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BEFORE THE STATE OF INDIANA

CIVIL RIGHTS COMMISSION

- - -

PUBLIC MEETING OF OCTOBER 21, 2024

- - -

PROCEEDINGS

in the above-captioned matter, before the Indiana
Civil Rights Commission, Adrienne L. Slash,
Chairperson, taken before me, Lindy L. Meyer,
Jr., a Notary Public in and for the State of
Indiana, County of Shelby, at the Indiana
Government Center North, 100 North Senate Avenue,
Room N300, Indianapolis, Indiana, on Monday,
October 21, 2024 at 1:07 o'clock p.m.

- - -

ACCURATE REPORTING OF INDIANA, LLC
543 Ponds Pointe Drive
Carmel, Indiana 46032
TELEPHONE: (317) 848-0088
EMAIL: accuratereportingofindiana@gmail.com

1 APPEARANCES:

2 COMMISSION MEMBERS:

3 Adrienne L. Slash, Chairperson
4 Steven A. Ramos
5 Sue Silberberg
6 Terry Tolliver

7 INDIANA CIVIL RIGHTS COMMISSION
8 By David Fleischhacker, Deputy Director
9 Indiana Government Center North
10 100 North Senate Avenue, Room N300
11 Indianapolis, Indiana 46204
12 On behalf of the Commission.

13 OTHER COMMISSION STAFF PRESENT:

14 Michael Lostutter
15 Christiana Afuwape
16 Yvette Kirchoff
17 Jordan Teske-Harrison
18 Paris Walton
19 Nicholas Piezonka
20 Nicole Owens
21 James Hodges

22 ALSO PRESENT:

23 Andrea Ciobanu
Brett Hession
Toni Everton
Steven F. Pockrass
Kate E. Trinkle
Anna Kirkman

- - -

1 1:07 o'clock p.m.
2 October 21, 2024

3 - - -

4 CHAIRPERSON SLASH: All right. Well,
5 I think we have our quorum here, and it's -- what
6 time is it? -- 1:07 on October 21st. I'll call
7 this meeting of the Indiana Civil Rights
8 Commission to order. To begin, we do have our
9 quorum in person, but our court reporter needs to
10 get the contact information for the people who
11 are on the phone; correct?

12 THE REPORTER: Yes.

13 CHAIRPERSON SLASH: Okay.

14 MR. LOSTUTTER: If people would
15 unmute themselves to announce their names.

16 (Discussion off the record.)

17 MS. AFUWAPE: We have at the
18 moment --

19 MR. LOSTUTTER: And would everybody
20 go ahead and announce themselves? Christiana
21 has.

22 MS. TESKE-HARRISON: Hello. This is
23 Jordan Teske-Harrison, Director of the ICW.

MR. LOSTUTTER: All right.

1 MS. WALTON: Hello. My name is Paris
2 Walton. I'm the Public Outreach and Education
3 Manager.

4 MR. PIEZONKA: This is Nick Piezonka.
5 I am Greg Wilson's Executive Assistant.

6 MS. OWENS: My name is Nicole Owens.
7 I am the Director of the Indiana Native American
8 Indian Affairs Commission.

9 MR. HODGES: This is Jim Hodges. I'm
10 an Investigator with the Employment Unit.

11 MR. LOSTUTTER: That is five.

12 MS. AFUWAPE: I am Christiana.

13 MR. LOSTUTTER: All right.

14 And very quickly, please be advised no
15 party will be allowed to speak directly to the
16 Commission during any Commission meetings except
17 during a previously scheduled oral argument
18 concerning appeals. The Commissioners will make
19 their initial determination based on the
20 complaint, the notice of finding, the appeal, and
21 the final investigative report. You must not
22 address the Commission members except and unless
23 you are addressed directly by them. If you have

1 any questions about your case, please wait to
2 speak to the Docket Clerk until after the
3 Commission meeting.

4 Thank you.

5 CHAIRPERSON SLASH: Okay. At this
6 time, we'll have the announcement of our agenda.

7 MR. LOSTUTTER: We will have approval
8 of previous meeting minutes; we will have the
9 ICRC Director's Report; Old Business, consisting
10 of appeal of notice of finding, and oral argument
11 is supposed to take place in that, also dealing
12 with a matter from a previous Commission meeting;
13 New Business, new appeals, notice of findings
14 that will be assigned to all of the Commissioners
15 plus two other motions that were filed in the
16 last week and a half; and then the ALJ decisions
17 will be reviewed, three of which involve oral
18 arguments today; and then we will conclude with
19 the reading into the record of the ALJ decisions
20 that are to be automatically confirmed.

21 CHAIRPERSON SLASH: Thank you very
22 much.

23 We'll begin. Do I have a motion to

1 approve last month's meeting minutes?

2 VICE-CHAIR RAMOS: So moved.

3 COMM. TOLLIVER: Second.

4 CHAIRPERSON SLASH: Okay. I'll take
5 the motion of Vice-Chair Ramos and the second,
6 Comm. Tolliver.

7 At this time, we'll have the ICRC
8 Director's Report.

9 MR. FLEISCHHACKER: Thank you, Chair
10 Slash.

11 We had a couple of major events over the
12 last month, since the last meeting. We had our
13 Annual Days of Service on September 16th
14 and 17th -- 17th and 18th, and we had over 200
15 volunteers that came out with us over those two
16 days. We did beautification projects on Martin
17 Luther King Jr. Drive, on the Northeast Landing
18 area just north of downtown.

19 A lot of state agencies were involved in
20 that as well, so it was well received, and we had
21 some good media coverage of it as well, so I
22 think it was a -- it came together really nicely,
23 and then we were able to get a lot of projects

1 done at Watkins Park and at Charlie Wiggins Park
2 and a couple of areas around that area.

3 We had the annual -- or the Indiana Civil
4 Rights Awards Dinner in early October. We had
5 approximately 380 attendees for the Dinner. It
6 was well received, great messages. The award
7 recipients were all well deserving and had great
8 stories to share. Overall, it was a great
9 evening at the Indiana Roof Ballroom.

10 Currently we're working -- starting to
11 work on annual reports for all of our Cultural
12 Commissions and for the Indiana Civil Rights
13 Commission as well. Last year, in 2023, was the
14 first time that we had an annual report for all
15 of the -- all of us together, and our goal is to
16 have all of those done here right at the end
17 of 2024 or early 2025 so those can get published
18 as well.

19 And then a couple of weeks ago, we met
20 with a -- Dr. Allon Friedman, President of the
21 Jewish American Affairs Committee of Indiana, and
22 we're -- our External Affairs team is starting to
23 work with them to put together some education and

1 awareness opportunities, particularly for
2 students who are Jewish, about their rights under
3 the Civil Rights Law when it comes to access to
4 education and different things like that. So, I
5 think that that will be a good partnership to
6 help combat some of the anti-Semitism that is
7 going on in Indiana and throughout the country.

8 As far as some ongoing things, we
9 mentioned earlier that we were going to have some
10 transfers from the EEOC. Ultimately we had 170
11 cases transferred to us from the EEOC in
12 September, so we're already starting to work on
13 those and process those.

14 We entered into kind of an agreement with
15 HUD, where they're going to be transferring 15
16 cases to us a month on a pilot program through
17 the end of the year to work and process as well.
18 So, again, great partnerships with our federal
19 partners.

20 And then right now we're engaged in some
21 fair housing testing, in partnership with the
22 Indiana Housing & Community Development
23 Authority. We have 111 properties throughout the

1 State of Indiana that we're going to be testing.
2 I believe we're right in the middle of that
3 testing right now. It'll, I think, be done by
4 the end of the month, and then we'll see if
5 there's any statistical -- or significant
6 difference in how the testers were treated, to
7 see if there's the need to pursue any charges in
8 any of those cases.

9 As far as some metrics go, our calls are
10 on pace of where they were last year through the
11 end of September, the same with inquiries, all
12 within about a five-percent difference. Our
13 formalized complaints are up significantly,
14 about 21 percent, through the end of September.
15 We had 924 complaints filed with the Commission,
16 compared to 762 at the same time last year.

17 All of last year we had 980 filed, so
18 that -- if we continue on our trend of -- or our
19 average of around 102 cases filed a month, we're
20 going to maybe surpass 1200 complaints by the end
21 of the year. So, we'll continue to monitor that,
22 but again, that's -- even the 980 was a
23 significant increase even from pre-COVID numbers.

1 So, we continue to see an upward trend in
2 the number of complaints filed, and that's
3 even -- that's not even including the transfers
4 that are coming to us from the EEOC and from HUD.
5 Those are just the complaints that are filed
6 directly with the office.

7 Closures are on pace to be around the
8 same, and then we're down a little bit for funds
9 recovered or obtained through mediation efforts,
10 but we're -- we've -- through the end of
11 September, we have recovered \$525,000, a little
12 over that, through the end of September.

13 At the end of September, we had 28 open
14 litigation cases, compared to 58 at the same time
15 last year. As you can assume with that, our
16 closures and then the litigations here are
17 significantly up, 51 closes here, compared to 34
18 at the same time last year.

19 We do have about ten cases that, on the
20 notice of finding, is currently a cause finding
21 that are under review, so we may see our
22 litigation numbers bump up here a little bit in
23 the next couple of weeks. Of those 28, there are

1 a number that were just settled, so we'll see
2 what that does with overall numbers.

3 That's what's going on.

4 CHAIRPERSON SLASH: Thank you.

5 Any Commissioners have any questions?

6 VICE-CHAIR RAMOS: No.

7 CHAIRPERSON SLASH: Comm. Tolliver
8 and I enjoyed ourselves at the Dinner. It was a
9 job well done, and Greg and Louise, and surely it
10 was an inspiring evening, and it was great to
11 hear from speakers and awardees.

12 MR. FLEISCHHACKER: Absolutely.

13 CHAIRPERSON SLASH: So, thank you.

14 Okay. I need to go back, because we did
15 not vote on the minutes.

16 MR. LOSTUTTER: Oh.

17 CHAIRPERSON SLASH: We got a motion
18 and a second, but we didn't vote. So, all in
19 favor in approving the minutes from last month's
20 meeting?

21 (Commission members responded, "Aye.")

22 CHAIRPERSON SLASH: Any opposed?

23 (No response.)

1 CHAIRPERSON SLASH: Okay. The
2 minutes have been approved.

3 Now we'll go into where we are for this
4 month, and we'll begin our Old Business. The
5 case of Christopher Hodgen versus Purdue
6 University Global, Case EDha24040213.

7 Do we have both parties present?

8 MR. LOSTUTTER: They are not on-line,
9 and I do not see them -- anyone here.

10 CHAIRPERSON SLASH: Okay. Well, with
11 that being said, I will go ahead at this time,
12 without having either party present -- we have
13 not heard from either party today at all?

14 MR. LOSTUTTER: No.

15 CHAIRPERSON SLASH: Okay. With that
16 being said, we'll take what we have in the case
17 as what we have in the case, and I would
18 recommend that we uphold the Deputy Director's
19 finding of no probable cause.

20 COMM. TOLLIVER: So moved.

21 VICE-CHAIR RAMOS: Second.

22 CHAIRPERSON SLASH: Thank you.

23 Motion, Comm. Tolliver, second, Vice-Chair Ramos.

1 And then the next --

2 MR. LOSTUTTER: You have to --

3 CHAIRPERSON SLASH: -- Old

4 Business -- huh?

5 VICE-CHAIR RAMOS: We have to vote.

6 CHAIRPERSON SLASH: Oh, thank you.

7 It's a Monday. Please let my Mondays happen. I

8 promise it's not a day early.

9 All in favor?

10 (Commission members responded, "Aye.")

11 CHAIRPERSON SLASH: Any opposed?

12 (No response.)

13 CHAIRPERSON SLASH: Okay. Very good.

14 Motion carries.

15 All right. Next, we have, in our Motions
16 and Other Filings, Derrick Young versus Camelot
17 Care Center, Case EMra24040257. The Respondent
18 is filing a Motion for More Specific and Definite
19 Statement from the Complainant, and it is filed
20 with the Commission. This was filed with the
21 Commission on the 8th. I am granting that. Do I
22 need a vote on that?

23 MR. FLEISCHHACKER: (Shook head no.)

1 CHAIRPERSON SLASH: Okay.

2 MR. LOSTUTTER: No.

3 CHAIRPERSON SLASH: So, that motion
4 is granted.

5 In New Business, I'll make assignments.
6 I'll try to go across the table as best as I can.
7 Kellee Rembert versus Lennar Homes of Indiana,
8 LLC & Lennar Mortgage, LLC, Case HOra24060455.
9 That case will be assigned to Comm. Silberberg.

10 The case of Kevin Thomas versus Affordable
11 Living Property Management, LLC & Crestview at
12 Kokomo, LLC, Case HOra24050384. That case is
13 assigned to Comm. Ramos.

14 Today Boyce versus Rolls-Royce
15 Corporation, Case EMha23030289. That case will
16 be assigned to me.

17 April Cook versus FSI Valleybrook Property
18 LLC, Yes! Communities LLC, & Valleybrook Mobile
19 Home Park, Case HOha24060496. The case will be
20 assigned to Comm. Tolliver. And for the record,
21 I will grant oral argument on both that have
22 requested.

23 Okay. Motions and Other Filings that we

1 have under New Business, Gregory L. Wilson, Sr.,
2 in his official capacity as Executive Director of
3 the Indiana Civil Rights Commission versus
4 Heritage Place at Parkview LP and Sterling Group,
5 Inc., Case HOno24090805. The Respondent is
6 filing a Motion for More Specific and Definite
7 Statement from the Complainant. I will grant
8 that motion.

9 And then the next case that we have is
10 ICRC/Darian Day versus Jerry Wenger. Respondent
11 is filing an objection to the Administrative Law
12 Judge's Recommended Final Facts, Conclusions of
13 Law and Order.

14 Can you remind me what my choices are on
15 this one?

16 MR. FLEISCHHACKER: There's nothing
17 for you to do on that one.

18 CHAIRPERSON SLASH: Okay.

19 MR. FLEISCHHACKER: It's just --

20 CHAIRPERSON SLASH: I just want to
21 make sure it's in the record and that I was right
22 on that.

23 MR. FLEISCHHACKER: The parties now

1 have -- the parties now have 30 days to file
2 their written briefs.

3 CHAIRPERSON SLASH: For your record,
4 do you need a case number? Okay. I'm having a
5 real day. Okay. HOha23090705. All right. Very
6 well.

7 Okay. So, this next section, we'll go
8 through Administrative Law Judge's orders
9 disposing of the proceeding -- of proceedings,
10 and we've got a few. I'll let our Deputy
11 Director kind of walk us into this section of --

12 MR. FLEISCHHACKER: Sure.

13 CHAIRPERSON SLASH: -- our agenda and
14 explain the course here.

15 MR. FLEISCHHACKER: Thank you, Chair
16 Slash.

17 So, in this section, we have the
18 Administrative Law Judge orders based on the law
19 at the time that these matters were originated.
20 The ALJ was a -- was not the ultimate authority
21 for these matters, so these nonfinal orders
22 require review by the ultimate authority. When
23 objections are filed, then the -- this

1 Commission, as the ultimate authority, has a
2 couple of options based on those objections.

3 The ultimate authority, the Commission,
4 can affirm the Administrative Law Judge's order,
5 which would mean that whatever the Administrative
6 Law Judge decided in their opinion and all of the
7 facts, conclusions of law should remain as
8 written.

9 The Commission can also issue a final
10 order modifying the Administrative Law Judge's
11 order, so that would be changing the result of
12 the decision, changing some of the fact
13 determinations in the decision, whatever the
14 Commission deems necessary to modify in the final
15 order and to that issue.

16 And then the Commission may also issue an
17 order remanding the matter, with or without
18 instructions, to the Administrative Law Judge for
19 further proceedings.

20 For the three matters that are before the
21 Commission today that have had objections filed,
22 all of those three matters were decisions based
23 on summary judgment briefings, so in these cases,

1 if the Commission were to follow that third route
2 and remand the matter with or without
3 instructions for further proceedings, those
4 further proceedings would ultimately be
5 evidentiary hearings before the Administrative
6 Law Judge.

7 CHAIRPERSON SLASH: Thank you.

8 Any Commissioners have any questions
9 before we begin this section of our agenda?

10 (No response.)

11 CHAIRPERSON SLASH: Okay. Very good.

12 We'll begin with the case of Andria Moss
13 versus Miller Transportation, Case PAha21110432.

14 We have both parties present?

15 MR. FLEISCHHACKER: Yes.

16 CHAIRPERSON SLASH: Okay. Very good.

17 So, when we do oral arguments here, the
18 way that we proceed is: We'll have five minutes
19 for the Complainant --

20 MR. FLEISCHHACKER: Ten.

21 CHAIRPERSON SLASH: We're at ten?

22 MR. LOSTUTTER: Ten.

23 MR. FLEISCHHACKER: Ten.

1 CHAIRPERSON SLASH: Okay. Great.
2 We'll go -- you have ten minutes to begin, and
3 then you're -- and then we'll have ten minutes
4 for the other side, and then we will have a
5 five-minute rebuttal.

6 MR. FLEISCHHACKER: Two.

7 CHAIRPERSON SLASH: Oh, okay. See,
8 the changes --

9 MR. FLEISCHHACKER: They can reserve
10 time from their original --

11 CHAIRPERSON SLASH: You can reserve
12 time, but you have two minutes for rebuttal when
13 it's your turn. And we've got the timer over
14 here.

15 MS. CIOBANU: Thank you. I would
16 like to reserve four minutes for rebuttal,
17 please.

18 MR. LOSTUTTER: Okay.

19 MS. CIOBANU: In this case, the
20 initial findings by the ICRC initially was in
21 Complainant's favor, and there was a stipulation
22 that the Complainant was blind. She was blind
23 later in life through a tragic situation. She

1 has a disability, she had a service dog, and she
2 was not permitted to ride the bus. Those were
3 all stipulations.

4 There were several different witnesses
5 they were neutral witnesses that observed it.
6 There were people -- so, this was a Greyhound and
7 a Miller -- this was against Miller. Greyhound
8 has settled. So, Miller -- she was not allowed
9 on the bus, but there was a ticket booth agent, a
10 female.

11 A witness complaint came in. She wrote
12 immediately and said, "I remember this. She was
13 fairly calm, and she was not allowed to get on
14 the bus, and I do recall them saying a pit bull
15 cannot be a service dog."

16 I would like to refer to you as
17 Complainant's Exhibit L -- I do have hard copies.
18 It was admitted in the record. I have hard
19 copies if you'd like to review it as I talk about
20 it. May I provide it?

21 CHAIRPERSON SLASH: Does anybody want
22 a copy?

23 VICE-CHAIR RAMOS: Sure. I already

1 have it.

2 MS. CIOBANU: Okay.

3 And in particular, I want to focus on page
4 two, and the reason why this is important -- may
5 I approach?

6 CHAIRPERSON SLASH: Sure.

7 MS. CIOBANU: The reason why this is
8 important, on page two -- so, this is two
9 pages -- on page two, Complainant took this
10 picture before she knew she was not going to be
11 allowed on the bus. She had an ADA ticket. She
12 is blind. She was going to a very important
13 appointment.

14 So, on page two, this is why this is
15 really important. She took this picture not
16 knowing she wasn't going to be allowed on the
17 bus. When we asked the bus driver -- and there
18 were two involved, and I'll get to more detail on
19 that later. Both of them said, "This is not the
20 dog." They didn't remember it having a chain,
21 they didn't remember her having a blue bag, and
22 they didn't remember anything else about this.
23 They said the dog was a different color, it

1 was 150 pounds, not 60 like here.

2 The woman is also blind. One of the
3 drivers said, "No, she wasn't blind at all." She
4 is a six-foot woman with blond hair and blind.
5 That would be hard to forget. The driver, the
6 actual driver, said, "No, she was a
7 five-foot-three woman, and the dog was running
8 all around, didn't have a leash."

9 We asked, "Did you -- have you seen this?"
10 And she said no, this was not -- so, this is the
11 driver, the real driver, and the reason why I say
12 "real driver," I'll get to that in a second. She
13 said, "This was not the dog," and she couldn't
14 even remember the woman.

15 There was an innocent bystander there who
16 was getting on another bus, and that -- and he
17 also came and testified, complete neutral
18 individual. He didn't know her. He came back
19 two years later and said she was calm, the dog
20 wasn't running around, she wasn't allowed on the
21 bus, the driver said a pit bull cannot be a
22 service dog.

23 The actual driver that was there was the

1 female driver, and she said -- she testified, and
2 she said, "Well, I now know that pit bulls can be
3 service dogs. I know that now." There's also no
4 signs anywhere, for Miller or Greyhound or at
5 that bus station, that service dogs are welcome.
6 And she had a service ticket, so she was supposed
7 to get on the bus.

8 Well, what's important about this is there
9 was another driver, Hammock. Mr. Hammock
10 testified the entire time, though there was a
11 stipulation that the female was the driver, he
12 kept saying, "I was the driver, I was the
13 driver." He repeatedly said that, and you can
14 see how many times he said that on here.

15 And he said he couldn't remember what she
16 was, she looked like a homeless woman with a
17 cart, which is why that's important, because
18 there's no cart here, a shopping cart. He said
19 it was a shopping cart, she looked like a
20 homeless woman, the dog was running around loose,
21 and here, the dog is not running around.

22 The Complainant testified she is blind,
23 his -- he wears jingles, this is what she calls

1 jingles. He has to wear jingles because she is
2 blind, she will trip. So, she has to hear where
3 he's walking around. So -- and then he also
4 testified, "Well, the same woman came back the
5 next day. It was the same woman and another dog,
6 and the dog --" I mean not a different dog, but
7 the same dog that was in question as in the same
8 day "-- and the dog was running around, the dog
9 was loose."

10 We again asked the investigator, who was
11 for Miller, "Did you ever find out what -- who
12 that dog was and who that woman was?" He stopped
13 working for Miller, and he said, "Well, I stopped
14 the investigation. I was done. I don't really
15 know who that woman was. I don't really know
16 what happened to this other individual."

17 But Mr. Hammock repeatedly said that he
18 was the driver, and he said this woman came by
19 the next day and the same thing happened and it
20 was an unruly dog and she was disrespectful.
21 We -- through the record, you'll see that that
22 was impossible. Our client was all of the way
23 down -- she was in -- she couldn't have done it.

1 She can't drive. She was down by Cincinnati.

2 She did not come back the next day.

3 So, that's why it's important what the
4 Complainant states, what -- what the neutral
5 party that was there that just witnessed -- and
6 he gave a voluntary statement to the ICRC. He
7 was interviewed very early on. He said they were
8 calm, the dog was in control. She was not
9 allowed on the bus because it -- because they
10 said a pit bull cannot be a service dog.

11 So, the only two -- well, there was
12 three -- were these two drivers who didn't -- the
13 one says he was the driver, and he had to concede
14 through the proceedings, after we showed
15 repeatedly the schedule, and we had to reshow the
16 schedule and the bus routes, then he conceded and
17 said, "Well, I couldn't have been the driver."

18 If he wasn't the driver and he thought he
19 was, and he described some other 150-pound dog,
20 he described another woman, he didn't -- maybe
21 there was another event, potentially, but he was
22 not the driver, and he conceded he wasn't, even
23 though there was a stipulation as to who the

1 driver was.

2 The actual driver was questioned about
3 this, and she said, "No, that's not the same
4 dog," and again, she was the one that said, "It's
5 a five-foot-three woman." And the other --
6 Mr. Hammock said, "And it wasn't a blind woman.
7 I didn't think it was a blind woman."

8 So, I don't know what happened with Miller
9 and their drivers on that day. I did ask
10 Mr. Addy, who was a witness who is not there any
11 longer. He doesn't know what happened with that
12 investigation, or maybe there was some other
13 woman with an incident, or a homeless person with
14 a dog, but it definitely wasn't Andria Moss.
15 Andria Moss testified, "I couldn't get on. They
16 told me it was a -- they told me that it was
17 because my dog was a pit bull, and a pit bull
18 can't be a service dog."

19 CHAIRPERSON SLASH: Thank you.
20 You've reached your time, if you still want to
21 reserve your original --

22 MS. CIOBANU: Yes, I do. Thank you.

23 CHAIRPERSON SLASH: Thank you.

1 MR. HESSION: Good afternoon.

2 (Discussion off the record.)

3 CHAIRPERSON SLASH: Okay.

4 MR. FLEISCHHACKER: Are you -- sorry;
5 you're reserving extra time for rebuttal?

6 MR. HESSION: Three minutes, please.

7 MR. FLEISCHHACKER: Okay.

8 CHAIRPERSON SLASH: Thank you.

9 MR. HESSION: My name is Brett
10 Hession, and along with my colleague, Toni
11 Everton, we represent Miller Transportation in
12 this matter.

13 Before I get into argument, just a brief
14 point of order. Counsel for the Commission
15 mentioned that all of the matters today were
16 after summary judgment. This matter did not have
17 summary judgment. This matter went through a
18 three-day administrative hearing before an ALJ,
19 which kind of takes me into kind of my first
20 argument.

21 This claim has been litigated over the
22 course of over two years now, there have been
23 four witness depositions, there was written

1 discovery from both sides, and the three-day
2 administrative hearing in this matter. There
3 were 11 witnesses called.

4 Ms. Moss' counsel is correct, there were
5 witnesses presented by both sides, as well as
6 kind of disinterested parties as well. There
7 were, I believe, 18 or so written -- or exhibits
8 introduced into evidence. And so, put simply,
9 there's been no stone left unturned when it comes
10 to this claim. This claim has been thoroughly
11 litigated by the parties.

12 At the conclusion of the evidence, both
13 sides were permitted the opportunity to marshal
14 whatever evidence they saw fit and make their
15 arguments to Judge Triggs, who was the
16 Administrative Law Judge. Both sides were
17 permitted the opportunity to present proposed
18 findings of facts and law to Judge Triggs, and
19 eventually Judge Triggs determined that Miller
20 Transportation -- or that Complainant had failed
21 to prove or failed to raise a prima facie case
22 that Miller Transportation discriminated against
23 Ms. Moss on the basis of her disability.

1 The findings of fact that the ALJ made was
2 that Ms. Moss is disabled and she was denied
3 service that day, but not due to her disability,
4 but because of Miller Transportation's
5 objectionable passenger policy. So, if I could
6 just kind of briefly take you through the facts
7 as Judge Triggs found them.

8 On September 11th, 2021, Ms. Moss
9 attempted to board a Miller Transportation bus
10 going from Evansville, Indiana to Louisville,
11 Kentucky. She did have a service animal, the
12 dog, named Stihl. Marion Lockwood was the driver
13 of the bus going from Evansville to Louisville
14 that day, and she testified that when she saw
15 Stihl, Stihl was running around and jumping on
16 people.

17 Miller Transportation has a policy
18 allowing for service animals, and she testified
19 that pit bulls and dogs had ridden on her bus as
20 service animals on several occasions in the past.
21 She asked Ms. Moss what function the dog served.
22 She did not ask for paperwork. She did not say a
23 pit bull cannot be a service dog.

1 Ms. Moss stated, you know, what function
2 the dog served, and Ms. Lockwood, the driver,
3 said, "Well, this dog is jumping on people,
4 ruling -- or jumping on people and running
5 around, this dog is essentially uncontrolled,"
6 and she denied service.

7 Ms. Moss then objected, she began
8 screaming and yelling at Ms. Lockwood. This was
9 a -- an interaction observed by a person named
10 Teri Corbell, who worked in the bus station, and
11 she testified to that at the hearing.

12 Ms. Lockwood then retreated back to her
13 bus, where she called her manager, Reginald Addy.
14 Mr. Addy advised Ms. Lockwood to wait, let the
15 situation calm down, and reapproach Ms. Moss.
16 Ms. Lockwood made the decision at that point that
17 if the other passengers on the bus were okay with
18 Ms. Moss and the dog riding, that the dog could
19 ride despite the previous uncontrolled nature of
20 the dog.

21 When she got off the bus, before she could
22 get that out, Ms. Moss started screaming at
23 Ms. Lockwood, called her an obscene name, which

1 is in the record. And at that point, because she
2 was screaming and yelling at Ms. Lockwood,
3 Ms. Lockwood testified that she no longer felt
4 safe giving Ms. Moss a ride and denied her
5 service, not because of the dog, but because of
6 Ms. Moss' own behavior under the objectionable
7 passenger policy.

8 Counsel referred to a gentleman named
9 Wayne Hammock, who was also a Miller
10 Transportation driver. In the briefing, Ms. --
11 Complainant's counsel indicates that Ms. Hammock
12 is confused, but in all -- in that briefing as
13 well, Complainant is relying on a statement from
14 Ms. Corbell, which she did not -- testifying to
15 an interaction between Ms. Moss and Ms. Lockwood
16 that she did not see herself but was relayed by
17 Mr. Hammock.

18 Mr. Hammock allegedly saw the interaction
19 and told Ms. Corbell, but the ALJ determined that
20 Ms. Corbell's testimony as to what she saw, not
21 what she heard from another person, but what she
22 saw, was the most credible portion of her
23 testimony, and that portion was Ms. Moss yelling

1 at Ms. Lockwood before she could get on the bus.

2 As I said, this is a claim that's been
3 fairly litigated. If you read through the
4 briefing, I think it's a fair characterization to
5 say that Ms. Moss' sole argument is essentially a
6 weighing of the evidence by the Administrative
7 Law Judge. There's no allegation that there was
8 any issue with the conduct of the proceedings or
9 whether each side had a sufficient time or
10 ability to present evidence.

11 And so, given the thoroughness of the
12 litigation between the parties and the fact that
13 Ms. Lockwood's testimony about Ms. Moss' conduct
14 was corroborated by both Ms. Corbell, who was a
15 disinterested party, and Ms. Addy, who said -- or
16 Mr. Addy, who said that as he was on the phone
17 with Ms. Lockwood, he heard a woman screaming in
18 the background, so Ms. Lockwood's testimony was
19 corroborated by multiple witnesses.

20 The Administrative Law Judge's hearing is
21 based on evidence that is substantial and
22 reliable, and that is what is required under the
23 Indiana Civil Rights Law -- or the Indiana

1 Administrative Procedures Act. Judge Triggs was
2 in the best position to make the findings of fact
3 and conclusions of law in this matter, and this
4 Commission -- respectfully I request that it
5 affirm Administrative Law Judge Triggs' order in
6 full.

7 Thank you.

8 MS. CIOBANU: To be clear,
9 Ms. Taggart, Teri Taggart, and Ms. Corbell are
10 the same person; she got married afterwards. We
11 do not agree that she said that she was out of
12 control. In fact, she said just the opposite.
13 She was the one that wrote in and said she was
14 fairly calm, and if we look at her testimony, she
15 said she did not hear profanity. What she did
16 hear was after the fact. She heard her say, "I'm
17 going to sue." That is what she heard. She said
18 she was calm and not screaming ahead of time.

19 Then Mr. Hammock signed an affidavit under
20 oath and said, "This dog was around and lunged at
21 myself and lunged at Teri Taggart," or
22 Ms. Corbell. Ms. Corbell then testifies and
23 said, "That's not true. I did not see the dog

1 lunging at anyone, and it certainly didn't lunge
2 at me."

3 If we look at Mr. Therber's testimony, and
4 that's on page six of our objection, Mr. Therber
5 was there the entire time. He heard the driver
6 say pit bulls are not service dogs and she would
7 not be allowed on the bus. Ms. Therber --
8 Mr. Therber, again, a neutral witness, he
9 testified that Complainant and Stihl -- Stihl was
10 the name of the dog -- were calm and they were
11 denied entry, and Stihl was quiet and always by
12 Complainant's side.

13 Mr. Therber then testified Stihl was not
14 running or growling at anyone, Mr. Therber
15 testified that there were no loud arguments or
16 profanity, and he was there the entire time. His
17 testimony was he was standing right there. She,
18 after the fact, said, "I'm going to sue," and she
19 has a right to say that, but that was after she
20 was already denied. Mr. Therber doesn't have any
21 reason -- he's neutral party. He was interviewed
22 very early on by ICRC. His story never changed;
23 it was the same.

1 And so, the ALJ did not weigh his
2 credibility or did not say that he was not
3 credible. She also didn't say Ms. Corbell, or
4 Ms. Taggart, was not credible Ms. Corbell said
5 she did not see her running around -- the dog
6 running around or her -- the dog out of control,
7 or the Complainant out of control.

8 And counsel testified about depositions,
9 written discovery, et cetera. That is all true,
10 but then Mr. Hammock still came, after all of
11 that, and after two years of that, he came in and
12 said, "Well, I was the driver," and he had these
13 interchanges with her that was describing another
14 woman, and saying -- and he didn't concede until
15 halfway through, or maybe towards the end, of his
16 testimony that he in fact wasn't the driver. So,
17 how can we be sure that he's talking about the
18 same person?

19 And the ALJ did not find that Ms. Corbell
20 was not credible. Her e-mail ahead of time,
21 before there was even an investigation, said,
22 "She was fairly calm, she was denied, and I
23 overheard them say, 'A pit bull can't be a

1 service animal.'"

2 And I think it also speaks volumes that
3 Mr. Hammock, early on, signed an affidavit that
4 the dog was lunging at him and Teri Taggart,
5 Ms. Corbell, the same person. I don't want there
6 to be confusion about that. Ms. Corbell said
7 that never happened. She would have recalled if
8 this dog lunged at her.

9 And again, this is the same dog that then
10 Mr. Hammock testified, "Well, that wasn't the
11 same dog as the day in question," and so did the
12 other driver. Ms. Lockwood said, "Well, it's not
13 the same driver." So, that's why we're saying
14 there's confusion. There was no problems with
15 credibility with Mr. Therber or Ms. Teri Taggart,
16 or Ms. Corbell.

17 And if we assess that, she was denied
18 because of her blindness, because this dog was a
19 pit bull, because, in her own words, Ms. Lockwood
20 said, "I now know --" and that was during these
21 proceedings" -- I now know that pit bulls can be
22 service dogs," and that's why she was not
23 permitted to be on this bus.

1 And so, we're asking that you have a
2 finding or reverse or remand so that there can be
3 a situation where Miller is compliant. Greyhound
4 has settled, but we would like to see Miller
5 compliant and have signs up that service dogs are
6 welcome, and this includes having some training
7 that pit bulls can be service dogs.

8 And recall again, Mr. Hammock said the
9 woman wasn't even blind. I don't know who he's
10 describing, but certainly not the Complainant
11 that -- couldn't have been the one. And our
12 client also denies -- she denies that she was
13 yelling. She did confirm that she said, "I will
14 sue," but that's -- that's permissible.

15 Thank you.

16 CHAIRPERSON SLASH: Thank you.

17 MR. HESSION: Okay. Thank you. Good
18 afternoon again.

19 Just to address a few of the points --

20 CHAIRPERSON SLASH: You have
21 additional minutes here.

22 MR. FLEISCHHACKER: Yeah, he said he
23 wanted three minutes for rebuttal.

1 MR. HESSION: Just to address a few
2 of the points raised by Ms. Moss' counsel, the
3 confusion and conflicts in the evidence that
4 Ms. Moss' counsel points to, these were all
5 presented to the Administrative Law Judge after
6 the hearings or -- there are no new arguments
7 here.

8 It's the Administrative Law Judge's job to
9 weigh the evidence and issue a nonfinal
10 administrative decision, but it's her job to base
11 her findings based on the evidence in the record,
12 and that is what she did. So, just to address a
13 few of these points.

14 So, Complainant's counsel indicated that
15 Ms. Lockwood said she didn't know pit bulls could
16 be service animals. Well, that is conflicting
17 with her other testimony in which she said that
18 she previously had pit bulls ride on her bus as
19 service animals, so that's one of the conflicting
20 testimonies that Judge Triggs resolved when she
21 issued her order.

22 Ms. Corbell, who indicated that she heard
23 Ms. Lockwood make a statement to Ms. Moss. She

1 didn't actually hear that. Her testimony was
2 that someone else told her that that statement
3 was made. The only thing that Ms. Corbell saw
4 was Ms. Moss yelling -- I think she used the word
5 "hollering" during the hearing -- yelling at
6 Ms. Lockwood. So, she corroborates the fact
7 that -- Ms. Corbell corroborates the fact that
8 Ms. Moss was yelling at Ms. Lockwood before
9 Ms. Lockwood as able to ultimately offer her a
10 ride on the bus.

11 Mr. Addy corroborates the testimony
12 because he is on the phone with Ms. Lockwood
13 while she's on the bus, and he hears screaming
14 over on the phone while he is on the phone with
15 her, with Ms. Lockwood.

16 Mr. Therber offered a statement in the
17 aftermath, as Complainant's counsel mentioned,
18 but in that statement, one of the things he says
19 is Ms. Lockwood did offer Ms. Moss a ride after
20 he got -- she got off the bus.

21 Ultimately, one of the things that you'll
22 see in the ALJ's unfinal administrative order is
23 that, based on her demeanor and delivery during

1 the hearing itself, the ALJ decided that Ms. Moss
2 herself was not a credible witness, and that was
3 based on not only her demeanor, but also the
4 conflicting evidence in the case. So, the ALJ
5 actually opined on the credibility of the
6 Complainant herself based on her own testimony.

7 All of these conflicts and, you know,
8 different forms of evidence in the case, these
9 were all accounted for by the Administrative Law
10 Judge after a three-day hearing in which each
11 side was able to present what they wished, and
12 again, I respectfully request that the Commission
13 fully affirm the Administrative Law Judge's
14 order.

15 Thank you.

16 CHAIRPERSON SLASH: Thank you.

17 That concludes the oral argument. Are
18 there any questions from Commissioners?

19 (No response.)

20 CHAIRPERSON SLASH: Okay. Hearing
21 none, is there a motion?

22 COMM. TOLLIVER: Actually I have a
23 question.

1 CHAIRPERSON SLASH: Okay.

2 COMM. TOLLIVER: What was -- so, if I
3 understand this right, the reason for removal was
4 the objectionable passenger.

5 MR. HESSION: Correct.

6 COMM. TOLLIVER: And who or what was
7 the objectionable passenger?

8 MR. HESSION: So, if you'll look in
9 the briefing itself, I hesitate to use the term,
10 but the name that she called Ms. Lockwood once
11 Ms. Lockwood got back off the bus, once she
12 uttered that, that was the objectionable
13 behavior. She yelled at her and called her an
14 offensive name, and at that point, Ms. Lockwood
15 determined that she wasn't going to be able to
16 ride the bus under the objectionable passenger
17 policy.

18 MS. CIOBANU: And I'd just remind
19 you, Complainant denies that, and Mr. Therber
20 said he didn't hear any profanity and yelling.
21 So, she conclusively denies that that occurred,
22 that she called her names and was yelling ahead
23 of time.

1 CHAIRPERSON SLASH: Thank you.

2 MS. EVERTON: May I chime in to add a
3 little bit to that also?

4 CHAIRPERSON SLASH: Briefly.

5 MS. EVERTON: Okay.

6 THE REPORTER: Identify yourself,
7 please.

8 MS. EVERTON: Oh, I'm sorry. I'm
9 Toni Everton. I'm an attorney on behalf of
10 Miller Transportation.

11 The objectionable passenger policy is in
12 place because, as you know, these are charter
13 buses, and the driver is on the bus alone with
14 passengers behind her, so Miller leaves it up to
15 the driver to make the determination as to
16 whether or not they feel safe having an
17 individual board the bus, because they're the
18 ones who are going to be out on the road handling
19 this large bus with the passengers behind them.

20 So, that's the purpose of the
21 objectionable passenger and the reason why the
22 driver is the one who gets to make that decision,
23 because it's based on what she sees and feels for

1 her safety at that time.

2 CHAIRPERSON SLASH: So, the question
3 that Comm. Tolliver is asking was: Who was the
4 objectionable passenger? And you're stating that
5 it was --

6 MR. HESSION: Ms. Moss.

7 CHAIRPERSON SLASH: -- Ms. Moss?

8 MR. HESSION: Yes.

9 CHAIRPERSON SLASH: Okay.

10 COMM. TOLLIVER: Okay. So, she was
11 not removed from the bus prior to her saying
12 this?

13 MR. HESSION: She was never on the
14 bus.

15 COMM. TOLLIVER: Or she was not told
16 she could not ride the bus until she made that
17 statement?

18 MR. HESSION: No, since she was --

19 COMM. TOLLIVER: So, she was not
20 removed at all?

21 MR. HESSION: She was -- I apologize.

22 COMM. TOLLIVER: Oh, I'm sorry.

23 MR. HESSION: So, she -- she, in the

1 first instance, told her -- told Ms. Moss that
2 because of the dog's uncontrolled behavior of
3 running around and jumping on people, that she
4 was going to not allow her to board the bus.
5 Then Ms. Moss became irate and started yelling.
6 Then Ms. Lockwood retreated back onto the bus to
7 call her manager to ask -- to say, "This is
8 what's happening. What should I do?"

9 Her manager said, "Take a few minutes, let
10 the situation calm down," and she did, and then
11 once she exited the bus, her intent was to
12 offer -- she testified that her intent was to
13 say, "If the other passengers are okay with the
14 dog riding, you can ride as well," but before she
15 could get that out, Ms. Moss then yelled at her
16 and called her the name, and at that point she
17 said, "It's not -- it's not the dog at this
18 point, it's your own behavior, and that's why you
19 can't ride."

20 COMM. SILBERBERG: I have a couple of
21 questions, too. Why did --

22 MR. HESSION: Yes.

23 COMM. SILBERBERG: So, I'm confused

1 why it would be a vote of passengers as to
2 whether -- I don't know if that's relevant or
3 not, but why that would be a vote, why passengers
4 would get to vote on whether or not they want the
5 dog if it's a service dog. I think that's a
6 federal law, not a vote.

7 MR. HESSION: So, I believe
8 Ms. Lockwood testified that there were not going
9 to be many passengers on that bus, it was not
10 going to be a full bus, and I believe she
11 testified that basically, even though this dog
12 was uncontrolled, and under Miller
13 Transportation's policies and federal law, she
14 had the right to deny service based on the
15 uncontrolled nature of the animal.

16 Despite that, within her discretion, she
17 was going to seek the other passengers on the
18 bus -- again, there weren't going to be many --
19 and basically try to find a way to accommodate
20 this uncontrolled dog, to allow Ms. Moss to ride
21 the bus, and seek out the other passengers to
22 make sure they were okay with this, you know, at
23 that point, uncontrolled dog riding the bus as

1 well, but again, she was not -- she didn't have
2 that opportunity.

3 COMM. TOLLIVER: Is Ms. Moss from
4 Evansville?

5 MS. EVERTON: Yes.

6 MS. CIOBANU: Yes, that's where she
7 lives. She was going down to Louisville.

8 CHAIRPERSON SLASH: Do you have any
9 further questions?

10 COMM. TOLLIVER: I do not.

11 COMM. SILBERBERG: Are we allowed to
12 know what Greyhound's settlement was?

13 MS. EVERTON: I don't -- I think
14 that's confidential.

15 MR. FLEISCHHACKER: Yeah, it's
16 confidential, attorneys.

17 CHAIRPERSON SLASH: Do you have
18 questions?

19 VICE-CHAIR RAMOS: I do not.

20 CHAIRPERSON SLASH: Okay.

21 Do any of the Commissioners have a motion?

22 COMM. TOLLIVER: I move that we --
23 I'd move that we remand the case to the ALJ and

1 request that she enter a finding in favor of the
2 Complainant and against the Respondent.

3 CHAIRPERSON SLASH: Is there a
4 second?

5 COMM. SILBERBERG: Second.

6 VICE-CHAIR RAMOS: Can we clarify the
7 motion?

8 (Laughter.)

9 CHAIRPERSON SLASH: So, he is
10 requesting -- your motion, I believe, is --

11 COMM. TOLLIVER: To tend it back, so
12 remand it to the ALJ --

13 CHAIRPERSON SLASH: Uh-huh.

14 COMM. TOLLIVER: -- with instruction
15 that she enter an order finding in favor of the
16 Complainant and against the Respondent; reverse
17 the decision.

18 COMM. SILBERBERG: So, it would be in
19 favor of --

20 CHAIRPERSON SLASH: The Complainant.

21 COMM. SILBERBERG: -- the
22 Complainant.

23 COMM. TOLLIVER: The passenger.

1 CHAIRPERSON SLASH: Yes, the
2 passenger.

3 COMM. SILBERBERG: Second.

4 CHAIRPERSON SLASH: Okay. All in
5 favor?

6 (Commission members responded, "Aye.")

7 CHAIRPERSON SLASH: Any opposed?

8 VICE-CHAIR RAMOS: No.

9 CHAIRPERSON SLASH: Okay. The motion
10 carries.

11 Thank you so much for coming today.

12 The next case, ICRC/Christine Harris
13 versus Dominic Pitzel, Case HOra21040110. Okay.
14 The Administrative Law Judge in this matter,
15 after having considered all of the evidence and
16 testimony presented by both parties, grants
17 Respondent's motion for summary judgment, denies
18 Complainant's motion for summary judgment, and
19 dismisses Complainant's complaint with prejudice.
20 Complainant's attorneys have filed an objection
21 to that decision, and the Respondents have filed
22 a response in opposition to that objection.

23 Oh, you're here to go again?

1 MS. EVERTON: I'm here again.

2 CHAIRPERSON SLASH: You're going
3 again; okay.

4 MS. EVERTON: You're hearing a lot
5 from me today.

6 CHAIRPERSON SLASH: Okay. So, as
7 with the last one, you'll have ten minutes, and
8 then you'll have two minutes on rebuttal.

9 MS. KIRCHOFF: Commissioner, Chair, I
10 would request five minutes in rebuttal, please.

11 MR. FLEISCHHACKER: So, you're
12 reserving three minutes, to make it five total on
13 rebuttal?

14 MS. KIRCHOFF: Yes. Well, is it --
15 point of order. Is it --

16 MR. FLEISCHHACKER: You get two.

17 MS. KIRCHOFF: Regardless?

18 MR. FLEISCHHACKER: Yes.

19 MS. KIRCHOFF: Okay. Then I would
20 reserve -- so, that would mean if I reserve four
21 for rebuttal, it would be a total of six.

22 MR. FLEISCHHACKER: Six on initial --
23 yeah.

1 MS. KIRCHOFF: Okay. All right.
2 Then I would reserve four for rebuttal, please.

3 MR. FLEISCHHACKER: Okay.

4 CHAIRPERSON SLASH: Thank you.

5 MS. KIRCHOFF: Thank you. Sorry
6 about that. My name is Yvette Kirchoff. I'm a
7 senior staff attorney for the Indiana Civil
8 Rights Commission. I am here on behalf of
9 Gregory Wilson, in his capacity as the Executive
10 Director of the Indiana Civil Rights Commission
11 and the public interest in the aggrieved person,
12 Ms. Christine Harris' complaint.

13 As you stated, both sides have filed
14 summary judgment motions and responses in this
15 case. The ALJ issued its nonfinding -- her
16 nonfinding -- nonfinal order granting summary
17 judgment to the Respondent. With all due respect
18 to Judge Triggs, everybody is human, everybody
19 makes mistakes. In this case, our position is
20 she got it wrong.

21 Once we got the nonfinal order, I filed
22 objections on behalf of the Complainant, and the
23 Respondent duly filed responses to those

1 objections. At this point, just to review what
2 you can do today, you can either affirm the ALJ's
3 proposed final order, modify it, dissolve it, or
4 remand it.

5 In this case, we believe the ALJ, with the
6 best of intentions, got it wrong. We are asking
7 you to reverse this decision, modify it, in other
8 words, to find summary judgment in favor of the
9 Complainant.

10 The factual summaries -- summary that
11 matters here that led to Ms. Harris, the
12 aggrieved person, filing the complaint with the
13 Civil Rights Commission are as follows: In
14 August of 2020, Niksa Mihaljevic, who, I will
15 from now on state that his name is Niksa, and the
16 Respondent, Mr. Pitzel, executed a lease
17 agreement for Niksa to rent a home from the
18 Respondent.

19 There is no dispute whatsoever that
20 Ms. Harris was not on the lease. There is no
21 dispute whatever that she actually did reside
22 there. There is no dispute that during the term
23 of the tenancy Niksa fell behind in his rental

1 payments. So, there's no dispute here.

2 The term that is important here is: In
3 August of 2020, this lease was entered into.
4 Niksa fell behind. There were letters exchanged
5 saying, "You're behind." Nothing besides
6 nonpayment were in the letters. This was also
7 during the COVID moratorium on evictions for
8 nonpayment only.

9 Flash forward to March 31st of 2021. What
10 happens that day is Ms. Harris, who is Niksa's
11 fiancée, girlfriend, who lived with him at the
12 home, who is African-American, answered the door
13 when somebody knocked. The person who knocked
14 was the Respondent's son. The Respondent's son
15 was returning light bulbs to Niksa that he did
16 not need.

17 On March 31st of 2021, again, eight months
18 later, on the day that the -- it was determined
19 that there was an African-American woman living
20 in this home, Mr. Pitzel then went to the home,
21 and at that point had a discussion with Niksa.
22 You're going to hear that discussion a little
23 later on. That discussion included racial slurs

1 and threats.

2 The ICRC, after a duly investigated
3 complaint, found probable -- probable and
4 reasonable cause that three issues of
5 discriminatory acts could have happened here.
6 The first one: Harris was evicted because of her
7 race.

8 Now, you may remember that she is not on
9 the lease. Indiana case law is clear that a
10 person who is not a tenant or not on the lease
11 can be the subject of a discriminatory act. The
12 ALJ agreed with that part of our analysis.

13 However, the ALJ made a terrible mistake
14 and found that, given the evidence -- and again,
15 you're going to hear some of that in my
16 rebuttal -- no, this was about other things going
17 on, other alleged criminal acts that were going
18 on. From August 2020 to March 2021, not a word
19 of that was said to Niksa, not a word.

20 Issue two, where we also believe that the
21 ALJ made a mistake, is that he made -- Respondent
22 made discriminatory remarks against Harris. We
23 are going to present evidence in our rebuttal

1 this is absolutely true. The Judge found that it
2 was not severe or pervasive enough; however,
3 Indiana case law is clear that the totality of
4 the circumstances must be taken into
5 consideration.

6 From March 31st through April 1st, once
7 they found out an African-American woman was
8 living in this house, the police were called four
9 times for events taking place at that home. No
10 events had previously taken place, nothing.
11 After the African-American woman was discovered,
12 all of these issues started to propound and
13 propound. The ALJ got it wrong here, too.

14 Finally, the ALJ found that there was no
15 hostile living environment. Again, the ALJ got
16 it wrong. It doesn't matter that it was two days
17 of problems. It matters that Christine Harris
18 stated in her affidavit she was afraid of
19 Mr. Pitzel. The events of the next two days
20 terrified her, terrified her to the point where
21 she is now afraid of Mr. Pitzel.

22 I believe my time is up, and I reserve my
23 six minutes, I think, for rebuttal.

1 CHAIRPERSON SLASH: Correct.

2 MS. KIRCHOFF: Thank you.

3 MS. EVERTON: Good afternoon. I'm
4 back. My name is Toni Everton. I am an attorney
5 on behalf of Respondent, Dominic Pitzel. I
6 understand I get two minutes. I would like to
7 reserve a total of three minutes, please, for
8 rebuttal. Thank you.

9 As the ICRC attorney stated, this is a
10 case that was before Administrative Law Judge
11 Triggs on summary judgment filed by -- it's
12 cross-summary judgments filed by both parties.

13 Mr. Pitzel believes that ALJ Triggs got it
14 correct. She ordered -- when she granted summary
15 judgment in his favor and denied it to the ICRC.
16 Mr. Pitzel respectfully requests that the
17 Commission affirm ALJ Triggs' order.

18 The ICRC correctly pointed out some
19 undisputed facts. They did -- Mr. Pitzel and --
20 I will also call him Niksa, if that's okay --
21 Mr. Pitzel and Niksa did enter into a lease
22 agreement in August of 2020. It's a standard
23 lease agreement. You should have it in your

1 documents, and it has some very important
2 provisions. One of them, of course, is that he
3 was expected to pay rent.

4 Now, as the ICRC has pointed out, this was
5 during the moratorium, so when Niksa did not pay
6 rent for several months, which is not a disputed
7 fact -- he admits he didn't pay rent for several
8 months -- Mr. Pitzel couldn't do anything about
9 it. A moratorium was in place.

10 As the ICRC pointed out, Mr. Pitzel did
11 send letters saying, "You know, you're behind on
12 rent, you're \$1200 behind," then the next month,
13 which was January 2021, "You're \$2400 behind."
14 He kept sending letters.

15 The last letter was in February of 2021,
16 and the ICRC pointed out that nowhere in that
17 letter did it mention any other lease violations.
18 The reason why is because the lease violations
19 that ultimately led to Niksa's eviction from the
20 home -- or let's say removal from the home --
21 happened in March of 2021, after that last letter
22 went out. And they happened based on several
23 lease violations that Mr. Pitzel became aware of

1 within a short period of time, not because of
2 Ms. Harris' race.

3 It is true, it is undisputed, that on
4 March 31st, 2021 was when Mr. Pitzel discovered
5 that Ms. Harris was living in the house. But
6 what is also true is that nowhere on the lease
7 was Ms. Pitzel -- oh, sorry -- Ms. Harris listed
8 as an occupant of the house. The lease itself
9 says, under "Occupant," that only Niksa would be
10 living there. So, Ms. -- she is -- was an
11 unauthorized occupant, a violation of the lease.

12 The other thing that happened on
13 March 31st, Mr. Pitzel went to the house, his
14 house, and saw that Niksa had installed what he
15 thought were cameras -- now, it turns out they
16 were lights, but what he thought were cameras --
17 on the porch of the house, on the -- like the
18 ceiling of the porch around the house.
19 Mr. -- Niksa did not ask Mr. Pitzel's permission.
20 It's Mr. Pitzel's house. The lease provisions
21 specifically say no alterations can be made to
22 the house without permission.

23 Another thing that happened shortly

1 thereafter -- I should say shortly before that --
2 is Mr. Pitzel had a friend who notified him of an
3 incident where the friend alleges that Niksa
4 removed a dump truck without his permission from
5 him and parked it on Mr. Pitzel's property.
6 Mr. Pitzel saw the truck there.

7 So, Mr. Pitzel goes to this house. He has
8 a tenant. He has a tenant who's not paying rent.
9 Now he finds out he's got somebody else living
10 there. He's put stuff on his house, outside of
11 this house, and he is possibly involving the
12 house in criminal activity.

13 All of this is going through Mr. Pitzel's
14 mind, not the race of the unoccupied tenant, but
15 just all of these lease violations and all of
16 this stuff that's going on in his house, and he's
17 like, "I've got to get this guy out of here";
18 right?

19 And so, on top of that, then, on
20 April 1st, Mr. Pitzel goes back to the house,
21 looks in his garage -- it's his garage -- window.
22 His \$1500 riding lawn mower is missing, and now
23 he's like, "Now my mower is missing out of my

1 garage. I didn't take it out. My son didn't
2 take it out." And so, all of this is going on.

3 And so -- and on top of that, there's one
4 more event that happens, and this is the thing
5 that really was the icing on the cake, so to
6 speak, sent Mr. Pitzel over the top. Mr. Pitzel
7 finds out that Niksa has asked one of his
8 employees -- Mr. Pitzel owns a business -- has
9 asked one of his employees for money for the
10 utilities.

11 That was the final straw. He's like, "I
12 have a person living in my house, he's got other
13 people living there, he's altering the house,
14 he's stealing my lawn mower." Whether or not
15 this is true, this is what Mr. Pitzel's thinking;
16 right? "And now he's asking my employees for
17 money, getting my employees involved in this."

18 So, he was angry. He -- and we're not
19 going to deny he was angry. You'll hear that. I
20 believe the ICRC's going to play a recording for
21 you, if she can get it to work, and you'll hear
22 in the recording Mr. Pitzel's angry.

23 So, when he asked Niksa to leave the

1 house, it wasn't because he had just learned that
2 a black woman was living there. It was because
3 he learned of all of these things that were going
4 on, all of these lease violations, all within a
5 short period of time.

6 The ALJ correctly found that that was the
7 situation, specifically when you look at the
8 house -- the race discrimination in the housing.
9 The ICRC's version of it was -- this is really
10 just speculation. They don't have any proof that
11 Mr. Pitzel was basing his decision strictly on
12 Ms. Harris' race.

13 They're making that speculation, and
14 you -- and under Indiana law, speculation can't
15 defeat summary judgment. So, ALJ Triggs
16 correctly held that they can't defeat that with
17 just their speculation. Their speculation is,
18 "Well, he evicted Mr. -- he evicted Niksa
19 because -- strictly because Mrs. -- Ms. Harris is
20 black."

21 In reality, the evidence shows -- the
22 undisputed evidence shows Niksa hadn't paid rent
23 for several months, Niksa had put stuff on the

1 hou -- on Mr. Pitzel's house, the lawn mower was
2 missing. You know, all of these other lease
3 violations are undisputed. So, the ALJ correctly
4 held in favor of Mr. Pitzel on the housing
5 discrimination.

6 As far as the discriminatory remarks,
7 you're going to hear them. There's two. We're
8 not denying that Mr. Pitzel made them.
9 Mr. Pitzel's not denying that he made them.
10 Mr. Pitzel regrets making them, but he was, as I
11 just said, very angry during this encounter.

12 And when you look at the comments, you
13 really -- and when you hear them -- you really
14 need to, as the ICRC attorney said, look at
15 everything as a whole. Look at the context
16 they're being made in. This isn't -- the
17 beginning of the conversation starts out with
18 Mr. Pitzel yelling at Niksa about asking his
19 employee for money. It doesn't start out about
20 Ms. Harris. It starts out about, "Why are you
21 asking my guy for money?" So, you have to really
22 look at them as a whole.

23 The other thing is: These were not --

1 these comments were not directed at Ms. Harris.
2 This is a landlord yelling at his tenant about
3 lease violations, including an unauthorized
4 occupant. This is not a landlord saying, "You
5 have to get out because you have a black person
6 living in my house." This is a landlord who's
7 initially angry about a bunch of lease violations
8 and him asking his employee for money.

9 So -- and as far as the hostile
10 environment goes, the acts weren't race based.
11 Ms. Harris -- the ICRC said Ms. Harris was scared
12 because of his acts. Let's talk about his acts.
13 Let's talk about his conduct. He broke lights
14 down off his own house. He forced his way into
15 his own garage because he didn't see his lawn
16 mower. He wrote a note on an oar. None of that
17 was directly aimed at Ms. Harris, and more
18 importantly, none of that was race based. It
19 was, again, a landlord mad at his tenant, not a
20 landlord mad at Ms. Harris because she was black.

21 So, thank you all. I'll save the rest for
22 rebuttal.

23 CHAIRPERSON SLASH: Thank you. That

1 concludes your time.

2 MS. KIRCHOFF: Are we ready to tee up
3 the video?

4 MR. LOSTUTTER: Audio.

5 MS. KIRCHOFF: Or audio; I'm sorry.
6 Okay. Got it.

7 CHAIRPERSON SLASH: Would you like
8 the audio at the beginning of your time, or at --

9 MS. KIRCHOFF: Yes, yes, I think
10 that's the best way to approach -- I'll start
11 with the rebuttal at this point, and I'm going to
12 frame it or bookend it. Let's let the Respondent
13 speak for himself and then go through some of the
14 points that opposing counsel brought up during
15 her argument.

16 Are we ready?

17 (Audio played.)

18 MS. KIRCHOFF: That's the end of the
19 recording.

20 First, to hit a couple of points,
21 Commissioners, the reason that the money for the
22 utilities -- or discussion with the employee for
23 money -- was because, although Niksa rented this

1 entire home, Mr. Pitzel had moved an employee
2 into the basement, and there was one electric
3 meter, and Mr. -- Niksa testified to that.
4 That's why the communication between the employee
5 and Niksa took place. That's the first and
6 foremost about that.

7 Also, in his testimony, Mr. Pitzel, in his
8 deposition, stated that, you know, about halfway
9 through the tenancy -- that would have been four
10 months, August, September, October, November time
11 frame -- halfway through the tenancy he saw a
12 truck in the driveway that he thought was stolen.
13 Did he take any actions then, thinking "criminal
14 activity"? No, he did not.

15 Nothing in that recording talks about late
16 payment. What happened after Mr. Pitzel found
17 out that an African-American woman was living in
18 the home, he went and took an oar out of the
19 vehicle that Ms. Harris drives, an oar for a
20 kayak, and wrote on the oar, "You need to get out
21 by tomorrow." Remember that he doesn't do paper
22 evictions. He takes it to the next level. So,
23 he did.

1 Then he went and knocked down outside
2 lights that he said were cameras. They weren't.
3 They were outside lights. That's what Niksa
4 testified to, and Mr. Pitzel could not produce
5 the cameras that he knocked down. So, all of
6 this takes place in the period of 48 hours after
7 learning that an African-American is living in
8 this home.

9 The recording is very clear. With a
10 blanket apology to the Commissioners for the
11 language I'm going to have to use, Mr. Pitzel
12 himself said those Croatian words, "fucking black
13 whore." "Fucking black whore." Inappropriate,
14 not acceptable in this day and age. Niksa, in
15 his deposition testimony, actually added more to
16 that definition, and that also included a word
17 that I do not ever repeat, but it starts with
18 an "N."

19 Oh, I'm sorry; I thought somebody said
20 "time."

21 That's not acceptable. It's not
22 appropriate. I don't care how angry a person is,
23 you do not go there. All of these alleged

1 criminal activity allegations took place after he
2 found out that Ms. Christine Harris was in the
3 home. Again, we are asking you to modify this
4 order and find summary judgment in favor of the
5 Complainant in the public interest of the
6 aggrieved person.

7 I see my time's up. Thank you so much.

8 CHAIRPERSON SLASH: Thank you.

9 MS. EVERTON: I have three minutes?
10 Thank you.

11 So, you heard the recording. You heard
12 some unfortunate words. You heard how angry
13 Mr. Pitzel was. The recording starts out with
14 him saying, "Don't call my guy," and so, this is
15 an angry man. You heard the "f" word. I'm not
16 even going to say it. You heard the "f" word a
17 lot. This is clearly an angry man. And who is
18 he talking to? Is he talking to Ms. Harris? No.
19 He's talking to Niksa. He's not saying any of
20 this to Ms. Harris. He's saying all of this to
21 his tenant, who he is mad at.

22 We need to look at the comments that
23 were made, the two comments; okay? He called

1 Ms. Harris a black whore, and then I also -- I'm
2 sorry; I have to repeat that. What's the
3 offensive part of that? It's the "whore" part;
4 right? This isn't a gender case, though, and
5 "whore" is a racially neutral word. The
6 offensive part is "whore," not "black." She is
7 black, but the fact that he called her a whore
8 was the offensive part. We're not condoning what
9 he did. He's not proud of what he did. He was
10 angry, it came out.

11 Here's another key thing: It came out in
12 a language that Ms. Harris doesn't even
13 understand. He didn't say it to her face. He
14 didn't say it in English. He said it in
15 Croatian. She doesn't understand it. She had to
16 have Niksa interpret it.

17 And although the ICRC just said that the
18 second phrase, or one of the phrases, somehow
19 ended up with the "N" word in it, that was not
20 ever in the briefing, and if you read the
21 transcript, which the ICRC submitted, it's not in
22 the transcript anywhere. Niksa supposedly
23 translated or somebody at the ICRC translated

1 this for us. The second words are "black woman."
2 Nowhere in the transcript is the "N" word.

3 And so -- and again, this is an angry man.
4 Look at the comments. And if you listen to the
5 recording, at one point Mr. Pitzel even says,
6 "Bye." You know, I don't know if you caught
7 that, but at one point after he said the first
8 word, he said, "Bye."

9 And the reason he even thought maybe she
10 was a whore -- and I don't mean to keep pounding
11 on this, I don't want to spend all of my rebuttal
12 on it -- is Mr. Pitzel is a big family man. His
13 dad died in -- on Wednesday of this past week.
14 His ninety-some-year-old dad had been living with
15 him the entire time he was ill. His grandson
16 lives with him. He's a big family man. He knew
17 Niksa was married. He knew Niksa had a son. He
18 thought that Ms. Harris was Niksa's girlfriend,
19 and that added to his concern, not her race, but
20 her conduct and Niksa's conduct.

21 So, there's a lot more I'd like to say,
22 but I'm running out of time, so Mr. Pitzel just
23 respectfully asks that you affirm the ALJ's

1 order.

2 Thank you.

3 CHAIRPERSON SLASH: Thank you.

4 Are there questions from Commissioners?

5 VICE-CHAIR RAMOS: No.

6 CHAIRPERSON SLASH: Okay.

7 No questions from you?

8 COMM. TOLLIVER: There was a comment
9 about an Albanian. Why was that not part of the
10 summary judgment motion?

11 MS. KIRCHOFF: Because the -- that
12 comment regarding nationality discrimination was
13 made towards Niksa, who's not party or an
14 aggrieved person in this case. In his testimony,
15 Mr. Pitzel stated when -- I asked him, "What does
16 that mean?" And he said, "Well, Albanians are
17 Muslim. Croats are Catholic." So, he's
18 actually making -- and I'm very clear with you on
19 what that national origin discrimination was
20 about.

21 But I must make a point of order. In our
22 designated evidence, Exhibit H is the deposition
23 of Niksa. He stated numerous times in that

1 deposition what that word meant -- those words
2 meant, utilizing the "N" word. So, it is part of
3 the record in this case. It is in his
4 deposition, which is part of our designated
5 evidence.

6 COMM. TOLLIVER: Okay. That's all of
7 my questions.

8 CHAIRPERSON SLASH: Okay.

9 Does anyone have a motion?

10 VICE-CHAIR RAMOS: I -- I motion that
11 we remand -- or actually, I want to make sure I
12 have the right options here. Yeah, that we
13 remand this for modification of summary judgment
14 in favor of Complainant.

15 CHAIRPERSON SLASH: Second?

16 COMM. SILBERBERG: Second.

17 CHAIRPERSON SLASH: Okay. All in
18 favor?

19 (Commission members responded, "Aye.")

20 CHAIRPERSON SLASH: Any opposed?

21 (No response.)

22 CHAIRPERSON SLASH: We're all here?

23 Thank you.

1 MS. KIRCHOFF: Thank you.

2 CHAIRPERSON SLASH: The next case we
3 have is ICRC/Ann Marie Leichentritt versus
4 Meritus Housing LLC, Yes Communities, and McAvon
5 Lakes Property, LLC, Case HOha23100762. The
6 Administrative Law Judge in this matter has
7 issued an order of default against the
8 Complainant and the matter is dismissed. The
9 objection period in this is closed.

10 Do we need to affirm this?

11 MR. FLEISCHHACKER: (Nodded yes.)

12 CHAIRPERSON SLASH: Okay. Thank you.

13 Is there a motion to affirm?

14 COMM. TOLLIVER: So moved.

15 CHAIRPERSON SLASH: Is there a
16 second?

17 COMM. SILBERBERG: Second.

18 CHAIRPERSON SLASH: All in favor?

19 (Commission members responded, "Aye.")

20 CHAIRPERSON SLASH: Any opposed?

21 (No response.)

22 CHAIRPERSON SLASH: The next case,
23 Gerald Rowe versus the Health and Hospital

1 Corporation of Marion County D/B/A Eskenazi
2 Health, Case PAha22010026. This case was -- the
3 Administrative Law Judge in this matter has
4 determined the Complainant's Motion for Partial
5 Summary Judgment as to liability is denied, that
6 the Complainant's Motion to Strike is denied, and
7 that the Respondent's Motion for Summary Judgment
8 is granted, with the Complainant -- with the
9 complaint of the Complainant being hereby
10 dismissed with prejudice.

11 Complainant's attorneys have filed an
12 objection to the Complainant's objection. The
13 objection period in this matter has closed, with
14 both sides having filed objections to the matter.
15 I believe we have people here for oral argument
16 today.

17 Thank you so much for your patience in
18 getting to this point in our hearing.

19 MS. CIOBANU: Yes.

20 CHAIRPERSON SLASH: Do you need your
21 instructions again?

22 MS. CIOBANU: No, I'm good, but I
23 would like to reserve four minutes for rebuttal.

1 we respectfully disagree, is that passing notes
2 is sufficient. Passing notes is not a proper
3 auxiliary aid, especially in such an issue of an
4 emergency room, 12 hours, and an emergency
5 situation. There are emergency interpreters,
6 that's why we have them, and having notes is not
7 a proper accommodation.

8 When we're talking about things such as
9 medical issues, legal issues, that's why there
10 are standards in Indiana, that you have to be a
11 qualified interpreter for medical issues or a
12 qualified interpreter for legal issues. If we
13 didn't have those standards, what would be the
14 purpose of an interpreter? We would just simply
15 pass notes back and forth.

16 There were -- there was -- basically what
17 they tried to submit as well, he testified in his
18 deposition he goes to the gas station and he
19 might write something down. That is not what
20 we're talking about here. We're not talking
21 about going to the gas station and writing down,
22 "Coke," or writing down, "I want to pay my gas
23 bill." We're talking about an emergency room,

1 that he was there for 12 hours.

2 And what's even worse about this case is
3 that Complainant had already settled something
4 with them before with -- through the Disability
5 Commission, and there was already a settlement in
6 place, and his -- and his case or his medical
7 file was earmarked that he absolutely needed an
8 interpreter.

9 I want to explain a little bit about sign
10 language. I am fluent in sign language, so I get
11 a lot of those types of cases. It's important to
12 understand that sign language is its own
13 language. It has its own idiomatic expressions.
14 It's not a word-for-word translation of English.

15 So, that would be equivalent to us saying,
16 "Well, they're Spanish, they're Arabian, they're
17 Japanese. Let's just write down an English
18 letter or an English word." It doesn't work that
19 way. And it's very embarrassing to a deaf
20 person. Sometimes they might nod their head.
21 Sometimes they might say they understand because
22 it's embarrassing to a deaf person.

23 We also have to understand there's

1 different levels of education with a deaf
2 individual. In his deposition, he couldn't get
3 through college. It was too hard for him. He
4 couldn't do it. The English was too difficult.
5 He needed ASL. And he went through a school that
6 was ASL.

7 She touches on that and says, "Well, he
8 graduated from the deaf school." It was in sign
9 language. It's a sign language school. That
10 doesn't mean that he understands very complicated
11 medical notes.

12 I also want to explain something to you,
13 that this is a protection for the hospital, for
14 the doctors, it's a protection for the client and
15 for the patients. I've had clients before where
16 there were -- there were not interpreters, and
17 there was a terminal illness. It was not
18 conveyed correctly to the deaf individual and the
19 deaf individual died. That turns into a medical
20 malpractice case.

21 It shouldn't rise to that level. And we
22 notice in their motion for summary judgment, this
23 is what they argue. They have their own

1 doctors -- and that's what our motion to strike
2 was on -- talk about the standard of care, and
3 that nothing would change and they would have
4 proceeded in the same manner.

5 We're not talking about right now a
6 medical malpractice case. We're talking about an
7 ADA compliance case, and it's about what the --
8 what the client knew or understood. It's not
9 about their own people serving as their own
10 expert witnesses and would they have served him
11 any differently, because the ADA violation is
12 just that, not proper accommodations.

13 And now this is said in a carte blanche
14 order, pretty much, to say, "Oh, you don't have
15 to use VRI." Well, this order says, "You can
16 just write notes." That is not compliant with
17 ADA, that is not -- that is really very dangerous
18 for very serious things, and we cannot compare
19 this to a situation where he's paying a gas bill.

20 And it's also unreasonable to say, "I want
21 a VRI" every single time he goes to pay a gas
22 bill. That's not what he's asking here. He's
23 asking here, where they already knew, that it was

1 on notice, his file was earmarked that he needs
2 to have an interpreter because he doesn't
3 understand. And this is going -- this order will
4 set it up to say, "The hospital says, it's not by
5 ICRC, the judge signed, you can just simply write
6 notes."

7 In our objection we filed, we sent some --
8 we mentioned a case where that was found and it
9 was reversed on the federal level. The Federal
10 Court said, "You can't do this. It's a complex
11 case. You can't simply say writing notes back
12 and forth is an auxiliary aid."

13 What they need to do is get something in
14 place. Yes, they can use their VRI in most
15 circumstances, but it does have to work. And if
16 it doesn't, you have to call emergency services,
17 and you have to call emergency interpreting
18 services. They had 12 hours. They certainly
19 could have done it.

20 And then the argument here is, "Well, he
21 understood. He understood there would be no
22 change." This is a summary judgment. First of
23 all, he argues that he didn't. He argues that in

1 his deposition. He said, "I didn't know what was
2 going on. That's why this is messed up." And
3 again, you have to remember, a deaf person might
4 just be nodding their head out of embarrassment.
5 They might say, "Yes," but do we know what they
6 really understand?

7 The issue here, then, is, "Well, it can't
8 be decided on summary judgment." We believe it
9 should be decided on summary judgment. That's
10 why we did a partial as to -- in Complainant's
11 favor, because they simply didn't provide an
12 auxiliary aid. The VRI was not working, and they
13 concede on that issue. There has to be something
14 in place, because something much worse can
15 happen.

16 So, that's why we think it should be in
17 his favor as a partial summary judgment, and the
18 reason why it was partial is because we can't
19 determine damages. However, if you all determine
20 there's a factual dispute, it goes to: What did
21 he understand and what he didn't understand.

22 He didn't understand, and that was his
23 testimony. That was his testimony in his

1 affidavit, that was his testimony in his
2 deposition, and he said, "This is why it's all
3 messed up. This isn't what I -- this isn't what
4 I said, this isn't what I understood, and that's
5 because I didn't have an interpreter."

6 And simply -- we cannot say a big hospital
7 like Eskenazi can just simply say, "We're going
8 to write notes back and forth with nurses and
9 with doctors in the emergency room." We
10 understand if it's a short period of time, but
11 there were no efforts at all. Once they knew it
12 wasn't working, there were no efforts at all to
13 get in emergency interpreting services. There
14 needs to be something in place if the VRI fails.
15 They need to get a qualified interpreter.

16 And we look at, again, Indiana's rules for
17 a qualified interpreter. Why do we have
18 qualifications for medical interpreters? Because
19 there's a level of expertise in interpreting, but
20 not just any type of interpreting. There is
21 medical interpreting and there's legal
22 interpreting, and if they're not properly
23 qualified, then they can't interpret.

1 And then we're going to put that on the
2 deaf person, who maybe doesn't know English very
3 well, may not be very educated, to understand
4 complex legal or medical terms? We're talking
5 about his medical condition. He could have taken
6 the wrong medication, he could have done
7 anything -- number of reasons wrong.

8 However, their affidavit, again, as to the
9 medical -- the medical treatment would be
10 different. It's irrelevant as to an ADA law. An
11 ADA law is either they complied or didn't comply.
12 And here, they simply didn't comply. So, we're
13 asking that you reverse the motion for summary
14 judgment and find in Complainant's favor.

15 Thank you.

16 CHAIRPERSON SLASH: And you're the
17 first time up for today, so you have ten minutes
18 here, and you have two minutes at rebuttal, and
19 you may reserve time if that's what you'd like.
20 You can inform us so we can hold that time back
21 if you'd like it.

22 MR. POCKRASS: Thank you, Your Honor.
23 I would like to reserve an additional three

1 minutes, so it would be five minutes total,
2 please.

3 MR. FLEISCHHACKER: Okay.

4 MR. POCKRASS: Thank you.

5 May it please the Commission, my name is
6 Steve Pockrass. I'm an attorney representing the
7 Respondent, Eskenazi Health.

8 Eskenazi Health respectfully requests that
9 the Commission affirm the recommended order
10 issued by Judge Triggs in this case. Contrary to
11 the assertions made by Plaintiff's attorney,
12 Judge Triggs properly applied the law and the
13 facts in granting summary judgment as to Eskenazi
14 Health.

15 Mr. Rowe is deaf. The issue here is
16 whether Eskenazi Health provided appropriate
17 auxiliary aids and services to Mr. Rowe when he
18 was admitted to the Emergency Department shortly
19 after midnight on September 9th, 2021.

20 Counsel didn't talk about the facts that
21 led to his emergency room visit, which is that he
22 had ingested 20 THC Yummies, and he communicated
23 with the paramedics by notes, he went to the

1 hospital, and I'll walk through with you both the
2 affidavit testimony of Dr. Reyes, which shows the
3 extensive efforts that she made to ensure that
4 there were effective communications.

5 Mr. Rowe's attorney also did not mention
6 the fact that the reason that the VRI system was
7 not working was because there had been a cyber
8 attack on Eskenazi Health's systems, and as a
9 result, they had to take down all Internet-based
10 services.

11 So, this is a very unique situation. It's
12 not a situation where VRI is constantly not
13 working, where there's some other problems, a
14 very unusual situation, and you'll see the
15 declaration testimony of Jeff Martz walking
16 through exactly what was happening and why they
17 couldn't use those Internet -- any Internet-based
18 services at that point in time.

19 The undisputed facts show that on numerous
20 occasions, Mr. Rowe in fact does use things other
21 than ASL interpreters, not just for simple
22 things, but all sorts of stuff. He's got his --
23 an app that he uses.

1 There have been times at Eskenazi Health
2 when they've offered him ASL interpretation, and
3 he has said no. There was -- once that system
4 went back up, he went in for a colonoscopy. They
5 actually provided him with three ASL
6 interpreters.

7 What the law says, and what the Indiana
8 Civil Rights Law says, is that you look at
9 reasonable means. Did the entity use reasonable
10 means in terms of the interpretation? And so,
11 again, what the law says is that you don't have
12 to use the preferred method of communication, but
13 you need to consider it, which the undisputed
14 evidence shows that they did. But the standard
15 is whether the use of another auxiliary aid, in
16 which this case, the exchange of notes between
17 Dr. Reyes and Mr. Rhodes -- Rowe -- was that an
18 effective aid?

19 If you look at the record evidence in this
20 case, there can be no dispute, and Mr. Rowe, you
21 know, essentially what he said was he was -- he
22 doesn't remember half of what happened. He was
23 sleeping most of the time when he was at -- when

1 he was at the hospital for those 12 hours.

2 And there was a communication when
3 Dr. Reyes tried to communicate with him. She saw
4 in the -- in his medical record that it did say
5 ASL is required. She went to get the VRI, but
6 when that was not working, it was Mr. Rowe who
7 actually gestured to her to start using notes,
8 and she provided him with a pen and paper, and
9 they communicated with each other with regard to
10 those notes.

11 If we take a look at the affidavit of
12 Dr. Reyes, which is Exhibit F, she walks through
13 all of the efforts that she made to work with
14 Mr. Rowe, and I think one of the things that
15 struck me as I was sitting here is that this is a
16 case and a situation where Eskenazi Health and
17 Dr. Reyes bent over backward to try to do the
18 right thing to help Mr. Rowe.

19 In these other cases that you heard -- I
20 know there's some dispute about how did somebody
21 get harmed? And here, the entire effort was to
22 help. So, Dr. Reyes, in her affidavit, yes, it
23 was a 12-hour visit. She says, "I immediately

1 noticed that Mr. Rowe did not communicate
2 verbally and attempted to use ASL."

3 Moreover, Mr. Rowe's medical record from
4 prior visits to Eskenazi Health stated he needed
5 ASL interpretation services. "I promptly brought
6 the VRI unit to Mr. Rowe's patient room to enable
7 live ASL interpretative -- interpretation
8 services through video chat."

9 She then says, "However, during this time,
10 Eskenazi Health's entire network, including
11 e-mail and Internet access, had been disabled due
12 to a cyber attack. Thus, the VRI unit could not
13 connect to the network, and the ASL service was
14 rendered unavailable due to lack of Internet
15 access. I documented this in Mr. Rowe's medical
16 record for his September 19th -- 9th, 2021
17 encounter."

18 Mr. Rowe in fact -- he said he saw that
19 they were trying to use the VRI, and could tell
20 that it wasn't working. He said that he was so
21 dizzy and his eyes were crossed and things like
22 that, he couldn't even say for sure whether a VRI
23 would have been effective for him in that

1 situation.

2 An in-person interpreter -- going to this
3 whole issue of emergency interpreter; okay? It's
4 shortly after midnight when Mr. Rowe gets there.

5 An in-person ASL interpreter from Easterseals
6 Crossroads was not a viable option due to the
7 urgent nature of the visit and the time of day.

8 "Easterseals Crossroads' in-person ASL
9 interpreters are best suited for scheduled
10 healthcare visits when 24 to 48 hours' notice can
11 be provided. When Mr. Rowe saw that the VRI unit
12 was not working, Mr. Rowe made a hand gesture to
13 me signaling that he wanted to communicate via
14 handwritten notes. I immediately provided
15 Mr. Rowe with pen and paper."

16 CHAIRPERSON SLASH: Time.

17 MR. POCKRASS: Pardon?

18 CHAIRPERSON SLASH: Time.

19 MS. POCKRASS: Thank you.

20 MS. CIOBANU: Commissioners, writing
21 is not a preferred method. It simply is not an
22 auxiliary -- it's not accepted to be an auxiliary
23 aid.

1 Also, on page six of our objection, the
2 ADA requires if it uses VRI services, then it
3 shall ensure that it's high-quality video images
4 that don't produce lags, choppy, blurry or grainy
5 images, like it specifically delineates it, and I
6 have this citation there. If you're going to use
7 it, that's fine.

8 They simply didn't even call. There are
9 other emergency services, Luna and so many
10 others. They actually didn't even try to call.
11 And then they talk about, "Well, he had a note."
12 His note said, "Need an interpreter." That's
13 what he wrote down on the piece of paper, "Need
14 interpreter." And it's on his -- it's on his --
15 in his -- in his -- it's Flack, FYI Flack,
16 electronic medical record, indicating the
17 Complainant is deaf and requires American Sign
18 Language interpreting.

19 So, he can file a contract violation. I
20 mean they have violated his contract, an earlier
21 agreement, but he really shouldn't have to go
22 that far. He was going through the ICRC. Why
23 should any deaf or disabled person go through

1 this much work just to say, "I need an auxiliary
2 aid. I want you to follow the ADA"? I mean he
3 could continue, but we're really hoping that it
4 will just be over after we get this done, because
5 he could continue to pursue.

6 Counsel brought out about the reason why
7 he was there, because it's irrelevant, but with
8 the 20 -- the 20 gummies, to actually look at his
9 testimony, the testimony was because there was
10 confusion, he didn't understand. He got
11 confused. He didn't understand they were THC
12 gummies, he just thought they were gummies.

13 And that's what he testified. It was
14 someone at the gas station, and that's where they
15 got, "Well -- oh, well, you're writing back and
16 forth." And that's what happens. I mean that's
17 what happens when he didn't understand. He said,
18 "I didn't know these were THC gummies. I just
19 thought they were gummies, like a candy," and
20 that's what made him sick.

21 But again, do we say, "Oh, well, that's a
22 proper accommodation"? I mean it's just not, and
23 that's what happens. And it doesn't matter what

1 he's there for. The requirement is ADA.
2 Whether -- for whatever reason, it doesn't
3 matter.

4 And the VRI, it doesn't mention why it
5 wasn't working. Well, again, it's irrelevant.
6 If it's not working, we've got to have a backup
7 plan. And that's another reason why the hospital
8 has to have a backup plan, to say -- this could
9 happen a lot. There's a lot of reasons why the
10 VRI -- it's great when it works, but the ADA
11 requires that things work. So, if it doesn't,
12 we've got to have a backup plan. There are some
13 hospitals that have it on staff, there's other
14 emergency services. We don't really care what it
15 is, it just needs to be a plan.

16 And the fact that they knew it was on
17 record that he needed it, and he went through a
18 lot before to get that agreement through that
19 other agency, because he has a medical excuse,
20 because he really doesn't understand, and he
21 really does need to be able to communicate
22 effectively. But again, this is just the law. I
23 mean it's simply the law. They've got to comply

1 with that.

2 And they have not said anything about
3 finances or they couldn't afford it. This is
4 more expensive to do this. It's better to just
5 have a system in place, and then it follows for
6 every deaf, disabled person thereafter. Even for
7 other languages there should be something in
8 place, but again, we have a higher, heightened
9 standard, because we have the ADA requirements.

10 And there actually was no effort on their
11 part. They didn't even call. That was -- that's
12 the other thing, they didn't even call. And the
13 fact that they don't see that they need to make
14 that call, they need to make that step, is very
15 problematic.

16 And the fact that they say, "Oh, because
17 he wrote a note, 'Need an interpreter,' oh, he
18 can communicate, and that's how were going to
19 communicate" is equally problematic. Just
20 because he writes out a simple word, "yes," "no,"
21 or "need interpreter," he understands those
22 simple words, but not a complex medical diagnosis
23 or what he needs to do, or to follow that.

1 So, it's as simple as that, and we're just
2 asking that you reverse this or remand it back,
3 and fully consider it.

4 Thank you.

5 MR. POCKRASS: The question of
6 whether VRI -- we have over 300 VRI units at
7 Eskenazi Health. It's not as though Eskenazi
8 Health is not trying to make sure that
9 services -- or to prevent services from being
10 provided.

11 We have a very unique situation here.
12 When you look at the case law, which is being
13 oversimplified by Mr. Rowe's counsel, the
14 question is whether you used reasonable means,
15 and the case law says that sometimes written
16 notes are and sometimes they're not, and you've
17 got to look at the entire situation.

18 The case law also says that if your VRI
19 is -- if you have this long series or history of
20 your VRI not working and cutting out and things
21 like that, then it can be a violation of the ADA.
22 But in this situation, again, when we look at it,
23 Dr. Reyes communicated with Mr. Rowe. He

1 indicated to her that he understood what was
2 going on.

3 She put together a plan for him; okay?
4 It's 12 hours. If you're looking at a situation
5 where you've got somebody who's got a surgery
6 scheduled or something like that that is more
7 complex, you know, like the colonoscopy, where
8 they got him three ASL interpreters, that's the
9 type of situation where notes may not be
10 effective.

11 But here, you had what was an emergent
12 situation. The guy indicated that he ingested
13 gummies. The reason -- and they're THC gummies.
14 And the reason that I point that out is because
15 he -- in his testimony, he's saying he doesn't
16 remember much of anything that was going on. He
17 would sleep, he'd wake up, he'd giggle, he'd go
18 back to sleep.

19 And the care plan was to monitor him, make
20 sure that his vitals were okay, and ensure that,
21 you know, there were not any complications or
22 other issues, which there were not. And so, you
23 do have to look at the facts and circumstances,

1 and one of those facts that you look at is: Is
2 this a planned medical treatment? Is this an
3 emergent situation? They weren't performing any
4 surgery on him, they weren't doing anything like
5 that. They were monitoring him to make sure that
6 those gummies metabolized.

7 Dr. Reyes indicated that there was not an
8 option to try to get an in-person interpreter
9 right away, at midnight on that evening, and she
10 used effective methods to communicate with
11 Mr. Rowe.

12 And so, again, if you look at the Judge's
13 order, she followed the facts closely. The fact
14 that Mr. Rowe's attorney may not like the
15 evidence that was presented because it is fatal
16 to her case does not support a motion to strike.

17 When we moved for summary judgment, we
18 moved as to both liability and to damages, and
19 so, I would also note that Judge Triggs only
20 ruled on the issue of liability. She found that
21 there was no liability. And accordingly, she
22 didn't have to also address that issue of
23 damages, but we would win on that issue as well.

1 So, with that, I would respectfully
2 request that you affirm Judge Triggs' order based
3 upon the facts that are in the record, the
4 designated evidence, and we appreciate your
5 consideration.

6 Thank you.

7 CHAIRPERSON SLASH: Thank you.

8 So, that concludes the oral arguments.

9 Are there any questions?

10 COMM. SILBERBERG: I have one
11 technical --

12 (Discussion off the record.)

13 MR. FLEISCHHACKER: What's the
14 question?

15 COMM. SILBERBERG: I have a family
16 member who works for Eskenazi Health. Should I
17 be recusing? I won't ask my questions if I'm not
18 supposed to be --

19 MR. FLEISCHHACKER: I don't think --

20 COMM. SILBERBERG: It doesn't matter?

21 MR. FLEISCHHACKER: No, I don't
22 think --

23 COMM. SILBERBERG: Okay.

1 MR. FLEISCHHACKER: It's not a
2 personal --

3 CHAIRPERSON SLASH: Do they live at
4 your house?

5 COMM. SILBERBERG: No.

6 CHAIRPERSON SLASH: Okay.

7 COMM. SILBERBERG: So, I figured -- I
8 just didn't want it to be --

9 MR. FLEISCHHACKER: I think
10 disclosing it, and then --

11 COMM. SILBERBERG: Yeah.

12 MR. FLEISCHHACKER: -- if either of
13 the parties want to --

14 COMM. SILBERBERG: Okay. Because I
15 do have a question, then.

16 So, are you -- were you saying that
17 because that something needs 20 -- has to give a
18 24-to-48-hour notice in order to get the
19 accommodations that they need to follow ADA -- I
20 was confused. You mentioned 24 to 48 hours, and
21 needing enough time, and I'm confused by that.

22 MR. POCKRASS: Sure. Let me respond
23 to that. So, Dr. Reyes had to make a decision

1 about what to do once she realized that the VRI
2 wasn't working, and she knew that she needed to
3 address Mr. Rowe's condition right away. If you
4 use Easterseals Crossroads, it usually takes 24
5 to 48 hours to get that scheduled, and so, you
6 don't have the ability in that type of a
7 situation -- what would -- was she going to wait
8 until the people from Easterseals Crossroads came
9 out? It's not a viable option.

10 And so, she made the decision, as a
11 medical provider, as she saw that she was
12 communicating back and forth with Mr. Rowe, he
13 understood the treatment plan, that, you know,
14 she knew that she'd be able to get him out of
15 there, and I don't know that she knew it'd be
16 exactly 12 hours, but by the time they could
17 actually get somebody from Easterseals
18 Crossroads, it would be a situation where he
19 likely would have been discharged anyway.

20 COMM. SILBERBERG: But is that the
21 case for anybody who comes in with a disability,
22 that they can't get the --

23 MR. POCKRASS: No, no.

1 COMM. SILBERBERG: -- any of the
2 things that they need --

3 MR. POCKRASS: No, no.

4 COMM. SILBERBERG: -- for 24 to 48
5 hours?

6 MR. POCKRASS: Absolutely not. This
7 was a very -- it was a unique situation because
8 of the fact that the VRI was not working.
9 Normally -- and again, they've got 300-plus of
10 these machines. The Internet is working now.
11 They're able to pull that up right away, make use
12 of it. You know, again, this was a very unusual,
13 unique situation, and they had to do the best
14 that they could in those circumstances.

15 So -- and again, if you look at -- with
16 other option -- or other things where he has come
17 in, they've been able to get him VRI right away,
18 and they get that for everybody right away. You
19 know, it was just that one incident where they
20 had to take down the Internet and otherwise risk
21 greater issues as a result of the cyber attack.
22 And that's all in the declaration of Jeff Martz
23 that explains the specifics of that unusual

1 situation.

2 COMM. SILBERBERG: So, I guess my
3 other question is not for you, but -- so, if we
4 rule based on this, are we setting precedent,
5 then, for any circumstance?

6 MR. FLEISCHHACKER: You're making a
7 ruling in this particular matter --

8 COMM. SILBERBERG: Okay.

9 MR. FLEISCHHACKER: -- based on the
10 fact pattern here, so --

11 CHAIRPERSON SLASH: Yes.

12 VICE-CHAIR RAMOS: I have a question.
13 My background isn't technology, and there always
14 has to be a number of processes in cases like
15 this. The good news is this was not a critical
16 life-death situation, but it could have been, and
17 you have to have some means to be able to
18 communicate as best you can with an individual.

19 And I know the state have -- they have
20 phone numbers that you can call with people, they
21 have a list of names that are out there that you
22 can reach for that, and there has to be a backup
23 system at Eskenazi for just this purpose. So,

1 I'm challenged by what happened in this
2 particular case.

3 COMM. TOLLIVER: How often is the VRI
4 system used?

5 MR. POCKRASS: Now it's -- I mean
6 it's used all of the time, and it's -- it's
7 working fine now.

8 COMM. TOLLIVER: What does that mean?

9 MR. POCKRASS: It -- well, that in
10 other words -- so, the VRI is a virtual remote
11 interpretation service, and so, it's an
12 Internet-based service. And I think in fact you
13 guys have changed your VRI provider now.

14 MS. KIRKMAN: We have, uh-huh.

15 MR. POCKRASS: So, there's a new, and
16 I would say better, provider of VRI services
17 right now, and so, people are able to, again,
18 anywhere in the hospital, in the health -- in the
19 entire health network, they are able -- you know,
20 if they come in, if they need ASL, they can get
21 that.

22 And then in addition, if you need or want
23 in-person and you can schedule that in advance,

1 you've got that option as well. But certainly,
2 again, this was a very unusual circumstance.

3 And, you know, again, going to the IT
4 issue, because it was a cyber attack and they had
5 to go through -- I mean their initial --
6 initially they -- I mean they had to shut down
7 their entire system. And so, the protocol was to
8 get everything internal done first, and then go
9 to the external. And so, now, again, VRI is up,
10 people can use it all of the time, there's no --
11 there's no time gap in terms of being able to use
12 the VRI.

13 COMM. TOLLIVER: Is it used daily?

14 MR. POCKRASS: Pardon me?

15 COMM. TOLLIVER: Is it used daily?

16 MS. KIRKMAN: Yes --

17 MR. POCKRASS: Oh, yeah, yeah.

18 MS. KIRKMAN: -- hundreds of
19 thousands of minutes a year, because it is on
20 demand for all kinds of different languages, and
21 ASL. So, it's a -- it's like Face time, if you
22 can picture that, and it's happened to people who
23 speak hundreds of different languages --

1 COMM. TOLLIVER: And it was down for
2 six weeks?

3 MS. KIRKMAN: -- including ASL. And
4 it was -- it was -- when we did not have an
5 Internet connection during that time, there was a
6 separate process to use.

7 THE REPORTER: Would you identify
8 yourself, please?

9 MS. KIRKMAN: Anna Kirkman, Eskenazi
10 Health, K i r k m a n.

11 COMM. SILBERBERG: So, if the
12 Internet goes down again, then will this recur,
13 where there won't be a backup plan?

14 MS. KIRKMAN: I --

15 COMM. SILBERBERG: Because there's
16 been -- there have been so many cyber attacks on
17 hospitals.

18 VICE-CHAIR RAMOS: With AI as well.

19 COMM. SILBERBERG: Yeah.

20 MR. POCKRASS: You know, I -- I mean
21 I don't know whether you can speak directly to
22 what the current contingency plan is. I don't
23 feel like I -- you know, I don't feel like I have

1 personal knowledge, that I can tell you what the
2 current contingency plan is for --

3 MS. KIRKMAN: There are additional
4 layers of backup ASL services now, so something
5 that is more immediate than what Easterseals has
6 historically been able to provide. I'd have to
7 look at our policy to give you that turnaround
8 time exactly, but we do have 300 VRI machines on
9 the hospital campus, hundreds of thousands of
10 interpreter service minutes annually. It's a
11 very effective system.

12 COMM. SILBERBERG: But only if
13 there's Internet.

14 MS. KIRKMAN: Yes.

15 MS. CIOBANU: And may I say that
16 further, their argu -- their whole argument was
17 that notes are sufficient, if VRI doesn't work,
18 notes are sufficient.

19 MR. POCKRASS: That's not what our
20 argument was. Our argument was that in this
21 specific case -- and again, that's what the case
22 law says is you look at the facts to examine
23 whether notes are sufficient. The law says --

1 the federal regulations say that notes can be a
2 sufficient form of communication, and that it
3 depends on the facts and circumstances, and that
4 while you take into consideration the requested
5 accommodation, that there are points where it
6 doesn't -- there is no per se rule that ASL is
7 required in every case.

8 Again, her client at times has turned down
9 ASL while being treated at Eskenazi Health, and
10 in the facts and circumstances of this case,
11 where they needed to monitor his condition, the
12 doctor looked, she saw that it was in his chart.
13 There was no breach of contract, and a breach of
14 contract doesn't constitute discrimination. It's
15 their choice that they filed this as a
16 discrimination case and not as a breach of
17 contract case.

18 But the fact is that she looked, she saw
19 that the system was not working. He then
20 indicated to her -- he gestured to her that he
21 wanted to use notes. They used notes.
22 Everything that she saw indicated to her that he
23 was understanding what the treatment plan was,

1 and that in fact he -- he -- they followed the
2 treatment plan, and, you know, it wasn't -- it
3 was a situation where she did exactly the same
4 things that she would have done -- and again, he
5 couldn't indicate whether he'd even be able to
6 view the VRI under -- you know, he didn't
7 remember much of anything that was going on.

8 CHAIRPERSON SLASH: Thank you for
9 responding to the question.

10 MS. KIRKMAN: May I clarify?

11 CHAIRPERSON SLASH: Did you have a
12 brief addition?

13 MS. KIRKMAN: Yes, yes. So, I did
14 just clarify that we now have LTE internal
15 language ASL access as well, which does not --

16 CHAIRPERSON SLASH: This is --

17 MS. KIRKMAN: -- rely on wifi, so
18 that is an added layer.

19 VICE-CHAIR RAMOS: They could have
20 just tested it.

21 CHAIRPERSON SLASH: Okay.

22 VICE-CHAIR RAMOS: I mean the reality
23 is you do have to test and retest the stuff to

1 make sure it works. And again, we're in a
2 fortunate situation that it was not a critical
3 situation, but you indicated that the person is
4 not capable and has been sleeping, yet you're
5 saying that he's approved the notes, to me, is a
6 conflict.

7 COMM. TOLLIVER: I guess that's the
8 qualifier you have, and this new --

9 CHAIRPERSON SLASH: No, I was going
10 to say --

11 COMM. TOLLIVER: Is this -- what
12 is -- do you agree that that's what the law is?
13 So, is the law that there has to be a reasonable
14 procedure in place, or does it have to be -- the
15 law has to ensure that your client gets the care
16 that he needs at that particular time?

17 MS. CIOBANU: Well, it's actually
18 both, but the law is very narrow on when notes
19 can be used. It's not for complex legal or
20 medical issues, and that's what the case was that
21 we cited. It's like when you're at a gas
22 station, when you're at those certain places
23 where it's real quick.

1 And the other issue is: It's not the
2 doctor's understanding, it's his. I mean this is
3 summary judgment. She doesn't know what he
4 understood. His testimony was, "I didn't
5 understand, and that's not what I said," when he
6 was being asked. So --

7 MR. POCKRASS: And I -- I mean I --
8 the case law indicates that you look at all of
9 the factors, you know. And to talk about this
10 being -- and this was an emergent situation. It
11 wasn't necessarily a complex situation. It was
12 one where you're going to watch and make sure
13 that the THC metabolizes and the person's vitals
14 are okay and things like that.

15 And so, it's not as though -- again, I go
16 to that colonoscopy example, where you're
17 scheduling something that's a more complex
18 medical procedure. She was responding to an
19 issue that was emergent, and it was one where
20 they wouldn't have been able to get an in-person
21 interpreter right away.

22 And if you look at the case law and the
23 facts and look at things like the Juech case and

1 some of the others that have been cited, they
2 show that in fact you look at the specific facts,
3 and in this case -- and it -- you do look at
4 whether or not it appears that there are -- the
5 communications are okay.

6 And so, when the doctor saw that -- again,
7 that Mr. Rowe -- and that Mr. Rowe appeared to be
8 understanding things -- and again, when I was
9 talking about his testimony, I'm talking about
10 his deposition testimony, where he's telling us
11 now that he can't remember what happened when he
12 was at the hospital, but her testimony shows that
13 in fact everything that she saw indicated that he
14 understood the plan.

15 And when you look at the case law, it
16 talks about the fact that, you know, if, for
17 example, either -- the doctor maybe starts seeing
18 that the person is having a hard time
19 communicating with you and doesn't appear to be
20 understanding, then that's a situation where you
21 need to make sure that you get an ASL
22 interpreter. She tried, she was unable to do
23 that. She then took the next steps. She went

1 out of her way to try to make sure that he was
2 okay, and in fact, she treated him appropriately.

3 CHAIRPERSON SLASH: Thank you.

4 (Discussion off the record.)

5 CHAIRPERSON SLASH: Do any of the
6 Commissioners have a motion?

7 MR. FLEISCHHACKER: Chair Slash,
8 would you like me to go on and do your options?

9 CHAIRPERSON SLASH: Yes, please.

10 MR. FLEISCHHACKER: Thank you.

11 So, this -- this was on cross-motions for
12 summary judgment; right, both sides?

13 MS. CIOBANU: (Nodded head yes.)

14 MR. POCKRASS: It was on -- we had
15 motioned for summary judgment as to both
16 liability and damages. Ms. Ciobanu --

17 MR. FLEISCHHACKER: But Complainant
18 also filed --

19 MR. POCKRASS: -- also filed a
20 cross-motion just as --

21 MS. TRINKLE: Just to liability.

22 MR. POCKRASS: -- to liability.

23 MR. FLEISCHHACKER: Sure.

1 All right. So, in a summary judgment
2 setting, you -- both sides are arguing that
3 there's no genuine issue of material facts. In
4 light of all of the evidence, even looking at it
5 in favor of the nonmoving party, that this is how
6 it should be. So, if you think that the ALJ got
7 it right saying that all of the evidence shows in
8 favor of the Respondent, as the ALJ has written,
9 then you would move to affirm the matter.

10 You can move to modify if you think that
11 the decision should be changed in favor of the
12 Complainant, and there you're saying all of the
13 evidence shows that there's no genuine issue of
14 material facts in favor of Complainant.

15 Or you can remand the matter to the
16 Administrative Law Judge, saying that there's
17 still things that need to be decided here, this
18 was briefed in summary judgment, and this should
19 go on to further proceedings and go to a hearing,
20 where further things can be decided.

21 CHAIRPERSON SLASH: Thank you.

22 Hearing that, Commissioners, do you have a
23 motion?

1 (Discussion off the record.)

2 VICE-CHAIR RAMOS: I'm comfortable
3 with -- I would recommend that we reverse the
4 ALJ's decision and remand the summary judgment in
5 favor of the Complainant.

6 CHAIRPERSON SLASH: Okay.

7 Is there a second?

8 COMM. TOLLIVER: Second.

9 CHAIRPERSON SLASH: Okay. All in
10 favor?

11 (Commission members responded, "Aye.")

12 CHAIRPERSON SLASH: Any opposed?

13 (No response.)

14 CHAIRPERSON SLASH: Okay.

15 MR. POCKRASS: Your Honor, can I ask
16 a point of clarification, since there was no
17 actual ruling on the damages portion?

18 MR. FLEISCHHACKER: It will then get
19 set for the evidence hearing with the ALJ.

20 MR. POCKRASS: But she didn't -- she
21 didn't rule as to summary judgment on the
22 damages. Wouldn't that still be something that
23 she would have to rule on?

1 case, ICRC/Darian Day versus Jerry Wenger,
2 Case HOha23090705. The ALJ in this matter has
3 determined that the Respondent in this matter did
4 indeed violate the Indiana Fair Housing Act and
5 the Indiana Civil Rights Law regarding the
6 Complainant on the basis of discriminating
7 against people with disabilities and regarding
8 unlawful retaliation in the protected area of
9 housing.

10 The Complainant is awarded compensatory
11 damages of nine thousand seven hundred dollars,
12 emotional damages of twenty-five thousand
13 dollars. The Respondent is ordered to cease and
14 desist from discriminative acts and retaliating
15 against people because of a protected activity.
16 The Respondent in this matter has filed an
17 objection, the Complainant has 30 days to file in
18 response, so no decision on this matter is due at
19 the time.

20 The next case, ICRC/De'Andre McDade and
21 DeSean Bartlett versus Rafayru Investments, LLC,
22 Case HOra22020034. The Administrative Law Judge
23 in this matter has granted the Complainant's

1 Motion to Dismiss, with prejudice, due to the
2 parties having reached a settlement. The
3 objection period in this has closed.

4 Is there a motion to affirm?

5 VICE-CHAIR RAMOS: So moved.

6 CHAIRPERSON SLASH: Is there a
7 second?

8 COMM. SILBERBERG: Second.

9 CHAIRPERSON SLASH: Thank you.

10 All in favor?

11 (Commission members responded, "Aye.")

12 CHAIRPERSON SLASH: Any opposed?

13 (No response.)

14 CHAIRPERSON SLASH: Okay. The next
15 case -- well, in this next section, these are ALJ
16 Decisions that are Automatically Confirmed, so
17 we're just reading them in. Julie Evans
18 Duszynski on behalf of minor child R. B. versus
19 New Prairie United School Corporation,
20 EDha24010036.

21 The next case, ICRC/Ira Gardner versus
22 SB 231 Holdings, LLC and HomeWorks Property
23 Management, Case HOra24050341. That concludes

1 that section of our agenda.

2 Upcoming meeting dates, the next one is
3 November 18th. We have a really late
4 Thanksgiving this year, so this shouldn't
5 really -- I'm sorry; a really early one, so I
6 don't think that this one goes into --

7 COMM. SILBERBERG: No.

8 CHAIRPERSON SLASH: -- any problems
9 there. Does anyone have any issues with
10 November 18th?

11 VICE-CHAIR RAMOS: I -- I do, Chair
12 Slash. I may be -- I'm on a six-hour Time Zone
13 difference, so I'm not sure I'll be able to --

14 CHAIRPERSON SLASH: So, we'll put you
15 on the possibilities list, but we'll leave you
16 for last; how about that?

17 VICE-CHAIR RAMOS: That sounds good.

18 CHAIRPERSON SLASH: We'll try to get
19 another board member. I don't have any issues
20 with these things.

21 COMM. TOLLIVER: I have a trial
22 scheduled that day.

23 CHAIRPERSON SLASH: You have a trial

1 scheduled that day?

2 COMM. TOLLIVER: I do. The important
3 thing is: When is your Thanksgiving celebration?

4 CHAIRPERSON SLASH: Yeah, when is
5 that, for the office?

6 MR. FLEISCHHACKER: That's a great
7 question. I do not know, but typically it's on a
8 Friday, but since we've moved the Commission
9 meetings to --

10 COMM. TOLLIVER: It's on a Friday?

11 CHAIRPERSON SLASH: I was going to
12 say it would probably actually be appropriate for
13 us to identify when that date is, when our
14 November date is, and see if we can get full
15 attendance from the Commission on that date, if
16 we can, because it does look like we have two --
17 we have two conflicts with November 18th, and
18 having two conflicts would mean that it's an
19 appropriate time to ask about another day.

20 COMM. TOLLIVER: I think three, and
21 that would make it Thanksgiving as a possibility;
22 right?

23 CHAIRPERSON SLASH: Well, it's not

1 that week.

2 COMM. SILBERBERG: Thanksgiving is a
3 week later.

4 COMM. TOLLIVER: No, for their
5 Thanksgiving celebration, you probably don't want
6 to be there on a Monday.

7 CHAIRPERSON SLASH: So, if we would
8 send a number of dates to be decided via e-mail
9 in the next seven days, is that helpful for you
10 all to get dates and things out?

11 MR. FLEISCHHACKER: Yep.

12 CHAIRPERSON SLASH: Okay. Thank you.

13 VICE-CHAIR RAMOS: The 22nd works for
14 me, except for --

15 COMM. TOLLIVER: The 22nd?

16 VICE-CHAIR RAMOS: -- that's a
17 Friday.

18 COMM. TOLLIVER: That would work for
19 me, too.

20 CHAIRPERSON SLASH: It works for me
21 as well.

22 COMM. SILBERBERG: I'm not sure if it
23 will work for me or not. The 15th would. That's

1 the Friday before, but I may be gone on the 22nd.

2 COMM. TOLLIVER: The 15th works for
3 me.

4 CHAIRPERSON SLASH: So, we can just
5 check the 15th and the 22nd.

6 COMM. SILBERBERG: Okay. And I'll
7 know by the time you check it.

8 CHAIRPERSON SLASH: Oh, okay.

9 COMM. SILBERBERG: I'll finalize what
10 I have.

11 CHAIRPERSON SLASH: Also, our agenda
12 has no Elections, Trainings or Other. I don't
13 see any Announcements. I don't believe we have
14 anyone here for Public Comments.

15 Before I adjourn, I would love to thank
16 all of the staff for their support today and
17 hanging out with us on-line. We know that many
18 of you were in the office, but thank you for your
19 patience and your diligence. We have actually
20 run over for the first time in my history of
21 serving on this Commission.

22 COMM. SILBERBERG: This was quite a
23 day.

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CHAIRPERSON SLASH: Yes.

So, with that in mind, it is, what, 3 --
3:08 -- I like that number -- and I will adjourn
today's meeting.

- - -
Thereupon, the proceedings of
October 21, 2024 were concluded
at 3:08 o'clock p.m.
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CERTIFICATE

I, Lindy L. Meyer, Jr., the undersigned Court Reporter and Notary Public residing in the City of Shelbyville, Shelby County, Indiana, do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me on Monday, October 21, 2024 in this matter and transcribed by me.

Lindy L. Meyer Jr.

Lindy L. Meyer, Jr.,
Notary Public in and
for the State of Indiana.

My Commission expires August 26, 2032.

Commission No. NP0690003

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