SUPERIOR COURT OF CALIFORNIA

COUNTY OF SAN MATEO

,	Case No.:
Plaintiff,	**TENTATIVE RULINGS ON MOTION TO BIFURCATE; MOTIONS IN LIMINE AND OTHER MATTERS**
v.	
,	PTC: January 26, 2026 Time: 1:30 p.m.
Defendants.	Dept. 4 Trial Date: TBD
and related cross-actions.	Assigned to Hon. Nancy L. Fineman

MOTION TO BIFURCATE

Defendants/cross-defendants Pacific Retirement Services, Inc. and Bay Area Senior Services, Inc. dba the Peninsula Regent's (Regent) bring a motion to bifurcate liability from damages pursuant to Code of Civil Procedure sections 598 and 1048, subdivision (b). Plaintiff opposes the motion. There was no briefing by defendant and cross-defendant Margaret Wong. The court denies the motion.

This court has the authority under Code of Civil Procedure section 1048 to bifurcate the liability portion of the case from damages "in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition or economy." (See also *id*., § 598; Evidence Code § 320, sub. (a).) The resolution of a motion to bifurcate is left to the sound discretion of the trial judge. (*Finley v. Superior Court* (2000) 80 Cal.App.4th 1152, 1163.) In this case, Regent seeks to bifurcate liability from damages because it claims that bifurcation will save valuable court time and promote judicial economy and efficiency, allow the logical presentation of evidence, simplify the issues for the jury, facilitate settlement, and potential prejudice.

This court, in exercising its discretion, after weighing all the factors finds that separate trials would not be conducive to expedition or economy. If the jury finds in favor of defendants on liability, there is no question that it would have been more efficient to have bifurcation. However, liability in this case is vigorously contested, the court denied the Regent's motion for summary judgment, and this court cannot assume that the jury will find in favor of Regent. While Regent states that if Wong is found solely liable, the finding would eliminate the need to reach damages (Regent's motion at p. 6), it provides no support for this claim and plaintiff states that damages will need to be determined if any defendant is found liable. If any defendant is found liable, there would be no efficiency to bifurcation.

The Regent's argument on efficiency would support bifurcation in every case, but the law does not compel the bifurcation of liability and damages in every case. The court sees no unique circumstances here to support bifurcation.

Further, a bifurcation would not support efficiencies. A jury would need to be told at the outset that they would need to be available for the time necessary for the liability and damage phase of the trial plus, the additional time that Regent wants for settlement discussions. There would be questions of what the jury would think when they receive the case much earlier than told. There might be disputes over what evidence of damages could be introduced in the liability phase. Further, if any defendant was found liable, the parties would need to give two opening statements and two closing arguments and there would be two jury deliberations, which would significantly increase the time to try the case. With the court's schedule of trial a maximum of three days a week, the time to try both liability and damages, if bifurcated, would stretch over a much longer period of time than trying liability and damages together.

The court has no doubt that the jury will be able to understand the issues even if they are not presented in a straightforward way. Juries are smart and pay attention. The jury instructions, opening statement and closing arguments provide a roadmap for the jury to follow. The court also has no doubt that the jury will follow Judicial Council Of California Civil Jury Instruction 100, 5000 (Oc. 2025 update) (do not let sympathy influence your verdict). There is a presumption that jurors follow the jury instructions (*People v. Mooc* (2001) 26 Cal.4th 1216, 1234) and the court, in its experience finds that jurors follow the instructions. Thus, the court finds that there will be no prejudice to Regent by hearing liability and damages together.

The parties can always discuss settlement and there are typical times during trial preparation or trial, e.g. after jury selection, where the parties settle the case. Even if there is a substantial plaintiff verdict or a total defense verdict, the parties could challenge the resulting judgment by post-trial motions or appeal.

MOTIONS IN LIMINE

The court rules on the parties' motions in limine as follows. These rulings are tentative and can be changed any time before or during trial. (*Scott v. C.R. Bard, Inc.* (2014) 231

Cal.App.4th 763, 784; *Cristler v. Express Messenger Systems, Inc.* (2009) 171 Cal.App.4th 72, 90, n. 6.)

PLAINTIFF'S MOTIONS IN LIMINE

The court notes that it only has oppositions from Wong even though the time has passed to submit oppositions.

The court grants plaintiff's request for judicial notice, but that does not mean that the truth of all the statements within the documents are true.

No. 1 re Limit Expert Opinion to Disclosure and Deposition Testimony

This motion is too general for the court to rule. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) Plaintiff fails to identify any specific evidence she seeks to exclude. For both sides, the court follows the law, e.g. *Easterby v. Clark* (2009) 171 Cal.App.4th 772, 780; *Jones v. Moore* (2000) 80 Cal.App.4th 557; *Kennemur v. State of California* (1982) 133 Cal.App.3d 907 and their progeny, in ruling on motions regarding work experts performed after their depositions. If an expert is going to testify about something that was not testified to at deposition, the best practice is to notify the other side and make the expert available for further deposition.

No. 2 re Exclude Any Statement, Argument or Inference that a Prior Injury Is Possible

Plaintiff seeks to preclude evidence regarding: inferences of her having prior injuries to her head or brain.

The court starts with the basic evidentiary principles. No evidence is admissible except relevant evidence. (Evid. Code, § 350.) Relevant evidence means "evidence, including evidence relevant to the credibility of a witness or hearsay declarant, having any tendency in reason to prove or disprove any disputed fact that is of consequence to the determination of the action." (*Id*., § 210.) Even relevant evidence may be excluded "if its probative value is substantially outweighed by the probability that its admission will (a) necessitate undue

consumption of time or (b) create substantial danger of undue prejudice, of confusing the issues, or of misleading the jury." (*Id*., § 352.)

"One of the elements of a fair trial is the right to offer relevant and competent evidence on a material issue. Subject to such obvious qualifications as the court's power to restrict cumulative and rebuttal evidence, and to exclude unduly prejudicial matter, denial of this fundamental right is almost always considered reversible error." (3 Witkin, *Cal. Evid.* 6th Presentation § 1 (June 2025 update.) [citations and reference to other sections omitted].. There is no exception for unpleasant subject matter. (*Ibid*.) However, evidence is excluded when the inference is remote or conjectural. (*Id*. at § 155 citing *Savarese v. State Farm Mut. Auto. Ins. Co.* (1957) 150 Cal.App.2d 518, 520 ["Of course, the building of inference upon inference may often result in a progressive weakening of logical sequence, and lead to an ultimate conclusion which is untenable on the basis of the facts proven. When an ultimate inference is thus remote from the evidence, it should be rejected."].)

Evidence can either be direct or circumstantial, with both having the same effect. (CACI 202.) "The general test of relevancy of indirect evidence is whether it tends logically, naturally, and by reasonable inference to prove or disprove a material issue." (1 Witkin, *Cal. Evid.*, *supra*, Circum Evid § 32 [quoting *People v. Jones* (1954) 42 Cal.2d 219, 222, 266.].)

A court must disallow cross-examination of a witness that lacks a good faith basis, invites unsupported speculation and exposes the jury to inadmissible hearsay. (*People v. Lomax* (2010) 49 Cal.4th 530, 580 [Supreme Court rejected defendant's claim that his cross-examination was curtailed finding "the trial court properly prevented counsel from asking questions that lacked a good faith basis and invited jury speculation on claims that would not be given any evidentiary support"]; *People v. Lillard* (1963) 219 Cal.App.2d 368, 379 ["These 'did you known that' questions designed not to obtain information or test adverse testimony but to afford cross-examining counsel a device by which his own unsworn statements can reach the ears of the jury and be accepted by them as proof have been repeatedly condemned."]; 3 Witkin, *Cal. Evid.*, *supra*, Presentation § 196 ["A question that in its statement assumes the

existence of certain facts that are actually in issue and not proved or admitted may be excluded."].)

Wong has not made any offer of proof regarding the evidence of prior injuries to plaintiff's head or brain. Based upon plaintiff's motion, a defendant must make such an offer of proof before introducing that evidence. The defendant can point to the exhibit which contains the information or identify the witness that will provide that testimony. The defendant also needs to demonstrate not only the underlying fact, but for the issues of causation or damages, the opinion testimony which will be adduced demonstrating that if the fact occurred, it would be a contributing factor to plaintiff's injuries**.** A possible cause is insufficient to establish causation. (*Waller v. FAC US LLC* (2020) 48 Cal.App.5th 888.) "A possible cause only becomes 'probable' when, in the absence of other reasonable causal explanations, it becomes more likely than not that the injury was a result of its action. This is the outer limit of inference upon which an issue may be submitted to the jury." (*Id*. at p. 895 [quoting *Jones v. Ortho Pharmaceutical Corp.* (1985) 163 Cal.App.3d 396, 403].)

No. 3 Re Preclude Reference to Certain Witnesses Not Being Called to Testify

The motion is granted in part and denied in part. A party does not need to call every witness that supports the party's position. The court has limited time for trials, cumulative evidence can be excluded under Evidence Code section 352, and there may be reasons that a witness is not called, e.g. unavailable for trial. Therefore, if a witness is known and could be called by either party, no party shall comment that the evidence the court grants the motion. (*Patton v. Royal Industries, Inc.* (1968) 263 Cal.App.2d 760, 768.) To the extent, however, that plaintiff is seeking to circumvent CACI 203 or 204, the motion is denied.

No. 4 to Permit Further Motions Once Experts Are Deposed

Granted.

No. 5 re Sub Rosa Surveillance

Neither party cites a case addressing the issue of whether surveillance videos are protected by work product and a leading treatise states that there is no recent authority on the

issue, i.e. post-Discovery Act. (*Cal. Prac. Guide Civ. Pro. Before Trial* § 8:243 (TRG June 2025 update).) However, the conclusion reached by the treatise is that videos prepared for trial under an attorneys' direction reflecting counsel's strategies and tactics are qualified work product. (*Id*., §§ 8:243.1 *et seq*.) The court agrees with this analysis and, therefore, denies the motion. However, if defendant has but is not putting the videos or other surveillance evidence on the exhibit list, then defendant must have an offer of proof showing foundation of the documents. The court will not allow the jury to view any such evidence until it is authenticated by a witness, whether it be the plaintiff or the third party who took the video.

No. 6 re Request for Admissions

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 7 to Exclude Prior Collisions with the Regent's Dumpster or to Argue that Placement of the Dumpster on the Day of the Incident Was Safe.

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 8 to Exclude Any Attempt by Defendants to Apologize

Since liability is contested, the court grants the motion regarding any apology for causing the accident. However, the court denies the motion to the extent that if one entity witness or Wong wishes to make a brief mention of feeling sympathy or a similar emotion for plaintiff's injuries.

No. 9 re Exclude Evidence that Defense Theory or Scenario Is Possible

This motion is too general for the court to rule. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) See ruling on motion in limine no. 2.

No. 10 re Financial Condition of Plaintiff

The motion is granted and is reciprocal. No party shall refer to the other party's financial condition.

No. 11 re Alternative Causes of Plaintiff's Injuries Not Supported by the Evidence

See ruling on motion in limine no. 9.

No. 12 re Recology's Potential Responsibility

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 13 re Settlement Discussions

Grant.

No. 14 to Exclude Prior Medical Conditions, Treatment or Surgeries

This motion is too general for the court to rule. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) The ruling on motion in limine no. 2 discusses the framework for admission. The court notes that Wong has not identified any information that she seeks to introduce. To the extent that any prior medical conditions, treatment or surgeries are not related to an issue in this case, the evidence is irrelevant, it impermissibly invades plaintiff's right to privacy, and the court after weighing the factors excludes it under Evidence Code section 352. The parties shall make sure that any medical records introduced into evidence redact irrelevant information.

No. 15 re Plaintiff's Comparative Fault

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 16 to Exclude Evidence regarding a Dismissed Defendant

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 17 re Limited Voir Dire re Potential Juror Bias re the Insurance Industry

The parties can ask the parties about their employment and about the employment of their immediate family. Some of those questions may involve answers involving insurance or insurance companies and such questions are permissible. Questions that create the impression that the defendant has insurance are improper. (*Cal. Prac. Guide Civ. Trials & Ev.* § 5:356

(TRG Oct. 2025 update).) The case law is split on whether jurors can be questioned regarding their financial interest in insurance companies. (*Id*., § 5:358 *et seq*.) Plaintiff shall be prepared at the pretrial conference to provide the types of questions she wishes to ask and the court will decide then.

No. 18 re Exclude Collateral Source Evidence and to Permit Proof of Past Medical Expenses by Index

Neither Wang or Wong provide sufficient information about Wang's medical bills, the type of insurance she had (some information is provided by plaintiff in another pleading), and whether any liens are involved. Without that information, the court cannot rule on the motion. The court provides its general understanding of the admissible evidence and the parties can discuss the admissible evidence at the hearing.

Howell v. Hamilton Meats & Provisions, Inc. (2011) 52 Cal.4th 541 (*Howell*) and its progeny made significant changes in the medical expenses that a plaintiff can recover. "Damages for past medical expenses are limited to the lesser of (1) the amount paid or incurred for past medical expenses and (2) the reasonable value of the services." (*Corenbaum v. Lampkin* (2013) 215 Cal.App.4th 1308, 1325-1326 (*Corenbaum*).) For any bills that have been paid or will be paid by insurance, a plaintiff's recovery is capped at that amount. (*Howell*, *supra*, 52 Cal.4th at p. 555.) That is, a "plaintiff can recover as economic damages *no more* than the reasonable value of the medical services received and is not entitled to recover the reasonable value if his or her loss was less." (*Ibid*. [emphasis in original].) Other appellate courts have held that the full amount billed is not relevant to the reasonable value of the services provided, regardless of whether the provider had agreed to accept a lower amount. (*Ochoa v. Dorado* (2014) 228 Cal.App.4th 120, 135-136 (*Ochoa*).)

An "injured plaintiff with health insurance may not recover economic damages that exceed the amount paid by the insurer for the medical services provided." (*Pebley v. Santa Clara Organics, LLC* (2018) 22 Cal.App.5th 1266, 1268-1269 (*Pebley*); see also *id*., at p. 1269 ["the amount or measure of economic damages for an uninsured plaintiff typically turns on the

reasonable value of the services rendered or expected to be rendered."] [citing *Howell*, *supra*, 52 Cal.4th at p. 555].) Additionally, an insured plaintiff "who has chosen to treat with doctors and medical facility providers outside his insurance plan . . . shall be considered uninsured, as opposed to insured, for the purpose of determining economic damages." (*Ibid*.) If that were the case, plaintiff would be considered uninsured for both past and future medical bills. (*Id*., at pp. 1276-1278.)

Whether uninsured or insured but choosing to treat with out-of-plan providers, a plaintiff deemed uninsured must provide additional evidence that the amount incurred is reasonable. (*Pebley*, *supra*, 22 Cal.App.5th at p. 1275.) That is, "when a plaintiff is not insured, medical bills are relevant and admissible to prove both the amount incurred and the reasonable value of medical services provided." (*Ibid*.) "But the uninsured plaintiff also must present additional evidence, generally in the form of expert opinion testimony, to establish that the amount billed is a reasonable value for the service rendered." (*Ibid*.) "Thus, if the plaintiff has an expert who can competently testify that the amount incurred and billed is the reasonable value of the service rendered, he or she should be permitted to introduce that testimony. The defendant may then test the expert's opinion through cross-examination and present his or her own expert opinion testimony that the reasonable value of the service is lower." (*Id*., at pp. 1275-1276.)

A plaintiff must also show that they actually incurred the obligation to pay for the medical expenses. (*Qaadir v. Figueroa* (2021) 67 Cal.App.5th 790, 804 (*Qaadir*), as modified (Aug. 16, 2021), review denied (Nov. 10, 2021).) "Thus, in cases where the plaintiff did not receive treatment through his or her health insurance plan and the bill remains unpaid at trial, the question on whether the full medical bill is admissible turns on the amount for which the plaintiff is liable." (*Ibid*.) Whether the plaintiff is liable for the full amount billed may be established through the plaintiff's testimony or through that of the healthcare provider.

No. 19 to Exclude Franchise Agreement

There is no opposition to the motion in the binder and, plaintiff states that no opposition was filed as of January 12, 2026. On that basis, grants the motion.

No. 20 to Exclude Defendants from Using Medicare or Any Insurance Reimbursement Rates or Coverage Assumptions to Discount Further Medical Expenses

This motion is too general for the court to rule. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) Wong does not provide any evidence of testimony to be provided by her expert regarding reasonable rates. The court will need to know the opinion and the basis for the opinion. Neither side provides analysis of the case law regarding this issue and the court may need further briefing.

WONG'S MOTIONS IN LIMINE

Wong does not provide any oppositions in violation of the court's pretrial order. That omission and her failure to provide the pleadings in the manner required in the pretrial order has increased the court's workload. The clipped pleadings provided to the court includes Wong's motions in limine and its opposition to Wang's motions in limine, which also increased the time that the court needed to spend on the motions.

No. 1 re Identifying and Sequence of Witnesses

The court's general order is:

> The parties are to notify the other side no later than 4:30 p.m. the court day before the next court day of the witnesses who will be called the next court day.

The court though expects the parties to communicate regarding witnesses and all other trial issues. Generally, the parties agree on the sequence of witnesses during these communications, but the court will not make that order because depending on the length of one witness, another witness may need to be called out of order.

No. 2 to Exclude Reference to Plaintiff as the "Injured Victim."

Denied.

No. 3 re Howell

See ruling on plaintiff's motion in limine no. 18.

No. 4 re Referencing a Particular Amount During Voir Dire

In voir dire, the law allows questions about whether the parties can award a certain amount in damages. (Wegner, Fairbank and Epstein, *Cal. Prac. Guide Civ. Trials & Ev.* § 5:312. (TRG Oct. 2025 update).) However, the parties are not to pre-try their case or precondition the potential jurors in voir dire. There must be a good faith belief that the damage amounts will come into evidence. The court expects the parties to know the bounds of permissible advocacy and stay within those bounds. For example for voir dire, Code of Civil Procedure section 222.5 subsection (b)(3) provides: "For purposes of this section, an 'improper question' is any question that, as its dominant purpose, attempts to precondition the prospective jurors to a particular result, indoctrinate the jury, or question the prospective jurors concerning the pleadings or the applicable law." Also, the parties are not to discuss the law in voir dire, opening statement or witness testimony. The court rather than the attorney or witnesses supply the jury with the law.

No. 5 to Preclude Question re Conscience of the Community

The court grants the motion to prohibit "'reptile theory' arguments, which are improper appeals to a jury's emotions by arguing a defendant's conduct threatens the community's safety." (*Russell v. Department of Corrections and Rehabilitation* (2021) 72 Cal.App.5th 916, 941, reh'g denied (Jan. 13, 2022), review denied (Mar. 9, 2022) citing *Regalado v. Callaghan* (2016) 3 Cal.App.5th 582, 599; *Burchell v. Faculty Physicians & Surgeons of Loma Linda University School of Medicine* (2020) 54 Cal.App.5th 515, 530 [improper for counsel to appeal to jury's self-interest and ask them to use their verdict to protect the community generally].)

The court grants to preclude any Golden Rule argument. (Cotchett & Fineman, *Persuasive Opening Statements and Closing Arguments*, § 3.7 (CEB 2025).) The ruling includes any statement that the jury acts as the conscience or voice of the community. (*Regalado v. Callaghan*, *supra*, 3 Cal.App.5th at p. 599.)

The court denies the motion as to any effort to stop closing argument from being vigorous. The court experts that the parties know the outer bounds of advocacy and that they will conduct their voir dire, make their opening statement and closing arguments within the law's parameters. (See Cotchett & Fineman at Chapter 3.)

The court reminds the parties that opening statement and examination of witnesses are not to contain argument.

No. 6 re Counsel Refrain from Offering to Stipulate

Denied. The court invites as many stipulations as possible and often during trial, for example, a party will stipulate to a fact to move the case along. The court expects that the parties will refrain from gamesmanship. The court emphasizes the parties' professional responsibilities and reminds them that the court expects them to be in constant communication during trial to make sure that the case is presented efficiently with each side's rights protected.

No. 7 to Preclude General Reference to Other Brain Injuries

This motion is too general for the court to rule. (*Kelly v. New West Federal Savings* (1996) 49 Cal.App.4th 659.) Wong has not identified any specific evidence she seeks to exclude. In general, experts use examples to help the jury understand concepts that are not within common knowledge. The court will generally permit the use of examples and the opposing party may vigorously cross-examine.

No. 8 to Preclude Use of Expert Opinions of Non-Retained Experts

As long as the medical provider was disclosed as a non-retained expert, the motion is denied. (*Schreiber v. Estate of Kiser* (1999) 22 Cal.4th, 31, 35; *Dozier v. Shapiro* (2011) 199 Cal.App.4th 1509, 1520; *Cal. Prac. Guide Civ. Trials & Ev.* § 11:15.1 (TRG Oct. 2025).) Defendants may make objections to specific questions.

No. 9 to Exclude Witnesses from the Courtroom

Granted. All witnesses except for parties (one representative for the entity defendant) are excluded until after they have testified and are excused from further testimony.

No. 10 to File Motions re Plaintiff's Exhibit Lists, Witness List and Ongoing Expert Depositions

Granted as to ongoing expert witness lists. Wong's counsel is to provide a declaration under penalty of perjury filed, served and emailed to Department 4 by 9:00 a.m. on Monday, January 26, 2026 explaining why this motion regarding exhibit and witnesses lists was necessary when the pretrial order required the parties to file joint lists, which was not done, and Wong is to identify any motions that she wishes to now file. The court will discuss the motion at the hearing.

PENINSULA'S MOTIONS IN LIMINE

The court did not receive any courtesy copies of motions in limine from Peninsula and does not see any motions in Odyssey.

By 11:00 a.m. on January 23, 2026, the parties shall email Department 4 and each other as to any tentative rulings for the motion to bifurcate and motions in limine that they wish to contest. If the court and the opposing party do not receive notice by that time, the tentative rulings will be adopted at the pretrial conference.

VOIR DIRE AND QUESTIONAIRRE

The parties are to meet-and confer to determine the number of sides and accordingly, the number of preemptory challenges. (Code of Civ. Proc., § 231, subd. (c).) The court will discuss this subject at the pretrial conference.

The court has a request from plaintiff and Wong for a jury questionnaire. The court finds juror questionnaire take longer than regular voir dire and do not obtain as much information as simply having the attorneys ask questions. (Accord *Cal. Judges Benchbook Civ. Proc. Trial* § 3.67 (July 2025 update).) However, if the parties wants a questionnaire the court will give one, but then the court will not allow the extensive questioning in oral voir dire but only follow-up to the questionnaire. The purpose of the questionnaire is to make voir dire shorter and provide sufficient information to the parties to intelligently make for cause and preemptory challenges. (*People v. Fuentes* (1991) 54 Cal.3d 707, 720, n. 8.)

There are many issues with the questionnaires. Plaintiff states that the questionnaire must be completed no later than "5 pm on your reporting day." The questionnaires need to be returned to Department 4 and Department 4 locks its doors at 4:30 p.m. Wong's questionnaire asks for the juror's phone number and e-mail address. Counsel for Wong is to email Department 4 and the parties by 10:00 a.m. on January 26, 2026 with the authority that allows them to obtain this information during jury selection. The parties are to be prepared to identify the last time they used their proposed questionnaire and the judge that used the questionnaire.

The court has concerns about many of the questions. In general, questions about date and place of birth, age, sex, religious and political beliefs, and implicitly race/ethnicity are not appropriate. The law does not allow such questions unless there is a specific showing that the question is relevant to an issue in the case, which showing has not been made in this case. (See e.g. *People v. Ramos* (1997) 15 Cal.4th 1133, 1157–1158; *Unzueta v. Akopyan* (2022) 85 Cal.App.5th 67, 83; *In re Malvasi's Estate* (1929) 96 Cal.App. 204, 210; *Cal. Prac. Guide Civ. Trials & Ev.* § 5:351 et seq. (TRG Oct. 2025 update); Prejudice—Religion, Jury Selection: The Law, Art and Science of Selecting a Jury § 7:40 et seq. (Nov. 2024 update); Barry Goode, Religion, Politics, Race and Ethnicity: The Range and Limits of Voir Dire, *92 Ky. L. J.* 601, 610–11 (2003–04). Some of the questions will be asked by the court in determining hardships.

The court notes that the proposed questionnaires are long and will take potential jurors significant time to fill out. There is no place but the courtroom for the jurors to fill out the questionnaire. There is no place on the fourth floor for the jurors to fill out the questionnaires, the jury assembly room may not be used, and the court is not aware of any large space in the courthouse where the parties can fill out the questionnaire. The parties will be responsible for providing seventy-five clipboards and pens and copying the questionnaires and putting them in alphabetical order. The court will need a hard copy in a binder with tabs for each letter. The copying will have to be done within a few hours so that the court and the parties have sufficient time to review the questionnaires.

The court does not see any caution to the jurors regarding the confidentiality or lack thereof of their responses. (*Cal. Judges Benchbook Civ. Proc. Trial* § 3.70 (July 2025 update).) That notice shall be given on the questionnaire.

For voir dire when there is no questionnaire, the court generally asks the questions in the Standards of Judicial Administration, Standard 3.25(c) and allows the parties to conduct most of the voir dire. There is no question that the parties have a constitutional right to an impartial jury and that "the trial judge should permit liability and probing examination calculated to discover bias or prejudice. (Code Civ. Proc., § 222.5.) Voir dire, however, is not unlimited, the court has broad discretion in how voir dire is conducted, and the court can impose reasonable time limits. (*Cal. Judges Benchbook Civ. Proc. Trial* §§ 3.53, 3.54, 3.56 (July 2025 update).)

The court explains its understanding of "for cause" challenges. There is no question that a prospective juror may be challenged for cause when the potential juror has actual bias. (Code Civ. Proc., § 225, subd. (b)(1)(C).) The trial judge is the arbiter of whether a juror will act fairly where there are indications both ways or other ambiguity. (See *People v. Thornton* (2007) 41 Cal.4th 391, 414.) In discussing death penalty cases, our Supreme Court provides useful guidance on how a trial court is to rule upon "for cause" challenges. The key is whether the prospective juror agrees to listen to the evidence and decide the case only upon the evidence and the law and prospective jurors may not be disqualified from service simply because they object to the death penalty as a general matter. As explained for death penalty cases:

> "[N]ot all who oppose the death penalty are subject to removal for cause in capital cases; those who firmly believe that the death penalty is unjust may nevertheless serve as jurors in capital cases so long as they state clearly that they are willing to temporarily set aside their own beliefs in deference to the rule of law." (*Lockhart v. McCree* (1986) 476 U.S. 162, 176, 106 S.Ct. 1758, 90 L.Ed.2d 137.) Nor may a juror be disqualified from service because he or she might "impose a higher threshold before concluding that the death penalty is appropriate." (*People v. Stewart* (2004) 33 Cal.4th 425, 447, 15 Cal.Rptr.3d 656, 93 P.3d 271.) "The critical issue is whether a life-leaning prospective juror — that is, one generally (but not invariably) favoring life in prison instead of the death penalty as an appropriate punishment — can set aside his or her personal views about capital punishment and follow the law as the trial judge instructs." (*People v. Thompson* (2016) 1 Cal.5th 1043, 1065, 210 Cal.Rptr.3d 667, 384 P.3d 693.) If a juror can obey those

> instructions and determine whether death is appropriate based on a sincere consideration of aggravating and mitigating circumstances, the juror may not be excused for cause. (*People v. Armstrong*, *supra*, 6 Cal.5th at p. 750, 243 Cal.Rptr.3d 105, 433 P.3d 987; *Stewart*, at p. 447, 15 Cal.Rptr.3d 656, 93 P.3d 271; *People v. Lewis* (2001) 25 Cal.4th 610, 633, 106 Cal.Rptr.2d 629, 22 P.3d 392.)

(*People v. Peterson* (2020) 10 Cal.5th 409, 429–430; see also *People v. Kipp* (1998) 18 Cal.4th 349, 366 [no abuse of discretion by trial court in rejecting for cause challenge when the trial court could reasonably determine that despite juror's expressed distaste for defendant's appearance, she would faithfully discharge oath to impartially determine facts and apply law to reach just verdict]; *Graybill v. De Young* (1905) 146 Cal. 421, 422-424 [no abuse of discretion in rejecting challenge for cause in libel action where juror admitted prejudice against such actions but said he would try case "on the evidence and the law"]; *People v. Bivert* (2011) 52 Cal.4th 96, 115 (trial court reasonably determined that despite juror's strong pro-death penalty views, juror would follow law as instructed] A preexisting opinion is not disqualifying if the juror can set it aside and decide the case solely on the evidence presented in court. (*People v Rountree* (2013) 56 Cal.4th 823, 842; *Alcazar v Los Angeles Unified Sch. Dist.* (2018) 29 Cal.App.5th 86, 99.)

The court is aware of the Legislature's enactment of Code of Civil Procedure section 237.1, which has started to apply to certain limited civil cases (not this case). The court expects that counsel will also be aware of the statute's requirement and conduct their voir dire keeping in mind the legislature's goal of minimizing implicit bias.

JURY INSTRUCTIONS AND VERDICT FORMS

The parties have failed to comply with the pretrial order as each party filed their own jury instructions and no party included the proposed jury instructions in their submission as required by the California Rules of Court and the pretrial order. Accordingly, by 9:00 a.m. on January 26, 2026, the parties are to file joint jury instructions as set forth in the pretrial order. A copy shall be emailed to Department 4 and a hard copy brought to the pretrial conference.

The court only has plaintiff's proposed verdict form. If any party objects, they shall provide a redline of plaintiff's proposed verdict form and a short argument supporting their

positions. The document shall be filed and emailed to Department 4 by 9:00 a.m. on January 26, 2026. A hard copy shall be brought to the pretrial conference.

STATEMENT OF THE CASE

The parties have failed to comply with the pretrial order which requires a joint proposed statement of the case as each party filed their own statement. Accordingly, by 9:00 a.m. on January 26, 2026, the parties are to file a joint statement as set forth in the pretrial order. A copy shall be emailed to Department 4 and a hard copy brought to the pretrial conference.

WITNESSES

The parties have failed to comply with the pretrial order as each party filed their own witness lists. Accordingly, by 9:00 a.m. on January 26, 2026, the parties are to file joint jury instructions as set forth in the pretrial order. A copy shall be emailed to Department 4 and a hard copy brought to the pretrial conference.

The court has plaintiff's deposition designations (in Odyssey only) but does not see any counter-designations or objections filed. The parties shall meet-and-confer about deposition designations. If there are any objections, they shall file the objections and provide a binder with the disputed testimony bolded with the objection written next to the designation as required by the pretrial order. The court will set a deadline for submission at the pretrial conference.

If any witness will be testifying by Zoom, the parties shall so indicate at the pretrial conference and if any party objects to the witness testifying by Zoom, the party shall indicate the reason for the objection.

The parties are to notify the other side no later than 4:30 p.m. the court day before the next court day of the witnesses who will be called the next court day.

If a party does not have a witness ready to testify, the court, in its discretion, may find that the party has rested.

EXHIBITS

The parties have failed to comply with the pretrial order as each party filed their own exhibit lists. Accordingly, by 9:00 a.m. on January 26, 2026, the parties are to file joint jury instructions as set forth in the pretrial order. A copy shall be emailed to Department 4 and a hard copy brought to the pretrial conference.

The court has the following comments:

The court will not admit all medical records from a provider. Specific records must be identified. Personal identifying information must be redacted from all records. The parties are to meet-and-confer regarding objections.

Expert files and CVs are generally not admitted into evidence.

Deposition transcripts are not exhibits and do not go into the jury room. (Code Civ. Proc., § 612.)

For the discovery responses, only the relevant questions and answers (with objections redacted) which are used will be admitted into evidence.

The court needs three sets of exhibits in binders to be provided to Department 4 by the Monday before jury selection—one original, one for the judge, and one for the witness. The parties are to affix the exhibit labels on the documents. The format of the labels can be obtained from the Department 4 clerk.

OPENING STATEMENT

The court believes that opening statements do not need to be any longer than thirty minutes. If the parties believe that they will need more than thirty minutes for opening statement, they should provide argument at the pretrial conference.

The parties are to exchange any deposition excerpts they plan to show in opening and any demonstratives forty-eight hours before the date set for jury selection so that any objections can be ruled upon prior to opening statements.

TRIAL SCHEDULE

The court will set a trial date and discuss the trial schedule with the parties at the pretrial conference.

As the parties know, the court only holds trial on Wednesday, Thursday and Friday. The court will discuss the schedule at the pretrial conference. The court schedule is 9:00 a.m. to noon with a twenty minute break and 1:30 p.m. to 4:30 p.m. with a twenty minute break, except for Fridays where the morning schedule is the same and the afternoon schedule is 2:00 p.m. to 4:30 p.m. with a twenty minute break.

COURT REPORTER

The parties are reminded of the court's rule regarding court reporters. If the parties want a court reporter, they must follow the required procedure.

If there is a court reporter, the court will ask the parties at the pretrial conference whether they will waive reporting of voir dire and put any objections to the process on the record at a later time.

INTERPRETERS OR ADA ACCOMMODATIONS

If any party or witness needs an interpreter, counsel are to follow the court's procedure for requesting an interpreter and should make sure to provide the length of the trial and the specific times that an interpreter is requested.

If any attorney, party or witness needs any accommodations, they are to follow the court's procedures for making their request.

PRETRIAL CONFERENCE

The parties are reminded that the first pretrial conference is in person and will be held at the Hall of Justice, 400 County Center, Courtroom 4C, Redwood City, CA 94063.

Dated: January 21, 2026

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NANCY L. FINEMAN
Judge of the Superior Court