

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

AMES RAY,

Plaintiff,

-against-

BALESTRIERE FARIELLO, et al.,

Defendants.

No. 1:18-cv-11211 (JLR)

ORDER

JENNIFER L. ROCHON, United States District Judge:

The Court has reviewed the parties' joint letter, dated January 17, 2023. *See* ECF


No. 171. It is hereby ORDERED:

- **Plaintiff's Exhibits:** Defendants have waived their objection to Plaintiff's exhibits 26 and 27. Additionally, the Court declines to issue Defendants' requested instruction to the jury regarding these exhibits (*see* ECF No. 171 at 1), because the instruction would inappropriately comment on the evidence and "influence the jury on decisions which should be in the jury's sole province." *United States v. Mundy*, 539 F.3d 154, 158 (2d Cir. 2008) (holding that, absent special circumstances, judges should not "summarize and comment upon the evidence generally" in their instructions to the jury).
- **Defendants' Exhibits:**
 - Defendants have withdrawn exhibit DX-7. *See* ECF No. 171 at 2. Plaintiff has waived his objection to Defendants' exhibits DX-79, DX-100, DX-104, DX-113, DX-128, and DX-134, subject to Defendants separating these exhibits into subparts as agreed upon by the parties. *See* ECF No. 171 at 1-2. Defendants shall submit such revised exhibits, after conferring with Plaintiff, by **January 19, 2023**. Since the joint letter states that the "only" Defendants' exhibit that remains in dispute is DX-108, the Court concludes that Plaintiff has not renewed, and has therefore waived, his objection to Defendants' exhibits DX-25, DX-66, DX-89, DX-106, DX-112, DX-137, and DX-151.
 - Plaintiff objects to the first sentence in Defendants' exhibit DX-108 on hearsay grounds. Defendants assert that the sentence is not hearsay because they do not intend to offer it for the truth of the matter asserted, but Defendants do not state any alternative purpose for introducing the sentence. *See* ECF No. 171 at 2. Plaintiff's objection is sustained, without prejudice to the Court revisiting if Defendants articulate a legitimate purpose for which it is sought to be admitted, other than the truth of the statement asserted. *See* Fed. R. Evid. 801(c)(2). Defendants shall provide a redacted version of DX-108 by **January 19, 2023**.

- Defendants shall submit their proposed exhibits DX-163, DX-164, DX-165, and DX-166 to the Court by **January 19, 2023**. Before submission, the parties must confer about these exhibits in an effort to resolve any objections and, if any objection remains, Plaintiff must make the objection (and Defendants must provide their response) at the time the exhibits are filed.
- The Court asked the parties whether they had any objections to the Court's PowerPoint of preliminary instructions to the jury that were provided to the parties on January 11, 2023. The parties have not raised any objections and, hearing no objection, the Court will present those instructions to the jury before opening statements.
- The Court will provide the parties' jointly proposed preliminary instruction regarding the attorney-client privilege during the initial instructions prior to opening statements. *See* ECF No. 171 at 2.
- Finally, Plaintiff shall, by **January 19, 2023**, file a stipulation signed by all parties dismissing this action as to John Does 1-5 or file a letter stating that Plaintiff does not intend to dismiss John Does 1-5 from this action.

Dated: January 18, 2023
New York, New York

SO ORDERED.



JENNIFER L. ROCHON
United States District Judge