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UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LUKE ROMERO,
Plaintiff,
v.
COUNTY OF SANTA CLARA, et al.,
Defendants.

Case No. [11-cv-04812-WHO](#)

**TENTATIVE ORDER REGARDING
OPENING JURY INSTRUCTIONS**

Re: Dkt. No. 140

The parties have filed proposed opening and closing jury instructions. Dkt. No. 140. The parties agree on proposed opening jury instructions 1 through 3 and 5 through 17. The parties disagree on proposed opening jury instruction 4. I intend to adopt the agreed upon proposed jury instructions and, subject to argument by the parties at the pretrial conference, I also intend to adopt the following opening jury instruction 4.

**JURY INSTRUCTION NO. 4
CLAIMS AND DEFENSES**

To help you follow the evidence, I will give you a brief summary of the positions of the parties.

Plaintiff Dr. Luke Romero is an anesthesiologist. He claims that Defendants Santa Clara County, Dr. Friedrich Moritz, Dr. Bridget Phillip, Dr. Adella Garland, and Dr. Dolly Goel retaliated against him for engaging in protected activity under California’s Fair Employment and Housing Act (FEHA), California Labor Code section 1102.5, California Health & Safety Code section 1278.5, and the First Amendment of the United States Constitution. Dr. Romero claims that after he made complaints about discrimination, harassment, mismanagement, and deficient patient care at the Santa Clara County hospital where he worked, his own patient care was subjected to unfair peer reviews by his colleagues. “Peer review” is a process by which a

1 physician's patient care is analyzed and evaluated by other physicians with similar training. Dr.
2 Romero has the burden of proving his claims by a preponderance of the evidence.

3 Defendants deny Dr. Romero's claims. Defendants allege that Dr. Romero made his
4 complaints at the same time the hospital was implementing a new and more rigorous peer review
5 policy that applied to all physicians and that Dr. Romero's patient care would have been reviewed
6 even if he had not made the complaints.

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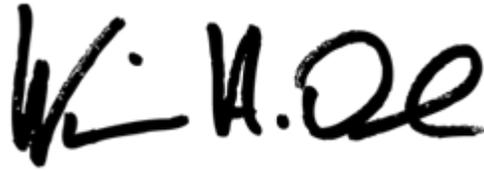
8 **Court's analysis:** This is based on the Ninth Circuit Model Civil Jury Instruction 1.2 and
9 substantially similar to defendants' proposed instruction. Defendants' objections to plaintiffs'
10 proposed instruction are well-taken.

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12 **IT IS SO ORDERED.**

13 Dated: September 22, 2014

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WILLIAM H. ORRICK
United States District Judge

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