



1 Plaintiff's motion to proceed remotely via video at jury trial will be denied. In the context  
2 of a jury trial, the matter of whether to permit parties or witnesses to appear remotely by way of  
3 Zoom (or otherwise) is left to the court's discretion. *See, e.g., Steele v. Nat'l R.R. Passenger*  
4 *Corp.*, No. 19-cv-553-BHS, 2022 WL 1154351, at \*2 (W.D. Wash. Apr. 19, 2022); *Bao Xuyen Le*  
5 *v. Reverend Dr. Martin Luther King, Jr. Cnty.*, 524 F. Supp. 3d 1113, 1115–16 (W.D. Wash.  
6 2021); *Rinaldi v. SCA La Goutte, D'Or*, 16-cv-1901-VSB, 2022 WL 443779, at \*2 (S.D.N.Y.  
7 Feb. 14, 2022).<sup>1</sup> Specifically, Federal Rules of Civil Procedure 43(a) and 77(b) do authorize  
8 courts to “permit testimony in open court by contemporaneous transmission from a different  
9 location,” for good cause in compelling circumstances. But plaintiff's request is broader than  
10 merely wishing to present certain trial testimony remotely. Here, the court does not find good  
11 cause or compelling circumstances that would warrant plaintiff's participation in the trial of this  
12 case, in which he is proceeding *pro se*, to be entirely carried out remotely via Zoom.

13 Although plaintiff's asserted disabilities could be construed as an illness or similar  
14 condition, those circumstances cannot be said to be unexpected in this case. Plaintiff has been  
15 consistently reiterating his alleged disabilities throughout this litigation, but he has nonetheless  
16 indicated that he wishes to proceed to trial. Now, on the eve of that jury trial, the court cannot  
17 find plaintiff's request to conduct that trial remotely to be well-taken. While the court remains  
18 sympathetic to plaintiff's asserted conditions, plaintiff brought this action on his own behalf and it  
19 is his burden to prosecute it. Accordingly, plaintiff's motion will be denied.

20 Plaintiff has now informed the court that “telephonic appearance is the only way” that he  
21 will be able to be present at the jury trial scheduled in this action and that if he cannot appear  
22 remotely, his alleged circumstances will prevent him from appearing in the courtroom of the  
23 undersigned on the date set for trial. (Doc. No. 196 at 2.) The court takes plaintiff at his word in

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25 <sup>1</sup> As the district court in *Rinaldi* recognized, “[t]he opportunity to judge the demeanor of a  
26 witness face-to-face is accorded great value in our tradition. Transmission cannot be justified  
27 merely by showing that it is inconvenient for the witness to attend the trial.” *Rinaldi*, 2022 WL  
28 433779, at \*2 (citing Federal Rule of Civil Procedure 43(a) Advisory Committee's note to 1996  
amendment). “The most persuasive showings of good cause and compelling circumstances are  
likely to arise when a witness is unable to attend trial for unexpected reasons, such as accident or  
illness, but remains able to testify from a different place.” *Id.*

1 this regard. Nonetheless, for the reasons explained above, the court will deny plaintiff's request  
2 to appear at the jury trial in this action telephonically or by video or Zoom. Plaintiff is therefore  
3 ordered to notify the court in writing by no later than 5:00 p.m. on Friday May 13, 2022 that he  
4 intends to be personally present in the courtroom of the undersigned at 8:30 a.m. on May 17,  
5 2022 to prosecute this action at trial as scheduled. If plaintiff fails to notify the court of his  
6 intention to personally appear at trial, the court will find that he has declined to appear at his  
7 scheduled jury trial as indicated in his pending motion and will dismiss this case due to plaintiff's  
8 failure to prosecute.<sup>2</sup>

9 Accordingly,

- 10 1. Plaintiff's motion to participate in the May 17, 2022 jury trial in this case solely by  
11 telephone or via video or Zoom (Doc. No. 196) is denied;
- 12 2. Plaintiff is ordered to notify the court in writing by 5:00 p.m. on Friday, May 13,  
13 2022 that he intends to be personally present in the courtroom of the undersigned  
14 to proceed with the jury trial in this case on May 17, 2022;
- 15 3. If plaintiff fails to notify the court of his intent to proceed in person, the court will  
16 find that plaintiff has declined to personally appear at trial (as indicated in the  
17 pending motion is his intention), and the court will dismiss this case due to  
18 plaintiff's failure to prosecute; and
- 19 4. The Clerk of the Court is ordered to serve this order on plaintiff by way of mail  
20 and via e-mail at his e-mail address of record in order to ensure he receives it with  
21 time to respond as ordered.

22 IT IS SO ORDERED.

23 Dated: May 11, 2022

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26 UNITED STATES DISTRICT JUDGE

27 <sup>2</sup> The court simply cannot justify inconveniencing the 50 perspective jurors who are otherwise  
28 being called upon to report to the courthouse for the jury trial on the morning of May 17, 2022, if  
plaintiff has no intention of personally appearing for trial as ordered.