibits that you
22 neglected to offer into evidence that you want to offer into
23 evidence before we bring the jury back in, and after that, I
24 imagine you're probably going to rest unless you have another
25 witness to call.

1 Okay. I see you're nodding. I can't hear
2 anything, but I can see you nodding.

3 MR. KEIMBAYE: Thank you.

4 THE COURT: All right, Mr. Keimbaye. Thank
5 you.

6 Anything else to be addressed at this time?
7 We still have about 15 minutes.

8 DISCUSSION RE DIRECTED VERDICT MOTION

9 MS. ROSEN: Your Honor, do you -- are you okay
10 with me moving for a directed verdict in front of the jury,
11 or do you want me to wait and, like, excuse the jury after he
12 rests then I'll make my argument?

13 THE COURT: Well, yeah. I don't think that
14 should happen in the presence of the jury.

15 MS. ROSEN: Okay. So when he rests, we'll
16 take a break, and I'll argue my motion.

17 THE COURT: Okay. I mean, it may be that we
18 just -- if he tells us he's resting, then we can do that
19 without even bringing the jury into the room.

20 MS. ROSEN: Uh-huh.

21 THE COURT: But if there's something else, if
22 there's some other evidence to introduce, then, yeah, we'll
23 have to bring the jury in and then --

24 MS. ROSEN: Okay. Thank you. I just want to
25 be clear on that.

1 THE COURT: Yes.

2 Yes, Mr. Keimbaye?

3 MR. KEIMBAYE: Yes, Your Honor. Will I rest
4 my case here or under oath over there?

5 THE COURT: No, not under oath.

6 MR. KEIMBAYE: Okay.

7 THE COURT: Right. I mean, when you're saying
8 Plaintiff's rests, you're really acting as the advocate
9 rather than as the party.

10 MR. KEIMBAYE: Okay.

11 THE COURT: Okay?

12 MR. KEIMBAYE: Thank you.

13 THE COURT: All right. All right. In that
14 case, we will be at recess until 1:30.

15 MS. ROSEN: Thank you, Your Honor.

16 MS. BURNHAM: Thank you, Your Honor.

17 THE COURT: Thank you.

18 THE BAILIFF: Please rise.

19 (Recess at 11:44:29 a.m., recommencing at 1:35:24 p.m.)

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SEATTLE, WASHINGTON

MONDAY, SEPTEMBER 11, 2023

AFTERNOON SESSION - 1:35:26 P.M.

JURY TRIAL (DAY 4):

(The following proceedings were held outside the presence of the jury:)

THE BAILIFF: Court is again in session.

THE COURT: Thank you. Please be seated.

Good afternoon.

MS. ROSEN: Afternoon, Your Honor.

THE COURT: All right. Mr. Keimbaye?

MR. KEIMBAYE: Yes, Your Honor?

THE COURT: Did you have something else?

MR. KEIMBAYE: Say again, Your Honor?

THE COURT: Did you have something else?

MR. KEIMBAYE: Regarding the --

DISCUSSION RE OUTSTANDING EXHIBITS

THE COURT: You were going to go over your exhibits.

MR. KEIMBAYE: Oh, yes. Yes, Your Honor. I would like to talk about a few exhibits. Exhibit Number 3. If it may please the Court to admit it and publish?

THE COURT: Well, typically you're supposed to do that while a witness is testifying. But which exhibit numbers did you have in mind?

1 MR. KEIMBAYE: 3, 7, 12, 13 --

2 THE COURT: One at a time.

3 MR. KEIMBAYE: Okay. Start with 3.

4 THE COURT: 3?

5 MR. KEIMBAYE: Yes. It's in regard to
6 extensive -- extensive communication about plenty of access
7 to ACLS with Mr. Sweeney (phonetic).

8 THE COURT: Is there an objection to admission
9 of Exhibit 3?

10 MS. ROSEN: Yes, Your Honor. It goes to his
11 termination. And we objected based on ER 401, 402, 403, 602,
12 and 802.

13 THE COURT: All right. I'm not admitting
14 Exhibit 3.

15 MR. KEIMBAYE: Next Exhibit 7 regarding
16 attempt to complete make up call regarding ACLS
17 certification.

18 THE COURT: Is there an objection?

19 MS. ROSEN: Yes, Your Honor. I don't even
20 know what this is.

21 THE COURT: I didn't know either, except it
22 looks like screenshots that are labeled -- at least the top
23 one is labeled ACL simulation.

24 MR. KEIMBAYE: Yes.

25 MS. ROSEN: Yeah, I don't even know what this

1 shows.

2 MR. KEIMBAYE: It's -- it's the last step to
3 complete ACLS certification. And I have to complete a
4 simulation where --

5 THE COURT: Why is this relevant?

6 MR. KEIMBAYE: It is relevant because that was
7 the last step to -- to complete in order to -- to --

8 THE COURT: I know, but the evidence that's
9 before the jury is that you weren't authorized by Providence
10 to be doing this. So why is it relevant to your hostile work
11 environment or your discrimination or harassment claims?

12 MR. KEIMBAYE: Because they -- they have been
13 collecting my access to ACLS to label me as a fraud.

14 THE COURT: All right. Exhibit 7 is refused.
15 What's next? Oh, I'm sorry. I marked 6, and I didn't need
16 to mark 6. I meant to mark 7. 7 is refused.

17 MR. KEIMBAYE: 12, Your Honor.

18 THE COURT: 12. All right. 12 is an email
19 from Eric Sweeney dated June 13th of 2018 to somebody named
20 Dale Hubert (phonetic) and Clara Caldwell (phonetic)
21 temporarily suspending IT access for Mr. Keimbaye.

22 All right. What's this relevant to?

23 MR. KEIMBAYE: Again, to Mr. Keimbaye's record
24 of accessing ACLS that was used against him.

25 THE COURT: Is that objected to?

1 MS. ROSEN: Yes, Your Honor. This is just
2 saying they're suspending his IT access while he's on
3 administrative leave.

4 THE COURT: Yep, I don't see this as relevant
5 to any of the claims. Exhibit 12 is refused. Anything else?

6 MR. KEIMBAYE: Exhibit 14 is the most
7 important related to Plaintiff's text messages back and forth
8 with Mr. John.

9 MS. ROSEN: 14?

10 MS. BURNHAM: Did you say 13 or 14?

11 MR. KEIMBAYE: I said 13, yes.

12 MS. ROSEN: Oh, 13.

13 THE COURT: You said 1 through 13. 14 is
14 already admitted.

15 MR. KEIMBAYE: And the -- this email
16 Mr. Sweeney is literally asking Mr. John in that table to
17 forward Mr. Keimbaye text messages. And it's very important
18 based on calling in sick and --

19 THE COURT: Is there an objection to Exhibit
20 13?

21 MS. ROSEN: Yes, I don't see the relevance,
22 Your Honor. It also says missing image at the top.

23 THE COURT: Yeah.

24 MR. KEIMBAYE: Well, those are the text
25 messages attached by Mr. John.

1 MS. ROSEN: Well, then it's not a complete
2 exhibit.

3 THE COURT: It's not a complete exhibit. And
4 also it's from October. So it's several months after you
5 left Providence. And I don't see what this is relevant to
6 show.

7 MR. KEIMBAYE: Your Honor, it's -- it's
8 relevant because the table statement there is in connection
9 with the text message that the Plaintiff had with the -- his
10 supervisor Mr. John.

11 THE COURT: What text message?

12 MR. KEIMBAYE: That table in the -- in the
13 email, June 12th. Dominique texts Travis that he --

14 THE COURT: Yeah, I don't know who this is
15 from.

16 MR. KEIMBAYE: From --

17 THE COURT: It looks like it might be from
18 Mr. Sweeney.

19 MR. KEIMBAYE: Yes.

20 THE COURT: But he's inquiring what time of
21 day. He notified you that you were being placed on unpaid
22 administrative leave. And there's no response to that, so I
23 don't know what this is relevant to.

24 MR. KEIMBAYE: To --

25 THE COURT: What is this relevant to?

1 MR. KEIMBAYE: It's relevant because the
2 statement in that -- that table here is related to the exact
3 text message from Plaintiff to Mr. John.

4 THE COURT: Well, maybe. But how is it
5 relevant to your claims here? Remember, you don't have a
6 claim for wrongful termination in this trial.

7 MR. KEIMBAYE: Okay.

8 THE COURT: All right. 13 is not admitted.
9 Anything else?

10 MR. KEIMBAYE: 23, Your Honor.

11 MS. ROSEN: 22?

12 THE COURT: 23, I believe, he said.

13 MR. KEIMBAYE: 23.

14 THE COURT: 23. What's this relevant for?

15 MR. KEIMBAYE: It is relevant and related to
16 the discharge -- notice of discharge.

17 THE COURT: Yes, which is not an issue for
18 this trial. So how is it relevant to this trial? Your claim
19 for wrongful discharge or wrongful termination was dismissed
20 on summary judgment. And it's not an issue we're going to
21 ask the jury to decide.

22 MR. KEIMBAYE: Okay.

23 THE COURT: All right. 23 is refused.
24 Anything else?

25 MR. KEIMBAYE: 24.

1 THE COURT: All right. These are emails dated
2 after you were terminated. Why is this relevant?

3 MR. KEIMBAYE: It is relevant because they
4 appear on -- Mr. Bach was aware of or had the communication
5 of previously what the -- Mr. John before, you know, reaching
6 out, you know, to him.

7 THE COURT: I'm sorry, I'm not understanding
8 how this is relevant to your claims in this trial. These are
9 all emails that date after your termination. And Mr. John is
10 saying that he had to terminate you because of violations of
11 the code of conduct.

12 And there were integrity issues that came to
13 light. And then there's questions about a replacement for
14 your position. How is this relevant to your claim?

15 MR. KEIMBAYE: Is it relevant because it seems
16 like there is like, you know, well planned --

17 THE COURT: Because of what?

18 MR. KEIMBAYE: Well planned to -- to
19 terminate, you know, Plaintiff.

20 THE COURT: How does this show that?

21 MR. KEIMBAYE: The connection between the two
22 individuals.

23 THE COURT: I'm sorry?

24 MR. KEIMBAYE: The -- the communication
25 between the two individuals.

1 THE COURT: Long after you got fired.

2 MR. KEIMBAYE: Well, Your Honor, if I may, you
3 know, state this because on the day Mr. John called Plaintiff
4 to put him on administrative leave --

5 THE COURT: Yeah.

6 MR. KEIMBAYE: -- Mr. Keimbaye reached out to
7 Mr. Bach, you know, about the position that he applied for at
8 the Swedish.

9 THE COURT: Okay.

10 MR. KEIMBAYE: And during that communication,
11 Mr. Bach, you know, told Mr. Keimbaye that the -- I'm not
12 going to -- you know, to hire you for this position.

13 THE COURT: All right. That has nothing to do
14 with your claims in this case, nor is any of that in
15 evidence. Is there an objection to 24?

16 MS. ROSEN: Yes, Your Honor.

17 THE COURT: 24 is refused. Anything else?

18 MR. KEIMBAYE: 26.

19 THE COURT: Are we going to go through all of
20 these that haven't been admitted yet? That wasn't my
21 intention. It was just something that you inadvertently left
22 out during your case.

23 MR. KEIMBAYE: I have four more and then we'll
24 be done here, Your Honor.

25 THE COURT: All right. This is an emailed

1 | dated August 3rd of 2018 from Mr. Sweeney. What does this
2 | have to do with your case?

3 | MR. KEIMBAYE: It is related to my
4 | communication with Ms. -- Ms. Rice. And --

5 | THE COURT: I don't understand. How is this
6 | relevant to your case?

7 | MR. KEIMBAYE: Related to -- to the report
8 | that, you know, I -- I presented to Ms. Rice. And they are
9 | mentioning Ms. Rice in this email.

10 | THE COURT: Where?

11 | MR. KEIMBAYE: The second paragraph.

12 | THE COURT: "I thought the conversation went
13 | well. Marilyn understood the union's dynamic. She spoke
14 | with, I believe, her one up and got back to me."

15 | I have no idea what this is about.

16 | MR. KEIMBAYE: Okay.

17 | THE COURT: Is there something that indicates
18 | that it relates to your case?

19 | MR. KEIMBAYE: Well, it related to the
20 | inappropriate behavior that, you know, I -- I reported to
21 | Ms. --

22 | THE COURT: Where does it mention any
23 | inappropriate behavior that you reported?

24 | MR. KEIMBAYE: Well, because the last person I
25 | spoke with is Ms. Rice to -- to complete the integrity line

1 that, you know, they provided to me.

2 THE COURT: All right. I'm not admitting this
3 exhibit at this time. There's nothing in here that even
4 indicates that this has anything to do with you. I
5 don't -- oh, yeah. I do see your name on here. Okay.

6 "In speaking with Anthony Canto (phonetic),
7 the Union rep, Dominique Keimbaye has complained to UFCW that
8 his ASST certificate has been revoked."

9 But that doesn't -- that's not related to your
10 sexual harassment claim.

11 Is there an objection to 26?

12 MS. ROSEN: Yes, Your Honor.

13 THE COURT: All right. It's refused. What
14 else?

15 MR. KEIMBAYE: 38, please, Your Honor.

16 THE COURT: 38. Is there an objection to 38?

17 MS. ROSEN: Yes, Your Honor. It's comparator
18 evidence.

19 THE COURT: What does this have to do with
20 your case, Ms. Keimbaye?

21 MS. ROSEN: It also was not produced during
22 discovery. I don't know where he got this.

23 THE COURT: Mr. Keimbaye?

24 MR. KEIMBAYE: You provide this to -- to
25 Plaintiff?

1 THE COURT: You're speaking so softly I can't
2 hear you.

3 MR. KEIMBAYE: They provide this to -- to me.
4 I don't have access to the system to get this kind of form.
5 They provided it to me.

6 THE COURT: Well, all right. It doesn't have
7 a Bates stamp on it, but --

8 MR. KEIMBAYE: Yeah.

9 THE COURT: -- actually quite a few of your
10 exhibits don't. Why is this relevant?

11 MR. KEIMBAYE: These are for -- based on, you
12 know, corrective action that, you know, staff -- you know,
13 they had a severe, you know, violation compared to -- to
14 Plaintiff on this table.

15 THE COURT: All right. That's refused because
16 I did grant the Defense motion in limine to not admit
17 comparator evidence. And you didn't oppose that motion at
18 the time. Anything else?

19 MR. KEIMBAYE: I -- I have three more to go,
20 and we'll be done.

21 THE COURT: All right.

22 MR. KEIMBAYE: But 41, please.

23 THE COURT: 41.

24 MR. KEIMBAYE: Yes.

25 THE COURT: That's an email dated October 4th

1 of 2018 referring to -- oh, I see. Forwarding an April 5th,
2 2018 email.

3 MR. KEIMBAYE: Yes.

4 THE COURT: Okay. Is there an objection to
5 this?

6 MS. ROSEN: Yes, Your Honor. Because the
7 email below is already admitted. And I don't see what the
8 email on top is relevant to.

9 THE COURT: Oh.

10 MR. KEIMBAYE: Okay.

11 THE COURT: Okay. If the email below is
12 admitted, we don't need this twice.

13 Do we, Mr. Keimbaye?

14 MR. KEIMBAYE: Okay.

15 THE COURT: All right. So that's not
16 admitted.

17 MR. KEIMBAYE: 45 and then 54.

18 THE COURT: 45?

19 MR. KEIMBAYE: Yes, Your Honor.

20 THE COURT: 45. I thought this was already in
21 evidence or something similar to this?

22 MR. KEIMBAYE: Not yet.

23 THE COURT: This has to do with an email in
24 May of 2018 asking for a copy of Mr. Keimbaye's current BLS
25 card.

1 MS. ROSEN: I, too, thought this was admitted,
2 Your Honor.

3 THE COURT: I thought it was too.

4 MR. KEIMBAYE: No, it wasn't.

5 THE COURT: Well, there's a bunch of other
6 stuff behind.

7 MR. KEIMBAYE: The only -- one thing that was
8 admitted was 62, and it is not related to this.

9 THE COURT: Well, is there an objection?

10 MS. ROSEN: I'm trying to --

11 MS. BURNHAM: Hold on just one second, Your
12 Honor.

13 MS. ROSEN: I mean, the objection is it has
14 comparator information in it.

15 MR. KEIMBAYE: But there is no comparator --

16 THE COURT: Does it?

17 MS. ROSEN: Yeah, it does. When it --

18 THE COURT: Where?

19 MS. ROSEN: Expires BLS certifications, and it
20 has a bunch of other people.

21 MR. KEIMBAYE: Where is it?

22 THE COURT: Where?

23 MS. BURNHAM: Second page.

24 MS. ROSEN: The second page.

25 THE COURT: The second page has everything

1 blacked out except for Mr. Keimbaye.

2 MR. KEIMBAYE: Exactly.

3 THE COURT: So it doesn't list any other
4 names.

5 MS. ROSEN: Yeah, we think this might be
6 duplicative. Can we come back to this one real quick?

7 MS. BURNHAM: We'll look while --

8 THE COURT: Okay.

9 MS. BURNHAM: -- we move onto the next one.

10 THE COURT: Yeah, okay.

11 MR. KEIMBAYE: And, Your Honor, if I can -- if
12 I may mention something?

13 THE COURT: Yeah, you may.

14 MR. KEIMBAYE: I'm looking for admitting only
15 this page.

16 THE COURT: Only the first page?

17 MR. KEIMBAYE: Yes.

18 THE COURT: Then you'd have to remark it as a
19 separate exhibit. Because we can only admit -- we can't
20 admit portions of exhibits.

21 MR. KEIMBAYE: Okay. Only one page, yeah.
22 This page only.

23 THE COURT: Okay. So that would be Exhibit
24 63. But Defense Counsel is looking to see whether this is
25 already in evidence as one of theirs. So let's move onto the

1 last one. What was the last one you wanted to admit?

2 MR. KEIMBAYE: The last one, it's something
3 that a -- a -- I'd like you to make a judgment on that. It's
4 Exhibit 54.

5 THE COURT: five four?

6 MR. KEIMBAYE: Yes, Your Honor.

7 THE COURT: 54. Do you have a little pad of
8 Post-its? Thank you so much. I wanted to just save this
9 page here.

10 MR. KEIMBAYE: And the -- and the Plaintiff is
11 looking for specifically on page -- one moment, Your Honor.
12 Specifically on page 23. Bottom of page 23 regarding
13 benefit. And the place with a limit to you to make a
14 judgment on that.

15 MS. ROSEN: I don't know why his benefits
16 would be relevant here, Your Honor.

17 THE COURT: I also don't think these things
18 get admitted as exhibits. I think they can be ready to the
19 jury.

20 MS. ROSEN: Yeah, these are discovery
21 responses.

22 THE COURT: Yeah. So before you rest, if you
23 wanted to read this question and the Defense answer to the
24 jury, I think you can do that. But I don't think this comes
25 in as an exhibit.

1 MS. ROSEN: Well, can he do that though? It's
2 about his benefits, which is not --

3 THE COURT: Oh, no. It's interrogatory
4 number 23, not interrogatory number 24.

5 It's interrogatory number 23 you want, right?

6 MR. KEIMBAYE: Yes, Your Honor.

7 THE COURT: Yes, he's nodding yes.

8 MS. ROSEN: I mean, that's already been
9 testified to.

10 THE COURT: It has been. On the other hand, I
11 don't see how it can possibly prejudice the Defense. Is
12 there a contention that it does?

13 MS. ROSEN: No.

14 THE COURT: All right. So if you want to read
15 this question and the answers to the jury, you can do that.

16 MR. KEIMBAYE: To the jury?

17 THE COURT: Yes, but that one question and
18 then the answer and the supplemental answer. But the exhibit
19 does not come into evidence.

20 MR. KEIMBAYE: Okay. When reading it to the
21 jury, when they come in after this?

22 THE COURT: Well, I will call on you --

23 MR. KEIMBAYE: Okay.

24 THE COURT: -- to ask if you have any
25 additional evidence to present.

1 MR. KEIMBAYE: Okay.

2 THE COURT: Okay?

3 MR. KEIMBAYE: I appreciate it. Thank you.

4 MS. ROSEN: And just to be clear, Your Honor,
5 he's limited to that?

6 THE COURT: Yes.

7 MS. ROSEN: He may not --

8 THE COURT: That's why he --

9 MS. ROSEN: I want to make sure he doesn't
10 make any comments about Yulia or any comments about anything
11 else that's been ruled that can't come in.

12 THE COURT: Well, no commentary. Just read
13 it. That's what you want to do, right?

14 MR. KEIMBAYE: There is no Yulia names here.

15 MS. ROSEN: No, I -- I just want to make sure
16 all you're doing is reading this.

17 THE COURT: Okay. Isn't it?

18 MR. KEIMBAYE: Yes, Your Honor.

19 THE COURT: All right. Counsel, you have
20 signaled that you plan to make a motion for directed verdict.
21 I think kind of in the interest of being as respectful as
22 possible of the jurors' time and even that my understanding
23 is that -- is it Ms. Rice who is the next witness?

24 MS. ROSEN: Yes.

25 THE COURT: Okay. And she's the only witness

1 | you have today?

2 | MS. ROSEN: Yes.

3 | THE COURT: Why don't we take her testimony.

4 | Your motion will still be timely.

5 | MS. ROSEN: Okay.

6 | THE COURT: In fact, you can make it in front

7 | of the jury and just say the Defense moves for a directed

8 | verdict. And I'll say something like, we will take that up

9 | after Ms. Rice's testimony.

10 | MS. ROSEN: Okay.

11 | THE COURT: Okay? And it'll be timely.

12 | MS. ROSEN: Okay. Thank you.

13 | THE COURT: Okay. Yep, let's do that.

14 | All right. Anything else before we bring in

15 | the jury?

16 | MR. KEIMBAYE: Except what I'll be reading to

17 | the jury. It will be statement to -- to rest my case?

18 | THE COURT: Yes, have we figured out --

19 | MS. ROSEN: You cannot make a statement when

20 | you rest your case.

21 | THE COURT: Yeah --

22 | MS. ROSEN: You need to --

23 | THE COURT: -- you just rest your case.

24 | That's --

25 | MS. ROSEN: Yeah.

1 THE COURT: -- all you say. You say Plaintiff
2 rests --

3 MR. KEIMBAYE: That's fair.

4 THE COURT: -- or I rest. Either way.

5 MR. KEIMBAYE: That's fair.

6 THE COURT: Have we figured out yet whether
7 Exhibit 45 is in evidence in some form?

8 MS. BURNHAM: We didn't see it in evidence,
9 Your Honor. So I don't think it's been admitted.

10 THE COURT: Okay. So what we'll do is we'll
11 remark the first page as Plaintiff's Exhibit 63 and admit
12 that.

13 MS. ROSEN: Okay.

14 THE COURT: All right. I'm going to take this
15 out of here so that a photocopy can be made of that page.

16 MS. ROSEN: Okay. Thank you.

17 THE COURT: And then 63 is admitted once you
18 have it.

19 THE COURT: I'll just put it up here for now,
20 or can I give it to you? Is that all right?

21 THE CLERK: Yeah.

22 THE COURT: You can even mark it.

23 THE CLERK: Plaintiff's Exhibit 63 is marked
24 for identification only.

25 (PLAINTIFF'S EXHIBIT 63 MARKED FOR IDENTIFICATION)

1 THE COURT: Thank you. And actually, it will
2 be admitted as well. We just need to make copies for
3 everybody.

4 All right. I think we're ready for the jury.

5 THE BAILIFF: Please acknowledge the jury.
6 (Jury enters at 1:59:47 p.m.)

7 THE COURT: Welcome back, Members of the jury.
8 Please be seated. Sorry to keep you waiting. We did have
9 some fairly important issues that I needed to talk to
10 Mr. Keimbaye and Counsel about before we brought you back.
11 So thank you for being patient with us.

12 Mr. Keimbaye, is there any further evidence
13 you wish to present?

14 MR. KEIMBAYE: Yes, I have one interrogatory
15 question number 24.

16 THE COURT: All right. And I should probably
17 tell the jury that interrogatories are a form of what we call
18 discovery. That one party can send to another party, and the
19 other party responds to that. And that's evidence that you
20 can consider.

21 So go ahead, Mr. Keimbaye.

22 MS. ROSEN: We're confused on what number he's
23 reading?

24 THE COURT: So I believe he's reading
25 interrogatory number 23.

1 MR. KEIMBAYE: 24.

2 THE COURT: And the Defense response to that.

3 MS. ROSEN: He just said 24.

4 THE COURT: No, it's 23; is it not? It's
5 Exhibit 54, which is not admitted as an exhibit. But
6 interrogatory number 23 can be read. It was my understanding
7 that's the one you wanted to read, Mr. Keimbaye; is that
8 correct?

9 MR. KEIMBAYE: The page is 23.

10 THE COURT: Page 22. That was the one you
11 talked about before we brought in the jury.

12 MR. KEIMBAYE: Page 23 from the -- do I read
13 the table?

14 THE COURT: No, that's not what we talked
15 about, and it's also not relevant to your claims here. So if
16 you wanted to read 23, the question and the answers, you may
17 do that. If not --

18 MR. KEIMBAYE: Okay.

19 THE COURT: -- that's fine.

20 MR. KEIMBAYE: Okay.

21 THE COURT: It's up to you.

22 MR. KEIMBAYE: Yes. Interrogatory number 23.
23 (Reading):

24 "If Defendants contend that they took
25 reasonable care to prevent all discriminatory

1 conduct, why did empire Providence and its OR
2 personnels or managers and anesthesia supervisor
3 Mr. John and anesthesia tech lead Mr. Kortendick
4 fail to assist and protect Plaintiff, Mr. Keimbaye,
5 from Ms. Lonon's excessive obsession and sexual
6 harassment?"

7 Their answer. (Reading):

8 "Providence object to interrogatory number
9 23 as argumentative and assume that not in evidence
10 subject to and without waiving said objection.
11 Providence responded as followed. Providence is in
12 the process of collecting responsive information
13 and will supplement their answer shortly."

14 Their supplemental answers. (Reading):

15 "Subject to and without waiving the forgoing
16 objection, Providence responds as follows.
17 Mr. John and Mr. Kortendick were unaware of any
18 issue with the Plaintiff concerning Ms. Lonon.

19 "Plaintiff -- when Plaintiff reported his
20 concern regarding Mr. Lonon for the first time here
21 in integrity line on June 15th, Providence
22 immediately investigated and acted on Plaintiff
23 complaint to ensure that any alleged harassment was
24 immediately seized."

25 THE COURT: All right. Thank you. And the

1 other issue that we took up before the jury came in was that
2 Exhibit 63 was marked and was admitted by the Court. So it
3 will be among the evidence for the jury's consideration
4 during deliberations.

5 Mr. Keimbaye, anything else?

6 PLAINTIFF RESTS

7 MR. KEIMBAYE: With that, Plaintiff rests his
8 case.

9 THE COURT: All right. Thank you,
10 Mr. Keimbaye.

11 MR. KEIMBAYE: Thank you, Your Honor.

12 MS. ROSEN: Your Honor, Defendants move for a
13 directed verdict.

14 THE COURT: All right. Thank you. Let's take
15 that up since we have a witness waiting after we take that
16 witness's testimony.

17 MS. ROSEN: Thank you, Your Honor.

18 THE COURT: So Defense is calling who as their
19 next witness?

20 MS. ROSEN: Marilyn Rice, Your Honor.
21 (Witness summoned.)

22 THE COURT: Okay. She is labeled Tracy
23 Garcell (phonetic).

24 THE CLERK: I'll change it.

25 THE COURT: All right. You'll fix that. I'll

1 go ahead and admit her. She's testifying via Zoom.

2 Good afternoon, Mr. Rice. Can you hear me
3 okay? Ms. Rice, are you able to hear me?

4 UNIDENTIFIED SPEAKER: Hold on. I don't
5 believe the sound's up yet.

6 THE COURT: You don't think what's up yet?

7 MS. BURNHAM: The sound.

8 THE COURT: Oh, you didn't unmute the
9 courtroom. Okay. All right. Sorry, I didn't realize the
10 courtroom was muted.

11 Okay. That's better. Are you able to hear me
12 okay, Ms. Rice?

13 MS. RICE: Yes, I am.

14 THE COURT: All right. Wonderful. So you
15 have been called as a witness by Providence. I will go
16 ahead -- I'm Judge Darvas. And I will go ahead and swear you
17 in before you testify. Could you raise your right hand for
18 me, please?

19 Do you swear or affirm that the testimony you
20 will give in this matter will be the truth, the whole truth,
21 and nothing but the truth?

22 MS. RICE: I do.

23 **MARILYN RICE,**

24 called as a witness for the Defendants, having been
25 duly sworn, testified as follows, by video:

1 THE COURT: Thank you very much.

2 MR. SANZONE: Judge Darvas, I'm Joseph
3 Sanzone. And this witness is testifying from my witness room
4 in my law office in Lynchburg, Virginia.

5 THE COURT: All right. Well, thank you and
6 welcome. Are you presenting her?

7 MR. SANZONE: No, ma'am. I'm just here to
8 assist the Court and to assist counsel.

9 THE COURT: Understood. Thank you very much,
10 sir.

11 MR. SANZONE: Thank you, Your Honor.

12 THE COURT: All right. Counsel?

13 **DIRECT EXAMINATION**

14 BY MS. ROSEN:

15 Q. Good afternoon, Ms. Rice.

16 A. Hello.

17 Q. Before we get started, can you please state and
18 spell your name for the record?

19 A. It's Marilyn Rice. M-a-r-i-l-y-n, R-i-c-e.

20 Q. And can you please state your mailing address?

21 A. My mailing address is 11046 106th Court Northeast,
22 Redmond, Washington.

23 Q. So I think probably everyone wants to know why
24 you're testifying from Lynchburg, Virginia. So can you tell
25 the jury why you're in Lynchburg, Virginia?

1 A. Interesting. I'm on my vacation and visiting my
2 husband's family here in the area of Virginia and North
3 Carolina.

4 Q. Thank you. Are you currently employed, Ms. Rice?

5 A. No, I'm not.

6 Q. What do you do for work?

7 A. I am retired.

8 Q. When did you retire?

9 A. June of 2022.

10 Q. What was your place of employment when you retired?

11 A. Providence Health & Services.

12 Q. What was your title when you retired?

13 A. Senior human resources consultant.

14 Q. How long did you work for Providence?

15 A. Ten years.

16 Q. Were you assigned to a specific geographic area in
17 2018?

18 A. Yes, I was.

19 Q. And what was that?

20 A. It was the northwest of Everett area.

21 Q. Can you describe your duties for the jury as a
22 senior HR consultant?

23 A. Yes, my role was to investigate complex allegations
24 in a -- in a neutral manner. And later in my career there, I
25 also took on a training role and trained our HR consultants

1 in the proper protocols in investigations.

2 Q. What's your opinion of the role of an investigator
3 at Providence?

4 A. It is to be a neutral party and investigate in a
5 consistent and fair manner.

6 Q. How many years of experience do you have doing
7 investigations?

8 A. Twenty-five years.

9 Q. And what training did you receive on how to conduct
10 workplace investigations?

11 A. I received several trainings. Education from
12 Perkins Coie Law firm from the Equal Employment Opportunity
13 Counsel as well.

14 Q. How many investigations did you conduct during your
15 time as Providence?

16 A. Two hundred and fifty.

17 Q. Does Providence have a policy against harassment?

18 A. They do.

19 Q. You have -- you should have in front of you what's
20 been marked as Exhibit 107. Would you mind just looking at
21 that?

22 A. Yes.

23 Q. And is this the Providence policy against
24 harassment for Providence Everett?

25 A. It is.

1 MS. ROSEN: Your Honor, move to admit
2 Exhibit 107.

3 THE COURT: Any objection to admission of
4 Exhibit 107?

5 MR. KEIMBAYE: No, Your Honor.

6 THE COURT: 107 is admitted.

7 (DEFENDANTS' EXHIBIT 107 RECEIVED INTO EVIDENCE)

8 MS. ROSEN: Move to publish 107.

9 THE COURT: You may.

10 MS. ROSEN: Thank you.

11 BY MS. ROSEN:

12 Q. So, Ms. Rice, if you could just direct your
13 attention to this policy. What does it mean where it says in
14 the policy that Providence has a zero tolerance policy
15 against harassment?

16 A. It means we don't tolerate harassment or any
17 unacceptable behavior. And we will take appropriate action.

18 Q. What is an employee supposed to do if he or she
19 believes that he or she or they are being harassed?

20 A. It instructs them to report it to their supervisor.
21 If their supervisor's involved, report it the manager or a
22 leadership individual to report it to human resources. And
23 they can do that in many ways.

24 Q. What ways can they report it?

25 A. They can do it verbally. They can make a phone

1 call. They can send an email. They can also put it in
2 writing and email form. They can call the integrity hotline.
3 Call human resources.

4 Q. If somebody violates Providence's antiharassment
5 policy, does that mean that they violated the law?

6 A. No.

7 Q. Where is the policy available, the harassment
8 policy?

9 A. It would be available online.

10 Q. Can you describe for the jury what you typically do
11 when you conduct an investigation?

12 A. Sure. I will initially try to scope the
13 investigation by gathering any policies that are relevant,
14 any documents that are relevant, then assessing who I need to
15 talk to first. And generally, it's the complainant I talk to
16 first and then any witnesses they've identified.

17 And then lastly the subject I would speak to
18 firsthand information from them. Then I would begin to
19 analyze based on the complainant's allegations. Work through
20 what questions I need to ask of whom. And then begin to
21 analyze the information that I've received.

22 And then prepare a report in a written form and
23 then communicate the findings out.

24 Q. Did you conduct an investigation into a complaint
25 made by Mr. Keimbaye?

1 A. I did.

2 Q. And when did that investigation start? I believe
3 it was June 17th, 2018; does that sound right?

4 A. That's correct.

5 Q. Okay. Why was that investigation started?

6 A. It was started because Mr. Keimbaye reported
7 inappropriate behavior.

8 Q. Who asked you to conduct the investigation?

9 A. Mr. Eric Sweeney.

10 Q. And who is Eric Sweeney?

11 A. He was the local Everett human resources business
12 partner.

13 Q. Did you have any prior dealings with Mr. Keimbaye
14 before you conducted the investigation into his complaint?

15 A. No.

16 Q. Please explain what you did to investigate
17 Mr. Keimbaye's complaint.

18 A. I reviewed the policies. Like I mentioned, there
19 was the harassment policy, the standards of conduct, the
20 mission and value statement, and then his integrity report
21 that he filed.

22 Based on that, then I interviewed several
23 individuals that Mr. Keimbaye provided as potential witnesses
24 to the allegations.

25 Q. And I'm not going to give you a memory test. But

1 | it says in your report, but it -- does it sound accurate that
2 | you spoke with Mr. Keimbaye?

3 | A. Yes.

4 | Q. And Travis John?

5 | A. Yes.

6 | Q. Chris Kortendick?

7 | A. Yes.

8 | Q. Laura Kubler (phonetic)?

9 | A. Yes.

10 | Q. Gustav Ramos (phonetic)?

11 | A. Yes.

12 | Q. Amy Fletcher?

13 | A. Yes.

14 | Q. And Opal Lonon?

15 | A. Yes.

16 | Q. Is that a complete --

17 | A. I spoke with all of them.

18 | Q. Sorry. You spoke with all those people?

19 | A. Yes.

20 | Q. Did you interview everyone that Mr. Keimbaye said
21 | witnessed the alleged harassment?

22 | A. Yes.

23 | MS. ROSEN: I want to, if you will, direct
24 | your attention to Exhibit 40. And I want to direct your
25 | attention specifically to the chart that's at the front. Do

1 | you see that?

2 | Your Honor, this has been admitted already.

3 | Permission to publish?

4 | THE COURT: You may.

5 | MS. ROSEN: Okay. Thank you.

6 | BY MS. ROSEN:

7 | Q. So would you, please, just tell the jury what this
8 | chart is?

9 | A. Again, that's one of my tools that I created to
10 | help me analyze how to conduct the investigation so that I
11 | would know what questions to ask of what witnesses. And then
12 | to put a quick summary in the comment section so that I would
13 | know what I could confirm or deny based on the witnesses and
14 | the subject's statements to me.

15 | Q. Sure. So let's just go over the chart a little
16 | bit. Where it says, Incident date, can you explain what that
17 | means?

18 | A. That is the date that Mr. Keimbaye told me the
19 | incident occurred.

20 | Q. And if that -- I'm sorry, go ahead.

21 | A. No, go ahead.

22 | Q. If that date is blank, what does that mean?

23 | A. It means that Mr. Keimbaye did not have a specific
24 | date of the incidents or the allegations.

25 | Q. And then where it says reporter, I'm assuming

1 that's the person that made the complaint, Mr. Keimbaye,
2 correct?

3 A. Yeah, correct.

4 Q. And then where it says subject, that's the person
5 Mr. Keimbaye complained about; is that right?

6 A. Correct.

7 Q. Okay.

8 A. Yes.

9 Q. And then it lists witnesses, correct?

10 A. Correct.

11 Q. And where do you get the information under the
12 witness name column?

13 A. That was what Mr. Keimbaye had told me who had
14 witnessed those allegations.

15 Q. And then down at the bottom, it says subject
16 Travis. Do you see where it says that?

17 A. Yes.

18 Q. Okay. And that means -- that's there because
19 Mr. Keimbaye said Travis witnessed some of this behavior by
20 Opal Lonon?

21 A. Yes.

22 Q. Okay. And then where it says statements, where do
23 you get all that information?

24 A. Again, that was verbally from Mr. Keimbaye and from
25 the integrity report.

1 Q. Okay. So the -- the things that are listed under
2 statement, these are a fair summary of everything
3 Mr. Keimbaye told you that he was complaining about?

4 A. Yes, correct.

5 Q. Okay. And then what -- what is the comment field?

6 A. That is what I was able to substantiate or not
7 substantiate based on speaking with all of the individuals.

8 Q. And then take us through what the confirm, deny,
9 and neither columns mean?

10 A. Right, the confirmed simply means that I could
11 confirm that that allegation occurred. The deny column would
12 mean I could not confirm it. None of the witnesses would
13 substantiate the allegation. And neither is just simply
14 neither. Could neither confirm, nor deny.

15 Q. And what if -- like if you look at line 12, there
16 isn't anything checked. What does that mean?

17 A. It just -- again, it's a working tool. So it means
18 that I wasn't able to substantiate it.

19 Q. Okay. So let's take each one of these allegations
20 that Mr. Keimbaye told you and then what you found. So the
21 first one says, "Opal coiled her right leg around his right
22 leg. Held him with both arms around chest."

23 And what did you find with regard to that
24 allegation?

25 A. I found that Opal admitted to that behavior.

1 Q. And did she admit to that on -- did she admit that
2 she had done that on just one occasion?

3 A. Just one occasion.

4 Q. Did Mr. Keimbaye allege she had done that more than
5 once?

6 A. No.

7 Q. And then --

8 A. Only on the January 18 date.

9 Q. Okay. Thank you. And then when it says confirm,
10 and Chris Kortendick is listed here. Does that mean Chris
11 Kortendick indicated that he witnessed that?

12 A. Not necessarily. I would make a reference more
13 fully in my written report as to what he confirmed or denied.

14 Q. Okay. We'll look at that. The next statement you
15 write is, "Brought back a dried coconut souvenir." What did
16 you find with regard to that allegation?

17 A. I found that she -- Opal Lonon had admitted to
18 bringing back coconuts for everyone and that Mr. Keimbaye was
19 not singled out as the only person receiving that coconut.

20 Q. The next item says that -- told him you had been
21 thinking about him and couldn't wait to see him. And it
22 lists Amy Fletcher and Gustav Ramos as potential witnesses.

23 What did you find with regard to that allegation?

24 A. I found that neither Amy, nor Gustav substantiated
25 that allegation.

1 Q. Okay. And then the next allegation is, "Told him
2 he was missing all of this." What did you find with regard
3 to that allegation?

4 A. I found that Amy Fletcher did not substantiate that
5 claim.

6 Q. And Ms. Lonon didn't admit that?

7 A. Correct.

8 Q. Okay. The next allegation says, "Dominique told
9 you he likes vanilla women." Do you see that?

10 A. Correct.

11 Q. What did you find with regard to that allegation?

12 A. Opal admitted that she had heard that. She
13 reported that she had a Caucasian boyfriend but not
14 necessarily that Chris Kortendick witnessed that or
15 substantiated that.

16 Q. Okay. The next allegation is, "Encouraged female
17 coworkers to convince him to date her." Do you see where it
18 says that?

19 A. Yes.

20 Q. And what did you find with regard to that
21 allegation?

22 A. The witnesses that Mr. Keimbaye provided, Amy
23 Fletcher and Laura Cubler, did not substantiate that
24 allegation.

25 Q. The next allegation says, "Said if she ever went on

1 a date with him that she wouldn't let him sleep with her."

2 Do you see where is says that?

3 A. Correct.

4 Q. What did you find with regard to that allegation?

5 A. Mr. Keimbaye did not provide any witnesses to that
6 allegation. And when the interviewees were asked about that,
7 they did not substantiate that allegation.

8 Q. And what did Ms. Lonon say in regard to that
9 allegation?

10 A. She denied that.

11 Q. The only thing Mr. Lonon admitted was that she
12 hugged Mr. Keimbaye and brought him back a coconut; is that
13 right?

14 A. Correct.

15 Q. Then the next one says, "Said Dominique doesn't
16 like big black women and only white women even if they aren't
17 pretty." Do you see where it says that?

18 A. Yes.

19 Q. What did you find with regard to that allegation?

20 A. Mr. Keimbaye did not provide any witnesses to that
21 allegation. And the interviewees that I spoke with, they did
22 not substantiate that allegation.

23 Q. The next one says, "Said she would call him from
24 her home to go to work and then would go hangout with him."

25 What did you find with regard to that allegation?

1 A. The witnesses -- there were no witnesses identified
2 by Mr. Keimbaye. And the interviewees that I asked did not
3 substantiate it. Opal indicated she was the preceptor or an
4 instructor, if you will, for Mr. Keimbaye.

5 And she would need to call him to come to work as
6 part of her role and that she would offer to come work. And
7 that was the context of that comment.

8 Q. The next allegation is, "Told others not to like
9 Dominique. That he's a mean person." What did you find with
10 regard to that allegation?

11 A. Mr. Keimbaye did not identify any witnesses to
12 that. But the interviewees when I asked them, they did not
13 substantiate that allegation.

14 Q. The next allegation is, "Told others Dominique
15 taking advantage of work time and cheating the system." Do
16 you see where it says that?

17 A. Yes.

18 Q. And what did you find with regard to that
19 allegation?

20 A. Mr. Keimbaye did not provide any witnesses to that
21 allegation. And the interviewees that I asked -- spoke to,
22 they did not substantiate that allegation.

23 Q. The next one is, "Travis observed many times Opal's
24 behavior to be in a relationship with him." What did you
25 find with regard to that allegation?

1 A. Travis -- Mr. John Travis denied that allegation.
2 He had never observed that behavior.

3 Q. And then the next allegation is, "Told Travis he
4 didn't like Opal's behavior." Do you see that allegation?

5 A. Yes.

6 Q. And what did you find with regard to that
7 allegation?

8 A. Travis John, he denied that he had been told by
9 Mr. Keimbye that he didn't like Opal's behavior.

10 Q. Okay. Is this a complete list of all the behavior
11 that Mr. Keimbye complained to you about?

12 A. Yes.

13 Q. Did Mr. Keimbye ever tell you that Mr. Kortendick
14 witnessed any of the behavior he was complaining about other
15 than the hug?

16 A. He indicated that Mr. Kortendick had heard the
17 vanilla women comment but no other behavior.

18 Q. And Mr. Kortendick denied witnessing the hug,
19 correct?

20 A. Correct.

21 Q. Okay. Did Mr. Keimbye tell you anything during
22 your investigation about Mr. Lonon putting her hand up his
23 shirt?

24 A. No.

25 Q. Did he tell you anything about Mr. Lonon saying she

1 loves men with hairy chests?

2 A. No.

3 Q. Did he tell you anything about Ms. Lonon kissing
4 him on the neck?

5 A. No.

6 Q. Did he tell you -- did he say anything about
7 conduct by Chris Kortendick that he found to be offensive?

8 A. No.

9 Q. Did he tell you anything about conduct by Chris
10 Kortendick that he found to be problematic?

11 A. No.

12 Q. Did you give him the opportunity to complain about
13 anybody else?

14 A. Yes, one of my standard questions that I ask every
15 interviewee is, is there anything else that I haven't asked
16 you about that I should know about?

17 Q. And did you ask Mr. Keimbaye that question?

18 A. I did.

19 Q. And what was his response?

20 A. There was no other information shared.

21 Q. Did Mr. Keimbaye ever tell you anything about
22 Mr. John engaging in any inappropriate behavior towards him?

23 A. No.

24 Q. Did he tell you anything about any of the
25 anesthesia doctor engaging in any inappropriate behavior

1 towards him?

2 A. No.

3 Q. He never told you that he was alleging Dr. Usoltsev
4 punched him in the groin so hard that he bled?

5 A. No.

6 Q. Did you do a report of the investigation?

7 A. I did.

8 Q. And you have your report in front of you, correct?

9 A. I do.

10 Q. Okay. The report's part of Exhibit 40, so we'll
11 put that up.

12 Is this a copy of your report, Ms. Rice?

13 A. Yes, I have it in front of me.

14 Q. Okay. Any who's the subject identified in this
15 report?

16 A. Ms. Opal Lonon.

17 Q. And no one else is identified as a subject,
18 correct?

19 A. Correct.

20 Q. Why not?

21 A. She was the only individual Mr. Keimbaye alleged
22 had made inappropriate conduct.

23 Q. Okay. Let's look at the second page of the report
24 if you would where it says summary of witness interviews; do
25 you see that?

1 A. I do.

2 Q. And so tell me how you go about writing these
3 summaries of witness interviews.

4 A. Well again, it's based off of the tool that I use.
5 The Excel Spreadsheet. Putting that information into a
6 written form so that I can explicitly spell out each and
7 every allegation that was made and then whether it was
8 confirmed or denied.

9 Q. And you wrote --

10 A. And it's gathered --

11 Q. I'm sorry, go ahead.

12 A. Oh.

13 Q. Sorry, go ahead.

14 A. It was gathered from firsthand
15 conversations -- phone conversations with each one of these
16 individuals.

17 Q. And do you take notes while you are talking to the
18 individuals on the phone?

19 A. I do.

20 Q. And are your notes reflected in this report?

21 A. They are.

22 Q. And so you take contemporaneous notes when you're
23 talking to the witness on the phone?

24 A. Yes.

25 Q. And this report is dated June 25th, 2018, correct?

1 A. Correct.

2 Q. So that's ten days after you first received the
3 complaint about -- from Mr. Keimbaye, correct?

4 A. Correct.

5 Q. Okay. That's pretty quick turnaround.

6 Okay. So I just want to look at what you wrote for
7 Travis John. If you look at Mr. Travis John where it says,
8 supervisor anesthesia tech; do you see where it says that?

9 A. Yes.

10 Q. And you said, Mr. John did not substantiate
11 Mr. Keimbaye's allegations; do you see where you put that?

12 A. Yes.

13 Q. And is that consistent with your recollection?

14 A. Yes.

15 Q. Okay. Then with Mr. Kortendick, you said
16 anesthesia tech. Mr. Kortendick did not substantiate
17 Mr. Keimbaye's allegations; do you see where it says that?

18 A. Yes.

19 Q. And that's consistent with your recollection?

20 A. Yes.

21 Q. Then the next person you have listed here is Laura
22 Kubler. I might be saying that incorrectly who's listed as
23 an anesthesia tech. And it says, Ms. Kubler did not
24 substantiate Mr. Keimbaye's allegations; do you see where it
25 says that?

1 A. Yes.

2 Q. And that's consistent with your recollection?

3 A. It is.

4 Q. Okay. And then it says, Mr. Gustav Ramos

5 anesthesia tech. Mr. Ramos did not substantiate

6 Mr. Keimbaye's allegations; do you see where it says that?

7 A. Yes.

8 Q. And is that consistent with your recollection?

9 A. Yes.

10 Q. And then where it says Ms. Amy Fletcher. It says,

11 Ms. Fletcher did not substantiate Mr. Keimbaye's allegations;

12 do you see where it says that?

13 A. Yes.

14 Q. And is that consistent with your recollection?

15 A. Yes.

16 Q. And then looking at your summary of -- of your

17 discussion with Ms. Lonon, the only thing Ms. Lonon admitted

18 to doing was hugging Mr. Keimbaye and bringing him back a

19 coconut, correct?

20 A. Correct.

21 Q. What were the results of the investigation?

22 A. I was unable to substantiate the majority of

23 Mr. Keimbaye's allegations. I did confirm that in early

24 January of 2018 that Ms. Lonon did wrap or coil her leg

25 around Mr. Keimbaye and did hug him, which was a policy

1 violation.

2 Q. Did you form an impression about Mr. Keimbaye's
3 credibility?

4 A. I did.

5 Q. What impression was that?

6 A. It was my opinion that Mr. Keimbaye lacked
7 credibility as the witnesses he provided did not substantiate
8 his allegations.

9 Q. Did you form an impression about Ms. Lonon's
10 credibility?

11 A. I did.

12 Q. And what was that?

13 A. That she was more credible. She admitted to that
14 January 2018 incident.

1 Q. Did you recommend discipline for Ms. Lonon?

2 A. I recommended the Everett location take appropriate
3 action.

4 Q. Did you provide any details on what action you
5 thought that should be?

6 A. No.

7 Q. What, if anything, did you do to follow-up with
8 Mr. Keimbaye regarding the results of -- of the
9 investigation?

10 A. I drafted a summary document for Mr. Eric Sweeney
11 to deliver a closure to Mr. Keimbaye.

12 MS. ROSEN: Thank you, Ms. Rice.

13 I don't have any further questions.

14 THE COURT: Thank you.

15 Mr. Keimbaye, do you have questions for Ms.
16 Rice?

17 MR. KEIMBAYE: Yes, Your Honor.

18 THE COURT: Okay.

19 **CROSS-EXAMINATION**

20 BY MR. KEIMBAYE:

21 Q. Ms. Rice, can you hear me?

22 A. I can hear you.

23 Q. Okay. I -- I actually don't have a lot of
24 questions to ask you because when I met, or you know, spoke
25 with you, you seemed very respectful.

1 And so I -- I remember correctly where you reached
2 out to me via email. So when -- when was the first time you
3 contacted Mr. Keimbaye?

4 A. I don't necessarily know the first date. I
5 contacted you via email. But I do know that I spoke to you
6 on June 19th.

7 Q. That is correct. That is a day later after
8 Mr. Keimbaye met with Mr. Sweeney; isn't it?

9 A. I don't know what date you met with Mr. Sweeney.

10 Q. Mr. Keimbaye met with Mr. Sweeney and Ms. Cabagol
11 on June 18, 2018; is that correct?

12 MS. ROSEN: Objection. Calls for speculation.

13 THE COURT: Sustained.

14 BY MR. KEIMBAYE:

15 Q. Okay. Moving on. Preparing an investigation
16 investigating inappropriate behavior is your specialties, or
17 no?

18 A. It is my specialty.

19 Q. This includes sexual harassment, yes, or no?

20 A. I don't understand your question. Can you repeat
21 it?

22 Q. Your specialty includes sexual harassment report
23 only, yes, or no?

24 MS. ROSEN: I think he's asking do you only
25 investigate sexual harassment.

1 THE WITNESS: Oh, no. I investigate many
2 subjects.

3 BY MR. KEIMBAYE:

4 Q. Okay. You heard about Mr. Keimbaye's concerns of
5 sexual harassment through his union, yes, or no?

6 A. No, I heard from Mr. Sweeney.

7 MR. KEIMBAYE: May I have a moment, Your
8 Honor?

9 THE COURT: Sure.

10 MR. KEIMBAYE: Thank you.

11 THE COURT: Hopefully, not too long.

12 MR. KEIMBAYE: Thank you.

13 (Pause in proceedings.)

14 THE COURT: Mr. Keimbaye?

15 MR. KEIMBAYE: Yes, Your Honor?

16 THE COURT: Do you have a question?

17 MR. KEIMBAYE: Yes, in regard to a witness
18 statement. The witness says she heard it from Mr. --

19 THE COURT: No, if you have a question for the
20 witness, please ask the witness.

21 BY MR. KEIMBAYE:

22 Q. Well, in your -- in your email on June 19th, you
23 state that you are reaching out to Mr. Keimbaye because you
24 heard about his concern of -- his concern of harassment from
25 his union.

1 THE COURT: But do you have a --

2 BY MR. KEIMBAYE:

3 Q. Isn't that correct?

4 THE COURT: Well -- all right.

5 MR. KEIMBAYE: I'll come back to it, Your
6 Honor.

7 MS. ROSEN: You can answer, Ms. Rice.

8 THE WITNESS: Oh, okay. I don't have a copy
9 of the email in front of me, but that recollection sounds
10 correct.

11 ///

12 BY MR. KEIMBAYE:

13 Q. Well, you said no. You heard it from Mr. Sweeney?

14 A. Mr. Sweeney asked me to conduct the investigation.

15 Q. That was not the question Plaintiff asked you.

16 THE CLERK: Do you have a question, sir?

17 MR. KEIMBAYE: Okay.

18 THE COURT: Okay.

19 BY MR. KEIMBAYE:

20 Q. Your contact with Mr. Keimbaye happened after he
21 met with Mr. Sweeney on June 18th, 2018, correct?

22 MS. ROSEN: Objection. It's been asked and
23 answered.

24 THE COURT: Sustained.

25 MR. KEIMBAYE: Okay.

1 BY MR. KEIMBAYE:

2 Q. By the time Mr. Keimbaye had -- by the -- by this
3 time -- by that time Mr. Keimbaye had already initiated his
4 harassment concern case, yes, or no?

5 May I rephrase for you?

6 A. Yes.

7 Q. Okay. Before speaking with Mr. Keimbaye, he
8 already initiated his concern with the integrity line, yes,
9 or no?

10 A. I believe yes. I used the integrity report as part
11 of the basis of my conversation with you -- with
12 Mr. Keimbaye.

13 Q. Okay. That he filed with your online integrity
14 system, yes, or no?

15 A. Yes.

16 Q. Okay. This was filed on or around June 15th,
17 correct?

18 A. On or around, yes.

19 Q. Okay. This means he could talk about details of
20 sexual harassment only with you, yes, or no?

21 A. No.

22 Q. Why not?

23 A. There are a team of HR standardized consultants who
24 could handle that complaint of inappropriate allegations. I
25 was assigned to it because Everett was my territory.

1 However, had I been on vacation, someone else could have
2 assumed that role.

3 Q. You then state you could not mix two different
4 concerns into one case number, yes, or no?

5 A. I did not state that.

6 Q. You later said that you investigate one case at a
7 time, yes, or no?

8 A. I did not state that.

9 Q. You later state that you would get back to
10 Mr. Keimbaye about his other concern later, yes, or no?

11 A. No, I -- if we're talking of today's conversation,
12 no, I did not state that.

13 Q. By that time, you completed your -- your
14 investigation, and --

15 A. I completed my investigation with a report on June
16 25th, yes.

17 Q. And by that time, Mr. Keimbaye was already
18 terminated, yes, or no?

19 A. I don't know. I don't handle terminations, so I
20 don't know.

21 Q. Didn't you say earlier that you recommended
22 Mr. Sweeney to terminate Mr. Keimbaye?

23 A. No, I did not say that.

24 Q. Did you -- did you state that you found
25 Mr. Keimbaye's testimony not credible and recommended his

1 removal?

2 A. I did not -- I -- that's two different statements.
3 I did say I did not find Mr. Keimbaye to be credible because
4 his witnesses did not substantiate what he said they would.
5 I have no opinion on the termination of Mr. Keimbaye.

6 Q. Well, Mr. Keimbaye's termination happened on June
7 22nd. Three days after he spoke with you, correct?

8 A. I don't know your termination date.

9 Q. Whether Mr. Keimbaye gave full details -- sexual
10 details to tell you what he could remember is what he needed;
11 did you say that?

12 A. I'm sorry, your question is confusing.

13 Q. You state if Mr. Keimbaye would give you the sexual
14 details of his concern, that's all that mattered. Did -- did
15 you state that?

16 MS. ROSEN: Objection, Your Honor. Confusing.
17 Misleading.

18 THE COURT: Sustained.

19 BY MR. KEIMBAYE:

20 Q. During the -- during your intake, you state
21 Mr. Keimbaye could give you a few details of his -- a few
22 details of any sexual acts that he experienced, yes, or no?

23 A. I asked you to provide -- or I asked Mr. Keimbaye
24 to provide any information he had that were allegations of an
25 inappropriate behavior, correct.

1 Q. Okay. Did this mean if he didn't provide any
2 details about hugging or kissing, he's -- he was not credible
3 to you?

4 MS. ROSEN: Object to the form.

5 THE COURT: Sustained.

6 BY MR. KEIMBAYE:

7 Q. Okay. If you hug another person, you should have
8 your -- your hand around that person's neck, yes, or no?

9 MS. ROSEN: Object to the form.

10 THE COURT: Sustained. I don't understand the
11 question, Mr. Keimbaye. I doubt the witness does.

12 BY MR. KEIMBAYE:

13 Q. Are you here to say whatever you can say to help
14 your former employer to win?

15 MS. ROSEN: Objection, Your Honor. It's
16 argumentative. It's battering the witness.

17 THE COURT: Sustained.

18 MS. ROSEN: It's inappropriate.

19 THE COURT: Anything else, Mr. Keimbaye, for
20 this witness?

21 MR. KEIMBAYE: One moment, Your Honor.

22 (Pause in proceedings.)

23 BY MR. KEIMBAYE:

24 Q. Let's turn on page 138 regarding the previous
25 question Plaintiff asked you regarding where you heard his

1 concern from.

2 THE COURT: I'm sorry, are you asking her to
3 turn to an exhibit?

4 MR. KEIMBAYE: Yes.

5 THE COURT: Which one?

6 MR. KEIMBAYE: 138.

7 MS. ROSEN: She doesn't have --

8 THE COURT: She doesn't --

9 MS. ROSEN: -- any -- that exhibit.

10 THE COURT: It is an admitted exhibit, but
11 apparently she doesn't have it.

12 MS. ROSEN: We can put it up on the -- yeah,
13 on the screen.

14 THE COURT: Okay.

15 THE WITNESS: I'm not sure I can see it.

16 THE COURT: They'll zoom it --

17 MS. ROSEN: We'll try to --

18 THE COURT: -- for you.

19 MS. ROSEN: -- make it bigger. Oh, she can't
20 see the exhibit.

21 THE COURT: Can we make it larger? It's --

22 MS. BURNHAM: No, she doesn't --

23 MS. ROSEN: She can't see that apparently.

24 THE WITNESS: It's only, like, about a one
25 inch by two inch --

1 THE COURT: Yeah, I'm just asking if it can be
2 zoomed, yeah. Can you see it now?

3 THE WITNESS: No.

4 THE COURT: Okay. Well, it's really short.
5 What did you want to ask about?

6 BY MR. KEIMBAYE:

7 Q. I can read it to you. Would you like that,
8 Ms. Rice?

9 A. I'm sorry?

10 Q. May I read it to you?

11 A. Yes, if you'll tell me the context of what it is.

12 Q. Okay. I will go ahead and read it to you. In this
13 email date on June 19th, 2018, in the subject line you said
14 touch base. And you said, Good morning, Dominique.

15 Dominique asks you where did you hear about Mr. Keimbaye --

16 THE COURT: No, you're reading the email right
17 now, right?

18 MR. KEIMBAYE: Okay.

19 THE COURT: Let's not editorialize about it if
20 you're reading it.

21 MR. KEIMBAYE: All right. I appreciate, Your
22 Honor. Thank you.

23 BY MR. KEIMBAYE:

24 Q. You said, "Good morning, Dominique. I left you a
25 voice message shortly after 10:00 a.m. this morning. So

1 following up with an email, Providence has heard through the
2 Union of your concern with a coworker of sexual nature. I
3 need to speak with you to obtain the details of this concern.
4 Please call me at your earliest convenience at your numbers."

5 You said warm regards. Is this your statement?

6 A. That sounds correct.

7 MR. KEIMBAYE: Okay. That's all I have.
8 Thank you so much.

9 THE COURT: Any redirect?

10 MS. ROSEN: No, Your Honor.

11 THE COURT: Do members of the jury have
12 questions you want proposed to Ms. Rice? It looks like we
13 do.

14 MS. ROSEN: Okay. Marilyn, the jury has
15 questions that the Judge is going to ask you. But we have to
16 go back in chambers --

17 THE COURT: Okay.

18 MS. ROSEN: -- and review the questions.

19 THE COURT: Yeah.

20 MS. ROSEN: And so just hang tight for about
21 five minutes if you would.

22 THE COURT: Right. And I realize we're passed
23 time for a break. But I was hoping we could get Ms. Rice's
24 testimony done beforehand given that it's three hours later
25 on the East Coast.

1 MS. ROSEN: Yeah.

2 THE WITNESS: Thank you, Your Honor.

3 (Recess at 2:52:52 p.m., recommencing at 2:59:23 p.m.)

4 (The following proceedings were held inside the presence of
5 the jury:)

6 **EXAMINATION BY THE JURY**

7 THE COURT: All right. Ms. Rice, thank you
8 for hanging in there. I think this first question has to do
9 with that table that you testified about during direct.

10 And the question is, why was Travis John
11 listed as a subject and not as a witness?

12 THE WITNESS: Because as the individual who
13 would have heard Mr. Keimbaye's complaints, he was the
14 subject who heard those complaints allegedly.

15 THE COURT: Okay. When you interviewed Opal
16 Lonon, and she admitted the leg twining incident, did you ask
17 her if there were any other -- whether there were any
18 witnesses to that behavior?

19 THE WITNESS: I don't believe I did. But
20 Mr. Keimbaye had reported there was a witness, but that
21 witness did not substantiate seeing that behavior. And
22 simply because she admitted to it, I did not need to confirm
23 it with others.

24 THE COURT: Okay. Is every complaint from the
25 integrity line investigated by an HR consultant?

1 THE WITNESS: No.

2 THE COURT: Is every allegation of
3 inappropriate workplace behavior opened as a separate case or
4 can multiple allegations be bundled within one case number or
5 identification?

6 THE WITNESS: In an integrity report, the case
7 numbers, there can be many items -- many allegations varying,
8 not just sexual harassment, bundled into the integrity
9 report. My role was to simply investigate anything that was
10 inappropriate behavior.

11 THE COURT: All right. In your report when
12 you state that a particular witness did not substantiate a
13 particular allegation, does that mean that they didn't
14 witness that allegation or that the allegation conclusively
15 didn't happen?

16 THE WITNESS: It means the individual did not
17 see it happen.

18 THE COURT: And then we have a question as
19 to -- based on the investigation you conducted and wrote up,
20 whether you performed your investigatory duties as an HR
21 investigator without prejudice and in a neutral and fair
22 manner?

23 THE WITNESS: I absolutely did, yes.

24 THE COURT: All right. Thank you. That
25 covers the questions.

1 Any redirect, Mr. -- I'm sorry, no. This is a
2 Defense witness. Any redirect, Ms. Rosen?

3 MS. ROSEN: No, Your Honor.

4 THE COURT: Any re-cross, Mr. Keimbaye?

5 MR. KEIMBAYE: No questions, Your Honor.

6 THE COURT: All right. Thank you, Ms. Rice.
7 I think you're done with your testimony.

8 THE WITNESS: Thank you so much.

9 (Witness excused.)

10 THE COURT: And, members of the jury, we're
11 really late for our break right now. So we're going to take
12 it now. I just was hoping to get this witness finished. So
13 please keep following the same rules. And we'll let you know
14 what happens next.

15 We may end up excusing you early today. But
16 let me talk with Mr. Keimbaye and Defense Counsel after the
17 break and then J. will let you know.

18 THE BAILIFF: All please rise.

19 (Jury exits at 3:04:24 p.m.)

20 THE COURT: All right. I appreciate everybody
21 soldiering through. Let's take 15 minutes and resume at
22 3:20.

23 MS. ROSEN: Thank you.

24 MS. BURNHAM: Thank you.

25 MS. ROSEN: Marilyn, you're free to go.

1 (Recess at 3:05:04 p.m., recommencing at 3:23:03 p.m.)

2 (The following proceedings were held outside the presence of
3 the jury:)

4 THE BAILIFF: Again in session. The Honorable
5 Judge Darvas presiding.

6 THE COURT: Thanks very much. Please be
7 seated. Before we get started my suggestion would be, but
8 I'm willing to hear from the parties if you have any
9 concerns, would be for J. to tell the jury that they're done
10 for today and also to keep an eye on their email.

11 Because she may be emailing them about changes
12 to the schedule after court today. Because what I don't want
13 them to do is come all the way down here and if the motion to
14 dismiss is granted, be kind of disgruntled that they came all
15 the way down here.

16 So does anyone have any concerns about that?

17 MS. ROSEN: No.

18 MS. BURNHAM: No, Your Honor.

19 THE COURT: Mr. Keimbaye?

20 MR. KEIMBAYE: I -- I thought we made a
21 determination on the motion already?

22 THE COURT: I'm sorry, what?

23 MR. KEIMBAYE: Your Honor, I thought you
24 already made a determination on the motion.

25 THE COURT: No, this is their halftime motion.

1 This is their motion to dismiss because you haven't proved
2 your case. That's what they're arguing. I'm not making a
3 ruling yet. I'm just saying if I were to grant that, then
4 the jurors don't need to come in tomorrow.

5 MR. KEIMBAYE: Interesting.

6 THE COURT: Any concerns with J. giving that
7 instruction to the jury?

8 MR. KEIMBAYE: No concern at all, Your Honor.

9 THE COURT: Okay. All right. Why don't you
10 tell them, and we'll wait for them to leave and then we'll do
11 the argument.

12 THE BAILIFF: Okay. Thank you.

13 THE COURT: I'm sorry, I wasn't counting. Is
14 that everybody?

15 MS. BURNHAM: I think so.

16 THE COURT: Okay.

17 MS. ROSEN: I heard something about parking
18 validations.

19 THE COURT: Are we good?

20 THE BAILIFF: Oh, only because I thought maybe
21 you heard something. No, they're all good.

22 THE COURT: Okay. Thank you. Yeah, usually
23 she doesn't close the door until they're all out.

24 All right. Ms. Rosen, are you arguing this?

25 DEFENDANT'S MOTION FOR DIRECTED VERDICT

1 MS. ROSEN: Yes, Your Honor. Your Honor,
2 Defendant's Providence Health & Services and Chris Kortendick
3 moved for a directed verdict dismissing all of Mr. Keimbye's
4 claims against them.

5 I would like to start with the claims against
6 Mr. Kortendick. Mr. Keimbye has entered no evidence that
7 Mr. Kortendick was a supervisor. The only evidence that he
8 has entered is that somebody supposedly said to him, here's
9 your supervisor Mr. Kortendick.

10 Which Mr. Kortendick denies and is not enough
11 to establish that Mr. Kortendick is a supervisor. He's
12 presented no testimony on what Mr. Kortendick does that makes
13 him a supervisor or any of the job functions that he performs
14 that he believes makes him a supervisor.

15 On the other side, we've presented tons of
16 testimony from almost every witness we've -- that has
17 testified that Mr. Kortendick was not a supervisor. He did
18 not have the authority to hire. He did not have the
19 authority to fire. He did not have the authority to
20 discipline.

21 He did not have authority to do anything that
22 would affect someone's terms and conditions of employment.
23 Even if you believe that Mr. Kortendick was a supervisor or
24 that Mr. Keimbye proved that, which we dispute, the conduct
25 he's accused Mr. Kortendick of does not rise to the level of

1 | severe of pervasive conduct.

2 | What we have on the record that he's accused
3 | Mr. Kortendick of is tampering with anesthesia machines,
4 | making comments about where he's from, and making a comment
5 | about his skin color. Those three things, even if you
6 | believe those, even if those are true, that's not enough to
7 | rise to a level of severe pervasive harassment.

8 | And they're not, in fact, true. You've heard
9 | testimony that those anesthesia machines were always
10 | malfunctioning. You've heard testimony that Travis John
11 | looked into his concerned about the anesthesia machines and
12 | found them to be unfounded.

13 | You've also heard testimony that Mr. Keimbaye
14 | is not offended when people ask him where he's from and that
15 | Mr. Kortendick asked him where he was from in an attempt to
16 | get to know him and be friendly, not for any kind of
17 | harassment. The only remaining comment is an alleged comment
18 | about his -- his skin color, which Mr. Kortendick denies and
19 | there are no witnesses to.

20 | THE COURT: Well, again, on a motion to
21 | dismiss the Court is required to take all of the evidence and
22 | the reasonable inferences from the evidence in the light most
23 | favorable to the nonmoving party.

24 | MS. ROSEN: Yeah, I understand, Your Honor.

25 | THE COURT: So I can't -- in other words, if

1 | there's no evidence, then there's no evidence. But I -- what
2 | I'm not allowed to do is say, well, Plaintiff has this small
3 | amount of evidence, and the Defense has this very large
4 | amount of evidence to counter that. Because, of course,
5 | that -- you know, the weighing of the evidence is for the
6 | trier of fact.

7 | MS. ROSEN: Thank you, Your Honor. I -- I
8 | think that there has been no evidence admitted that
9 | Mr. Kortendick's a supervisor like we've discussed. And as
10 | well as that even if you believe what Mr. Keimbaye says, and
11 | you take the inference most favorable to him about what he
12 | says Mr. Kortendick did, it doesn't rise to the level of
13 | severe or pervasive harassment.

14 | That would hold Mr. Kortendick liable for.
15 | And so we respectfully request that Mr. Kortendick be
16 | dismissed from the case.

17 | Moving onto Providence, Mr. Keimbaye has no
18 | established that there's been any severe or pervasive conduct
19 | toward him by Providence. Most importantly, he hasn't
20 | established that providence knew or should've know about the
21 | conduct.

22 | And even if when Providence did learn about
23 | Opal Lonon, the alleged conduct to her, it took prompt and
24 | effective remedial action to put a stop to that conduct. It
25 | investigated right away. It did a thorough investigation.

1 And Ms. Lonon was issued a disciplinary notice.

2 So -- and I think, you know, most importantly
3 Mr. Keimbaye hasn't presented any witnesses. He's only
4 presented his only self-serving testimony. And he had the
5 opportunity to present witnesses, and he hasn't done so.

6 So we respectfully move for a directed verdict
7 against -- in favor of Chris Kortendick and Providence Health
8 & Services.

9 THE COURT: So I did -- I spent like the
10 entire 90-minute lunch hour looking at cases talking about
11 who is a supervisor under Washington law. And clearly under
12 Washington law, it's a more lenient standard than under
13 Title VII.

14 And you cited some of the case law. The
15 primary case seems to be *Brown v. Scott Paper Worldwide*. I
16 tried to take a look at other cases. But it doesn't really
17 talk about how do you -- how can you tell if someone is a
18 supervisor. And there don't seem to be a whole lot of cases.
19 So -- and some of them aren't even published.

20 MS. ROSEN: I think, Your Honor, it's clear
21 that a person who's a supervisor has to be able to impact the
22 terms and conditions of employment. I agree with you that
23 the case law is -- is muddy and there that there isn't -- you
24 know, there is not a clear standard.

25 THE COURT: Yep.

1 MS. ROSEN: But almost all the cases talk
2 about being able to impact the terms and conditions of
3 someone's employment.

4 THE COURT: Right. And *Jackson* [*Sic*] sort of
5 comes the closes to talking about that -- *Jenkins*, I'm sorry,
6 not *Jackson*. *Jenkins v. Palmer*, 116 Wash. App 671 --

7 MS. ROSEN: Yeah.

8 THE COURT: -- where is says --

9 MS. ROSEN: And I'm dating myself, but I
10 worked on the *Brown* case.

11 THE COURT: Oh my goodness.

12 MS. ROSEN: So --

13 THE COURT: You don't need to worry about
14 dating yourself. I'm way older than anyone in this
15 courtroom.

16 MS. ROSEN: So, yeah, so I'm very familiar
17 with the issue.

18 THE COURT: Yeah. "*Palmer* does not assert
19 that *Jenkins* was her employer or that he was acting in the
20 interests of the employer in any way when he allegedly
21 sexually harassed or discriminated against her."

22 I suppose one could argue that if you're
23 harassing someone, that's probably not in the interest of
24 your employer. But I don't think that's the definition.

25 MS. ROSEN: No, I agree with you. I think

1 it's affecting the terms and conditions of the person's
2 employment. And courts routinely look to Title VII because
3 of the lack of a good definition under Washington law.

4 THE COURT: Right. Well, one of the cases I
5 looked at was *Ellorin v. Applied Finishing, Inc.* That is a
6 published decision from the western district from 2014. 996
7 F.Supp.2d 1070 where the Court observed that the alleged
8 supervisor's -- said his duties do not include hiring,
9 firing, directing, or in any way managing or supervising any
10 employees.

11 Although, he apparently had been hired to
12 manage operations including facility management, whatever
13 that means. And the court says, well, there's conflicting
14 testimony about his involved in supervising others and some
15 employees did testify that he supervised their work at least
16 to some degree.

17 The court says, Washington decisions look to
18 such person's involvement in the employment policy or
19 decisions that result in discrimination and hold them liable
20 for their own discriminatory acts. Here Mr. Soden was
21 allegedly involved in fulfilling his job-related duties at
22 the time much or all of the conduct at issue occurred. And
23 the court concludes its issue of facts.

24 So this was a summary judgment, which is a
25 little different. I think -- in fact, I clearly recall

1 denying the Defense motion for summary judgment on this very
2 issue previously. Because Mr. Keimbaye alleged enough facts
3 along with the declaration from Ms. Husted that the Court
4 found that there was a material issue of fact or trial.

5 But the evidence at trial is in now. So
6 that's what we need to consider. Okay. I think I
7 interrupted you. Were you done, Ms. Rosen, or was there
8 something else?

9 MS. ROSEN: I was done, Your Honor.

10 THE COURT: Okay. Mr. Keimbaye?

11 MR. KEIMBAYE: Yes, Your Honor.

12 THE COURT: I'm calling on you if you have an
13 argument to make in opposition to Ms. Rosen's argument.

14 ORAL ARGUMENT BY THE PLAINTIFF

15 MR. KEIMBAYE: Yes, Your Honor. Previously,
16 this Court ruled on summary judgment based on
17 Mr. Kortendick's authorization and recommendation from his
18 employer.

19 THE COURT: So you do understand that the
20 standard at summary judgment is different than the standard I
21 have to apply now? The standard I have to apply now is what
22 evidence came out at trial, not what the declarations were at
23 the time of summary judgment.

24 MR. KEIMBAYE: Well, Your Honor, during
25 witness testimony Plaintiff asked a lot of questions that he

1 asked the witness stating you were authorized by your
2 employer to train Mr. Keimbaye on his job functions, yes, or
3 no? And the witness says, yes.

4 THE COURT: That doesn't necessarily make him
5 a supervisor. There were several people who trained you and
6 showed you how things worked when you were first hired. And
7 there was some testimony about Mr. Ramos and Ms. Lonon also
8 being, quote-unquote, preceptors or trainers or leads from
9 time to time.

10 That doesn't necessarily make him your
11 supervisor. So what else?

12 MR. KEIMBAYE: Yes, but, you know, he would
13 only get the authorization from his employer, you know,
14 to -- to train --

15 THE COURT: Okay.

16 MR. KEIMBAYE: -- new employees.

17 THE COURT: Okay.

18 MR. KEIMBAYE: And that makes him, you
19 know -- that makes the Plaintiff -- he's a subordinate.

20 THE COURT: That makes -- I'm sorry, that
21 means Plaintiff what?

22 MR. KEIMBAYE: Dominique -- Mr. Keimbaye
23 has -- he's a subordinate. He -- he oversees what I do or
24 what I did over there. Because of, you know, the authority,
25 you know, his employer gave to him.

1 MS. ROSEN: That's not in the record.

2 THE COURT: So -- all right. So you asked him
3 the question. During Plaintiff's -- in fact, that was your
4 last question to him, or it was the last question I have a
5 note of.

6 MR. KEIMBAYE: Yes, I --

7 THE COURT: During Plaintiff's employment --

8 MR. KEIMBAYE: I'm sorry.

9 THE COURT: -- did Mr. Kortendick authorize
10 and recommend Mr. Keimbaye's job role and function? He
11 answered no. Then you asked him, Was he allowed to lead your
12 training? And his response to that was, I was authorized to
13 help train.

14 That's what he said.

15 MR. KEIMBAYE: That's right.

16 THE COURT: Okay.

17 MR. KEIMBAYE: But he's an employer.

18 THE COURT: So are you saying that that alone
19 is enough to make him your supervisor?

20 MR. KEIMBAYE: It made Plaintiff or
21 Mr. Keimbaye as his subordinate to obey to his training and
22 his -- you know, whatever he would recommend to -- to
23 Mr. Keimbaye to do his job functions.

24 THE COURT: Well, no.

25 MR. KEIMBAYE: He had power over Mr. Keimbaye.

1 THE COURT: So he said he was authorized to
2 help train you. What power did he have? And I'm not asking
3 you to explain to me what power he had. I'm asking you to
4 explain to me what evidence there is that he had power over
5 you.

6 MR. KEIMBAYE: The power is the authorization
7 for -- getting from the employer to lead my training. And I
8 have to obey to his -- his guidance to not to anything wrong,
9 or you know, following, you know, all the assignments that he
10 gave to me. According to his recommendation, not my
11 recommendation.

12 THE COURT: Where's that evidence?

13 MR. KEIMBAYE: Well, the --

14 THE COURT: Where's the evidence that you had
15 to follow what he told you to do?

16 MR. KEIMBAYE: Well, the evidence is that he
17 admitted that he trained me.

18 THE COURT: No, he --

19 MR. KEIMBAYE: So --

20 THE COURT: -- admitted that he helped train
21 you.

22 (Pause in proceedings.)

23 THE COURT: Are you thinking? I'm not sure
24 how to construe your silence. So are you --

25 MR. KEIMBAYE: Well, Your Honor --

1 THE COURT: -- thinking about something else
2 to say?

3 MR. KEIMBAYE: I also have to mention
4 something regarding Ms. Husted's, you know, testimony. I
5 mean --

6 THE COURT: Well, her testimony is not in
7 evidence, Mr. Keimbaye.

8 MR. KEIMBAYE: I mean, where is this -- this
9 case going all a sudden?

10 THE COURT: Well, they've made a motion to
11 dismiss, and they've made their argument. And I'm giving you
12 the opportunity to make an opposing argument.

13 MR. KEIMBAYE: Well, I am making my opposing
14 argument because when I started my employment, I was
15 handed -- I was handed by my own supervisor who represent my
16 employer and authorized Mr. Kortendick as a lead anesthesia
17 technician to observe or supervise my own job functions,
18 which automatically made Mr. Keimbaye his subordinate.

19 I argue this, and you -- you, Your Honor,
20 agreed to length in your -- in your point of view during
21 their summary judgment to dismiss him from the case.

22 THE COURT: I know, but that's not where we
23 are now. What I ruled at that time was that there was enough
24 there in your declarations and in Ms. Husted's declaration
25 that it should go to trial regarding evidence as to whether

1 or not Mr. Kortendick was your supervisor.

2 But the evidence on your case in trial is now
3 in. So I need to look at that evidence and make a
4 determination as to whether a reasonable trier of fact,
5 whether a reasonable juror could find based on that evidence
6 that Mr. Kortendick was your supervisor.

7 MR. KEIMBAYE: Well, I -- I'm sorry, Your
8 Honor. That evidence is -- is being taken away from me, you
9 know? Especially Ms. Husted's, you know, testimony is --

10 THE COURT: Well, you made your argument. I
11 ruled it wasn't coming in and then you rested your case. So
12 your case is the evidence that came in before you rested.
13 And that's what I have to base any ruling on. That's what
14 the jury is going to have to do decide the case on if I deny
15 the Defense motion to dismiss.

16 MR. KEIMBAYE: How could that happen all of a
17 sudden, you know, that Plaintiff cannot present his
18 witness -- you know, the position, you know, to the -- to the
19 jury?

20 THE COURT: Because you didn't provide
21 admissible evidence that she no longer lived in King County.
22 And, yes, I know you provided some text messages. But there
23 was no declaration under penalty of perjury from her or other
24 evidence from which I could make a finding that she was not
25 available for trial.

1 MR. KEIMBAYE: Well, Your Honor, if I remember
2 correctly last Thursday, you encouraged Plaintiff to reach
3 out to Ms. Husted. And if Plaintiff did not get any
4 supporting document, you'd have to sworn in, you know,
5 Plaintiff in -- in Ms. Husted's replacement for her
6 deposition to be published to the jury.

7 That's the last statement by her from you.
8 And since Friday, I've been like reaching out through phone.
9 Making phone calls. Text message. The only thing I get back
10 is text messages -- two text messages.

11 MS. ROSEN: This doesn't have anything to do
12 with this motion to dismiss.

13 THE COURT: Yeah, well, it does to the extent
14 that there's information in her deposition as to whether or
15 not Mr. Kortendick exercised any kind of supervisory duties.

16 MS. ROSEN: Right, but that isn't in as
17 evidence.

18 THE COURT: I'm sorry.

19 MS. ROSEN: It's not in as evidence.

20 THE COURT: No, it's not in as evidence.

21 Anything else, Mr. Keimbaye?

22 MR. KEIMBAYE: No, Your Honor. Thank you.

23 THE COURT: I'm trying to find the ER 804
24 discussion. Does Defense Counsel remember where it is?

25 MS. BURNHAM: No, Your Honor. We -- sorry, we

1 | didn't bring that information with us --

2 | THE COURT: I'm sorry?

3 | MS. BURNHAM: I didn't bring that information
4 | with me as you had already ruled on that, Your Honor.

5 | THE COURT: Yeah, well, I was having second
6 | thoughts. But the truth is, there just isn't any admissible
7 | evidence that she's unavailable. The best thing I have is
8 | Mr. Keimbaye indicating that he got a text from someone he
9 | believed was her.

10 | Although, there was no actual verification
11 | indicating that she was living in Florida. He never actually
12 | spoke with her apparently, or at least there's no evidence
13 | before the Court he actually spoke with her. There's nothing
14 | from her indicating that she's not available.

15 | I don't think -- it's not enough. And that's
16 | the reason I ruled that her testimony wasn't coming in.

17 | MR. KEIMBAYE: One last statement, Your Honor.

18 | MS. ROSEN: Our client saw him deleting text
19 | messages.

20 | THE COURT: Oh, wonderful.

21 | MR. KEIMBAYE: What is that?

22 | MS. ROSEN: Our client saw you deleting text
23 | messages. She was sitting right there.

24 | MS. BURNHAM: Standing right there.

25 | MR. KEIMBAYE: Oh, Jesus Christ.

1 THE COURT: All right.

2 MR. KEIMBAYE: Jesus.

3 THE COURT: What was the one other thing that
4 you wanted to bring up, Mr. Keimbaye?

5 MR. KEIMBAYE: Okay. I was taking screenshots
6 or deleting text messages?

7 MS. ROSEN: She saw you deleting text
8 messages.

9 MR. KEIMBAYE: This is a grand accusation.

10 MS. ROSEN: Well, that's what she said.

11 THE COURT: All right. Mr. Keimbaye, can you
12 focus on me?

13 MR. KEIMBAYE: Yes, Your Honor.

14 THE COURT: Yes, you said you had one other
15 thing to say.

16 MR. KEIMBAYE: Last Thursday, Plaintiff
17 seriously took into account your statement encouraging him to
18 try his best to reach out to Ms. Husted.

19 THE COURT: I know.

20 MR. KEIMBAYE: Via phone call, you stated.
21 And Plaintiff has called Ms. Husted several times.

22 THE COURT: Yeah, you mentioned that earlier.

23 MR. KEIMBAYE: Yes, and then text message as
24 well. The only thing that, you know, Plaintiff received from
25 Ms. Husted is the text message. And you stated that if by

1 Monday Ms. Husted cannot be able -- you know, cannot be
2 available for testimony via Zoom, or you know, phone call
3 then you would put Plaintiff, you know, to sworn in.

4 MS. ROSEN: No, that's not what she said.

5 THE COURT: I don't think I --

6 MS. ROSEN: Why are we arguing --

7 THE COURT: -- said that.

8 MR. KEIMBAYE: No, this is a clear --

9 MS. ROSEN: -- this again.

10 MR. KEIMBAYE: -- statement.

11 THE COURT: That may have been what
12 Mr. Keimbaye understood, but that's not what I said.

13 MR. KEIMBAYE: Oh righteous.

14 MS. ROSEN: Why are we arguing this constantly
15 when it has nothing to do with my motion that's in front of
16 the Court?

17 THE COURT: Do you have anything else to say
18 about the motion, Mr. Keimbaye?

19 MR. KEIMBAYE: I have no more statements to
20 make right now, Your Honor.

21 THE COURT: All right. Any rebuttal?

22 MS. ROSEN: No, Your Honor.

23 COURT'S RULING

24 THE COURT: All right. I think at this point
25 the Court is compelled to conclude that Mr. Kortendick was

1 not a supervisor within the meaning of RCW -- hold on a
2 second. I need to pull it up. RCW 49.60.040. I think it's
3 sub 11 now.

4 Back when the *Brown v. Scott Paper Worldwide*
5 case was published, it was sub 3. But they've added a bunch
6 of additional definitions. For the reasons, frankly, Defense
7 Counsel laid out, he was not in charge of Mr. Keimbaye's
8 schedule.

9 In fact, Mr. Keimbaye's own testimony was that
10 he didn't communicate with Mr. Kortendick about his schedule.
11 That he would communicate directly with Mr. John if he was
12 going to be tardy, or he was going to be calling out sick.

13 He testified he never asked Mr. Kortendick for
14 any authorization to stay late after his shift ended. That
15 those requests were directed only to his supervisor,
16 Mr. John, who he identified as his supervisor.

17 He didn't get any performance evaluations from
18 Mr. Kortendick. All the communications with respect to
19 Mr. Keimbaye's punching in and punching out and so forth were
20 directed only to Mr. John. Mr. Kortendick not only -- didn't
21 have those communications directed to him, he wasn't CC'd on
22 the emails.

23 There was that one email where he reported
24 having seen Mr. Keimbaye late when he was supposed to be off
25 shift. But even then, it was something he was reported to

1 Mr. John. And Mr. Kortendick indicated he didn't have any
2 power to do anything about it.

3 It was Mr. John who placed Mr. Keimbaye on
4 administrative leave. He didn't know -- Mr. Keimbaye
5 admitted that he didn't know if Mr. Kortendick had any role
6 in discipline or firing. And, in fact -- I need to find it.
7 I highlighted it, but.

8 There was some testimony from Mr. Keimbaye
9 that he speculated that Mr. Kortendick made some kind of a
10 recommendation about disciplining him. But he indicated that
11 he was just -- he didn't know. Okay. I found it. So when
12 he was asked about that on cross-examination, Mr. Keimbaye
13 testified that Mr. Kortendick didn't discipline him on paper.

14 But he may have recommended to Mr. John or to
15 the HR department that Mr. Keimbaye be disciplined because
16 Mr. Keimbaye's said he was under Mr. Kortendick's
17 supervision. But then he admitted that he has no evidence
18 that Mr. Kortendick ever recommended that Mr. Keimbaye be
19 disciplined.

20 He agreed that Mr. John was the one who made
21 the schedule with -- well, actually, what he said was he
22 can't say for certain whether it was Mr. John who made the
23 schedule with Ms. Maddy. Because when Mr. John wasn't there,
24 Mr. Kortendick was the one who worked with Ms. Maddy to come
25 up with the daily schedule and was the one who communicated

1 with the anesthesia team what the schedule was.

2 Well, he did say that Mr. Kortendick assigned
3 rooms to the techs. So what about that?

4 MS. ROSEN: I mean, that -- Mr. Kortendick
5 said that wasn't true. And I don't --

6 THE COURT: Well, I know, but --

7 MS. ROSEN: And -- and I don't think that
8 makes him a supervisor. Just to say go to this room -- he
9 said there was a set schedule on how people got assigned to
10 rooms. That was his testimony.

11 THE COURT: Well, he -- I remember his
12 testimony about the rotation.

13 MS. ROSEN: Yeah.

14 THE COURT: But again, if there's a dispute
15 about the evidence, I need to take it in the light most
16 favorable to the Plaintiff.

17 MS. ROSEN: Well, if you take it in that
18 light, I still don't think he rises to the level of a
19 supervisor. He's not impacting the terms and conditions of
20 employment.

21 MR. KEIMBAYE: Your Honor, may I make one last
22 statement?

23 THE COURT: Go ahead, yeah.

24 MR. KEIMBAYE: When Mr. John is on vacation
25 leave, the responsibility is --

1 THE COURT: I'm sorry, what? When Mr. John's
2 on vacation --

3 MR. KEIMBAYE: Yes, Mr. Kortendick got the
4 lead and supervised the whole entire techs.

5 MS. ROSEN: That's not in evidence.

6 THE COURT: Well, there's -- it's
7 not -- that's not in evidence.

8 MR. KEIMBAYE: And assigned them to -- to
9 which room you're supposed to go.

10 THE COURT: Well, that's not in evidence
11 either. What is in evidence is -- you said that when
12 Mr. John wasn't there, Kortendick was the one who worked with
13 Ms. Maddy to come up with the daily schedule and communicated
14 with the anesthesia team as to what the schedule was and
15 assigned rooms to the techs.

16 That's all that's in evidence about that. I
17 don't -- I mean, that's not the hallmark of supervision. I
18 don't think there's enough there even taking all of the
19 evidence and reasonable inferences in the light most
20 favorable to the Plaintiff.

21 I don't think there's enough there that
22 Mr. Kortendick was a supervisor, which means he's not
23 individually liable for any harassment or discriminatory
24 statements. Then the question becomes whether Providence is.

25 So, Mr. Keimbaye, what's the evidence that

1 Providence management knew or should have known about any
2 alleged harassment, either by Mr. Kortendick or by Ms. Lonon
3 or by anyone else?

4 MR. KEIMBAYE: Mr. Keimbaye -- everything that
5 he had been going through, he always brought it to the
6 attention of his supervisor, which is Mr. John. In reality,
7 Mr. John and Mr. Kortendick took Plaintiff in the anesthesia
8 workroom on the second floor to the first floor.

9 Walking Plaintiff all the way to Mr. Sweeney's
10 HR office.

11 THE COURT: Yeah, I remember that testimony.
12 What I don't remember is testimony that you complained to
13 Mr. John that you were being harassed.

14 MR. KEIMBAYE: Yes, each -- each event, you
15 know, I always look for him and tell him. And his -- his
16 favorite comment is like, I will have a talk with him. I
17 mean --

18 MS. ROSEN: That's not in evidence.

19 MR. KEIMBAYE: I mean, Plaintiff could not
20 like, you know, harassing, you know, his supervisor when he
21 promised him that he would go and have a talk with someone
22 that harassed him. That's not -- that's not good what Mr.
23 Kortendick did, I will have a talk with him. It's not on
24 paper. I had this conversation with my own supervisor.

25 THE COURT: Okay. Well, let me look at my

1 notes on that. So you testified you told Mr. John about your
2 long drive to work and coming in late. So you certainly
3 testified about that.

4 So you testified that -- all right. So
5 Mr. Keimbaye testified about this alleged sabotage by
6 Mr. Kortendick of the anesthesia equipment and testified that
7 that's what caused the doctor to get upset with him and punch
8 him. He said he always brought in parts and supplies along
9 with Mr. Kortendick to set up the rooms for patient care.

10 He said Mr. Kortendick would purposely
11 dislocate -- well, then there was an objection, and it was
12 sustained. So he testified that he would ask Mr. Kortendick
13 where the lines had been put because he had used them
14 earlier. And Mr. Kortendick said, I don't know.

15 So Mr. Keimbaye went into the anesthesia
16 workroom and asked coworkers to ask Mr. Kortendick where he
17 could find those anesthesia supplies. And when they asked
18 Mr. Kortendick, he told them what drawer they were in even
19 though he wouldn't tell Mr. Keimbaye, which caused him to
20 have a poor performance and get blamed for it.

21 And he said, Then I brought it to my
22 supervisor because Mr. John made me believe I could trust
23 him. Call me if you ever need anything. So I told John, You
24 heard what Chris Kortendick said about my dark skin color.
25 All that sort of stuff.

1 And he was rude and mean whenever I would work
2 with him. And Mr. John would say that Mr. Kortendick was
3 just a rude person. I realize Mr. John denies this.

4 MS. ROSEN: Well, more importantly, Your
5 Honor, there -- other than the skin color comment, there's no
6 evidence that the machine thing was based on race, national
7 origin, or sex.

8 THE COURT: And then he said that he walked
9 out with Mr. Kortendick and Mr. John. And Mr. John made some
10 comment about him only being wanted for sex.

11 MS. ROSEN: Which is directly contradicted by
12 his deposition.

13 THE COURT: Well, I don't recall him being
14 cross-examined by his -- and impeached with his deposition.

15 MS. ROSEN: He will be if we keep going.

16 THE COURT: All right. Well, we're not there
17 yet.

18 MS. ROSEN: Yeah.

19 THE COURT: Okay. So what we have, is we do
20 have Mr. Keimbaye saying that he went to Mr. John, and he
21 complained about Chris Kortendick saying something about his
22 dark skin color, and he was rude and mean.

23 And then he talked about asking how to contact
24 HR. And Mr. John promised to get back. But there isn't
25 testimony that he told Mr. John why he wanted to talk to HR.

1 Okay. Then there's testimony that on
2 June 8th, a female anesthesiologist came out of the room next
3 to where Mr. Keimbaye was staying and yelled insults at him.

4 MS. ROSEN: Again, no evidence based on race,
5 sexual, or international origin.

6 THE COURT: That's true, actually. He doesn't
7 say that she was yelling racial epithets at him. Okay. Then
8 he was testifying about the assault in the OR. And he says
9 he went to the third floor, saw Mr. John, and talked to him
10 about the anesthesiologist who assaulted him. Mr. John said
11 he would talk to him.

12 MS. ROSEN: Still the same argument, Your
13 Honor.

14 THE COURT: Yeah, I don't see anything
15 about -- that he got assaulted because of his race or his
16 national origin. Okay. Then there's a bunch of testimony
17 about the BLS and ACLS stuff. Permission to stay late.

18 And then there was testimony about a meeting
19 in April with Dan Roehrich and Mr. John where Mr. Keimbaye
20 testified that Mr. John heard Mr. Keimbaye threaten to quit
21 because of concerns he was having about Mr. Kortendick's
22 behavior towards him.

23 And Mr. John said at that meeting that they
24 were aware of Mr. Kortendick behavior. And the OR manager
25 was looking into taking action about it because everybody

1 loves you here. And all the providers I talk to say you're
2 the hardest worker.

3 MS. ROSEN: Again, no evidence about race.

4 THE COURT: I see that, yes.

5 MS. ROSEN: Yeah.

6 THE COURT: Okay. So then there was sort of a
7 non-specific statement from Mr. Keimbaye that all this
8 harassment he told Mr. John about and begged him to help him
9 report it to HR. And he asked if that was the reason for his
10 administrative leave, and Mr. John said no.

11 It was because of some timecard issue. So
12 this would've been well after any harassment occurred, so it
13 would be a contemporaneous report. More stuff about the
14 tardies. After the meeting with HR, Mr. Keimbaye was begging
15 Mr. John to help report it.

16 But again, this was long after it would've
17 occurred. Because the meeting with HR was when Mr. Keimbaye
18 was placed on administrative leave. And he said something
19 about, well, when he told Mr. John about what was happening,
20 he didn't help or try to put a stop to what was happening but
21 then an investigation confirmed it.

22 That's a torture. He doesn't specifically say
23 he complained about Mr. Lonon to Mr. John though. He said he
24 complained about Mr. Kortendick to Mr. John. Sorry, I'm
25 doing a wordsearch through my notes for John.

1 That's it. That's what we got.

2 MS. ROSEN: Yeah, it's not enough.

3 THE COURT: Don't think -- Mr. Keimbaye, I
4 wanted to give you an opportunity to prove your case. But
5 there's really no substantial evidence that you specifically
6 told Mr. John that you were being harassed, either sexually
7 or because of your race or your national origin.

8 MR. KEIMBAYE: Your Honor, may I make a
9 statement?

10 THE COURT: Of course.

11 MR. KEIMBAYE: When Mr. Porter was degrading
12 Plaintiff, that's disparaging -- disparaging Plaintiff --

13 THE COURT: Are you talking about the doctor?

14 MR. KEIMBAYE: Yes, based on his -- his
15 origin. Where did you get your, you know, anesthesia
16 training from, Africa? Somalia? Ethiopia? Kenya? And all
17 of those --

18 THE COURT: I'm sorry, what was the last thing
19 you said?

20 MR. KEIMBAYE: He -- he --

21 THE COURT: The last thing you said after
22 Somalia.

23 MR. KEIMBAYE: Kenya.

24 THE COURT: All right.

25 MR. KEIMBAYE: So basically, they're degrading

1 Plaintiff based on, you know, his -- his race and skin color.

2 THE COURT: But that's a doctor who is not an
3 employee of Providence.

4 MR. KEIMBAYE: And because of that, I
5 immediately, you know, after setting up his room, went
6 straight to -- to Mr. John and said that please, you know,
7 talk to Dr. Porterfield. Because all I'm doing is my job.

8 I'm not -- I'm not here, you know, to -- to
9 argue with anybody. But his -- the way he put me down,
10 that's a very -- that's racist for him to degrade me and
11 humiliate me in front of, you know, my coworkers.

12 MS. ROSEN: Asking where he got his training
13 from his not necessarily --

14 MR. KEIMBAYE: That's -- that's the statement
15 I had with Mr. John when he was doing the update on one of
16 the anesthesia cart on the third floor.

17 MS. ROSEN: A lot of that is not --

18 MR. KEIMBAYE: The same thing -- same thing
19 with Mr. Kortendick's behavior. But, you know, during
20 my -- my testimony, you know, I was not allowed to talk much
21 about --

22 MS. ROSEN: I mean, Your Honor, a lot of this
23 is not in testimony. And like asking somebody where they're
24 from and where they got their training from is not a racist
25 comment.

1 THE COURT: Well, it depends on the context.

2 MS. ROSEN: Right. And --

3 THE COURT: But it's one incident.

4 MR. KEIMBAYE: I -- I --

5 THE COURT: And it's an incident not by a
6 Providence employee or agent.

7 MR. KEIMBAYE: That's the reason why I
8 addressed it to my supervisor.

9 THE COURT: Okay. But it's one incident.

10 MR. KEIMBAYE: It's more than one incident.

11 THE COURT: Well, you --

12 MR. KEIMBAYE: Mr. Kortendick -- for someone
13 to, you know, like -- when someone is being, like, you know,
14 honest and friendly to you, you would know. But when
15 someone's mocking -- mocking and laughing about your darker
16 skin, that's insulting.

17 And comparing to a -- Sudanese are human
18 beings too. And they are black like me. How can I describe
19 that's racist? That's the way to interpret it.

20 MS. ROSEN: It's one comment.

21 MR. KEIMBAYE: For someone to laugh by
22 my -- my darker skin, and you know, like going on
23 and --Sudanese are, you know, black men. I am a black man.
24 Do I need to look different than Sudanese?

25 THE COURT: I assume that's a rhetorical

1 question. I have no idea what a stereotypical person from
2 Sudan looks like versus a stereotypical person from Chad.
3 And I wouldn't presume to rely on any such stereotypes in any
4 event.

5 MR. KEIMBAYE: Your Honor, I live it, endure
6 it, and experience it. It is my hope that you make the right
7 decision. There is no way that, you know, I -- someone would
8 spend five years telling this story over and over.

9 MS. ROSEN: You've filed four other -- three
10 other lawsuits.

11 MR. KEIMBAYE: They are legitimate lawsuits.

12 THE COURT: They may be.

13 MR. KEIMBAYE: They are very legitimate.

14 THE COURT: I'm just saying that the fact that
15 you spend so much time on this one doesn't -- isn't really
16 dispositive as to whether there's sufficient evidence to
17 support your claim.

18 The Court finds there is not. I wanted to
19 give you an opportunity to prove your case, Mr. Keimbaye, but
20 there just -- there isn't substantial evidence to go to the
21 jury that Providence was aware that you were being harassed
22 because of your race or your national origin or your sex.

23 MR. KEIMBAYE: Your Honor, with all due
24 respect, we are leaning towards the end of the day. I would
25 respectfully appreciate if you would put some thoughts on it

1 | because --

2 | THE COURT: I'm sorry, what?

3 | MR. KEIMBAYE: -- I -- put some thoughts on
4 | Plaintiff's testimony and evidence presented.

5 | THE COURT: No, you rested your case.

6 | MR. KEIMBAYE: Well, is it the plan to, you
7 | know, encourage Plaintiff to rest the case and then, you
8 | know, knock him out today?

9 | THE COURT: So that's what Civil Rule 50
10 | permits. If you haven't established a *prima facie* case in
11 | your case in chief, then the Court is supposed to dismiss
12 | your claims. And I'm supposed to be pretty liberal about
13 | construing the evidence in your favor, but --

14 | MR. KEIMBAYE: Your Honor --

15 | THE COURT: -- I can't make up evidence that
16 | isn't there.

17 | MR. KEIMBAYE: Your Honor?

18 | THE COURT: Yes?

19 | MR. KEIMBAYE: Plaintiff came here to continue
20 | on with his case. And, you know, waiting for the next
21 | following, you know, witness that were coming tomorrow. It
22 | was your own, you know, statement telling Plaintiff to, you
23 | know, to -- to rest his case.

24 | THE COURT: No, no, no, no.

25 | MS. ROSEN: No.

1 THE COURT: I asked you repeatedly if you had
2 any more evidence to present. And you said no other than
3 some additional exhibits. And then I -- and then you rested
4 your case. If you had additional witnesses to call, then
5 when I ask you if you have additional evidence to present, I
6 expected you to say, yes, I want to call witness so and so.

7 But you rested your case, which means you are
8 finished presenting evidence in your case and chief.

9 MR. KEIMBAYE: Was there a reason to try to
10 kill my witness deposition first and then come up to this?

11 THE COURT: All right. I mean, we've been
12 over that already. It was --

13 MR. KEIMBAYE: I hope.

14 THE COURT: -- your responsibility --

15 MR. KEIMBAYE: Your Honor, --

16 THE COURT: -- to either get your witnesses'
17 testimony either by Zoom or in person or to provide
18 admissible evidence that the witness did not reside in King
19 County or within 20 miles of the courthouse, that the witness
20 was unavailable. And there was no admissible evidence that
21 this witness was unavailable.

22 MR. KEIMBAYE: Your Honor, your last Thursday
23 statement, I took it seriously.

24 MS. ROSEN: Your Honor, we've been over this.

25 THE COURT: We're going back over --

1 MS. BURNHAM: Yeah.

2 THE COURT: -- things that the Court already
3 ruled on.

4 So the motion is granted. The case is
5 dismissed.

6 Defense Counsel can present an order. And I
7 will ask J. to let the jurors know that they do not need to
8 report tomorrow.

9 You can certainly appeal, Mr. Keimbaye.

10 MS. BURNHAM: Thank you, Your Honor.

11 MS. ROSEN: Thank you, Your Honor.

12 THE BAILIFF: Court will stand in recess.

13 THE COURT: I think so. Thank you.

14 THE BAILIFF: All please rise.

15 (Proceedings concluded at 4:15:44 p.m.)

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CERTIFICATE OF TRANSCRIBER

I, Deborah S. Anderson, a court-approved transcriber, certify that the foregoing is a full, true, and correct transcript, transcribed to the best of my ability from the official electronic sound recording of the proceedings in the above-entitled matter;

That I am neither an attorney, not employed by, related to, nor of counsel for any of the parties named herein, nor otherwise interested in the outcome of this action.

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AAERT Certification effective until February 8, 2027

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Pertinent **WLAD** statutory excerpts (RCW 49.60.010, .020, .030(1), .180, .210)

RCW 49.60.010

Purpose of chapter.

This chapter shall be known as the "law against discrimination." It is an exercise of the police power of the state for the protection of the public welfare, health, and peace of the people of this state, and in fulfillment of the provisions of the Constitution of this state concerning civil rights. The legislature hereby finds and declares that practices of discrimination against any of its inhabitants because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability are a matter of state concern, that such discrimination threatens not only the rights and proper privileges of its inhabitants but menaces the institutions and foundation of a free democratic state. A state agency is herein created with powers with respect to elimination and prevention of discrimination in employment, in credit and insurance transactions, in places of public resort, accommodation, or amusement, and in real property transactions because of race, creed, color, national origin, citizenship or immigration status, families with children, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability; and the commission established hereunder is hereby given general jurisdiction and power for such purposes.

[2020 c 52 s 1; 2007 c 187 s 1; 2006 c 4 s 1; 1997 c 271 s 1; 1995 c 259 s 1; 1993 c 510 s 1; 1985 c 185 s 1; 1973 1st ex.s. c 214 s 1; 1973 c 141 s 1; 1969 ex.s. c 167 s 1; 1957 c 37 s 1; 1949 c 183 s 1; Rem. Supp. 1949 s 7614-20.]

NOTES:

Effective date—1995 c 259: "This act is necessary for the immediate preservation of the public peace, health, or safety, or support of the state government and its existing public institutions, and shall take effect July 1, 1995." [1995 c 259 s 7.]

Severability—1993 c 510: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1993 c 510 s 26.]

Severability—1969 ex.s. c 167: "If any provision of this act, or its application to any person or circumstance is held invalid, the remainder of the act, or the application of the provision to other persons or circumstances is not affected." [1969 ex.s. c 167 s 10.]

Severability—1957 c 37: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1957 c 37 s 27.]

Severability—1949 c 183: "If any provision of this act or the application of such provision to any person or circumstance shall be held invalid, the remainder of such act or the application of such provision to persons or circumstances other than those to which it is held invalid shall not be affected thereby." [1949 c 183 s 13.]

Community renewal law—Discrimination prohibited: RCW 35.81.170.

RCW 49.60.020

Construction of chapter—Election of other remedies.

The provisions of this chapter shall be construed liberally for the accomplishment of the purposes thereof. Nothing contained in this chapter shall be deemed to repeal any of the provisions of any other law of this state relating to discrimination because of race, color, creed, national origin, citizenship or immigration status, sex, marital status, sexual orientation, age, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability, other than a law which purports to require or permit doing any act which is an unfair practice under this chapter. However, to the extent that distinction or differential treatment on the basis of citizenship or immigration status is authorized by federal or state law, regulation, or government contract, it is not an unfair practice. Nor shall anything herein contained be construed to deny the right to any person to institute any action or pursue any civil or criminal remedy based upon an alleged violation of his or her civil rights. This chapter shall not be construed to endorse any specific belief, practice, behavior, or orientation. Inclusion of sexual orientation in this chapter shall not be construed to modify or supersede state law relating to marriage.

[2020 c 52 s 2; 2007 c 187 s 2; 2006 c 4 s 2; 1993 c 510 s 2; 1973 1st ex.s. c 214 s 2; 1973 c 141 s 2; 1957 c 37 s 2; 1949 c 183 s 12; Rem. Supp. 1949 s 7614-30.]

NOTES:

Severability—1993 c 510: See note following RCW 49.60.010.

RCW 49.60.030

Freedom from discrimination—Declaration of civil rights.

(1) The right to be free from discrimination because of race, creed, color, national origin, citizenship or immigration status, sex, honorably discharged veteran or military status, sexual orientation, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability is recognized as and declared to be a civil right. This right shall include, but not be limited to:

- (a) The right to obtain and hold employment without discrimination;
- (b) The right to the full enjoyment of any of the accommodations, advantages, facilities, or privileges of any place of public resort, accommodation, assemblage, or amusement;
- (c) The right to engage in real estate transactions without discrimination, including discrimination against families with children;
- (d) The right to engage in credit transactions without discrimination;
- (e) The right to engage in insurance transactions or transactions with health maintenance organizations without discrimination: PROVIDED, That a practice which is not unlawful under RCW 48.30.300, 48.44.220, or 48.46.370 does not constitute an unfair practice for the purposes of this subparagraph;

(f) The right to engage in commerce free from any discriminatory boycotts or blacklists. Discriminatory boycotts or blacklists for purposes of this section shall be defined as the formation or execution of any express or implied agreement, understanding, policy or contractual arrangement for economic benefit between any persons which is not specifically authorized by the laws of the United States and which is required or imposed, either directly or indirectly, overtly or covertly, by a foreign government or foreign person in order to restrict, condition, prohibit, or interfere with or in order to exclude any person or persons from any business relationship on the basis of race, color, creed, religion, sex, honorably discharged veteran or military status, sexual orientation, the presence of any sensory, mental, or physical disability, or the use of a trained dog guide or service animal by a person with a disability, or national origin, citizenship or immigration status, or lawful business relationship: PROVIDED HOWEVER, That nothing herein contained shall prohibit the use of boycotts as authorized by law pertaining to labor disputes and unfair labor practices; and

(g) The right of a mother to breastfeed her child in any place of public resort, accommodation, assemblage, or amusement.

(2) Any person deeming himself or herself injured by any act in violation of this chapter shall have a civil action in a court of competent jurisdiction to enjoin further violations, or to recover the actual damages sustained by the person, or both, together with the cost of suit including reasonable attorneys' fees or any other appropriate remedy authorized by this chapter or the United States Civil Rights Act of 1964 as amended, or the Federal Fair Housing Amendments Act of 1988 (42 U.S.C. Sec. 3601 et seq.).

(3) Except for any unfair practice committed by an employer against an employee or a prospective employee, or any unfair practice in a real estate transaction which is the basis for relief specified in the amendments to RCW 49.60.225 contained in chapter 69, Laws of 1993, any unfair practice prohibited by this chapter which is committed in the course of trade or commerce as defined in the Consumer Protection Act, chapter 19.86 RCW, is, for the purpose of applying that chapter, a matter affecting the public interest, is not reasonable in relation to the development and preservation of business, and is an unfair or deceptive act in trade or commerce.

[2020 c 52 s 4; 2009 c 164 s 1; 2007 c 187 s 3; 2006 c 4 s 3; 1997 c 271 s 2; 1995 c 135 s 3. Prior: 1993 c 510 s 3; 1993 c 69 s 1; 1984 c 32 s 2; 1979 c 127 s 2; 1977 ex.s. c 192 s 1; 1974 ex.s. c 32 s 1; 1973 1st ex.s. c 214 s 3; 1973 c 141 s 3; 1969 ex.s. c 167 s 2; 1957 c 37 s 3; 1949 c 183 s 2; Rem. Supp. 1949 s 7614-21.]

NOTES:

Intent—1995 c 135: See note following RCW [29A.08.760](#).

Severability—1993 c 510: See note following RCW [49.60.010](#).

Severability—1993 c 69: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [[1993 c 69 s 17](#).]

Severability—1969 ex.s. c 167: See note following RCW [49.60.010](#).

Severability—1957 c 37: See note following RCW [49.60.010](#).

Severability—1949 c 183: See note following RCW [49.60.010](#).



RCW 49.60.180

Unfair practices of employers.

It is an unfair practice for any employer:

(1) To refuse to hire any person because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, unless based upon a bona fide occupational qualification: PROVIDED, That the prohibition against discrimination because of such disability shall not apply if the particular disability prevents the proper performance of the particular worker involved: PROVIDED, That this section shall not be construed to require an employer to establish employment goals or quotas based on sexual orientation.

(2) To discharge or bar any person from employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability.

(3) To discriminate against any person in compensation or in other terms or conditions of employment because of age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability: PROVIDED, That it shall not be an unfair practice for an employer to segregate washrooms or locker facilities on the basis of sex, or to base other terms and conditions of employment on the sex of employees where the commission by regulation or ruling in a particular instance has found the employment practice to be appropriate for the practical realization of equality of opportunity between the sexes.

(4) To print, or circulate, or cause to be printed or circulated any statement, advertisement, or publication, or to use any form of application for employment, or to make any inquiry in connection with prospective employment, which expresses any limitation, specification, or discrimination as to age, sex, marital status, sexual orientation, race, creed, color, national origin, citizenship or immigration status, honorably discharged veteran or military status, or the presence of any sensory, mental, or physical disability or the use of a trained dog guide or service animal by a person with a disability, or any intent to make any such limitation, specification, or discrimination, unless based upon a bona fide occupational qualification: PROVIDED, Nothing contained herein shall prohibit advertising in a foreign language.

[2020 c 52 s 10; 2007 c 187 s 9; 2006 c 4 s 10; 1997 c 271 s 10; 1993 c 510 s 12; 1985 c 185 s 16; 1973 1st ex.s. c 214 s 6; 1973 c 141 s 10; 1971 ex.s. c 81 s 3; 1961 c 100 s 1; 1957 c 37 s 9. Prior: 1949 c 183 s 7, part; Rem. Supp. 1949 s 7614-26, part.]

NOTES:

Severability—1993 c 510: See note following RCW 49.60.010.

Effective date—1971 ex.s. c 81: See note following RCW 49.60.120.

Element of age not to affect apprenticeship agreements: RCW 49.04.910.

Employment rights of persons serving in uniformed services: RCW 73.16.032.

Labor—Prohibited practices: Chapter 49.44 RCW.

Unfair practices in employment because of age of employee or applicant: RCW 49.44.090.

RCW 49.60.210

Unfair practices—Discrimination against person opposing unfair practice—Retaliation against whistleblower.

(1) It is an unfair practice for any employer, employment agency, labor union, or other person to discharge, expel, or otherwise discriminate against any person because he or she has opposed any practices forbidden by this chapter, or because he or she has filed a charge, testified, or assisted in any proceeding under this chapter.

(2) It is an unfair practice for a government agency or government manager or supervisor to retaliate against a whistleblower as defined in chapter 42.40 RCW.

(3) It is an unfair practice for any employer, employment agency, labor union, government agency, government manager, or government supervisor to discharge, expel, discriminate, or otherwise retaliate against an individual assisting with an office of fraud and accountability investigation under RCW 74.04.012, unless the individual has willfully disregarded the truth in providing information to the office.

[2011 1st sp.s. c 42 s 25; 1992 c 118 s 4; 1985 c 185 s 18; 1957 c 37 s 12. Prior: 1949 c 183 s 7, part; Rem. Supp. 1949 s 7614-26, part.]

NOTES:

Findings—Intent—Effective date—2011 1st sp.s. c 42: See notes following RCW 74.08A.260.

Finding—2011 1st sp.s. c 42: See note following RCW 74.04.004.

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Relevant Title VII excerpts (42 U.S.C. § 2000e et seq.)



Title VII of the Civil Rights Act of 1964

*EDITOR'S NOTE: The following is the text of Title VII of the Civil Rights Act of 1964 (Title VII) (Pub. L. 88-352), as amended. Title VII is codified at 42 U.S.C. 2000e and in subsequent sections. Title VII amendments include those introduced by the **Civil Rights Act of 1991** (<https://www.eeoc.gov/statutes/civil-rights-act-1991>) (CRA) and the **Lilly Ledbetter Fair Pay Act of 2009** (<https://www.eeoc.gov/lilly-ledbetter-fair-pay-act-2009-original-text>). Editor's notes appear in italics and include cross-references to the codified version of Title VII. Title VII prohibits employment discrimination based on race, color, religion, sex and national origin.*

An Act

To enforce the constitutional right to vote, to confer jurisdiction upon the district courts of the United States to provide injunctive relief against discrimination in public accommodations, to authorize the attorney General to institute suits to protect constitutional rights in public facilities and public education, to extend the Commission on Civil Rights, to prevent discrimination in federally assisted programs, to establish a Commission on Equal Employment Opportunity, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Civil Rights Act of 1964".

* * *

DEFINITIONS

SEC. 2000e. *[Section 701]*

For the purposes of this subchapter-

(a) The term "person" includes one or more individuals, governments, governmental agencies, political subdivisions, labor unions, partnerships, associations, corporations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 *[originally, bankruptcy]*, or receivers.

(b) The term "employer" means a person engaged in an industry affecting commerce who has fifteen or more employees for each working day in each of twenty or more calendar weeks in the current or preceding calendar year, and any agent of such a person, but such term does not include (1) the United States, a corporation wholly owned by the Government of the United States, an Indian tribe, or any department or agency of the District of Columbia subject by statute to procedures of the competitive service (as defined in section 2102 of Title 5 *[United States Code]*), or

(2) a bona fide private membership club (other than a labor organization) which is exempt from taxation under section 501(c) of Title 26 *[the Internal Revenue Code of 1986]*, except that during the first year after March 24, 1972 *[the date of enactment of the Equal Employment Opportunity Act of 1972]*, persons having fewer than twenty-five employees (and their agents) shall not be considered employers.

(c) The term "employment agency" means any person regularly undertaking with or without compensation to procure employees for an employer or to procure for employees opportunities to work for an employer and includes an agent of such a person.

(d) The term "labor organization" means a labor organization engaged in an industry affecting commerce, and any agent of such an organization, and includes any organization of any kind, any agency, or employee representation committee, group, association, or plan so engaged in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours, or other terms or conditions of employment, and any conference, general committee, joint or system board, or

joint council so engaged which is subordinate to a national or international labor organization.

(e) A labor organization shall be deemed to be engaged in an industry affecting commerce if (1) it maintains or operates a hiring hall or hiring office which procures employees for an employer or procures for employees opportunities to work for an employer, or (2) the number of its members (or, where it is a labor organization composed of other labor organizations or their representatives, if the aggregate number of the members of such other labor organization) is (A) twenty-five or more during the first year after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], or (B) fifteen or more thereafter, and such labor organization-

(1) is the certified representative of employees under the provisions of the National Labor Relations Act, as amended [*29 U.S.C. 151 et seq.*], or the Railway Labor Act, as amended [*45 U.S.C. 151 et seq.*];

(2) although not certified, is a national or international labor organization or a local labor organization recognized or acting as the representative of employees of an employer or employers engaged in an industry affecting commerce; or

(3) has chartered a local labor organization or subsidiary body which is representing or actively seeking to represent employees of employers within the meaning of paragraph (1) or (2); or

(4) has been chartered by a labor organization representing or actively seeking to represent employees within the meaning of paragraph (1) or (2) as the local or subordinate body through which such employees may enjoy membership or become affiliated with such labor organization; or

(5) is a conference, general committee, joint or system board, or joint council subordinate to a national or international labor organization, which includes a labor organization engaged in an industry affecting commerce within the meaning of any of the preceding paragraphs of this subsection.

(f) The term "employee" means an individual employed by an employer, except that the term "employee" shall not include any person elected to public office in any State or political subdivision of any State by the qualified voters thereof, or any

person chosen by such officer to be on such officer's personal staff, or an appointee on the policy making level or an immediate adviser with respect to the exercise of the constitutional or legal powers of the office. The exemption set forth in the preceding sentence shall not include employees subject to the civil service laws of a State government, governmental agency or political subdivision. With respect to employment in a foreign country, such term includes an individual who is a citizen of the United States.

(g) The term "commerce" means trade, traffic, commerce, transportation, transmission, or communication among the several States; or between a State and any place outside thereof; or within the District of Columbia, or a possession of the United States; or between points in the same State but through a point outside thereof.

(h) The term "industry affecting commerce" means any activity, business, or industry in commerce or in which a labor dispute would hinder or obstruct commerce or the free flow of commerce and includes any activity or industry "affecting commerce" within the meaning of the Labor-Management Reporting and Disclosure Act of 1959 [29 U.S.C. 401 et seq.], and further includes any governmental industry, business, or activity.

(i) The term "State" includes a State of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, Guam, Wake Island, the Canal Zone, and Outer Continental Shelf lands defined in the Outer Continental Shelf Lands Act [43 U.S.C. 1331 et seq.].

(j) The term "religion" includes all aspects of religious observance and practice, as well as belief, unless an employer demonstrates that he is unable to reasonably accommodate to an employee's or prospective employee's religious observance or practice without undue hardship on the conduct of the employer's business.

(k) The terms "because of sex" or "on the basis of sex" include, but are not limited to, because of or on the basis of pregnancy, childbirth, or related medical conditions; and women affected by pregnancy, childbirth, or related medical conditions shall be treated the same for all employment-related purposes, including receipt of benefits under fringe benefit programs, as other persons not so affected but similar in their ability or inability to work, and nothing in section 2000e-2(h) of this title [section 703(h)] shall be interpreted to permit otherwise. This subsection shall not require an employer to pay for health insurance benefits for abortion,

except where the life of the mother would be endangered if the fetus were carried to term, or except where medical complications have arisen from an abortion: Provided, That nothing herein shall preclude an employer from providing abortion benefits or otherwise affect bargaining agreements in regard to abortion.

(l) The term "complaining party" means the Commission, the Attorney General, or a person who may bring an action or proceeding under this subchapter.

(m) The term "demonstrates" means meets the burdens of production and persuasion.

(n) The term "respondent" means an employer, employment agency, labor organization, joint labor management committee controlling apprenticeship or other training or retraining program, including an on-the-job training program, or Federal entity subject to section 2000e-16 of this title.

APPLICABILITY TO FOREIGN AND RELIGIOUS EMPLOYMENT

SEC. 2000e-1. *[Section 702]*

(a) Inapplicability of subchapter to certain aliens and employees of religious entities

This subchapter shall not apply to an employer with respect to the employment of aliens outside any State, or to a religious corporation, association, educational institution, or society with respect to the employment of individuals of a particular religion to perform work connected with the carrying on by such corporation, association, educational institution, or society of its activities.

(b) Compliance with statute as violative of foreign law

It shall not be unlawful under section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* for an employer (or a corporation controlled by an employer), labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining (including on-the-job training programs) to take any action otherwise prohibited by such section, with respect to an employee in a workplace in a foreign country if compliance with such section would cause such employer (or such corporation), such organization, such

agency, or such committee to violate the law of the foreign country in which such workplace is located.

(c) Control of corporation incorporated in foreign country

(1) If an employer controls a corporation whose place of incorporation is a foreign country, any practice prohibited by section 2000e-2 or 2000e-3 of this title *[section 703 or 704]* engaged in by such corporation shall be presumed to be engaged in by such employer.

(2) Sections 2000e-2 and 2000e-3 of this title *[sections 703 and 704]* shall not apply with respect to the foreign operations of an employer that is a foreign person not controlled by an American employer.

(3) For purposes of this subsection, the determination of whether an employer controls a corporation shall be based on-

(A) the interrelation of operations;

(B) the common management;

(C) the centralized control of labor relations; and

(D) the common ownership or financial control, of the employer and the corporation.

UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-2. *[Section 703]*

(a) Employer practices

It shall be an unlawful employment practice for an employer -

(1) to fail or refuse to hire or to discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin; or

(2) to limit, segregate, or classify his employees or applicants for employment in any way which would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin.

(b) Employment agency practices

It shall be an unlawful employment practice for an employment agency to fail or refuse to refer for employment, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin, or to classify or refer for employment any individual on the basis of his race, color, religion, sex, or national origin.

(c) Labor organization practices

It shall be an unlawful employment practice for a labor organization-

(1) to exclude or to expel from its membership, or otherwise to discriminate against, any individual because of his race, color, religion, sex, or national origin;

(2) to limit, segregate, or classify its membership or applicants for membership, or to classify or fail or refuse to refer for employment any individual, in any way which would deprive or tend to deprive any individual of employment opportunities, or would limit such employment opportunities or otherwise adversely affect his status as an employee or as an applicant for employment, because of such individual's race, color, religion, sex, or national origin; or

(3) to cause or attempt to cause an employer to discriminate against an individual in violation of this section.

(d) Training programs

It shall be an unlawful employment practice for any employer, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs to discriminate against any individual because of his race, color, religion, sex, or national origin in admission to,

or employment in, any program established to provide apprenticeship or other training.

(e) Businesses or enterprises with personnel qualified on basis of religion, sex, or national origin; educational institutions with personnel of particular religion

Notwithstanding any other provision of this subchapter, (1) it shall not be an unlawful employment practice for an employer to hire and employ employees, for an employment agency to classify, or refer for employment any individual, for a labor organization to classify its membership or to classify or refer for employment any individual, or for an employer, labor organization, or joint labor management committee controlling apprenticeship or other training or retraining programs to admit or employ any individual in any such program, on the basis of his religion, sex, or national origin in those certain instances where religion, sex, or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise, and (2) it shall not be an unlawful employment practice for a school, college, university, or other educational institution or institution of learning to hire and employ employees of a particular religion if such school, college, university, or other educational institution or institution of learning is, in whole or in substantial part, owned, supported, controlled, or managed by a particular religion or by a particular religious corporation, association, or society, or if the curriculum of such school, college, university, or other educational institution or institution of learning is directed toward the propagation of a particular religion.

(f) Members of Communist Party or Communist-action or Communist-front organizations

As used in this subchapter, the phrase "unlawful employment practice" shall not be deemed to include any action or measure taken by an employer, labor organization, joint labor management committee, or employment agency with respect to an individual who is a member of the Communist Party of the United States or of any other organization required to register as a Communist-action or Communist-front organization by final order of the Subversive Activities Control Board pursuant to the Subversive Activities Control Act of 1950 [50 U.S.C. 781 et seq.].

(g) National security

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to fail or refuse to hire and employ any individual for any position, for an employer to discharge any individual from any position, or for an employment agency to fail or refuse to refer any individual for employment in any position, or for a labor organization to fail or refuse to refer any individual for employment in any position, if-

(1) the occupancy of such position, or access to the premises in or upon which any part of the duties of such position is performed or is to be performed, is subject to any requirement imposed in the interest of the national security of the United States under any security program in effect pursuant to or administered under any statute of the United States or any Executive order of the President; and

(2) such individual has not fulfilled or has ceased to fulfill that requirement.

(h) Seniority or merit system; quantity or quality of production; ability tests; compensation based on sex and authorized by minimum wage provisions

Notwithstanding any other provision of this subchapter, it shall not be an unlawful employment practice for an employer to apply different standards of compensation, or different terms, conditions, or privileges of employment pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion, sex, or national origin, nor shall it be an unlawful employment practice for an employer to give and to act upon the results of any professionally developed ability test provided that such test, its administration or action upon the results is not designed, intended or used to discriminate because of race, color, religion, sex or national origin. It shall not be an unlawful employment practice under this subchapter for any employer to differentiate upon the basis of sex in determining the amount of the wages or compensation paid or to be paid to employees of such employer if such differentiation is authorized by the provisions of section 206(d) of Title 29 [*section 6(d) of the Labor Standards Act of 1938, as amended*].

(i) Businesses or enterprises extending preferential treatment to Indians

Nothing contained in this subchapter shall apply to any business or enterprise on or near an Indian reservation with respect to any publicly announced employment practice of such business or enterprise under which a preferential treatment is given to any individual because he is an Indian living on or near a reservation.

(j) Preferential treatment not to be granted on account of existing number or percentage imbalance

Nothing contained in this subchapter shall be interpreted to require any employer, employment agency, labor organization, or joint labor-management committee subject to this subchapter to grant preferential treatment to any individual or to any group because of the race, color, religion, sex, or national origin of such individual or group on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin employed by any employer, referred or classified for employment by any employment agency or labor organization, admitted to membership or classified by any labor organization, or admitted to, or employed in, any apprenticeship or other training program, in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section, or other area, or in the available work force in any community, State, section, or other area.

(k) Burden of proof in disparate impact cases

(1) (A) An unlawful employment practice based on disparate impact is established under this subchapter only if-

(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or

(ii) the complaining party makes the demonstration described in subparagraph (C) with respect to an alternative employment practice and the respondent refuses to adopt such alternative employment practice.

(B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i),

the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent's decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice.

(ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.

(C) The demonstration referred to by subparagraph (A)(ii) shall be in accordance with the law as it existed on June 4, 1989, with respect to the concept of "alternative employment practice".

(2) A demonstration that an employment practice is required by business necessity may not be used as a defense against a claim of intentional discrimination under this subchapter.

(3) Notwithstanding any other provision of this subchapter, a rule barring the employment of an individual who currently and knowingly uses or possesses a controlled substance, as defined in schedules I and II of section 102(6) of the Controlled Substances Act (21 U.S.C. 802(6)), other than the use or possession of a drug taken under the supervision of a licensed health care professional, or any other use or possession authorized by the Controlled Substances Act [21 U.S.C. 801 et seq.] or any other provision of Federal law, shall be considered an unlawful employment practice under this subchapter only if such rule is adopted or applied with an intent to discriminate because of race, color, religion, sex, or national origin.

(l) Prohibition of discriminatory use of test scores

It shall be an unlawful employment practice for a respondent, in connection with the selection or referral of applicants or candidates for employment or promotion, to adjust the scores of, use different cutoff scores for, or otherwise alter the results of, employment related tests on the basis of race, color, religion, sex, or national origin.

(m) Impermissible consideration of race, color, religion, sex, or national origin in employment practices

Except as otherwise provided in this subchapter, an unlawful employment practice is established when the complaining party demonstrates that race, color, religion, sex, or national origin was a motivating factor for any employment practice, even though other factors also motivated the practice.

(n) Resolution of challenges to employment practices implementing litigated or consent judgments or orders

(1) (A) Notwithstanding any other provision of law, and except as provided in paragraph (2), an employment practice that implements and is within the scope of a litigated or consent judgment or order that resolves a claim of employment discrimination under the Constitution or Federal civil rights laws may not be challenged under the circumstances described in subparagraph (B).

(B) A practice described in subparagraph (A) may not be challenged in a claim under the Constitution or Federal civil rights laws-

(i) by a person who, prior to the entry of the judgment or order described in subparagraph (A), had-

(I) actual notice of the proposed judgment or order sufficient to apprise such person that such judgment or order might adversely affect the interests and legal rights of such person and that an opportunity was available to present objections to such judgment or order by a future date certain; and

(II) a reasonable opportunity to present objections to such judgment or order; or

(ii) by a person whose interests were adequately represented by another person who had previously challenged the judgment or order on the same legal grounds and with a similar factual situation, unless there has been an intervening change in law or fact.

(2) Nothing in this subsection shall be construed to-

(A) alter the standards for intervention under rule 24 of the Federal Rules of Civil Procedure or apply to the rights of parties who have successfully intervened pursuant to such rule in the proceeding in which the parties intervened;

(B) apply to the rights of parties to the action in which a litigated or consent judgment or order was entered, or of members of a class represented or sought to be represented in such action, or of members of a group on whose behalf relief was sought in such action by the Federal Government;

(C) prevent challenges to a litigated or consent judgment or order on the ground that such judgment or order was obtained through collusion or fraud, or is transparently invalid or was entered by a court lacking subject matter jurisdiction; or

(D) authorize or permit the denial to any person of the due process of law required by the Constitution.

(3) Any action not precluded under this subsection that challenges an employment consent judgment or order described in paragraph (1) shall be brought in the court, and if possible before the judge, that entered such judgment or order. Nothing in this subsection shall preclude a transfer of such action pursuant to section 1404 of Title 28 [*United States Code*].

OTHER UNLAWFUL EMPLOYMENT PRACTICES

SEC. 2000e-3. [*Section 704*]

(a) Discrimination for making charges, testifying, assisting, or participating in enforcement proceedings

It shall be an unlawful employment practice for an employer to discriminate against any of his employees or applicants for employment, for an employment agency, or joint labor-management committee controlling apprenticeship or other training or

retraining, including on—the-job training programs, to discriminate against any individual, or for a labor organization to discriminate against any member thereof or applicant for membership, because he has opposed any practice made an unlawful employment practice by this subchapter, or because he has made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this subchapter.

(b) Printing or publication of notices or advertisements indicating prohibited preference, limitation, specification, or discrimination; occupational qualification exception

It shall be an unlawful employment practice for an employer, labor organization, employment agency, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, to print or publish or cause to be printed or published any notice or advertisement relating to employment by such an employer or membership in or any classification or referral for employment by such a labor organization, or relating to any classification or referral for employment by such an employment agency, or relating to admission to, or employment in, any program established to provide apprenticeship or other training by such a joint labor-management committee, indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin, except that such a notice or advertisement may indicate a preference, limitation, specification, or discrimination based on religion, sex, or national origin when religion, sex, or national origin is a bona fide occupational qualification for employment.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

SEC. 2000e-4. *[Section 705]*

(a) Creation; composition; political representation; appointment; term; vacancies; Chairman and Vice Chairman; duties of Chairman; appointment of personnel; compensation of personnel

There is hereby created a Commission to be known as the Equal Employment Opportunity Commission, which shall be composed of five members, not more than

three of whom shall be members of the same political party. Members of the Commission shall be appointed by the President by and with the advice and consent of the Senate for a term of five years. Any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed, and all members of the Commission shall continue to serve until their successors are appointed and qualified, except that no such member of the Commission shall continue to serve (1) for more than sixty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted. The President shall designate one member to serve as Chairman of the Commission, and one member to serve as Vice Chairman. The Chairman shall be responsible on behalf of the Commission for the administrative operations of the Commission, and, except as provided in subsection (b) of this section, shall appoint, in accordance with the provisions of Title 5 [*United States Code*] governing appointments in the competitive service, such officers, agents, attorneys, administrative law judges [*originally, hearing examiners*], and employees as he deems necessary to assist it in the performance of its functions and to fix their compensation in accordance with the provisions of chapter 51 and subchapter III of chapter 53 of Title 5 [*United States Code*], relating to classification and General Schedule pay rates: Provided, That assignment, removal, and compensation of administrative law judges [*originally, hearing examiners*] shall be in accordance with sections 3105, 3344, 5372, and 7521 of Title 5 [*United States Code*].

(b) General Counsel; appointment; term; duties; representation by attorneys and Attorney General

(1) There shall be a General Counsel of the Commission appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel shall have responsibility for the conduct of litigation as provided in sections 2000e-5 and 2000e-6 of this title [*sections 706 and 707*]. The General Counsel shall have such other duties as the Commission may prescribe or as may be provided by law and shall concur with the Chairman of the Commission on the appointment and supervision of regional attorneys. The General Counsel of the Commission on the effective date of this Act shall continue in such position and perform the functions specified in this subsection until a successor is appointed and qualified.

(2) Attorneys appointed under this section may, at the direction of the Commission, appear for and represent the Commission in any case in court, provided that the Attorney General shall conduct all litigation to which the Commission is a party in the Supreme Court pursuant to this subchapter.

(c) Exercise of powers during vacancy; quorum

A vacancy in the Commission shall not impair the right of the remaining members to exercise all the powers of the Commission and three members thereof shall constitute a quorum.

(d) Seal; judicial notice

The Commission shall have an official seal which shall be judicially noticed.

(e) Reports to Congress and the President

The Commission shall at the close of each fiscal year report to the Congress and to the President concerning the action it has taken [*originally, the names, salaries, and duties of all individuals in its employ*] and the moneys it has disbursed. It shall make such further reports on the cause of and means of eliminating discrimination and such recommendations for further legislation as may appear desirable.

(f) Principal and other offices

The principal office of the Commission shall be in or near the District of Columbia, but it may meet or exercise any or all its powers at any other place. The Commission may establish such regional or State offices as it deems necessary to accomplish the purpose of this subchapter.

(g) Powers of Commission

The Commission shall have power-

(1) to cooperate with and, with their consent, utilize regional, State, local, and other agencies, both public and private, and individuals;

(2) to pay to witnesses whose depositions are taken or who are summoned before the Commission or any of its agents the same witness

and mileage fees as are paid to witnesses in the courts of the United States;

(3) to furnish to persons subject to this subchapter such technical assistance as they may request to further their compliance with this subchapter or an order issued thereunder;

(4) upon the request of (i) any employer, whose employees or some of them, or (ii) any labor organization, whose members or some of them, refuse or threaten to refuse to cooperate in effectuating the provisions of this subchapter, to assist in such effectuation by conciliation or such other remedial action as is provided by this subchapter;

(5) to make such technical studies as are appropriate to effectuate the purposes and policies of this subchapter and to make the results of such studies available to the public;

(6) to intervene in a civil action brought under section 2000e-5 of this title *[section 706]* by an aggrieved party against a respondent other than a government, governmental agency or political subdivision.

(h) Cooperation with other departments and agencies in performance of educational or promotional activities; outreach activities

(1) The Commission shall, in any of its educational or promotional activities, cooperate with other departments and agencies in the performance of such educational and promotional activities.

(2) In exercising its powers under this subchapter, the Commission shall carry out educational and outreach activities (including dissemination of information in languages other than English) targeted to-

(A) individuals who historically have been victims of employment discrimination and have not been equitably served by the Commission; and

(B) individuals on whose behalf the Commission has authority to enforce any other law prohibiting employment discrimination, concerning rights and obligations under this subchapter or such law, as the case may be.

(i) Personnel subject to political activity restrictions

All officers, agents, attorneys, and employees of the Commission shall be subject to the provisions of section 7324 of Title 5 [*originally, section 9 of the Act of August 2, 1939, as amended (the Hatch Act)*], notwithstanding any exemption contained in such section.

(j) Technical Assistance Training Institute

(1) The Commission shall establish a Technical Assistance Training Institute, through which the Commission shall provide technical assistance and training regarding the laws and regulations enforced by the Commission.

(2) An employer or other entity covered under this subchapter shall not be excused from compliance with the requirements of this subchapter because of any failure to receive technical assistance under this subsection.

(3) There are authorized to be appropriated to carry out this subsection such sums as may be necessary for fiscal year 1992.

(k) EEOC Education, Technical Assistance, and Training Revolving Fund

(1) There is hereby established in the Treasury of the United States a revolving fund to be known as the "EEOC Education, Technical Assistance, and Training Revolving Fund" (hereinafter in this subsection referred to as the "Fund") and to pay the cost (including administrative and personnel expenses) of providing education, technical assistance, and training relating to laws administered by the Commission. Monies in the Fund shall be available without fiscal year limitation to the Commission for such purposes.

(2)(A) The Commission shall charge fees in accordance with the provisions of this paragraph to offset the costs of education, technical assistance, and training provided with monies in the Fund. Such fees for any education, technical assistance, or training--

(i) shall be imposed on a uniform basis on persons and entities receiving such education, assistance, or training,

(ii) shall not exceed the cost of providing such education, assistance, and training, and

(iii) with respect to each person or entity receiving such education, assistance, or training, shall bear a reasonable relationship to the cost of providing such education, assistance, or training to such person or entity.

(B) Fees received under subparagraph (A) shall be deposited in the Fund by the Commission.

(C) The Commission shall include in each report made under subsection (e) of this section information with respect to the operation of the Fund, including information, presented in the aggregate, relating to--

(i) the number of persons and entities to which the Commission provided education, technical assistance, or training with monies in the Fund, in the fiscal year for which such report is prepared,

(ii) the cost to the Commission to provide such education, technical assistance, or training to such persons and entities, and

(iii) the amount of any fees received by the Commission from such persons and entities for such education, technical assistance, or training.

(3) The Secretary of the Treasury shall invest the portion of the Fund not required to satisfy current expenditures from the Fund, as determined by the Commission, in obligations of the United States or obligations guaranteed as to principal by the United States. Investment proceeds shall be deposited in the Fund.

(4) There is hereby transferred to the Fund \$1,000,000 from the Salaries and Expenses appropriation of the Commission.

ENFORCEMENT PROVISIONS

SEC. 2000e-5. *[Section 706]*

(a) Power of Commission to prevent unlawful employment practices

The Commission is empowered, as hereinafter provided, to prevent any person from engaging in any unlawful employment practice as set forth in section 2000e-2 or 2000e-3 of this title *[section 703 or 704]*.

(b) Charges by persons aggrieved or member of Commission of unlawful employment practices by employers, etc.; filing; allegations; notice to respondent; contents of notice; investigation by Commission; contents of charges; prohibition on disclosure of charges; determination of reasonable cause; conference, conciliation, and persuasion for elimination of unlawful practices; prohibition on disclosure of informal endeavors to end unlawful practices; use of evidence in subsequent proceedings; penalties for disclosure of information; time for determination of reasonable cause

Whenever a charge is filed by or on behalf of a person claiming to be aggrieved, or by a member of the Commission, alleging that an employer, employment agency, labor organization, or joint labor-management committee controlling apprenticeship or other training or retraining, including on-the-job training programs, has engaged in an unlawful employment practice, the Commission shall serve a notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) on such employer, employment agency, labor organization, or joint labor-management committee (hereinafter referred to as the "respondent") within ten days, and shall make an investigation thereof. Charges shall be in writing under oath or affirmation and shall contain such information and be in such form as the Commission requires. Charges shall not be made public by the Commission. If the Commission determines after such investigation that there is not reasonable cause to believe that the charge is true, it shall dismiss the charge and promptly notify the person claiming to be aggrieved and the respondent of its action. In determining whether reasonable cause exists, the Commission shall accord substantial weight to final findings and orders made by State or local authorities in proceedings commenced under State or local law pursuant to the requirements of subsections (c) and (d) of this section. If the Commission determines after such investigation that there is reasonable cause to believe that the charge is true, the Commission shall endeavor to eliminate any such alleged unlawful employment practice by informal methods of conference, conciliation, and persuasion. Nothing said or done during and as a part of such informal endeavors may be made public by the Commission, its officers or employees, or used as evidence in a subsequent proceeding without the written consent of the persons concerned. Any person who makes public information in violation of this subsection

shall be fined not more than \$1,000 or imprisoned for not more than one year, or both. The Commission shall make its determination on reasonable cause as promptly as possible and, so far as practicable, not later than one hundred and twenty days from the filing of the charge or, where applicable under subsection (c) or (d) of this section, from the date upon which the Commission is authorized to take action with respect to the charge.

(c) State or local enforcement proceedings; notification of State or local authority; time for filing charges with Commission; commencement of proceedings

In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (a) of this section by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

(d) State or local enforcement proceedings; notification of State or local authority; time for action on charges by Commission

In the case of any charge filed by a member of the Commission alleging an unlawful employment practice occurring in a State or political subdivision of a State which has a State or local law prohibiting the practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, the Commission shall, before taking any action with respect to such charge, notify the appropriate State or local officials and, upon request, afford them a reasonable time, but not less than sixty days (provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective

day of such State or local law), unless a shorter period is requested, to act under such State or local law to remedy the practice alleged.

(e) Time for filing charges; time for service of notice of charge on respondent; filing of charge by Commission with State or local agency; seniority system

(1) A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

(2) For purposes of this section, an unlawful employment practice occurs, with respect to a seniority system that has been adopted for an intentionally discriminatory purpose in violation of this subchapter (whether or not that discriminatory purpose is apparent on the face of the seniority provision), when the seniority system is adopted, when an individual becomes subject to the seniority system, or when a person aggrieved is injured by the application of the seniority system or provision of the system.

(3)(A) For purposes of this section, an unlawful employment practice occurs, with respect to discrimination in compensation in violation of this title, when a discriminatory compensation decision or other practice is adopted, when an individual becomes subject to a discriminatory compensation decision or other practice, or when an individual is affected by application of a discriminatory compensation decision or other practice, including each time wages, benefits, or other

compensation is paid, resulting in whole or in part from such a decision or other practice.

(B) In addition to any relief authorized by section 1977A of the Revised Statutes (42 U.S.C. 1981a), liability may accrue and an aggrieved person may obtain relief as provided in subsection (g)(1), including recovery of back pay for up to two years preceding the filing of the charge, where the unlawful employment practices that have occurred during the charge filing period are similar or related to unlawful employment practices with regard to discrimination in compensation that occurred outside the time for filing a charge.

(f) Civil action by Commission, Attorney General, or person aggrieved; preconditions; procedure; appointment of attorney; payment of fees, costs, or security; intervention; stay of Federal proceedings; action for appropriate temporary or preliminary relief pending final disposition of charge; jurisdiction and venue of United States courts; designation of judge to hear and determine case; assignment of case for hearing; expedition of case; appointment of master

(1) If within thirty days after a charge is filed with the Commission or within thirty days after expiration of any period of reference under subsection (c) or (d) of this section, the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission may bring a civil action against any respondent not a government, governmental agency, or political subdivision named in the charge. In the case of a respondent which is a government, governmental agency, or political subdivision, if the Commission has been unable to secure from the respondent a conciliation agreement acceptable to the Commission, the Commission shall take no further action and shall refer the case to the Attorney General who may bring a civil action against such respondent in the appropriate United States district court. The person or persons aggrieved shall have the right to intervene in a civil action brought by the Commission or the Attorney General in a case involving a government, governmental agency, or political subdivision. If a charge filed with the Commission pursuant to subsection (b) of this section is

dismissed by the Commission, or if within one hundred and eighty days from the filing of such charge or the expiration of any period of reference under subsection (c) or (d) of this section, whichever is later, the Commission has not filed a civil action under this section or the Attorney General has not filed a civil action in a case involving a government, governmental agency, or political subdivision, or the Commission has not entered into a conciliation agreement to which the person aggrieved is a party, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, shall so notify the person aggrieved and within ninety days after the giving of such notice a civil action may be brought against the respondent named in the charge (A) by the person claiming to be aggrieved or (B) if such charge was filed by a member of the Commission, by any person whom the charge alleges was aggrieved by the alleged unlawful employment practice. Upon application by the complainant and in such circumstances as the court may deem just, the court may appoint an attorney for such complainant and may authorize the commencement of the action without the payment of fees, costs, or security. Upon timely application, the court may, in its discretion, permit the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, to intervene in such civil action upon certification that the case is of general public importance. Upon request, the court may, in its discretion, stay further proceedings for not more than sixty days pending the termination of State or local proceedings described in subsection (c) or (d) of this section or further efforts of the Commission to obtain voluntary compliance.

(2) Whenever a charge is filed with the Commission and the Commission concludes on the basis of a preliminary investigation that prompt judicial action is necessary to carry out the purposes of this Act, the Commission, or the Attorney General in a case involving a government, governmental agency, or political subdivision, may bring an action for appropriate temporary or preliminary relief pending final disposition of such charge. Any temporary restraining order or other order granting preliminary or temporary relief shall be issued in accordance with rule 65 of the Federal Rules of Civil Procedure. It shall be the duty of a court having jurisdiction over proceedings under this section to assign cases

for hearing at the earliest practicable date and to cause such cases to be in every way expedited.

(3) Each United States district court and each United States court of a place subject to the jurisdiction of the United States shall have jurisdiction of actions brought under this subchapter. Such an action may be brought in any judicial district in the State in which the unlawful employment practice is alleged to have been committed, in the judicial district in which the employment records relevant to such practice are maintained and administered, or in the judicial district in which the aggrieved person would have worked but for the alleged unlawful employment practice, but if the respondent is not found within any such district, such an action may be brought within the judicial district in which the respondent has his principal office. For purposes of sections 1404 and 1406 of Title 28 [*United States Code*], the judicial district in which the respondent has his principal office shall in all cases be considered a district in which the action might have been brought.

(4) It shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

(5) It shall be the duty of the judge designated pursuant to this subsection to assign the case for hearing at the earliest practicable date and to cause the case to be in every way expedited. If such judge has not scheduled the case for trial within one hundred and twenty days after issue has been joined, that judge may appoint a master pursuant to rule 53 of the Federal Rules of Civil Procedure.

(g) Injunctions; appropriate affirmative action; equitable relief; accrual of back pay; reduction of back pay; limitations on judicial orders

(1) If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in

the complaint, the court may enjoin the respondent from engaging in such unlawful employment practice, and order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay (payable by the employer, employment agency, or labor organization, as the case may be, responsible for the unlawful employment practice), or any other equitable relief as the court deems appropriate. Back pay liability shall not accrue from a date more than two years prior to the filing of a charge with the Commission. Interim earnings or amounts earnable with reasonable diligence by the person or persons discriminated against shall operate to reduce the back pay otherwise allowable.

(2) (A) No order of the court shall require the admission or reinstatement of an individual as a member of a union, or the hiring, reinstatement, or promotion of an individual as an employee, or the payment to him of any back pay, if such individual was refused admission, suspended, or expelled, or was refused employment or advancement or was suspended or discharged for any reason other than discrimination on account of race, color, religion, sex, or national origin or in violation of section 2000e-3(a) of this Title *[section 704(a)]*.

(B) On a claim in which an individual proves a violation under section 2000e-2(m) of this title *[section 703(m)]* and a respondent demonstrates that the respondent would have taken the same action in the absence of the impermissible motivating factor, the court-

- (i) may grant declaratory relief, injunctive relief (except as provided in clause (ii)), and attorney's fees and costs demonstrated to be directly attributable only to the pursuit of a claim under section 2000e-2(m) of this title *[section 703(m)]*; and

- (ii) shall not award damages or issue an order requiring any admission, reinstatement, hiring, promotion, or payment, described in subparagraph (A).

(h) Provisions of chapter 6 of Title 29 not applicable to civil actions for prevention of unlawful practices

The provisions of chapter 6 of title 29 [*the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes," approved March 23, 1932 (29 U.S.C. 105-115)*] shall not apply with respect to civil actions brought under this section.

(i) Proceedings by Commission to compel compliance with judicial orders In any case in which an employer, employment agency, or labor organization fails to comply with an order of a court issued in a civil action brought under this section, the Commission may commence proceedings to compel compliance with such order.

(j) Appeals

Any civil action brought under this section and any proceedings brought under subsection (i) of this section shall be subject to appeal as provided in sections 1291 and 1292, Title 28 [*United States Code*].

(k) Attorney's fee; liability of Commission and United States for costs

In any action or proceeding under this subchapter the court, in its discretion, may allow the prevailing party, other than the Commission or the United States, a reasonable attorney's fee (including expert fees) as part of the costs, and the Commission and the United States shall be liable for costs the same as a private person.

CIVIL ACTIONS BY THE ATTORNEY GENERAL

SEC. 2000e-6. [*Section 707*]

(a) Complaint

Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights secured by this subchapter, and that the pattern or practice is of such a nature and is intended to deny the full exercise of the rights herein described, the Attorney General may bring a civil action in the appropriate district court of the United States by filing with it a complaint (1) signed by him (or in

his absence the Acting Attorney General), (2) setting forth facts pertaining to such pattern or practice, and (3) requesting such relief, including an application for a permanent or temporary injunction, restraining order or other order against the person or persons responsible for such pattern or practice, as he deems necessary to insure the full enjoyment of the rights herein described.

(b) Jurisdiction; three-judge district court for cases of general public importance: hearing, determination, expedition of action, review by Supreme Court; single judge district court: hearing, determination, expedition of action

The district courts of the United States shall have and shall exercise jurisdiction of proceedings instituted pursuant to this section, and in any such proceeding the Attorney General may file with the clerk of such court a request that a court of three judges be convened to hear and determine the case. Such request by the Attorney General shall be accompanied by a certificate that, in his opinion, the case is of general public importance. A copy of the certificate and request for a three-judge court shall be immediately furnished by such clerk to the chief judge of the circuit (or in his absence, the presiding circuit judge of the circuit) in which the case is pending. Upon receipt of such request it shall be the duty of the chief judge of the circuit or the presiding circuit judge, as the case may be, to designate immediately three judges in such circuit, of whom at least one shall be a circuit judge and another of whom shall be a district judge of the court in which the proceeding was instituted, to hear and determine such case, and it shall be the duty of the judges so designated to assign the case for hearing at the earliest practicable date, to participate in the hearing and determination thereof, and to cause the case to be in every way expedited. An appeal from the final judgment of such court will lie to the Supreme Court.

In the event the Attorney General fails to file such a request in any such proceeding, it shall be the duty of the chief judge of the district (or in his absence, the acting chief judge) in which the case is pending immediately to designate a judge in such district to hear and determine the case. In the event that no judge in the district is available to hear and determine the case, the chief judge of the district, or the acting chief judge, as the case may be, shall certify this fact to the chief judge of the circuit (or in his absence, the acting chief judge) who shall then designate a district or circuit judge of the circuit to hear and determine the case.

It shall be the duty of the judge designated pursuant to this section to assign the case for hearing at the earliest practicable date and to cause the case to be in every

way expedited.

(c) Transfer of functions, etc., to Commission; effective date; prerequisite to transfer; execution of functions by Commission

Effective two years after March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], the functions of the Attorney General under this section shall be transferred to the Commission, together with such personnel, property, records, and unexpended balances of appropriations, allocations, and other funds employed, used, held, available, or to be made available in connection with such functions unless the President submits, and neither House of Congress vetoes, a reorganization plan pursuant to chapter 9 of Title 5 [*United States Code*], inconsistent with the provisions of this subsection. The Commission shall carry out such functions in accordance with subsections (d) and (e) of this section.

(d) Transfer of functions, etc., not to affect suits commenced pursuant to this section prior to date of transfer

Upon the transfer of functions provided for in subsection (c) of this section, in all suits commenced pursuant to this section prior to the date of such transfer, proceedings shall continue without abatement, all court orders and decrees shall remain in effect, and the Commission shall be substituted as a party for the United States of America, the Attorney General, or the Acting Attorney General, as appropriate.

(e) Investigation and action by Commission pursuant to filing of charge of discrimination; procedure

Subsequent to March 24, 1972 [*the date of enactment of the Equal Employment Opportunity Act of 1972*], the Commission shall have authority to investigate and act on a charge of a pattern or practice of discrimination, whether filed by or on behalf of a person claiming to be aggrieved or by a member of the Commission. All such actions shall be conducted in accordance with the procedures set forth in section 2000e-5 of this title [*section 706*].

EFFECT ON STATE LAWS

SEC. 2000e-7. [*Section 708*]

Nothing in this subchapter shall be deemed to exempt or relieve any person from any liability, duty, penalty, or punishment provided by any present or future law of any State or political subdivision of a State, other than any such law which purports to require or permit the doing of any act which would be an unlawful employment practice under this subchapter.

INVESTIGATIONS

SEC. 2000e-8. *[Section 709]*

(a) Examination and copying of evidence related to unlawful employment practices

In connection with any investigation of a charge filed under section 2000e-5 of this title *[section 706]*, the Commission or its designated representative shall at all reasonable times have access to, for the purposes of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to unlawful employment practices covered by this subchapter and is relevant to the charge under investigation.

(b) Cooperation with State and local agencies administering State fair employment practices laws; participation in and contribution to research and other projects; utilization of services; payment in advance or reimbursement; agreements and rescission of agreements

The Commission may cooperate with State and local agencies charged with the administration of State fair employment practices laws and, with the consent of such agencies, may, for the purpose of carrying out its functions and duties under this subchapter and within the limitation of funds appropriated specifically for such purpose, engage in and contribute to the cost of research and other projects of mutual interest undertaken by such agencies, and utilize the services of such agencies and their employees, and, notwithstanding any other provision of law, pay by advance or reimbursement such agencies and their employees for services rendered to assist the Commission in carrying out this subchapter. In furtherance of such cooperative efforts, the Commission may enter into written agreements with such State or local agencies and such agreements may include provisions under which the Commission shall refrain from processing a charge in any cases or class of cases specified in such agreements or under which the Commission shall relieve any person or class of persons in such State or locality from requirements imposed

under this section. The Commission shall rescind any such agreement whenever it determines that the agreement no longer serves the interest of effective enforcement of this subchapter.

(c) Execution, retention, and preservation of records; reports to Commission; training program records; appropriate relief from regulation or order for undue hardship; procedure for exemption; judicial action to compel compliance

Every employer, employment agency, and labor organization subject to this subchapter shall (1) make and keep such records relevant to the determinations of whether unlawful employment practices have been or are being committed, (2) preserve such records for such periods, and (3) make such reports there from as the Commission shall prescribe by regulation or order, after public hearing, as reasonable, necessary, or appropriate for the enforcement of this subchapter or the regulations or orders thereunder. The Commission shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this subchapter which controls an apprenticeship or other training program to maintain such records as are reasonably necessary to carry out the purposes of this subchapter, including, but not limited to, a list of applicants who wish to participate in such program, including the chronological order in which applications were received, and to furnish to the Commission upon request, a detailed description of the manner in which persons are selected to participate in the apprenticeship or other training program. Any employer, employment agency, labor organization, or joint labor-management committee which believes that the application to it of any regulation or order issued under this section would result in undue hardship may apply to the Commission for an exemption from the application of such regulation or order, and, if such application for an exemption is denied, bring a civil action in the United States district court for the district where such records are kept. If the Commission or the court, as the case may be, finds that the application of the regulation or order to the employer, employment agency, or labor organization in question would impose an undue hardship, the Commission or the court, as the case may be, may grant appropriate relief. If any person required to comply with the provisions of this subsection fails or refuses to do so, the United States district court for the district in which such person is found, resides, or transacts business, shall, upon application of the Commission, or the Attorney General in a case involving a government, governmental agency or political subdivision, have jurisdiction to issue to such person an order requiring him to comply.

(d) Consultation and coordination between Commission and interested State and Federal agencies in prescribing recordkeeping and reporting requirements; availability of information furnished pursuant to recordkeeping and reporting requirements; conditions on availability

In prescribing requirements pursuant to subsection (c) of this section, the Commission shall consult with other interested State and Federal agencies and shall endeavor to coordinate its requirements with those adopted by such agencies. The Commission shall furnish upon request and without cost to any State or local agency charged with the administration of a fair employment practice law information obtained pursuant to subsection (c) of this section from any employer, employment agency, labor organization, or joint labor-management committee subject to the jurisdiction of such agency. Such information shall be furnished on condition that it not be made public by the recipient agency prior to the institution of a proceeding under State or local law involving such information. If this condition is violated by a recipient agency, the Commission may decline to honor subsequent requests pursuant to this subsection.

(e) Prohibited disclosures; penalties

It shall be unlawful for any officer or employee of the Commission to make public in any manner whatever any information obtained by the Commission pursuant to its authority under this section prior to the institution of any proceeding under this subchapter involving such information. Any officer or employee of the Commission who shall make public in any manner whatever any information in violation of this subsection shall be guilty of a misdemeanor and upon conviction thereof, shall be fined not more than \$1,000, or imprisoned not more than one year.

CONDUCT OF HEARINGS AND INVESTIGATIONS PURSUANT TO SECTION 161 OF Title 29

SEC. 2000e-9. *[Section 710]*

For the purpose of all hearings and investigations conducted by the Commission or its duly authorized agents or agencies, section 161 of Title 29 *[section 11 of the National Labor Relations Act]* shall apply.

POSTING OF NOTICES; PENALTIES

SEC. 2000e-10. *[Section 711]*

(a) Every employer, employment agency, and labor organization, as the case may be, shall post and keep posted in conspicuous places upon its premises where notices to employees, applicants for employment, and members are customarily posted a notice to be prepared or approved by the Commission setting forth excerpts from or, summaries of, the pertinent provisions of this subchapter and information pertinent to the filing of a complaint.

(b) A willful violation of this section shall be punishable by a fine of not more than \$100 for each separate offense.

VETERANS' SPECIAL RIGHTS OR PREFERENCE

SEC. 2000e-11. *[Section 712]*

Nothing contained in this subchapter shall be construed to repeal or modify any Federal, State, territorial, or local law creating special rights or preference for veterans.

REGULATIONS; CONFORMITY OF REGULATIONS WITH ADMINISTRATIVE PROCEDURE PROVISIONS; RELIANCE ON INTERPRETATIONS AND INSTRUCTIONS OF COMMISSION

SEC. 2000e-12. *[Section 713]*

(a) The Commission shall have authority from time to time to issue, amend, or rescind suitable procedural regulations to carry out the provisions of this

subchapter. Regulations issued under this section shall be in conformity with the standards and limitations of subchapter II of chapter 5 of Title 5 [*originally, the Administrative Procedure Act*].

(b) In any action or proceeding based on any alleged unlawful employment practice, no person shall be subject to any liability or punishment for or on account of (1) the commission by such person of an unlawful employment practice if he pleads and proves that the act or omission complained of was in good faith, in conformity with, and in reliance on any written interpretation or opinion of the Commission, or (2) the failure of such person to publish and file any information required by any provision of this subchapter if he pleads and proves that he failed to publish and file such information in good faith, in conformity with the instructions of the Commission issued under this subchapter regarding the filing of such information. Such a defense, if established, shall be a bar to the action or proceeding, notwithstanding that (A) after such act or omission, such interpretation or opinion is modified or rescinded or is determined by judicial authority to be invalid or of no legal effect, or (B) after publishing or filing the description and annual reports, such publication or filing is determined by judicial authority not to be in conformity with the requirements of this subchapter.

APPLICATION TO PERSONNEL OF COMMISSION OF SECTIONS 111 AND 1114 OF TITLE 18; PUNISHMENT FOR VIOLATION OF SECTION 1114 OF TITLE 18

SEC. 2000e-13. [*Section 714*]

The provisions of sections 111 and 1114, Title 18 [*United States Code*], shall apply to officers, agents, and employees of the Commission in the performance of their official duties. Notwithstanding the provisions of sections 111 and 1114 of Title 18 [*United States Code*], whoever in violation of the provisions of section 1114 of such title kills a person while engaged in or on account of the performance of his official functions under this Act shall be punished by imprisonment for any term of years or for life.

TRANSFER OF AUTHORITY

[Administration of the duties of the Equal Employment Opportunity Coordinating Council was transferred to the Equal Employment Opportunity Commission effective July 1, 1978, under the President's Reorganization Plan of 1978.]

EQUAL EMPLOYMENT OPPORTUNITY COORDINATING COUNCIL; ESTABLISHMENT; COMPOSITION; DUTIES; REPORT TO PRESIDENT AND CONGRESS

SEC. 2000e-14. *[Section 715]*

[Original introductory text: There shall be established an Equal Employment Opportunity Coordinating Council (hereinafter referred to in this section as the Council) composed of the Secretary of Labor, the Chairman of the Equal Employment Opportunity Commission, the Attorney General, the Chairman of the United States Civil Service Commission, and the Chairman of the United States Civil Rights Commission, or their respective delegates.]

The Equal Employment Opportunity Commission *[originally, Council]* shall have the responsibility for developing and implementing agreements, policies and practices designed to maximize effort, promote efficiency, and eliminate conflict, competition, duplication and inconsistency among the operations, functions and jurisdictions of the various departments, agencies and branches of the Federal Government responsible for the implementation and enforcement of equal employment opportunity legislation, orders, and policies. On or before October 1 *[originally, July 1]* of each year, the Equal Employment Opportunity Commission *[originally, Council]* shall transmit to the President and to the Congress a report of its activities, together with such recommendations for legislative or administrative changes as it concludes are desirable to further promote the purposes of this section.

PRESIDENTIAL CONFERENCES; ACQUAINTANCE OF LEADERSHIP WITH PROVISIONS FOR EMPLOYMENT RIGHTS AND OBLIGATIONS; PLANS FOR FAIR ADMINISTRATION; MEMBERSHIP

SEC. 2000e-15. *[Section 716]*

[Original text: (a) This title shall become effective one year after the date of its enactment.

(b) Notwithstanding subsection (a), sections of this title other than sections 703, 704, 706, and 707 shall become effective immediately.

(c)] The President shall, as soon as feasible after July 2, 1964 [the date of enactment of this title], convene one or more conferences for the purpose of enabling the leaders of groups whose members will be affected by this subchapter to become familiar with the rights afforded and obligations imposed by its provisions, and for the purpose of making plans which will result in the fair and effective administration of this subchapter when all of its provisions become effective. The President shall invite the participation in such conference or conferences of (1) the members of the President's Committee on Equal Employment Opportunity, (2) the members of the Commission on Civil Rights, (3) representatives of State and local agencies engaged in furthering equal employment opportunity, (4) representatives of private agencies engaged in furthering equal employment opportunity, and (5) representatives of employers, labor organizations, and employment agencies who will be subject to this subchapter.

TRANSFER OF AUTHORITY

[Enforcement of Section 717 was transferred to the Equal Employment Opportunity Commission from the Civil Service Commission (Office of Personnel Management) effective January 1, 1979 under the President's Reorganization Plan No. 1 of 1978.]

EMPLOYMENT BY FEDERAL GOVERNMENT

SEC. 2000e-16. *[Section 717]*

(a) Discriminatory practices prohibited; employees or applicants for employment subject to coverage

All personnel actions affecting employees or applicants for employment (except with regard to aliens employed outside the limits of the United States) in military departments as defined in section 102 of Title 5 *[United States Code]*, in executive agencies *[originally, other than the General Accounting Office]* as defined in section 105 of Title 5 *[United States Code]* (including employees and applicants for employment who are paid from nonappropriated funds), in the United States Postal Service and the Postal Regulatory Commission, in those units of the Government of the District of Columbia having positions in the competitive service, and in those units of the judicial branch of the Federal Government having positions in the competitive service, in the Smithsonian Institution, and in the Government Printing Office, the Government Accountability Office, and the Library of Congress shall be made free from any discrimination based on race, color, religion, sex, or national origin.

(b) Equal Employment Opportunity Commission; enforcement powers; issuance of rules, regulations, etc.; annual review and approval of national and regional equal employment opportunity plans; review and evaluation of equal employment opportunity programs and publication of progress reports; consultations with interested parties; compliance with rules, regulations, etc.; contents of national and regional equal employment opportunity plans; authority of Librarian of Congress

Except as otherwise provided in this subsection, the Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall have authority to enforce the provisions of subsection (a) of this section through appropriate remedies, including reinstatement or hiring of employees with or without back pay, as will effectuate the policies of this section, and shall issue such rules, regulations, orders and instructions as it deems necessary and appropriate to carry out its responsibilities under this section. The Equal Employment Opportunity Commission *[originally, Civil Service Commission]* shall-

- (1) be responsible for the annual review and approval of a national and regional equal employment opportunity plan which each department and agency and each appropriate unit referred to in subsection (a) of this section shall submit in order to maintain an affirmative program of equal employment opportunity for all such employees and applicants for employment;
- (2) be responsible for the review and evaluation of the operation of all agency equal employment opportunity programs, periodically obtaining and publishing (on at least a semiannual basis) progress reports from each such department, agency, or unit; and
- (3) consult with and solicit the recommendations of interested individuals, groups, and organizations relating to equal employment opportunity.

The head of each such department, agency, or unit shall comply with such rules, regulations, orders, and instructions which shall include a provision that an employee or applicant for employment shall be notified of any final action taken on any complaint of discrimination filed by him thereunder. The plan submitted by each department, agency, and unit shall include, but not be limited to-

- (1) provision for the establishment of training and education programs designed to provide a maximum opportunity for employees to advance so as to perform at their highest potential; and
- (2) a description of the qualifications in terms of training and experience relating to equal employment opportunity for the principal and operating officials of each such department, agency, or unit responsible for carrying out the equal employment opportunity program and of the allocation of personnel and resources proposed by such department, agency, or unit to carry out its equal employment opportunity program.

With respect to employment in the Library of Congress, authorities granted in this subsection to the Equal Employment Opportunity Commission [*originally, Civil Service Commission*] shall be exercised by the Librarian of Congress.

(c) Civil action by employee or applicant for employment for redress of grievances; time for bringing of action; head of department, agency, or unit as defendant

Within 90 days of receipt of notice of final action taken by a department, agency, or unit referred to in subsection (a) of this section, or by the Equal Employment Opportunity Commission [*originally, Civil Service Commission*] upon an appeal from a decision or order of such department, agency, or unit on a complaint of discrimination based on race, color, religion, sex or national origin, brought pursuant to subsection (a) of this section, Executive Order 11478 or any succeeding Executive orders, or after one hundred and eighty days from the filing of the initial charge with the department, agency, or unit or with the Equal Employment Opportunity Commission [*originally, Civil Service Commission*] on appeal from a decision or order of such department, agency, or unit until such time as final action may be taken by a department, agency, or unit, an employee or applicant for employment, if aggrieved by the final disposition of his complaint, or by the failure to take final action on his complaint, may file a civil action as provided in section 2000e-5 of this title [*section 706*], in which civil action the head of the department, agency, or unit, as appropriate, shall be the defendant.

(d) Section 2000e-5(f) through (k) of this title applicable to civil actions

The provisions of section 2000e-5(f) through (k) of this title [*section 706(f) through (k)*], as applicable, shall govern civil actions brought hereunder, and the same interest to compensate for delay in payment shall be available as in cases involving nonpublic parties.

(e) Government agency or official not relieved of responsibility to assure nondiscrimination in employment or equal employment opportunity

Nothing contained in this Act shall relieve any Government agency or official of its or his primary responsibility to assure nondiscrimination in employment as required by the Constitution and statutes or of its or his responsibilities under Executive Order 11478 relating to equal employment opportunity in the Federal Government.

(f) Section 2000e-5(e)(3) [*Section 706(e)(3)*] shall apply to complaints of discrimination in compensation under this section.

PROCEDURE FOR DENIAL, WITHHOLDING, TERMINATION, OR SUSPENSION OF GOVERNMENT

CONTRACT SUBSEQUENT TO ACCEPTANCE BY GOVERNMENT OF AFFIRMATIVE ACTION PLAN OF EMPLOYER; TIME OF ACCEPTANCE OF PLAN

SEC. 2000e-17. *[Section 718]*

No Government contract, or portion thereof, with any employer, shall be denied, withheld, terminated, or suspended, by any agency or officer of the United States under any equal employment opportunity law or order, where such employer has an affirmative action plan which has previously been accepted by the Government for the same facility within the past twelve months without first according such employer full hearing and adjudication under the provisions of section 554 of Title 5 *[United States Code]*, and the following pertinent sections: Provided, That if such employer has deviated substantially from such previously agreed to affirmative action plan, this section shall not apply: Provided further, That for the purposes of this section an affirmative action plan shall be deemed to have been accepted by the Government at the time the appropriate compliance agency has accepted such plan unless within forty-five days thereafter the Office of Federal Contract Compliance has disapproved such plan.

A-13

**Mr. Kortendick's performance & authorized supervisory roles compared to
Relevant National Labor Relations Act excerpts (29 U.S.C. § 152(11) –
Definition of “supervisor”)**

2019 Performance and Development Form - for CHRIS S KORTENDICK

Caregiver Information

Last Name	KORTENDICK	First Name	CHRIS
Department	31674500 ANESTHESIOLOGY	Core Leader	TRAVIS H JOHN
Employee ID	360338	Position Description	ANESTHESIA TECH I

Review Information

Originator	SuccessFactors Administrator 2 (adminmn)
Review Period	01/01/2018 - 01/01/2019
Due Date	04/08/2019

2018 Goals

Caregiver Reflection

Reflect on your performance and development from the past year. Consider our values, your accomplishments and feedback you have received when answering the following questions:

[Guide: Complete Caregiver Reflection Section](#)

What did you do best? Always showing up, filling in additional shifts, and providing additional call coverage on nights and weekends.

Nothing because I am awesome!

What could you do better?

Chris does show up and work. He functions in the Lead designation.

Caregiver Look Ahead

Consider what you would like to accomplish this year as well as your career goals. Answer the questions below to help you and your leader discuss and decide on the performance and development goals that will leverage your strengths and help you continue growing. You will be asked to set a minimum of one performance goal and one development goal.

[Guide: Complete Caregiver Look Ahead Section](#)

[Guide: Distinguishing Between Performance & Development Goals](#)

[Guide: Set a Good Performance Goal](#)

[Guide: Set a Good Development Goal](#)

Select the statement that best describes your career aspirations today.

I plan to continue growing in this role for the foreseeable future

Thinking of your career aspirations, what areas of development do you think you should focus on this year? Describe the experiences, knowledge, learning, skills or behavior that will lead to success. Refer to the Set a Good Development Goal Guide above for guidance.

Working on team building with an emphasis on education and employee retention

In your current role, what areas of performance do you think you should focus on this year? Describe the experiences, knowledge, learning, skills or behavior that will lead to success. Refer to the Set a Good Performance Goal Guide above for guidance.

Additional communication skills need improvement

Core Leader Reflection

Reflect on the caregiver's performance, feedback received about the caregiver and their accomplishments from the prior year, then answer the questions below.

[Guide: Complete Core Leader Reflection Section](#)

Is this caregiver meeting expectations based on the job description for their role? Yes

Has this caregiver received corrective action or been on a performance improvement plan (PIP) in the last 12 months? No

Where should this caregiver focus his/her performance efforts for the year?

Chris fills many shoes while at work on his shift. I think it would be best if he continues to develop in his Lead roll alongside the support services lead to help streamline schedules and assignments. This should help ease confusion and bring additional organization to these job roles with the goal of employee retention

Where should this caregiver focus his/her development efforts for the year?

Work with Opal and Gus to bring preceptor skills to a higher level. Streamline checklists and orientation packets and insure all new employees are brought in and on boarded the same way to reduce new higher frustration and burnout and increase employee retention.

2019 Goals

Set a minimum of one Development Goal and one Performance Goal.

Development Goals

Streamline the orientation process and bring preceptors' skills up to insure standard work and standard processes.

In progress - on track

Goal Details

Goal

Streamline the orientation process and bring preceptors' skills up to insure standard work and standard processes.

Goal Status

In progress - on track

Other Details

Notes/Progress/Results

Core Leader Signature

Date of Conversation

02/28/2019

Core Leader Signature (type name here)

Travis H. John

Comments

Caregiver Signature

Review the form and add any comments as needed. Click the orange button below to sign the form; your signature and today's date will be added to the form and it will be routed to your Completed folder under Forms. If follow-up is needed regarding comments added here, contact your core leader directly.

Caregiver: _____

National Labor Relations Act

In 1935, Congress passed the National Labor Relations Act ("NLRA"), making clear that it is the policy of the United States to encourage collective bargaining by protecting workers' full freedom of association. The NLRA protects workplace democracy by providing employees at private-sector workplaces the fundamental right to seek better working conditions and designation of representation without fear of retaliation.

NATIONAL LABOR RELATIONS ACT

Also cited NLRA or the Act; 29 U.S.C. §§ 151-169

[Title 29, Chapter 7, Subchapter II, United States Code]

FINDINGS AND POLICIES

Section 1.[§151.] The denial by some employers of the right of employees to organize and the refusal by some employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

Experience has further demonstrated that certain practices by some labor organizations, their officers, and members have the intent or the necessary effect of burdening or obstructing commerce by preventing the free flow of goods in such commerce through strikes and other forms of industrial unrest or through concerted activities which impair the interest of the public in the free flow of such commerce. The elimination of such practices is a necessary condition to the assurance of the rights herein guaranteed

It is declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self- organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS

Sec. 2. [§152.] When used in this Act [subchapter]--

(1) The term "person" includes one or more individuals, labor organizations, partnerships, associations, corporations, legal representatives, trustees, trustees in cases under title 11 of the United States Code [under title 11], or receivers.

(2) The term "employer" includes any person acting as an agent of an employer, directly or indirectly, but shall not include the United States or any wholly owned Government corporation, or any Federal Reserve Bank, or any State or political subdivision thereof, or any person subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

[Pub. L. 93-360, § 1(a), July 26, 1974, 88 Stat. 395, deleted the phrase "or any corporation or association operating a hospital, if no part of the net earnings inures to the benefit of any private shareholder or individual" from the definition of "employer."]

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act [this subchapter] explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse, or any individual having the status of an independent contractor, or any individual employed as a supervisor, or any individual employed by an employer subject to the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time, or by any other person who is not an employer as herein defined.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8 [section 158 of this title].

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board provided for in section 3 of this Act [section 153 of this title].

(11) The term "supervisor" means any individual having authority, in the interest of the employer, to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward, or discipline other

employees, or responsibly to direct them, or to adjust their grievances, or effectively to recommend such action, if in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment.

(12) The term "professional employee" means--

(a) any employee engaged in work (i) predominantly intellectual and varied in character as opposed to routine mental, manual, mechanical, or physical work; (ii) involving the consistent exercise of discretion and judgment in its performance; (iii) of such a character that the output produced or the result accomplished cannot be standardized in relation to a given period of time; (iv) requiring knowledge of an advanced type in a field of science or learning customarily acquired by a prolonged course of specialized intellectual instruction and study in an institution of higher learning or a hospital, as distinguished from a general academic education or from an apprenticeship or from training in the performance of routine mental, manual, or physical processes; or

(b) any employee, who (i) has completed the courses of specialized intellectual instruction and study described in clause (iv) of paragraph (a), and (ii) is performing related work under the supervision of a professional person to qualify himself to become a professional employee as defined in paragraph (a).

(13) In determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

(14) The term "health care institution" shall include any hospital, convalescent hospital, health maintenance organization, health clinic, nursing home, extended care facility, or other institution devoted to the care of sick, infirm, or aged person.

[Pub. L. 93-360, § 1(b), July 26, 1974, 88 Stat. 395, added par. (14).]

NATIONAL LABOR RELATIONS BOARD

Sec. 3. [§ 153.] (a) [Creation, composition, appointment, and tenure; Chairman; removal of members] The National Labor Relations Board (hereinafter called the "Board") created by this Act [subchapter] prior to its amendment by the Labor Management Relations Act, 1947 [29 U.S.C. § 141 et seq.], is continued as an agency of the United States, except that the Board shall consist of five instead of three members, appointed by the President by and with the advice and consent of the Senate. Of the two additional members so provided for, one shall be appointed for a term of five years and the other for a term of two years. Their successors, and the successors of the other members, shall be appointed for terms of five years each, excepting that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as Chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

(b) [Delegation of powers to members and regional directors; review and stay of actions of regional directors; quorum; seal] The Board is authorized to delegate to any group of three or more members any or all of the powers which it may itself exercise. The Board is also authorized to delegate to its regional directors its powers under section 9 [section 159 of this title] to determine the unit appropriate for the purpose of collective bargaining, to investigate and provide for hearings, and determine whether a question of representation exists, and to direct an election or take a secret ballot under subsection (c) or (e) of section 9 [section 159 of this title] and certify the results thereof, except that upon the filing of a request therefore with the Board by any interested person, the Board may review any action of a regional director delegated to him under this paragraph, but such a review shall not, unless specifically ordered by the Board, operate as a stay of any action taken by the regional director. A vacancy in the Board shall not impair the right of the remaining members to exercise all of the powers of the Board, and three members of the Board shall, at all times, constitute a quorum of the Board, except that two members shall constitute a quorum of any group designated pursuant to the first sentence hereof. The Board shall have an official seal which shall be judicially noticed.

(c) [Annual reports to Congress and the President] The Board shall at the close of each fiscal year make a report in writing to Congress and to the President summarizing significant case activities and operations for that fiscal year.

(d) [General Counsel; appointment and tenure; powers and duties; vacancy] There shall be a General Counsel of the Board who shall be appointed by the President, by and with the advice and consent of the Senate, for a term of four years. The General Counsel of the Board shall exercise general supervision over all attorneys employed by the Board (other than administrative law judges and legal assistants to Board members) and over the officers and employees in the regional offices. He shall have final authority, on behalf of the Board, in respect of the investigation of charges and issuance of complaints under section 10 [section 160 of this title], and in respect of the prosecution of such complaints before the Board, and shall have such other duties as the Board may prescribe or as may be provided by law. In case of vacancy in the office of the General Counsel the President is authorized to designate the officer or employee who shall act as General Counsel during such vacancy, but no person or persons so designated shall so act (1) for more than forty days when the Congress is in session unless a nomination to fill such vacancy shall have been submitted to the Senate, or (2) after the adjournment sine die of the session of the Senate in which such nomination was submitted.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

Sec. 4. [§ 154. Eligibility for reappointment; officers and employees; payment of expenses] (a) Each member of the Board and the General Counsel of the Board shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint an executive secretary, and such attorneys, examiners, and regional directors, and such other employees as it may from time to time find necessary for the proper performance of its duties. The Board may not employ any attorneys for the purpose of reviewing transcripts of hearings or preparing drafts of opinions except that any attorney employed for assignment as a legal assistant to any Board member may for such Board member review such transcripts and prepare such drafts. No administrative law judge's report shall be reviewed, either before or after its publication, by any person other than a member of the Board or his legal assistant, and no administrative law judge shall advise or consult with the Board with respect to exceptions taken to his findings, rulings, or recommendations. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act [subchapter] shall be construed to authorize the Board to appoint individuals for the purpose of conciliation or mediation, or for economic analysis.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

(b) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers therefore approved by the Board or by any individual it designates for that purpose.

Sec. 5. [§ 155. Principal office, conducting inquiries throughout country; participation in decisions or inquiries conducted by member] The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

Sec. 6. [§ 156. Rules and regulations] The Board shall have authority from time to time to make, amend, and rescind, in the manner prescribed by the Administrative Procedure Act [by subchapter II of chapter 5 of title 5], such rules and regulations as may be necessary to carry out the provisions of this Act [subchapter].

RIGHTS OF EMPLOYEES

Sec. 7. [§ 157.] Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, and shall also have the right to refrain from any or all of such activities except to the extent that such right may be affected by an agreement requiring membership in a labor organization as a condition of employment as authorized in section 8(a)(3) [section 158(a)(3) of this title].

UNFAIR LABOR PRACTICES

Sec. 8. [§ 158.] (a) [Unfair labor practices by employer] It shall be an unfair labor practice for an employer--

(1) to interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7 [section 157 of this title];

(2) to dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: Provided, That subject to rules and regulations made and published by the Board pursuant to section 6 [section 156 of this title], an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay;

(3) by discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: Provided, That nothing in this Act [subchapter], or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in section 8(a) of this Act [in this subsection] as an unfair labor practice) to require as a condition of employment membership therein on or after the thirtieth day following the beginning of such employment or the effective date of such agreement, whichever is the later, (i) if such labor organization is the representative of the employees as provided in section 9(a) [section 159(a) of this title], in the appropriate collective-bargaining unit covered by such agreement when made, and (ii) unless following an election held as provided in section 9(e) [section 159(e) of this title] within one year preceding the effective date of such agreement, the Board shall have certified that at least a majority of the employees eligible to vote in such election have voted to rescind the authority of such labor organization to make such an agreement: Provided further, That no employer shall justify any discrimination against an employee for non-membership in a labor organization (A) if he has reasonable grounds for believing that such membership was not available to the employee on the same terms and conditions generally applicable to other members, or (B) if he has reasonable grounds for believing that membership was denied or terminated for reasons other than the failure of the employee to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(4) to discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act [subchapter];

(5) to refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9(a) [section 159(a) of this title].

(b) [Unfair labor practices by labor organization] It shall be an unfair labor practice for a labor organization or its agents--

(1) to restrain or coerce (A) employees in the exercise of the rights guaranteed in section 7 [section 157 of this title]: Provided, That this paragraph shall not impair the right of a labor organization to prescribe its own rules with respect to the acquisition or retention of membership therein; or (B) an employer in the selection of his representatives for the purposes of collective bargaining or the adjustment of grievances;

(2) to cause or attempt to cause an employer to discriminate against an employee in violation of subsection (a)(3) [of subsection (a)(3) of this section] or to discriminate against an employee with respect to whom membership in such organization has been denied or terminated on some ground

other than his failure to tender the periodic dues and the initiation fees uniformly required as a condition of acquiring or retaining membership;

(3) to refuse to bargain collectively with an employer, provided it is the representative of his employees subject to the provisions of section 9(a) [section 159(a) of this title];

(4)(i) to engage in, or to induce or encourage any individual employed by any person engaged in commerce or in an industry affecting commerce to engage in, a strike or a refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services; or (ii) to threaten, coerce, or restrain any person engaged in commerce or in an industry affecting commerce, where in either case an object thereof is- -

(A) forcing or requiring any employer or self-employed person to join any labor or employer organization or to enter into any agreement which is prohibited by section 8(e) [subsection (e) of this section];

(B) forcing or requiring any person to cease using, selling, handling, transporting, or otherwise dealing in the products of any other producer, processor, or manufacturer, or to cease doing business with any other person, or forcing or requiring any other employer to recognize or bargain with a labor organization as the representative of his employees unless such labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title]: Provided, That nothing contained in this clause (B) shall be construed to make unlawful, where not otherwise unlawful, any primary strike or primary picketing;

(C) forcing or requiring any employer to recognize or bargain with a particular labor organization as the representative of his employees if another labor organization has been certified as the representative of such employees under the provisions of section 9 [section 159 of this title];

(D) forcing or requiring any employer to assign particular work to employees in a particular labor organization or in a particular trade, craft, or class rather than to employees in another labor organization or in another trade, craft, or class, unless such employer is failing to conform to an order or certification of the Board determining the bargaining representative for employees performing such work:

Provided, That nothing contained in this subsection (b) [this subsection] shall be construed to make unlawful a refusal by any person to enter upon the premises of any employer (other than his own employer), if the employees of such employer are engaged in a strike ratified or approved by a representative of such employees whom such employer is required to recognize under this Act [subchapter]: Provided further, That for the purposes of this paragraph (4) only, nothing contained in such paragraph shall be construed to prohibit publicity, other than picketing, for the purpose of truthfully advising the public, including consumers and members of a labor organization, that a product or products are produced by an employer with whom the labor organization has a primary dispute and are distributed by another employer, as long as such publicity does not have an effect of inducing any individual employed by any person other than the primary employer in the course of his employment to refuse to pick up, deliver, or transport any goods, or not to perform any services, at the establishment of the employer engaged in such distribution;

(5) to require of employees covered by an agreement authorized under subsection (a)(3) [of this section] the payment, as a condition precedent to becoming a member of such organization, of a fee in an amount which the Board finds excessive or discriminatory under all the circumstances. In making such a finding, the Board shall consider, among other relevant factors, the practices and customs of labor organizations in the particular industry, and the wages currently paid to the employees affected;

(6) to cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other thing of value, in the nature of an exaction, for services which are not performed or not to be performed; and

(7) to picket or cause to be picketed, or threaten to picket or cause to be picketed, any employer where an object thereof is forcing or requiring an employer to recognize or bargain with a labor organization as the representative of his employees, or forcing or requiring the employees of an employer to accept or select such labor organization as their collective- bargaining representative, unless such labor organization is currently certified as the representative of such employees:

(A) where the employer has lawfully recognized in accordance with this Act [subchapter] any other labor organization and a question concerning representation may not appropriately be raised under section 9(c) of this Act [section 159(c) of this title],

(B) where within the preceding twelve months a valid election under section 9(c) of this Act [section 159(c) of this title] has been conducted, or

(C) where such picketing has been conducted without a petition under section 9(c) [section 159(c) of this title] being filed within a reasonable period of time not to exceed thirty days from the commencement of such picketing: Provided, That when such a petition has been filed the Board shall forthwith, without regard to the provisions of section 9(c)(1) [section 159(c)(1) of this title] or the absence of a showing of a substantial interest on the part of the labor organization, direct an election in such unit as the Board finds to be appropriate and shall certify the results thereof: Provided further, That nothing in this subparagraph (C) shall be construed to prohibit any picketing or other publicity for the purpose of truthfully advising the public (including consumers) that an employer does not employ members of, or have a contract with, a labor organization, unless an effect of such picketing is to induce any individual employed by any other person in the course of his employment, not to pick up, deliver or transport any goods or not to perform any services.

Nothing in this paragraph (7) shall be construed to permit any act which would otherwise be an unfair labor practice under this section 8(b) [this subsection].

(c) [Expression of views without threat of reprisal or force or promise of benefit] The expressing of any views, argument, or opinion, or the dissemination thereof, whether in written, printed, graphic, or visual form, shall not constitute or be evidence of an unfair labor practice under any of the provisions of this Act [subchapter], if such expression contains no threat of reprisal or force or promise of benefit.

(d) [Obligation to bargain collectively] For the purposes of this section, to bargain collectively is the performance of the mutual obligation of the employer and the representative of the employees to meet at reasonable times and confer in good faith with respect to wages, hours, and other terms and conditions of employment, or the negotiation of an agreement or any question arising thereunder, and the execution of a written contract incorporating any agreement reached if requested by either party, but such obligation does not compel either party to agree to a proposal or require the making of a concession: Provided, That where there is in effect a collective- bargaining contract covering employees in an industry affecting commerce, the duty to bargain collectively shall also mean that no party to such contract shall terminate or modify such contract, unless the party desiring such termination or modification--

(1) serves a written notice upon the other party to the contract of the proposed termination or modification sixty days prior to the expiration date thereof, or in the event such contract contains no expiration date, sixty days prior to the time it is proposed to make such termination or modification;

(2) offers to meet and confer with the other party for the purpose of negotiating a new contract or a contract containing the proposed modifications;

(3) notifies the Federal Mediation and Conciliation Service within thirty days after such notice of the existence of a dispute, and simultaneously therewith notifies any State or Territorial agency established to mediate and conciliate disputes within the State or Territory where the dispute occurred, provided no agreement has been reached by that time; and

(4) continues in full force and effect, without resorting to strike or lockout, all the terms and conditions of the existing contract for a period of sixty days after such notice is given or until the expiration date of

such contract, whichever occurs later:

The duties imposed upon employers, employees, and labor organizations by paragraphs (2), (3), and (4) [paragraphs (2) to (4) of this subsection] shall become inapplicable upon an intervening certification of the Board, under which the labor

organization or individual, which is a party to the contract, has been superseded as or ceased to be the representative of the employees subject to the provisions of section 9(a) [section 159(a) of this title], and the duties so imposed shall not be construed as requiring either party to discuss or agree to any modification of the terms and conditions contained in a contract for a fixed period, if such modification is to become effective before such terms and conditions can be reopened under the provisions of the contract. Any employee who engages in a strike within any notice period specified in this subsection, or who engages in any strike within the appropriate period specified in subsection (g) of this section, shall lose his status as an employee of the employer engaged in the particular labor dispute, for the purposes of sections 8, 9, and 10 of this Act [sections 158, 159, and 160 of this title], but such loss of status for such employee shall terminate if and when he is re-employed by such employer. Whenever the collective bargaining involves employees of a health care institution, the provisions of this section 8(d) [this subsection] shall be modified as follows:

(A) The notice of section 8(d)(1) [paragraph (1) of this subsection] shall be ninety days; the notice of section 8(d)(3) [paragraph (3) of this subsection] shall be sixty days; and the contract period of section 8(d)(4) [paragraph (4) of this subsection] shall be ninety days.

(B) Where the bargaining is for an initial agreement following certification or recognition, at least thirty days' notice of the existence of a dispute shall be given by the labor organization to the agencies set forth in section 8(d)(3) [in paragraph (3) of this subsection].

(C) After notice is given to the Federal Mediation and Conciliation Service under either clause (A) or (B) of this sentence, the Service shall promptly communicate with the parties and use its best efforts, by mediation and conciliation, to bring them to agreement. The parties shall participate fully and promptly in such meetings as may be undertaken by the Service for the purpose of aiding in a settlement of the dispute.

[Pub. L. 93-360, July 26, 1974, 88 Stat. 395, amended the last sentence of Sec. 8(d) by striking the words "the sixty-day" and inserting the words "any notice" and by inserting before the words "shall lose" the phrase ", or who engages in any strike within the appropriate period specified in subsection (g) of this section." It also amended the end of paragraph Sec. 8(d) by adding a new sentence "Whenever the collective bargaining . . . aiding in a settlement of the dispute."]

(e) [Enforceability of contract or agreement to boycott any other employer; exception] It shall be an unfair labor practice for any labor organization and any employer to enter into any contract or agreement, express or implied, whereby such employer ceases or refrains or agrees to cease or refrain from handling, using, selling, transporting or otherwise dealing in any of the products of any other employer, or cease doing business with any other person, and any contract or agreement entered into heretofore or hereafter containing such an agreement shall be to such extent unenforceable and void: Provided, That nothing in this subsection (e) [this subsection] shall apply to an agreement between a labor organization and an employer in the construction industry relating to the contracting or subcontracting of work to be done at the site of the construction, alteration, painting, or repair of a building, structure, or other work: Provided further, That for the purposes of this subsection (e) and section 8(b)(4)(B) [this subsection and subsection (b)(4)(B) of this section] the terms "any employer," "any person engaged in commerce or an industry affecting commerce," and "any person" when used in relation to the terms "any other producer, processor, or manufacturer," "any other employer," or "any other person" shall not include persons in the relation of a jobber, manufacturer, contractor, or subcontractor working on the goods or premises of the jobber or manufacturer or performing parts of an integrated process of production in the apparel and clothing industry: Provided further, That nothing in this Act [subchapter] shall prohibit the enforcement of any agreement which is within the foregoing exception.

(f) [Agreements covering employees in the building and construction industry] It shall not be an unfair labor practice under subsections (a) and (b) of this section for an employer engaged primarily in the building and construction industry to make an agreement covering employees engaged (or who, upon their employment, will be engaged) in the building and construction industry with a labor organization of which building and construction employees are members (not established, maintained, or assisted by any action defined in section 8(a) of this Act [subsection (a) of this section] as an unfair labor practice) because (1) the majority status of such labor organization has not been established under the provisions of section 9 of this Act [section 159 of this title] prior to the making of such agreement, or (2) such agreement requires as a condition of employment, membership in such labor organization after the seventh day following the beginning of such employment or the effective date of the agreement, whichever is later, or (3) such agreement requires the employer to notify such labor organization of opportunities for employment with such employer, or gives such labor organization an opportunity to refer qualified applicants for such employment, or (4) such agreement specifies minimum training or experience qualifications for employment or provides for priority in opportunities for employment based upon length of service with such employer, in the industry or in the particular geographical area: Provided, That nothing in this subsection shall set aside the final proviso to section 8(a)(3) of this Act [subsection (a)(3) of this section]: Provided further, That any agreement which would be invalid, but for clause (1) of this subsection, shall not be a bar to a petition filed pursuant to section 9(c) or 9(e) [section 159(c) or 159(e) of this title].

(g) [Notification of intention to strike or picket at any health care institution] A labor organization before engaging in any strike, picketing, or other concerted refusal to work at any health care institution shall, not less than ten days prior to such action, notify the institution in writing and the Federal Mediation and Conciliation Service of that intention, except that in the case of bargaining for an initial agreement following certification or recognition the notice required by this subsection shall not be given until the expiration of the period specified in clause (B) of the last sentence of section 8(d) of this Act [subsection (d) of this section]. The notice shall state the date and time that such action will commence. The notice, once given, may be extended by the written agreement of both parties.

[Pub. L. 93-360, July 26, 1974, 88 Stat. 396, added subsec. (g).]

REPRESENTATIVES AND ELECTIONS

Sec. 9 [§ 159.] (a) [Exclusive representatives; employees' adjustment of grievances directly with employer] Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: Provided, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer and to have such grievances adjusted, without the intervention of the bargaining representative, as long as the adjustment is not inconsistent with the terms of a collective- bargaining contract or agreement then in effect: Provided further, That the bargaining representative has been given opportunity to be present at such adjustment.

(b) [Determination of bargaining unit by Board] The Board shall decide in each case whether, in order to assure to employees the fullest freedom in exercising the rights guaranteed by this Act [subchapter], the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof: Provided, That the Board shall not (1) decide that any unit is appropriate for such purposes if such unit includes both professional employees and employees who are not professional employees unless a majority of such professional employees vote for inclusion in such unit; or (2) decide that any craft unit is inappropriate for such purposes on the ground that a different unit has been established by a prior Board determination, unless a majority of the employees in the proposed craft unit votes against separate representation or (3) decide that any unit is appropriate for such purposes if it includes, together with other employees, any individual employed as a guard to enforce against employees and other persons rules to protect property of the employer or to protect the safety of persons on the employer's premises; but no labor organization shall be certified

as the representative of employees in a bargaining unit of guards if such organization admits to membership, or is affiliated directly or indirectly with an organization which admits to membership, employees other than guards.

(c) [Hearings on questions affecting commerce; rules and regulations] (1) Whenever a petition shall have been filed, in accordance with such regulations as may be prescribed by the Board--

(A) by an employee or group of employees or any individual or labor organization acting in their behalf alleging that a substantial number of employees (i) wish to be represented for collective bargaining and that their employer declines to recognize their representative as the representative defined in section 9(a) [subsection (a) of this section], or (ii) assert that the individual or labor organization, which has been certified or is being currently recognized by their employer as the bargaining representative, is no longer a representative as defined in section 9(a) [subsection (a) of this section]; or

(B) by an employer, alleging that one or more individuals or labor organizations have presented to him a claim to be recognized as the representative defined in section 9(a) [subsection (a) of this section]; the Board shall investigate such petition and if it has reasonable cause to believe that a question of representation affecting commerce exists shall provide for an appropriate hearing upon due notice. Such hearing may be conducted by an officer or employee of the regional office, who shall not make any recommendations with respect thereto. If the Board finds upon the record of such hearing that such a question of representation exists, it shall direct an election by secret ballot and shall certify the results thereof.

(2) In determining whether or not a question of representation affecting commerce exists, the same regulations and rules of decision shall apply irrespective of the identity of the persons filing the petition or the kind of relief sought and in no case shall the Board deny a labor organization a place on the ballot by reason of an order with respect to such labor organization or its predecessor not issued in conformity with section 10(c) [section 160(c) of this title].

(3) No election shall be directed in any bargaining unit or any subdivision within which, in the preceding twelve-month period, a valid election shall have been held. Employees engaged in an economic strike who are not entitled to reinstatement shall be eligible to vote under such regulations as the Board shall find are consistent with the purposes and provisions of this Act [subchapter] in any election conducted within twelve months after the commencement of the strike. In any election where none of the choices on the ballot receives a majority, a run-off shall be conducted, the ballot providing for a selection between the two choices receiving the largest and second largest number of valid votes cast in the election.

(4) Nothing in this section shall be construed to prohibit the waiving of hearings by stipulation for the purpose of a consent election in conformity with regulations and rules of decision of the Board.

(5) In determining whether a unit is appropriate for the purposes specified in subsection (b) [of this section] the extent to which the employees have organized shall not be controlling.

(d) [Petition for enforcement or review; transcript] Whenever an order of the Board made pursuant to section 10(c) [section 160(c) of this title] is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under section 10(e) or 10(f) [subsection (e) or (f) of section 160 of this title], and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

(e) [Secret ballot; limitation of elections] (1) Upon the filing with the Board, by 30 per centum or more of the employees in a bargaining unit covered by an agreement between their employer and labor organization made pursuant to section 8(a)(3) [section 158(a)(3) of this title], of a petition alleging they desire that such authorization be rescinded, the Board shall take a secret ballot of the employees in such unit and certify the results thereof to such labor organization and to the employer.

(2) No election shall be conducted pursuant to this subsection in any bargaining unit or any subdivision within which, in the preceding twelve- month period, a valid election shall have been held.

PREVENTION OF UNFAIR LABOR PRACTICES

Sec. 10. [§ 160.] (a) [Powers of Board generally] The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice (listed in section 8 [section 158 of this title]) affecting commerce. This power shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, law, or otherwise: Provided, That the Board is empowered by agreement with any agency of any State or Territory to cede to such agency jurisdiction over any cases in any industry (other than mining, manufacturing, communications, and transportation except where predominately local in character) even though such cases may involve labor disputes affecting commerce, unless the provision of the State or Territorial statute applicable to the determination of such cases by such agency is inconsistent with the corresponding provision of this Act [subchapter] or has received a construction inconsistent therewith.

(b) [Complaint and notice of hearing; six-month limitation; answer; court rules of evidence inapplicable] Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint: Provided, That no complaint shall issue based upon any unfair labor practice occurring more than six months prior to the filing of the charge with the Board and the service of a copy thereof upon the person against whom such charge is made, unless the person aggrieved thereby was prevented from filing such charge by reason of service in the armed forces, in which event the six-month period shall be computed from the day of his discharge. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent, or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. Any such proceeding shall, so far as practicable, be conducted in accordance with the rules of evidence applicable in the district courts of the United States under the rules of civil procedure for the district courts of the United States, adopted by the Supreme Court of the United States pursuant to section 2072 of title 28, United States Code [section 2072 of title 28].

(c) [Reduction of testimony to writing; findings and orders of Board] The testimony taken by such member, agent, or agency, or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon the preponderance of the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action including reinstatement of employees with or without backpay, as will effectuate the policies of this Act [subchapter]: Provided, That where an order directs reinstatement of an employee, backpay may be required of the employer or labor organization, as the case may be, responsible for the discrimination suffered by him: And provided further, That in determining whether a complaint shall issue alleging a violation of section 8(a)(1) or section 8(a)(2) [subsection (a)(1) or (a)(2) of section 158 of this title], and in deciding such cases, the same regulations and rules of decision shall apply irrespective of whether or not the labor organization affected is affiliated with a labor organization national or international in scope. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon the preponderance of the testimony taken the Board shall not be of the opinion that the person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint. No order of the Board shall require the

reinstatement of any individual as an employee who has been suspended or discharged, or the payment to him of any backpay, if such individual was suspended or discharged for cause. In case the evidence is presented before a member of the Board, or before an administrative law judge or judges thereof, such member, or such judge or judges, as the case may be, shall issue and cause to be served on the parties to the proceeding a proposed report, together with a recommended order, which shall be filed with the Board, and if no exceptions are filed within twenty days after service thereof upon such parties, or within such further period as the Board may authorize, such recommended order shall become the order of the Board and become affective as therein prescribed.

[The title "administrative law judge" was adopted in 5 U.S.C. § 3105.]

(d) [Modification of findings or orders prior to filing record in court] Until the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) [Petition to court for enforcement of order; proceedings; review of judgment] The Board shall have power to petition any court of appeals of the United States, or if all the courts of appeals to which application may be made are in vacation, any district court of the United States, within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall file in the court the record in the proceeding, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent, or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the record. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which findings with respect to question of fact if supported by substantial evidence on the record considered as a whole shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. Upon the filing of the record with it the jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate United States court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in section 1254 of title 28.

(f) [Review of final order of Board on petition to court] Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review of such order in any United States court of appeals in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the United States Court of Appeals for the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith transmitted by the clerk of the court to the Board, and thereupon the aggrieved party shall file in the court the record in the proceeding, certified by the Board, as provided in section 2112 of title 28, United States Code [section 2112 of title 28]. Upon the filing of such petition, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e) of this section, and shall have the same jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and

proper, and in like manner to make and enter a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part the order of the Board; the findings of the Board with respect to questions of fact if supported by substantial evidence on the record considered as a whole shall in like manner be conclusive.

(g) [Institution of court proceedings as stay of Board's order] The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) [Jurisdiction of courts unaffected by limitations prescribed in chapter 6 of this title] When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying and enforcing as so modified, or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

(i) Repealed.

(j) [Injunctions] The Board shall have power, upon issuance of a complaint as provided in subsection (b) [of this section] charging that any person has engaged in or is engaging in an unfair labor practice, to petition any United States district court, within any district wherein the unfair labor practice in question is alleged to have occurred or wherein such person resides or transacts business, for appropriate temporary relief or restraining order. Upon the filing of any such petition the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper.

(k) [Hearings on jurisdictional strikes] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(D) of section 8(b) [section 158(b) of this title], the Board is empowered and directed to hear and determine the dispute out of which such unfair labor practice shall have arisen, unless, within ten days after notice that such charge has been filed, the parties to such dispute submit to the Board satisfactory evidence that they have adjusted, or agreed upon methods for the voluntary adjustment of, the dispute. Upon compliance by the parties to the dispute with the decision of the Board or upon such voluntary adjustment of the dispute, such charge shall be dismissed.

(l) [Boycotts and strikes to force recognition of uncertified labor organizations; injunctions; notice; service of process] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of paragraph (4)(A), (B), or (C) of section 8(b) [section 158(b) of this title], or section 8(e) [section 158(e) of this title] or section 8(b)(7) [section 158(b)(7) of this title], the preliminary investigation of such charge shall be made forthwith and given priority over all other cases except cases of like character in the office where it is filed or to which it is referred. If, after such investigation, the officer or regional attorney to whom the matter may be referred has reasonable cause to believe such charge is true and that a complaint should issue, he shall, on behalf of the Board, petition any United States district court within any district where the unfair labor practice in question has occurred, is alleged to have occurred, or wherein such person resides or transacts business, for appropriate injunctive relief pending the final adjudication of the Board with respect to such matter. Upon the filing of any such petition the district court shall have jurisdiction to grant such injunctive relief or temporary restraining order as it deems just and proper, notwithstanding any other provision of law: Provided further, That no temporary restraining order shall be issued without notice unless a petition alleges that substantial and irreparable injury to the charging party will be unavoidable and such temporary restraining order shall be effective for no longer than five days and will become void at the expiration of such period: Provided further, That such officer or regional attorney shall not apply for any restraining order under section 8(b)(7) [section 158(b)(7) of this title] if a charge against the employer under section 8(a)(2) [section 158(a)(2) of this title] has been filed and after the preliminary investigation, he has reasonable cause to believe that such charge is true and that a complaint should issue. Upon filing of any such petition the courts shall cause notice thereof to be served upon any person involved in the charge and such person, including the charging party, shall be given an opportunity to appear by counsel and present any relevant testimony: Provided further,

That for the purposes of this subsection district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal office, or (2) in any district in which its duly authorized officers or agents are engaged in promoting or protecting the interests of employee members. The service of legal process upon such officer or agent shall constitute service upon the labor organization and make such organization a party to the suit. In situations where such relief is appropriate the procedure specified herein shall apply to charges with respect to section 8(b)(4)(D) [section 158(b)(4)(D) of this title].

(m) [Priority of cases] Whenever it is charged that any person has engaged in an unfair labor practice within the meaning of subsection (a)(3) or (b)(2) of section 8 [section 158 of this title], such charge shall be given priority over all other cases except cases of like character in the office where it is filed or to which it is referred and cases given priority under subsection (1) [of this section].

INVESTIGATORY POWERS

Sec. 11. [§ 161.] For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10 [sections 159 and 160 of this title]--

(1) [Documentary evidence; summoning witnesses and taking testimony] The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. The Board, or any member thereof, shall upon application of any party to such proceedings, forthwith issue to such party subpoenas requiring the attendance and testimony of witnesses or the production of any evidence in such proceeding or investigation requested in such application. Within five days after the service of a subpoena on any person requiring the production of any evidence in his possession or under his control, such person may petition the Board to revoke, and the Board shall revoke, such subpoena if in its opinion the evidence whose production is required does not relate to any matter under investigation, or any matter in question in such proceedings, or if in its opinion such subpoena does not describe with sufficient particularity the evidence whose production is required. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) [Court aid in compelling production of evidence and attendance of witnesses] In case on contumacy or refusal to obey a subpoena issued to any person, any United States district court or the United States courts of any Territory or possession, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) Repealed.

[Immunity of witnesses. See 18 U.S.C. § 6001 et seq.]

(4) [Process, service and return; fees of witnesses] Complaints, orders and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered or certified mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefore when registered or certified and mailed or when telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States,

and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) [Process, where served] All process of any court to which application may be made under this Act [subchapter] may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) [Information and assistance from departments] The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

Sec. 12. [§ 162. Offenses and penalties] Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act [subchapter] shall be punished by a fine of not more than \$5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

Sec. 13. [§ 163. Right to strike preserved] Nothing in this Act [subchapter], except as specifically provided for herein, shall be construed so as either to interfere with or impede or diminish in any way the right to strike or to affect the limitations or qualifications on that right.

Sec. 14. [§ 164. Construction of provisions] (a) [Supervisors as union members] Nothing herein shall prohibit any individual employed as a supervisor from becoming or remaining a member of a labor organization, but no employer subject to this Act [subchapter] shall be compelled to deem individuals defined herein as supervisors as employees for the purpose of any law, either national or local, relating to collective bargaining.

(b) [Agreements requiring union membership in violation of State law] Nothing in this Act [subchapter] shall be construed as authorizing the execution or application of agreements requiring membership in a labor organization as a condition of employment in any State or Territory in which such execution or application is prohibited by State or Territorial law.

(c) [Power of Board to decline jurisdiction of labor disputes; assertion of jurisdiction by State and Territorial courts] (1) The Board, in its discretion, may, by rule of decision or by published rules adopted pursuant to the Administrative Procedure Act [to subchapter II of chapter 5 of title 5], decline to assert jurisdiction over any labor dispute involving any class or category of employers, where, in the opinion of the Board, the effect of such labor dispute on commerce is not sufficiently substantial to warrant the exercise of its jurisdiction: Provided, That the Board shall not decline to assert jurisdiction over any labor dispute over which it would assert jurisdiction under the standards prevailing upon August 1, 1959.

(2) Nothing in this Act [subchapter] shall be deemed to prevent or bar any agency or the courts of any State or Territory (including the Commonwealth of Puerto Rico, Guam, and the Virgin Islands), from assuming and asserting jurisdiction over labor disputes over which the Board declines, pursuant to paragraph (1) of this subsection, to assert jurisdiction.

Sec. 15. [§ 165.] Omitted.

[Reference to repealed provisions of bankruptcy statute.]

Sec. 16. [§ 166. Separability of provisions] If any provision of this Act [subchapter], or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act [subchapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

Sec. 17. [§ 167. Short title] This Act [subchapter] may be cited as the "National Labor Relations Act."

Sec. 18. [§ 168.] Omitted.

[Reference to former sec. 9(f), (g), and (h).]

INDIVIDUALS WITH RELIGIOUS CONVICTIONS

Sec. 19. [§ 169.] Any employee who is a member of and adheres to established and traditional tenets or teachings of a bona fide religion, body, or sect which has historically held conscientious objections to joining or financially supporting labor organizations shall not be required to join or financially support any labor organization as a condition of employment; except that such employee may be required in a contract between such employee's employer and a labor organization in lieu of periodic dues and initiation fees, to pay sums equal to such dues and initiation fees to a nonreligious, nonlabor organization charitable fund exempt from taxation under section 501(c)(3) of title 26 of the Internal Revenue Code [section 501(c)(3) of title 26], chosen by such employee from a list of at least three such funds, designated in such contract or if the contract fails to designate such funds, then to any such fund chosen by the employee. If such employee who holds conscientious objections pursuant to this section requests the labor organization to use the grievance-arbitration procedure on the employee's behalf, the labor organization is authorized to charge the employee for the reasonable cost of using such procedure.

[Sec. added, Pub. L. 93-360, July 26, 1974, 88 Stat. 397, and amended, Pub. L. 96-593, Dec. 24, 1980, 94 Stat. 3452.]

LABOR MANAGEMENT RELATIONS ACT

Also cited LMRA; 29 U.S.C. §§ 141-197
[Title 29, Chapter 7, United States Code]

SHORT TITLE AND DECLARATION OF POLICY

Section 1. [§ 141.] (a) This Act [chapter] may be cited as the "Labor Management Relations Act, 1947." [Also known as the "Taft-Hartley Act."]

(b) Industrial strife which interferes with the normal flow of commerce and with the full production of articles and commodities for commerce, can be avoided or substantially minimized if employers, employees, and labor organizations each recognize under law one another's legitimate rights in their relations with each other, and above all recognize under law that neither party has any right in its relations with any other to engage in acts or practices which jeopardize the public health, safety, or interest.

It is the purpose and policy of this Act [chapter], in order to promote the full flow of commerce, to prescribe the legitimate rights of both employees and employers in their relations affecting commerce, to provide orderly and peaceful procedures for preventing the interference by either with the legitimate rights of the other, to protect the rights of individual employees in their relations with labor organizations whose activities affect commerce, to define and proscribe practices on the part of labor and management which affect commerce and are inimical to the general welfare, and to protect the rights of the public in connection with labor disputes affecting commerce.

TITLE I, Amendments to

NATIONAL LABOR RELATIONS ACT

29 U.S.C. §§ 151-169 (printed above)

TITLE II

[Title 29, Chapter 7, Subchapter III, United States Code]

CONCILIATION OF LABOR DISPUTES IN INDUSTRIES AFFECTING COMMERCE; NATIONAL EMERGENCIES

Sec. 201. [§ 171. Declaration of purpose and policy] It is the policy of the United States that--

(a) sound and stable industrial peace and the advancement of the general welfare, health, and safety of the Nation and of the best interest of employers and employees can most satisfactorily be secured by the settlement of issues between employers and employees through the processes of conference and collective bargaining between employers and the representatives of their employees;

(b) the settlement of issues between employers and employees through collective bargaining may be advanced by making available full and adequate governmental facilities for conciliation, mediation, and voluntary arbitration to aid and encourage employers and the representatives of their employees to reach and maintain agreements concerning rates of pay, hours, and working conditions, and to make all reasonable efforts to settle their differences by mutual agreement reached through conferences and collective bargaining or by such methods as may be provided for in any applicable agreement for the settlement of disputes; and

(c) certain controversies which arise between parties to collective bargaining agreements may be avoided or minimized by making available full and adequate governmental facilities for furnishing assistance to employers and the representatives of their employees in formulating for inclusion within such agreements provision for adequate notice of any proposed changes in the terms of such agreements, for the final adjustment of grievances or questions regarding the application or interpretation of such agreements, and other provisions designed to prevent the subsequent arising of such controversies.

Sec. 202. [§ 172. Federal Mediation and Conciliation Service]

(a) [Creation; appointment of Director] There is created an independent agency to be known as the Federal Mediation and Conciliation Service (herein referred to as the "Service," except that for sixty days after June 23, 1947, such term shall refer to the Conciliation Service of the Department of Labor). The Service shall be under the direction of a Federal Mediation and Conciliation Director (hereinafter referred to as the "Director"), who shall be appointed by the President by and with the advice and consent of the Senate. The Director shall not engage in any other business, vocation, or employment

(b) [Appointment of officers and employees; expenditures for supplies, facilities, and services] The Director is authorized, subject to the civil service laws, to appoint such clerical and other personnel as may be necessary for the execution of the functions of the Service, and shall fix their compensation in accordance with sections 5101 to 5115 and sections 5331 to 5338 of title 5, United States Code [chapter 51 and subchapter III of chapter 53 of title 5], and may, without regard to the provisions of the civil service laws, appoint such conciliators and mediators as may be necessary to carry out the functions of the Service. The Director is authorized to make such expenditures for supplies, facilities, and services as he deems necessary. Such expenditures shall be allowed and paid upon presentation of itemized vouchers therefore approved by the Director or by any employee designated by him for that purpose.

(c) [Principal and regional offices; delegation of authority by Director; annual report to Congress] The principal office of the Service shall be in the District of Columbia, but the Director may establish regional offices convenient to localities in which labor controversies are likely to arise. The Director may by order, subject to revocation at any time, delegate any authority and discretion conferred upon him by this Act [chapter] to any regional director, or other officer or employee of the Service. The Director may establish suitable procedures for cooperation with State and local mediation agencies. The Director shall make an annual report in writing to Congress at the end of the fiscal year.

(d) [Transfer of all mediation and conciliation services to Service; effective date; pending proceedings unaffected] All mediation and conciliation functions of the Secretary of Labor or the United States Conciliation Service under section 51 [repealed] of title 29, United States Code [this title], and all functions of the United States Conciliation Service under any other law are transferred to the Federal Mediation and Conciliation Service, together with the personnel and records of the United States Conciliation Service. Such transfer shall take effect upon the sixtieth day after June 23, 1947. Such transfer shall not affect any proceedings pending before the United States Conciliation Service or any certification, order, rule, or regulation theretofore made by it or by the Secretary of Labor. The Director

and the Service shall not be subject in any way to the jurisdiction or authority of the Secretary of Labor or any official or division of the Department of Labor.

FUNCTIONS OF THE SERVICE

Sec. 203. [§ 173. Functions of Service] (a) [Settlement of disputes through conciliation and mediation] It shall be the duty of the Service, in order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, to assist parties to labor disputes in industries affecting commerce to settle such disputes through conciliation and mediation.

(b) [Intervention on motion of Service or request of parties; avoidance of mediation of minor disputes] The Service may proffer its services in any labor dispute in any industry affecting commerce, either upon its own motion or upon the request of one or more of the parties to the dispute, whenever in its judgment such dispute threatens to cause a substantial interruption of commerce. The Director and the Service are directed to avoid attempting to mediate disputes which would have only a minor effect on interstate commerce if State or other conciliation services are available to the parties. Whenever the Service does proffer its services in any dispute, it shall be the duty of the Service promptly to put itself in communication with the parties and to use its best efforts, by mediation and conciliation, to bring them to agreement.

(c) [Settlement of disputes by other means upon failure of conciliation] If the Director is not able to bring the parties to agreement by conciliation within a reasonable time, he shall seek to induce the parties voluntarily to seek other means of settling the dispute without resort to strike, lockout, or other coercion, including submission to the employees in the bargaining unit of the employer's last offer of settlement for approval or rejection in a secret ballot. The failure or refusal of either party to agree to any procedure suggested by the Director shall not be deemed a violation of any duty or obligation imposed by this Act [chapter].

(d) [Use of conciliation and mediation services as last resort] Final adjustment by a method agreed upon by the parties is declared to be the desirable method for settlement of grievance disputes arising over the application or interpretation of an existing collective-bargaining agreement. The Service is directed to make its conciliation and mediation services available in the settlement of such grievance disputes only as a last resort and in exceptional cases.

(e) [Encouragement and support of establishment and operation of joint labor management activities conducted by committees] The Service is authorized and directed to encourage and support the establishment and operation of joint labor management activities conducted by plant, area, and industry wide committees designed to improve labor management relationships, job security and organizational effectiveness, in accordance with the provisions of section 205A [section 175a of this title].

[Pub. L. 95-524, § 6(c)(1), Oct. 27, 1978, 92 Stat. 2020, added subsec. (e).]

Sec. 204. [§ 174. Co-equal obligations of employees, their representatives, and management to minimize labor disputes] (a) In order to prevent or minimize interruptions of the free flow of commerce growing out of labor disputes, employers and employees and their representatives, in any industry affecting commerce, shall--

(1) exert every reasonable effort to make and maintain agreements concerning rates of pay, hours, and working conditions, including provision for adequate notice of any proposed change in the terms of such agreements;

(2) whenever a dispute arises over the terms or application of a collective- bargaining agreement and a conference is requested by a party or prospective party thereto, arrange promptly for such a conference to be held and endeavor in such conference to settle such dispute expeditiously; and

(3) in case such dispute is not settled by conference, participate fully and promptly in such meetings as may be undertaken by the Service under this Act [chapter] for the purpose of aiding in a settlement of the dispute.

Sec. 205. [§175. National Labor-Management Panel; creation and composition; appointment, tenure, and compensation; duties] (a) There is created a National Labor-Management Panel which shall be composed of twelve members appointed by the President, six of whom shall be elected from among persons outstanding in the field of management and six of whom shall be selected from among persons outstanding in the field of labor. Each member shall hold office for a term of three years, except that any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed for the remainder of such term, and the terms of office of the members first taking office shall expire, as designated by the President at the time of appointment, four at the end of the first year, four at the end of the second year, and four at the end of the third year after the date of appointment. Members of the panel, when serving on business of the panel, shall be paid compensation at the rate of \$25 per day, and shall also be entitled to receive an allowance for actual and necessary travel and subsistence expenses while so serving away from their places of residence.

(b) It shall be the duty of the panel, at the request of the Director, to advise in the avoidance of industrial controversies and the manner in which mediation and voluntary adjustment shall be administered, particularly with reference to controversies affecting the general welfare of the country.

Sec. 205A. [§ 175a. Assistance to plant, area, and industry wide labor management committees]

(a) [Establishment and operation of plant, area, and industry wide committees] (1) The Service is authorized and directed to provide assistance in the establishment and operation of plant, area and industry wide labor management committees which--

(A) have been organized jointly by employers and labor organizations representing employees in that plant, area, or industry; and

(B) are established for the purpose of improving labor management relationships, job security, organizational effectiveness, enhancing economic development or involving workers in decisions affecting their jobs including improving communication with respect to subjects of mutual interest and concern.

(2) The Service is authorized and directed to enter into contracts and to make grants, where necessary or appropriate, to fulfill its responsibilities under this section.

(b) [Restrictions on grants, contracts, or other assistance] (1) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to a plant labor management committee unless the employees in that plant are represented by a labor organization and there is in effect at that plant a collective bargaining agreement.

(2) No grant may be made, no contract may be entered into and no other assistance may be provided under the provisions of this section to an area or industry wide labor management committee unless its participants include any labor organizations certified or recognized as the representative of the employees of an employer participating in such committee. Nothing in this clause shall prohibit participation in an area or industry wide committee by an employer whose employees are not represented by a labor organization.

(3) No grant may be made under the provisions of this section to any labor management committee which the Service finds to have as one of its purposes the discouragement of the exercise of rights contained in section 7 of the National Labor Relations Act (29 U.S.C. § 157) [section 157 of this title], or the interference with collective bargaining in any plant, or industry.

(c) [Establishment of office] The Service shall carry out the provisions of this section through an office established for that purpose.

(d) [Authorization of appropriations] There are authorized to be appropriated to carry out the provisions of this section \$10,000,000 for the fiscal year 1979, and such sums as may be necessary thereafter.

NATIONAL EMERGENCIES

Sec. 206. [§ 176. Appointment of board of inquiry by President; report; contents; filing with Service] Whenever in the opinion of the President of the United States, a threatened or actual strike or lockout affecting an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce, will, if permitted to occur or to continue, imperil the national health or safety, he may appoint a board of inquiry to inquire into the issues involved in the dispute and to make a written report to him within such time as he shall prescribe. Such report shall include a statement of the facts with respect to the dispute, including each party's statement of its position but shall not contain any recommendations. The President shall file a copy of such report with the Service and shall make its contents available to the public.

Sec. 207. [§ 177. Board of inquiry]

(a) [Composition] A board of inquiry shall be composed of a chairman and such other members as the President shall determine, and shall have power to sit and act in any place within the United States and to conduct such hearings either in public or in private, as it may deem necessary or proper, to ascertain the facts with respect to the causes and circumstances of the dispute.

(b) [Compensation] Members of a board of inquiry shall receive compensation at the rate of \$50 for each day actually spent by them in the work of the board, together with necessary travel and subsistence expenses.

(c) [Powers of discovery] For the purpose of any hearing or inquiry conducted by any board appointed under this title, the provisions of sections 49 and 50 of title 15, United States Code [sections 49 and 50 of title 15] (relating to the attendance of witnesses and the production of books, papers, and documents) are made applicable to the powers and duties of such board.

Sec. 208. [§ 178. Injunctions during national emergency]

(a) [Petition to district court by Attorney General on direction of President] Upon receiving a report from a board of inquiry the President may direct the Attorney General to petition any district court of the United States having jurisdiction of the parties to enjoin such strike or lockout or the continuing thereof, and if the court finds that such threatened or actual strike or lockout--

(i) affects an entire industry or a substantial part thereof engaged in trade, commerce, transportation, transmission, or communication among the several States or with foreign nations, or engaged in the production of goods for commerce; and

(ii) if permitted to occur or to continue, will imperil the national health or safety, it shall have jurisdiction to enjoin any such strike or lockout, or the continuing thereof, and to make such other orders as may be appropriate.

(b) [Inapplicability of chapter 6] In any case, the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"] shall not be applicable.

(c) [Review of orders] The order or orders of the court shall be subject to review by the appropriate United States court of appeals and by the Supreme Court upon writ of certiorari or certification as provided in section 1254 of title 28, United States Code [section 1254 of title 28].

Sec. 209. [§ 179. Injunctions during national emergency; adjustment efforts by parties during injunction period]

(a) [Assistance of Service; acceptance of Service's proposed settlement] Whenever a district court has issued an order under section 208 [section 178 of this title] enjoining acts or practices which imperil or threaten to imperil the national health or safety, it shall be the duty of the parties to the labor dispute giving rise to such order to make every effort to adjust and settle their differences, with the

assistance of the Service created by this Act [chapter]. Neither party shall be under any duty to accept, in whole or in part, any proposal of settlement made by the Service.

(b) [Reconvening of board of inquiry; report by board; contents; secret ballot of employees by National Labor Relations Board; certification of results to Attorney General] Upon the issuance of such order, the President shall reconvene the board of inquiry which has previously reported with respect to the dispute. At the end of a sixty-day period (unless the dispute has been settled by that time), the board of inquiry shall report to the President the current position of the parties and the efforts which have been made for settlement, and shall include a statement by each party of its position and a statement of the employer's last offer of settlement. The President shall make such report available to the public. The National Labor Relations Board, within the succeeding fifteen days, shall take a secret ballot of the employees of each employer involved in the dispute on the question of whether they wish to accept the final offer of settlement made by their employer, as stated by him and shall certify the results thereof to the Attorney General within five days thereafter.

Sec. 210. [§ 180. Discharge of injunction upon certification of results of election or settlement; report to Congress] Upon the certification of the results of such ballot or upon a settlement being reached, whichever happens sooner, the Attorney General shall move the court to discharge the injunction, which motion shall then be granted and the injunction discharged. When such motion is granted, the President shall submit to the Congress a full and comprehensive report of the proceedings, including the findings of the board of inquiry and the ballot taken by the National Labor Relations Board, together with such recommendations as he may see fit to make for consideration and appropriate action.

COMPILATION OF COLLECTIVE-BARGAINING AGREEMENTS, ETC.

Sec. 211. [§ 181.] (a) For the guidance and information of interested representatives of employers, employees, and the general public, the Bureau of Labor Statistics of the Department of Labor shall maintain a file of copies of all available collective bargaining agreements and other available agreements and actions thereunder settling or adjusting labor disputes. Such file shall be open to inspection under appropriate conditions prescribed by the Secretary of Labor, except that no specific information submitted in confidence shall be disclosed.

(b) The Bureau of Labor Statistics in the Department of Labor is authorized to furnish upon request of the Service, or employers, employees, or their representatives, all available data and factual information which may aid in the settlement of any labor dispute, except that no specific information submitted in confidence shall be disclosed.

EXEMPTION OF RAILWAY LABOR ACT

Sec. 212. [§ 182.] The provisions of this title [subchapter] shall not be applicable with respect to any matter which is subject to the provisions of the Railway Labor Act [45 U.S.C. § 151 et seq.], as amended from time to time.

CONCILIATION OF LABOR DISPUTES IN THE HEALTH CARE INDUSTRY

Sec. 213. [§ 183.] (a) [Establishment of Boards of Inquiry; membership] If, in the opinion of the Director of the Federal Mediation and Conciliation Service, a threatened or actual strike or lockout affecting a health care institution will, if permitted to occur or to continue, substantially interrupt the delivery of health care in the locality concerned, the Director may further assist in the resolution of the impasse by establishing within 30 days after the notice to the Federal Mediation and Conciliation Service under clause (A) of the last sentence of section 8(d) [section 158(d) of this title] (which is required by clause (3) of such section 8(d) [section 158(d) of this title]), or within 10 days after the notice under clause (B), an impartial Board of Inquiry to investigate the issues involved in the dispute and to make a written report thereon to the parties within fifteen (15) days after the establishment of such a Board. The written report shall contain the findings of fact together with the Board's recommendations for settling the dispute, with the objective of achieving a prompt, peaceful and just settlement of the dispute. Each such Board shall be composed of such number of individuals as the

Director may deem desirable. No member appointed under this section shall have any interest or involvement in the health care institutions or the employee organizations involved in the dispute.

(b) [Compensation of members of Boards of Inquiry] (1) Members of any board established under this section who are otherwise employed by the Federal Government shall serve without compensation but shall be reimbursed for travel, subsistence, and other necessary expenses incurred by them in carrying out its duties under this section.

(2) Members of any board established under this section who are not subject to paragraph (1) shall receive compensation at a rate prescribed by the Director but not to exceed the daily rate prescribed for GS-18 of the General Schedule under section 5332 of title 5, United States Code [section 5332 of title 5], including travel for each day they are engaged in the performance of their duties under this section and shall be entitled to reimbursement for travel, subsistence, and other necessary expenses incurred by them in carrying out their duties under this section.

(c) [Maintenance of status quo] After the establishment of a board under subsection (a) of this section and for 15 days after any such board has issued its report, no change in the status quo in effect prior to the expiration of the contract in the case of negotiations for a contract renewal, or in effect prior to the time of the impasse in the case of an initial bargaining negotiation, except by agreement, shall be made by the parties to the controversy.

(d) [Authorization of appropriations] There are authorized to be appropriated such sums as may be necessary to carry out the provisions of this section.

TITLE III

[Title 29, Chapter 7, Subchapter IV, United States Code]

SUITS BY AND AGAINST LABOR ORGANIZATIONS

Sec. 301. [§ 185.] (a) [Venue, amount, and citizenship] Suits for violation of contracts between an employer and a labor organization representing employees in an industry affecting commerce as defined in this Act [chapter], or between any such labor organization, may be brought in any district court of the United States having jurisdiction of the parties, without respect to the amount in controversy or without regard to the citizenship of the parties.

(b) [Responsibility for acts of agent; entity for purposes of suit; enforcement of money judgments] Any labor organization which represents employees in an industry affecting commerce as defined in this Act [chapter] and any employer whose activities affect commerce as defined in this Act [chapter] shall be bound by the acts of its agents. Any such labor organization may sue or be sued as an entity and in behalf of the employees whom it represents in the courts of the United States. Any money judgment against a labor organization in a district court of the United States shall be enforceable only against the organization as an entity and against its assets, and shall not be enforceable against any individual member or his assets.

(c) [Jurisdiction] For the purposes of actions and proceedings by or against labor organizations in the district courts of the United States, district courts shall be deemed to have jurisdiction of a labor organization (1) in the district in which such organization maintains its principal offices, or (2) in any district in which its duly authorized officers or agents are engaged in representing or acting for employee members.

(d) [Service of process] The service of summons, subpoena, or other legal process of any court of the United States upon an officer or agent of a labor organization, in his capacity as such, shall constitute service upon the labor organization.

(e) [Determination of question of agency] For the purposes of this section, in determining whether any person is acting as an "agent" of another person so as to make such other person responsible for his acts, the question of whether the specific acts performed were actually authorized or subsequently ratified shall not be controlling.

RESTRICTIONS ON PAYMENTS TO EMPLOYEE REPRESENTATIVES

Sec. 302. [§ 186.] (a) [Payment or lending, etc., of money by employer or agent to employees, representatives, or labor organizations] It shall be unlawful for any employer or association of employers or any person who acts as a labor relations expert, adviser, or consultant to an employer or who acts in the interest of an employer to pay, lend, or deliver, or agree to pay, lend, or deliver, any money or other thing of value--

(1) to any representative of any of his employees who are employed in an industry affecting commerce; or

(2) to any labor organization, or any officer or employee thereof, which represents, seeks to represent, or would admit to membership, any of the employees of such employer who are employed in an industry affecting commerce;

(3) to any employee or group or committee of employees of such employer employed in an industry affecting commerce in excess of their normal compensation for the purpose of causing such employee or group or committee directly or indirectly to influence any other employees in the exercise of the right to organize and bargain collectively through representatives of their own choosing; or

(4) to any officer or employee of a labor organization engaged in an industry affecting commerce with intent to influence him in respect to any of his actions, decisions, or duties as a representative of employees or as such officer or employee of such labor organization.

(b) [Request, demand, etc., for money or other thing of value]

(1) It shall be unlawful for any person to request, demand, receive, or accept, or agree to receive or accept, any payment, loan, or delivery of any money or other thing of value prohibited by subsection (a) [of this section].

(2) It shall be unlawful for any labor organization, or for any person acting as an officer, agent, representative, or employee of such labor organization, to demand or accept from the operator of any motor vehicle (as defined in part II of the Interstate Commerce Act [49 U.S.C. § 301 et seq.]) employed in the transportation of property in commerce, or the employer of any such operator, any money or other thing of value payable to such organization or to an officer, agent, representative or employee thereof as a fee or charge for the unloading, or in connection with the unloading, of the cargo of such vehicle: Provided, That nothing in this paragraph shall be construed to make unlawful any payment by an employer to any of his employees as compensation for their services as employees.

(c) [Exceptions] The provisions of this section shall not be applicable (1) in respect to any money or other thing of value payable by an employer to any of his employees whose established duties include acting openly for such employer in matters of labor relations or personnel administration or to any representative of his employees, or to any officer or employee of a labor organization, who is also an employee or former employee of such employer, as compensation for, or by reason of, his service as an employee of such employer; (2) with respect to the payment or delivery of any money or other thing of value in satisfaction of a judgment of any court or a decision or award of an arbitrator or impartial chairman or in compromise, adjustment, settlement, or release of any claim, complaint, grievance, or dispute in the absence of fraud or duress; (3) with respect to the sale or purchase of an article or commodity at the prevailing market price in the regular course of business; (4) with respect to money deducted from the wages of employees in payment of membership dues in a labor organization: Provided, That the employer has received from each employee, on whose account such deductions are made, a written assignment which shall not be irrevocable for a period of more than one year, or beyond the termination date of the applicable collective agreement, whichever occurs sooner; (5) with respect to money or other thing of value paid to a trust fund established by such representative, for the sole and exclusive benefit of the employees of such employer, and their families and dependents (or of such employees, families, and dependents jointly with the employees of other employers making similar payments, and their families and dependents): Provided, That (A) such payments are held in trust for the purpose of paying, either from principal or income or both, for the benefit of employees,

their families and dependents, for medical or hospital care, pensions on retirement or death of employees, compensation for injuries or illness resulting from occupational activity or insurance to provide any of the foregoing, or unemployment benefits or life insurance, disability and sickness insurance, or accident insurance; (B) the detailed basis on which such payments are to be made is specified in a written agreement with the employer, and employees and employers are equally represented in the administration of such fund, together with such neutral persons as the representatives of the employers and the representatives of employees may agree upon and in the event the employer and employee groups deadlock on the administration of such fund and there are no neutral persons empowered to break such deadlock, such agreement provides that the two groups shall agree on an impartial umpire to decide such dispute, or in event of their failure to agree within a reasonable length of time, an impartial umpire to decide such dispute shall, on petition of either group, be appointed by the district court of the United States for the district where the trust fund has its principal office, and shall also contain provisions for an annual audit of the trust fund, a statement of the results of which shall be available for inspection by interested persons at the principal office of the trust fund and at such other places as may be designated in such written agreement; and (C) such payments as are intended to be used for the purpose of providing pensions or annuities for employees are made to a separate trust which provides that the funds held therein cannot be used for any purpose other than paying such pensions or annuities; (6) with respect to money or other thing of value paid by any employer to a trust fund established by such representative for the purpose of pooled vacation, holiday, severance or similar benefits, or defraying costs of apprenticeship or other training programs: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (7) with respect to money or other thing of value paid by any employer to a pooled or individual trust fund established by such representative for the purpose of (A) scholarships for the benefit of employees, their families, and dependents for study at educational institutions, (B) child care centers for preschool and school age dependents of employees, or (C) financial assistance for employee housing: Provided, That no labor organization or employer shall be required to bargain on the establishment of any such trust fund, and refusal to do so shall not constitute an unfair labor practice: Provided further, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds; (8) with respect to money or any other thing of value paid by any employer to a trust fund established by such representative for the purpose of defraying the costs of legal services for employees, their families, and dependents for counsel or plan of their choice: Provided, That the requirements of clause (B) of the proviso to clause (5) of this subsection shall apply to such trust funds: Provided further, That no such legal services shall be furnished: (A) to initiate any proceeding directed (i) against any such employer or its officers or agents except in workman's compensation cases, or (ii) against such labor organization, or its parent or subordinate bodies, or their officers or agents, or (iii) against any other employer or labor organization, or their officers or agents, in any matter arising under the National Labor Relations Act, or this Act [under subchapter II of this chapter or this chapter]; and (B) in any proceeding where a labor organization would be prohibited from defraying the costs of legal services by the provisions of the Labor- Management Reporting and Disclosure Act of 1959 [29 U.S.C. § 401 et seq.]; or (9) with respect to money or other things of value paid by an employer to a plant, area or industry wide labor management committee established for one or more of the purposes set forth in section 5(b) of the Labor Management Cooperation Act of 1978.

[Sec. 302(c)(7) was added by Pub. L. 91-86, Oct. 14, 1969, 83 Stat. 133; Sec. 302(c)(8) by Pub. L. 93-95, Aug. 15, 1973, 87 Stat. 314; Sec. 302(c)(9) by Pub. L. 95-524, Oct. 27, 1978, 92 Stat. 2021; and Sec. 302(c)(7) was amended by Pub. L. 101-273, Apr. 18, 1990, 104 Stat. 138.]

(d) [Penalty for violations] Any person who willfully violates any of the provisions of this section shall, upon conviction thereof, be guilty of a misdemeanor and be subject to a fine of not more than \$10,000 or to imprisonment for not more than one year, or both.

(e) [Jurisdiction of courts] The district courts of the United States and the United States courts of the Territories and possessions shall have jurisdiction, for cause shown, and subject to the provisions of rule 65 of the Federal Rules of Civil Procedure [section 381 (repealed) of title 28] (relating to notice to

opposite party) to restrain violations of this section, without regard to the provisions of section 7 of title 15 and section 52 of title 29, United States Code [of this title] [known as the "Clayton Act"], and the provisions of sections 101 to 115 of title 29, United States Code [chapter 6 of this title] [known as the "Norris-LaGuardia Act"].

(f) [Effective date of provisions] This section shall not apply to any contract in force on June 23, 1947, until the expiration of such contract, or until July 1, 1948, whichever first occurs.

(g) [Contributions to trust funds] Compliance with the restrictions contained in subsection (c)(5)(B) [of this section] upon contributions to trust funds, otherwise lawful, shall not be applicable to contributions to such trust funds established by collective agreement prior to January 1, 1946, nor shall subsection (c)(5)(A) [of this section] be construed as prohibiting contributions to such trust funds if prior to January 1, 1947, such funds contained provisions for pooled vacation benefits.

BOYCOTTS AND OTHER UNLAWFUL COMBINATIONS

Sec. 303. [§ 187.] (a) It shall be unlawful, for the purpose of this section only, in an industry or activity affecting commerce, for any labor organization to engage in any activity or conduct defined as an unfair labor practice in section 8(b)(4) of the National Labor Relations Act [section 158(b)(4) of this title].

(b) Whoever shall be injured in his business or property by reason of any violation of subsection (a) [of this section] may sue therefore in any district court of the United States subject to the limitation and provisions of section 301 hereof [section 185 of this title] without respect to the amount in controversy, or in any other court having jurisdiction of the parties, and shall recover the damages by him sustained and the cost of the suit.

RESTRICTION ON POLITICAL CONTRIBUTIONS

Sec. 304. Repealed.

[See sec. 316 of the Federal Election Campaign Act of 1972, 2 U.S.C. § 441b.]

Sec. 305.[§ 188.] Strikes by Government employees. Repealed.

[See 5 U.S.C. § 7311 and 18 U.S.C. § 1918.]

TITLE IV

[Title 29, Chapter 7, Subchapter V, United States Code]

CREATION OF JOINT COMMITTEE TO STUDY AND REPORT ON BASIC PROBLEMS AFFECTING FRIENDLY LABOR RELATIONS AND PRODUCTIVITY

Secs. 401-407. [§§ 191-197.] Omitted.

TITLE V

[Title 29, Chapter 7, Subchapter I, United States Code]

DEFINITIONS

Sec. 501. [§ 142.] When used in this Act [chapter]--

(1) The term "industry affecting commerce" means any industry or activity in commerce or in which a labor dispute would burden or obstruct commerce or tend to burden or obstruct commerce or the free flow of commerce.

(2) The term "strike" includes any strike or other concerted stoppage of work by employees (including a stoppage by reason of the expiration of a collective-bargaining agreement) and any concerted slowdown or other concerted interruption of operations by employees.

(3) The terms "commerce," "labor disputes," "employer," "employee," "labor organization," "representative," "person," and "supervisor" shall have the same meaning as when used in the National Labor Relations Act as amended by this Act [in subchapter II of this chapter].

SAVING PROVISION

Sec. 502. [§ 143.] [Abnormally dangerous conditions] Nothing in this Act [chapter] shall be construed to require an individual employee to render labor or service without his consent, nor shall anything in this Act [chapter] be construed to make the quitting of his labor by an individual employee an illegal act; nor shall any court issue any process to compel the performance by an individual employee of such labor or service, without his consent; nor shall the quitting of labor by an employee or employees in good faith because of abnormally dangerous conditions for work at the place of employment of such employee or employees be deemed a strike under this Act [chapter].

SEPARABILITY

Sec. 503. [§ 144.] If any provision of this Act [chapter], or the application of such provision to any person or circumstance, shall be held invalid, the remainder of this Act [chapter], or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

DOMINIQUE KEIMBAYE - FILING PRO SE

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