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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

KYLE CHRISTOPHER ZOELLNER,

Plaintiff,

v.

CITY OF ARCATA, et al.,

Defendants.

Case No. 18-cv-04471-JSC

**ORDER FOLLOWING PRETRIAL  
CONFERENCE**

Re: Dkt. Nos. 246, 247, 248, 249, 250, 257,  
258, 259, 260, 261

Following the pretrial conference on September 15, 2022, the Court finalizes its tentative rulings on the parties' motions in limine, (*see* Dkt. No. 299), and resolves other pretrial matters explained below.

**I. PLAINTIFF'S MOTIONS IN LIMINE**

**A. No. 2 (Dkt. No. 247)**

DENIED. Detective Losey is not precluded from challenging the state court judge's determination of no probable cause following the preliminary hearing.

Whether issue preclusion bars Detective Losey from challenging the probable cause element of the malicious prosecution claim is a matter of California law. *See Wige v. City of Los Angeles*, 713 F.3d 1183, 1185 (9th Cir. 2013) (explaining that courts apply state law to determine preclusive effect of state court judgments).

In California, issue preclusion applies when five requirements are met: (1) the issue sought to be relitigated must be identical to the issue decided in the earlier action; (2) the issue must have been actually litigated and (3) necessarily decided in the earlier action; (4) the earlier decision must be final and made on the merits; and (5) the party against whom issue preclusion is asserted must have been a party to the earlier action or in privity with such party.

*Id.* Mr. Zoellner, as the party asserting issue preclusion as a bar to further litigation, "bears the

1 burden of proving that the requirements of the doctrine are satisfied.” *Hong Sang Mkt., Inc. v.*  
2 *Peng*, 20 Cal. App. 5th 474, 489 (2018).

3 The only requirement at issue here is whether Detective Losey, who was not a party to the  
4 preliminary hearing proceeding, was in privity with the District Attorney’s Office, a party to the  
5 preliminary hearing. As a matter of California law, he was not. *See Willis v. Mullins*, No.  
6 CIVF046542AWILJO, 2005 WL 3500771, at \*5–9 (E.D. Cal. Dec. 16, 2005) (applying California  
7 law and holding that police officers who conducted search of the plaintiff’s home were not barred  
8 by issue preclusion from relitigating the lawfulness of the search because they were not in privity  
9 with the prosecution); *see also Davis v. Eide*, 439 F.2d 1077, 1078 (9th Cir. 1971) (“The  
10 defendants were city police officers not directly employed by the state; they had no measure of  
11 control whatsoever over the criminal proceeding and no direct individual personal interest in its  
12 outcome. In these circumstances there was no privity sufficient to invoke the doctrine of collateral  
13 estoppel.”); *Duncan v. City of San Diego*, 401 F. Supp. 3d 1016, 1029 (S.D. Cal. 2019) (“federal  
14 courts applying state law have overwhelmingly concluded ‘that privity does not exist between law  
15 enforcement officers and the criminal prosecution,’” and citing cases). “While police do aspire to  
16 enforce the law, individual officers cannot be said to have a personal stake in ensuring  
17 conviction.” *Willis*, 2005 WL 3500771, at \*7.

18 The cases upon which Mr. Zoellner relies are distinguishable. In *McCutchen v. City of*  
19 *Montclair*, 87 Cal. Rptr. 2d 95, 101 (Cal. Ct. App. 1999), the issue was whether a finding of  
20 probable cause following a preliminary hearing barred *the plaintiff* from relitigating the issue in a  
21 subsequent action against police officers for malicious prosecution. Thus, there was no issue of  
22 privity as the party against whom issue preclusion was sought was a party to both the criminal  
23 action and the civil action. The same was true in *Haupt v. Dillard*, 17 F.3d 285, 288 (9th Cir.  
24 1994). Similarly, in *Wige*, 713 F.3d at 1184, the issue was whether a state court magistrate  
25 judge’s finding of probable cause following a preliminary hearing barred the plaintiff’s malicious  
26 prosecution claim. Thus, this case, too, did not address privity.

27 Mr. Zoellner has not met his burden of proving that a police officer is in privity with the  
28 prosecution such that he is bound by a finding of no probable cause following the preliminary

1 hearing. The Court acknowledges that while Detective Losey opposed Plaintiff's motion for issue  
2 preclusion, he did not raise the privity argument. Nonetheless, the Court must apply the correct  
3 law and place the burden on Mr. Zoellner, and for the reasons explained above, that burden has not  
4 been met.

5 While Detective Losey is not barred from arguing that there was probable cause for the  
6 criminal charges, probable cause is an issue for the Court to decide. *See* CACI No. 1500. In  
7 resolving that issue, the first question is what Detective Losey knew at the time he allegedly  
8 caused the charges to be filed and/or continued against Mr. Zoellner. If there is a dispute as to  
9 what he knew, the jury resolves those disputes of fact. Once those facts are established, the Court  
10 decides whether they constitute probable cause. *See Est. of Tucker ex rel. Tucker v. Interscope*  
11 *Recs., Inc.*, 515 F.3d 1019, 1031 (9th Cir. 2008). As discussed at the pretrial conference, **in order**  
12 **to identify disputes of fact, if any, that the jury will resolve:**

- 13 • By Monday, September 19, 2022, Detective Losey shall file an offer of proof in the form  
14 of a list of facts which he contends constitute probable cause for prosecuting Mr. Zoellner,  
15 with citations to the exhibit or witness who will testify to each fact.
- 16 • By Friday, September 23, 2022, Mr. Zoellner shall file a response to Detective Losey's  
17 list. The response shall indicate if there is a dispute as to (a) whether the fact exists or (b)  
18 whether Detective Losey knew the fact at the time, and may list additional facts which Mr.  
19 Zoellner contends show a lack of probable cause. The response shall include citations to  
20 the exhibit or witness who will put each fact in dispute or testify to each fact.

21 *See* CACI No. 1500 (requiring the court to instruct the jury on what facts are in dispute as to  
22 probable cause). Upon review of the parties' submissions, if the Court determines that there may  
23 not be a genuine dispute of fact material to the probable cause determination, it will direct the  
24 parties to appear for a further pretrial conference on September 29, 2022 at 2:30 p.m. Otherwise,  
25 the parties' submissions will assist with determining what facts need to be determined by the jury.  
26 As discussed at the pretrial conference, the parties are responsible for ensuring that the facts they  
27 believe are relevant to the probable cause determination are supported by the evidence admitted at  
28 trial; the Court will not consider evidence outside the trial record in deciding the probable cause

1 element.

2 **B. No. 1 (Dkt. No. 246)**

3 GRANTED. The report of Detective Losey’s expert Brian Medeiros, (Dkt. No. 300), is  
4 excluded because it opines on an ultimate issue of law, whether probable cause existed at the time  
5 charges were filed against Mr. Zoellner.

6 As explained above, this Court rather than the jury decides whether there was probable  
7 cause. An expert opining as to whether there was probable cause is not helpful to this Court’s  
8 probable cause determination. *See United States v. Diaz*, 876 F.3d 1194, 1197 (9th Cir. 2017)  
9 (“[A]n expert witness cannot give an opinion as to her legal conclusion, i.e., an opinion on an  
10 ultimate issue of law.”); *see also Gong v. Jones*, No. C 03–05495 TEH, 2008 WL 4183937, at \*4  
11 (N.D. Cal. Sept. 9, 2008) (“Courts regularly prohibit experts from testifying on the ultimate issue  
12 of whether there was ‘probable cause’ for an arrest.”).

13 **C. No. 3 (Dkt. No. 248)**

14 DENIED. There is a genuine dispute as to whether Detective Losey made a mistake;  
15 therefore, on the record currently before the Court it is a jury question.

16 **D. No. 4 (Dkt. No. 249)**

17 GRANTED as to evidence related to any traffic violation, juvenile record and/or  
18 misdemeanor records. Detective Losey does not offer any reason why such evidence is relevant  
19 and admissible.

20 GRANTED as to the evidence that Mr. Zoellner remains a suspect in the homicide as such  
21 evidence is irrelevant. Detective Losey’s insistence that the fact that Mr. Zoellner remains a  
22 suspect is relevant to the probable cause and malice elements of the malicious prosecution claim  
23 (Dkt. No. 249-1) is incorrect. As explained in connection with Plaintiff’s Motion in Limine No. 2,  
24 what is at issue on Mr. Zoellner’s claim is Detective Losey’s state of knowledge (probable cause  
25 element) and state of mind (malice element) at the time he allegedly caused the charges to be  
26 initiated against Mr. Zoellner and/or continued the charges to be prosecuted. *See Tucker*, 515 F.3d  
27 at 1030-31 (explaining that the plaintiff must prove that the charges were *brought* without  
28 probable cause and *initiated* with malice); *see also* CACI No. 1500. Detective Losey does not

1 explain, and the Court cannot understand, how the fact that in the minds of at least some in the  
2 Arcata Police Department Mr. Zoellner has not been ruled out as a suspect sheds any light as to  
3 whether Detective Losey lacked probable cause and acted with malice in April 2017.

4 As discussed at the pretrial conference, this ruling refers to evidence from after the charges  
5 against Mr. Zoellner were dismissed; Detective Losey may present evidence that he understood  
6 that Mr. Zoellner was the sole suspect at the time the charges were filed and prosecuted.

7 **E. No. 5 (Dkt. No. 250)**

8 DENIED. Evidence regarding what facts Detective Losey was aware of at the time he  
9 allegedly caused the charges to be filed against Mr. Zoellner is relevant to the probable cause and  
10 malice elements. *Tucker*, 515 F.3d at 1031.

11 There is an issue as to whether evidence of which Detective Losey was not aware at the  
12 time he allegedly caused the filing of the charges is otherwise relevant to this lawsuit. In  
13 particular, Detective Losey's exhibit list includes DNA reports. (Dkt. No. 264 at 22-24 (Proposed  
14 Exhibits 22-26).) The Court asked Detective Losey to demonstrate how and why those exhibits  
15 would come into evidence given that no DNA expert appears on his witness list. (Dkt. No. 289 at  
16 2.) Detective Losey responds that he does not intend to introduce the DNA results for the truth of  
17 the matter, but rather to show that they did not exonerate Mr. Zoellner and thus they are relevant to  
18 probable cause and malice. (Dkt. No. 295.) Using the test results to show that they did not  
19 exonerate Mr. Zoellner is using them for the truth of the matter. But, putting that problem aside,  
20 as the Court has explained, probable cause and malice are determined at the time the prosecution  
21 was allegedly maliciously initiated and continued. *Tucker*, 515 F.3d at 1031; (*see also* Dkt. No.  
22 296 at 2-3). What Detective Losey learned after the charges were dismissed is irrelevant to  
23 whether there was probable cause and he acted with malice at the time he allegedly caused the  
24 prosecution. As Detective Losey has not established the relevance of the DNA evidence, it is  
25 excluded.

26 Detective Losey also argues that evidence that tends to show that Mr. Zoellner committed  
27 the stabbing are relevant to his damages claim. The Court agrees that such evidence *in admissible*  
28 *form* may be relevant. The DNA evidence is not proffered in admissible form as Detective Losey

1 does not have a witness on his list competent to testify to the DNA results as substantive evidence.  
2 Other evidence, again in admissible form, may be relevant to damages. Mr. Zoellner demands \$7  
3 million in emotional distress damages. Even if the jury finds that Detective Losey lacked probable  
4 cause, acted with malice, and that his conduct caused the District Attorney to file charges, Mr.  
5 Zoellner still bears the burden of proving his damages. He appears to contend that he was severely  
6 damaged because he did not stab the victim and thus the false charge caused him emotional  
7 distress. But the jury may find that in light of all the evidence in the trial record, Mr. Zoellner has  
8 not met his burden of proving his damages, that is, that he suffered emotional distress from being  
9 *falsely* charged. The Court thus declines to rule at this stage that all evidence that Detective Losey  
10 was not aware of is not relevant. The relevance of such evidence, if any, will have to be  
11 specifically identified and addressed in context. Further, the Court will have to see how Mr.  
12 Zoellner argues his damages at trial.

13 **II. DEFENDANT’S MOTIONS IN LIMINE**

14 **A. No. 1 (Dkt. No. 257)**

15 DENIED. Mr. Zoellner identified the categories of damages in his initial disclosures and  
16 Detective Losey explored those categories in depth at Mr. Zoellner’s deposition.

17 **B. No. 2 (Dkt. No. 258)**

18 DENIED. In this Order the Court has explained the scope of relevant evidence. The Court  
19 does not know how Mr. Zoellner will respond to questions and Detective Losey does not offer any  
20 evidence that he refused to answer any questions at his deposition.

21 **C. No. 3 (Dkt. No. 259)**

22 GRANTED. Mr. Zoellner does not object. This order does not preclude Mr. Zoellner  
23 from mentioning any persons involved in the case; it only precludes Mr. Zoellner from identifying  
24 those persons as defendants.

25 **D. No. 4 (Dkt. No. 260)**

26 GRANTED. The gist of Mr. Zoellner’s argument is as follows: for past incidents,  
27 Detective Losey’s supervisors investigated to determine whether discipline was warranted, but  
28 they failed to investigate/discipline Detective Losey for the inaccuracy in his reporting on Mr.

1 Zoellner. According to Mr. Zoellner, “[t]he selective enforcement of the policies shows  
2 intentional acts by Losey and his superiors. This will show that the scheme was endorsed by his  
3 superiors which provides punitive damages coverage under any insurance policy.” (Dkt. No. 260-  
4 1 at 6.) This argument makes no sense as the district court granted summary judgment to all of the  
5 defendants on all claims, with the exception of malicious prosecution against Detective Losey and  
6 wrongful threat of criminal prosecution/intentional infliction of emotional distress, which is  
7 bifurcated and stayed. (Dkt. No. 233 at 12.) The proffered evidence does not tend to show  
8 absence of mistake. *See* Fed. R. Evid. 404(b)(2). Further, to the extent there is some limited  
9 relevance, it is outweighed by its likelihood of confusing the jury. *See* Fed. R. Evid. 403.

10 Mr. Zoellner expresses concern that via this motion in limine Detective Losey seeks to  
11 exclude various reports. (Dkt. No. 260-1 at 6.) Neither the Independent Review nor the Parker  
12 report are on Mr. Zoellner’s exhibit list. (Dkt. No. 264 at 13-15.) Thus, there is no need for  
13 Detective Losey to seek to exclude them; Mr. Zoellner has already excluded them himself. The  
14 Court addressed objections to exhibits identified on the exhibit lists at the pretrial conference.

15 **E. No. 5 (Dkt. No. 261)**

16 GRANTED as to defense and indemnification; DENIED as to Detective Losey’s personal  
17 financial condition. However, the Court will phase trial as to the amount of punitive damages  
18 assuming the jury finds in phase one that punitive damages are warranted. Thus, all evidence  
19 relevant only to the amount of punitive damages is excluded from phase one, but admissible in  
20 phase two.

21 **III. OTHER ISSUES**

22 **A. Grand Jury**

23 Mr. Zoellner references the District Attorney’s resubmission of the case against him to the  
24 grand jury in November 2019 and the grand jury’s decision not to indict. (Dkt. No. 293.) The  
25 grand jury evidence is irrelevant to Mr. Zoellner’s claim. This Court, not the grand jury, decides  
26 whether Detective Losey had probable cause at the time he allegedly caused the charges to be filed  
27 in 2017. *Tucker*, 515 F.3d at 1030. The criminal charges were terminated in Mr. Zoellner’s favor  
28 when the state court judge dismissed the charges for lack of probable cause. *Jaffe*, 18 Cal. 2d at

1 156 (1941) (indicating that a dismissal at a preliminary hearing is a “final termination of the  
2 proceedings in favor of the accused, unless it appears that further proceedings growing out of the  
3 same misconduct on his part have been instituted” (cleaned up)). No new formal charges have  
4 been initiated; thus, the relevant time period for the malicious prosecution claim is the  
5 approximately three weeks between when formal charges were filed and the formal charges were  
6 dismissed. *See Van Audenhove v. Perry*, 217 Cal. Rptr. 3d 843, 850 (Cal. Ct. App. 2017), as  
7 modified (June 14, 2017) (“The prosecution element of malicious prosecution sets up a bright-line  
8 test. Before charges are filed, the actions of the police and the prosecutor are merely  
9 investigatory.”).

10 Detective Losey’s response includes several inaccurate statements of law. He claims that  
11 the underlying proceeding—the prosecution of Mr. Zoellner—has not concluded. Detective Losey  
12 is wrong. There are no charges pending against Mr. Zoellner and since the charges were  
13 dismissed no new charges have been filed. It is the filing of the original charges that is at issue in  
14 this lawsuit. A plaintiff may not bring a malicious prosecution claim just because he remains  
15 under investigation. *See id.*

16 Detective Losey also incorrectly argues that Mr. Zoellner must establish that he continued  
17 to be maliciously prosecuted after the preliminary hearing. (Dkt. No. 291 at 5.) Again, not so.  
18 The prosecution was favorably terminated in Mr. Zoellner’s favor when the state court judge  
19 dismissed the charges against him for lack of probable cause. *See Jaffe*, 18 Cal. 2d at 156. Mr.  
20 Zoellner must thus prove that at the time Detective Zoellner allegedly caused the charges to be  
21 filed and/or continued, the facts of which Detective Losey was aware did not constitute probable  
22 cause.

23 **B. Trial Subpoena to Detective Losey (Dkt. No. 283)**

24 Detective Losey’s objection is sustained and the trial subpoena is QUASHED with respect  
25 to documents. Mr. Zoellner could have obtained those documents during the fact discovery  
26 period.

27 **C. Discovery from District Attorney Maggie Fleming (Dkt. No. 301)**

28 Mr. Zoellner’s request for additional discovery from Ms. Fleming is DENIED. Mr.



1 Zoellner could have obtained the requested documents or deposed Ms. Fleming during the fact  
2 discovery period. However, as discussed at the pretrial conference, Detective Losey’s counsel  
3 shall confirm with the police department that every report within the scope of what Mr. Zoellner  
4 requested during discovery was properly produced.

5 **D. Mr. Zoellner’s Expert Christopher W. Boyd**

6 The report of Mr. Zoellner’s expert Christopher W. Boyd, (Dkt. No. 304-1), is  
7 EXCLUDED. Mr. Boyd’s two opinions are not relevant because they are offered to rebut  
8 Detective Losey’s expert’s opinion, (*id.* at 2), which the Court has excluded; therefore, there is no  
9 opinion to rebut.

10 **IV. WITNESSES**

PLAINTIFF’S WITNESSES		
NO.	WITNESS NAME	DEFENDANT’S OBJECTION
1	MAGGIE FLEMING	Overruled. (Dkt. No. 297.)
2	ANDREW ISAAC	Overruled. (Dkt. No. 297.)
3	ROGER REES	Sustained. (Dkt. No. 297.)
4	TODD DOKWEILER	No objection.
5	ERIC LOSEY	No objection.
6	CHRISTOPHER BOYD	Witness excluded.
7	ERIC ZOELLNER	No objection.
8	KYLE ZOELLNER	No objection.
9	EVE KIEST	Sustained. (Dkt. No. 297.)
10	BETH SPELLMEYER, MD	Sustained. (Dkt. No. 297.)
11	KIT MEYERS	Sustained. (Dkt. No. 297.)
12	AISHA MORTON	Sustained. (Dkt. No. 297.)
DEFENDANT’S WITNESSES		
NO.	WITNESS NAME	PLAINTIFF’S OBJECTION
1	KYLE ZOELLNER	No objection.

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2	ERIC LOSEY	No objection.
3	TODD DOKWEILER	No objection.
4	DEVIN NILSEN	Overruled.
5	BRIAN MEDEIROS	Sustained pursuant to the Court's ruling on Plaintiff's Motion in Limine No. 1.
6	BRIAN AHEARN	Witness withdrawn.

**V. EXHIBITS**

<b>PLAINTIFF'S EXHIBITS</b>		
<b>NO.</b>	<b>EXHIBIT NAME/SUMMARY</b>	<b>ADMISSIBILITY</b>
1	Letter dated 4/5/19 from Fleming to AG	Not excluded. Plaintiff shall substitute a new Exhibit 1 as discussed.
2	Email dated 7/29/20 from Ahearn to Dokweiler	Excluded.
3A	Audio recording Martinez 1st interview by Losey	Not excluded.
3B	Audio recording Martinez 2nd interview by Losey	Not excluded.
3C	Audio recording IA of Losey	Excluded.
4	Transcript of Recording of Martinez 1st Interview	Not excluded.
5	Transcript of Recording of Martinez 2nd Interview	Not excluded.
6	Excerpts of Charging Summary	Not excluded.
7	Losey Police Report of Martinez Interview	Not excluded.
8	Felony Complaint (CR 1701730)	Not excluded.
9	Eric Losey Declaration	Not excluded.
10	Todd Dokweiler Declaration	Not excluded.
11	Excerpts of APD Policy Manual	Not excluded to limited extent discussed at pretrial conference.
12	Excerpts of Martinez Testimony at the preliminary by Martinez	Not excluded. Parties to meet and confer regarding a stipulation.
13	Excerpts of preliminary hearing transcript May 5, 2017 re: Judge finding lack of probable cause	Excluded.
14	Excerpts of Deposition transcript of Todd Dokweiler	Not excluded; may be used to refresh recollection or impeach

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		non-party.
15	Oath signed by Eric Losey	Not excluded.
16	Letter to Losey re: POST	Excluded.
17	2012 APD investigation of Losey	Excluded.
18	2017 Investigation of Losey	Excluded.
19	Losey resignation letter	Not excluded.
20	Losey Explanation of benefit	Excluded.
21	Civil Grand Jury Report	Excluded.
<b>DEFENDANT'S EXHIBITS</b>		
<b>NO.</b>	<b>EXHIBIT NAME/SUMMARY</b>	<b>ADMISSIBILITY</b>
1	Photographs of knife and Plaintiff's pants	Not excluded.
2	Photographs of search warrant executed on Plaintiff's residence	Not excluded.
3	Photographs of Plaintiff's Subaru	Not excluded.
4, 5	Photographs of Lawson at hospital; Autopsy photographs	Defendant shall choose one photo; otherwise excluded.
6	Photographs of Plaintiff's clothes	Not excluded.
7, 8	Photographs of Plaintiff's knife bag; Photographs of Plaintiff's employment	Defendant shall check when the photographs were taken.
9	Devin Nilsen's in car camera	Not excluded.
10	Devin Nilsen's in car camera facing out	Not excluded.
11	Zoellner's statement to the police	Not excluded.
12	Exhibits 16-22 to Plaintiff's Deposition	Not excluded.
13, 14, 15	Exhibits 25-27 to Plaintiff's Deposition	Withdrawn.
16	Exhibit 28 to Plaintiff's Deposition	Not excluded.
17, 18, 19	Exhibits 29-31 to Plaintiff's Deposition	Withdrawn.
20	Crime scene overview and crime scene diagram	Defendant shall check when the document was made.
21	Autopsy Report – to be marked but not admitted	N/A
22, 23, 24, 25	DOJ Reports Dated 10/3/18, 6/29/17, 9/21/18, 10/31/18	Excluded.

1	26	911 radio	Withdrawn.
2	27	Jason Martinez Statements	Not excluded.
3	28	Scene Photographs	Excluded as duplicative.

4  
5 \* \* \*

6 **PRETRIAL ARRANGEMENTS**

7 A. Should a daily transcript and/or real-time reporting be desired, the parties shall  
8 make arrangements with Rick Duvall, Supervisor of the Court Reporting Services, at  
9 (415) 522-2079, at least ten (10) calendar days prior to the trial date.

10 B. The United States Marshal requires a court order to allow equipment into the  
11 courthouse. For electronic equipment, parties should be prepared to maintain the equipment or  
12 have a technician handy at all times. The parties shall tape extension cords to the carpet for safety.  
13 The parties may work with the deputy clerk, Ada Means (415-522-2015), on all courtroom-layout  
14 issues.

15 **SCHEDULING**

16 Trial will be conducted from 8:30 a.m. to 2:30 or 3:00 p.m., depending on the availability  
17 of witnesses, Monday through Friday. Counsel must arrive by 8:00 a.m. for any matters to be  
18 heard out of the presence of the jury. The jury will be called at 8:30 a.m.

19 Each side will have **9 hours** for witness examinations and cross-examinations. Each side  
20 will have no more than **45 minutes** for opening statements.

21 The Court intends to do opening statements on October 3, 2022 and Mr. Zoellner shall  
22 have his first witness ready to testify on that date as well.

23 **THE JURY**

24 In civil cases, there are no alternate jurors and the jury is selected as follows:  
25 Eighteen to twenty jurors are called to fill the jury box and the row in front of the bar, and are  
26 given numbers (1 through 20). The remaining potential jurors will be seated in the public benches.  
27 Counsel for each side will have 20 minutes to conduct a limited voir dire. Challenges for cause  
28 will then be addressed out of the presence of the potential jurors. The Court will consider whether

1 to fill in the seats of the stricken jurors. If so, questions will be asked of the additional jurors and  
2 cause motions as to them will be considered. After a short recess, each side may exercise its  
3 allotment of peremptory challenges out of the presence of the potential jurors (three per side). The  
4 eight jurors surviving the challenge process with the lowest numbers become the final jury. For  
5 example, if the plaintiff strikes 1, 5, and 7 and the defendant strikes 2, 4, and 9, then 3, 6, 8, 10,  
6 11, 12, 13, and 14 become the final jury. Once the jury selection is completed, the jurors' names  
7 will be read again and they will be seated in the jury box and sworn. The Court may alter this  
8 procedure in its discretion and after consultation with the parties.

9 **WITNESSES**

10 At the close of each trial day, all counsel shall exchange a list of witnesses for the  
11 next two full court days and the exhibits that will be used during direct examination (other than  
12 for impeachment of an adverse witness). Within 24 hours of such notice, all other counsel shall  
13 provide any objections to such exhibits and shall provide a list of all exhibits to be used with the  
14 same witness on cross-examination (other than for impeachment). The first notice shall be  
15 exchanged prior to the first day of trial. All such notices shall be provided in writing. The parties  
16 shall also exchange what they intend to use in opening arguments by the Friday before trial  
17 commences.

18 **CHARGING CONFERENCE**

19 As the trial progresses and the evidence is heard, the Court will fashion a comprehensive  
20 set of jury instructions to cover all issues actually being tried. Prior to the close of the evidence,  
21 the Court will provide a draft final charge to the parties. After a reasonable period for review, one  
22 or more charging conferences will be held at which each party may object to any passage, ask for  
23 modifications, or ask for additions. Any instruction request must be renewed specifically at the  
24 conference or it will be deemed waived, whether or not it was requested prior to trial. If, however,  
25 a party still wishes to request an omitted instruction after reviewing the Court's draft, then it must  
26 affirmatively re-request it at the charging conference in order to give the Court a fair opportunity  
27 to correct any error. Otherwise, as stated, the request will be deemed abandoned or waived.

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All of the Court’s rulings are subject to reconsideration depending on how the evidence and argument is developed at trial.

This Order disposes of Docket Nos. 246, 247, 248, 249, 250, 257, 258, 259, 260, 261.

**IT IS SO ORDERED.**

Dated: September 16, 2022

  
\_\_\_\_\_  
JACQUELINE SCOTT CORLEY  
United States District Judge

**EXHIBIT A**

**BACKGROUND**

HAVE EACH OF THE 20 PROSPECTIVE JURORS ANSWER ALOUD THE GENERAL BACKGROUND QUESTIONS ON THE SHEET THAT HAS BEEN HANDED OUT.

1. Please state your name:
2. Please state the city in which you live:
  - a. How long have you lived there?
  - b. Where else have you lived in the past 5 years?
3. What is your current occupation?
  - a. How long have you been so employed?
  - b. What are your previous occupations, if any?
  - c. Have you or any member of your family been employed by a law firm?
4. Please give us the following information about your family:
  - a. Are you married?
    1. If so, what is your spouse's current occupation and by whom is your spouse employed?
  - b. Do you have any children?

If so:

    1. How many?
    2. What ages?
    3. What are their occupations, if any?
5. Are there any other adults living in your household?
  - a. If so, how are they related to you, and what is their age and occupation?