

SUPERIOR COURT OF CALIFORNIA (UNLIMITED JURISDICTION)

COUNTY OF SANTA CLARA

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LARRY BERENT,
Plaintiff,

vs.

No. 1-14-CV-272708

CREST ENTERPRISES, LLC and DOES
ONE through ONE HUNDRED, INCLUSIVE

Defendants.

_____ /

DEPOSITION OF CHRISTOPHER TAYLOR

Taken before LAURA A. DENYS, CSR
State of California
CSR No. 12357

October 25, 2016

DIABLO VALLEY REPORTING SERVICES
Certified Shorthand Reporters
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I N D E X

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3 DEPOSITION OF CHRISTOPHER TAYLOR

4 DATE: TUESDAY, OCTOBER 25, 2016

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1 DEPOSITION OF CHRISTOPHER TAYLOR

2
3 BE IT REMEMBERED, that pursuant to Notice, and on
4 the 25th day of October, 2016, commencing at the hour of
5 10:00 a.m., in the offices of Derby Law Firm, 1255 Treat
6 Boulevard, Conference Room, Walnut Creek, California, before
7 me, LAURA A. DENYS, personally appeared CHRISTOPHER TAYLOR,
8 produced as a witness in said action, and being by me first
9 administered an oath, was thereupon examined as a witness in
10 said cause.

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12 ---oOo---

13
14 STEVEN L. DERBY, ESQ., and ANTHONY GOLDSMITH, ESQ.,
15 The Derby Law Firm, 1255 Treat Boulevard, Suite 300, Walnut
16 Creek, California, 94597, (925) 472-6640, appeared on behalf
17 of the Plaintiff.

18
19 LANCE BURROW, ESQ., Kreeft, Pedersen & Lauderdale,
20 Attorneys At Law, One Almaden Boulevard, Suite 400, San Jose,
21 California 95113, (408) 271-5330, appeared on behalf of the
22 Defendants.

23
24
25 ///

1 MARIA S. BELLAFRONTO, ESQ., Hopkins & Carley, 70
2 South First Street, San Jose, California 95113, (408)
3 286-9800, appeared on behalf of the Defendants.

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1 CHRISTOPHER TAYLOR,
2 having been administered an oath
3 by the Certified Shorthand Reporter,
4 testified as follows:

5

6 EXAMINATION BY MR. DERBY

7 MR. DERBY: Q. Good morning. Would you state your
8 full name and spell your last for the record.

9 A. Christopher Troy Taylor, last name
10 T-a-y-l-o-r.

11 Q. Mr. Taylor, have you had your deposition taken
12 before?

13 A. Yes.

14 Q. Approximately, how many times?

15 A. Maybe 19.

16 Q. 19.

17 Have any of those been in the past six months?

18 A. No.

19 Q. All right. Well, I'm sure that you're
20 familiar with the process. Let me just go over a couple of
21 ground rules to try to get us out of here as quickly as
22 possible.

23 The first thing you probably have heard many times
24 before is that a deposition is testimony under oath same as
25 you give in court.

1 You understand that?

2 A. I do.

3 Q. You understand that everybody in this room
4 will rely upon the testimony you give here today, it would be
5 truthful and accurate and that testimony may be used either
6 for you and against you at trial.

7 A. I do.

8 Q. Very well.

9 You know my job as the attorney asking the questions
10 is to ask clear and intelligent questions; not always an easy
11 thing for me to do, but I will do my best. If I fail in that
12 regard, please let me know that you don't understand my
13 question and I'll be happy to ask it a different way for you.
14 Okay?

15 A. Okay.

16 Q. You are designated as a retained expert in
17 this particular case.

18 You understand that?

19 A. I do.

20 Q. As a retained expert, you have certain
21 additional obligations; they include giving clear and concise
22 answers, which every witness must do, but also to make sure
23 that you have provided the complete basis and understanding
24 for all of your opinions because this is my one and only
25 opportunity to obtain that information to prepare my case for

1 trial.

2 You understand?

3 A. I do.

4 Q. My goal and our purpose here today is to go
5 through your opinions and your qualifications in some detail
6 as well as the information you relied upon in forming those
7 opinions. If I should leave anything out inadvertently,
8 please let me know that I have missed something so that we
9 can get a complete record and also we don't have to keep
10 going back over the same ground.

11 Fair enough?

12 A. Fair enough.

13 Q. All right. As with every deposition, this is
14 being testimony taken under oath, so any gestures or
15 nonverbal communication that we might understand speaking
16 with each other in normal context should be avoided on both
17 our parts because it's very confusing to the court reporter.
18 Okay?

19 A. Okay.

20 Q. Since you've been through the process before,
21 I'll skip the other admonitions having to do with the
22 importance of the questions, the idea that you can change
23 your testimony.

24 You're aware of all those things, correct?

25 A. I am.

1 MR. DERBY: Good.

2 All right. So you have handed me a two-page
3 curriculum vitae -- or excuse me -- Statement of
4 Qualifications under title, ADA Compliance Consultants.

5 Exhibit 1 to the deposition will be the Notice of
6 Deposition, which contained a document request.

7 (Document marked Plaintiff's
8 Exhibit No. 1 for Identification.)

9 MR. DERBY: And before we went on the record here
10 today, you've been kind enough to provide me certain
11 documents, which we will go over as we need as things go
12 along.

13 Exhibit 2 should be this two-page document you've
14 handed to me as well.

15 MS. BELLAFRONTA: Do you have other copies or is
16 that the only one.

17 (Document marked Plaintiff's
18 Exhibit No. 2 for Identification.)

19 MR. DERBY: Q. Showing you what has now been marked
20 as Exhibit 2, sir, do you recognize the document?

21 A. I do.

22 Q. Tell us what it is, please?

23 A. It is my statement of qualifications. My CV
24 and my rate of fees.

25 Q. All right. Thank you.

1 May I have that back?

2 A. Yes, you can.

3 Q. Thank you.

4 So is this a current and accurate statement of your
5 qualifications?

6 A. It is.

7 Q. So let me go through this just briefly with
8 you to understand some of the acronyms contained in this
9 document.

10 Is ADACC a shorthand for ADA Compliance Consultants,
11 Inc.?

12 A. It is.

13 Q. What type of business is ADA Compliance
14 Consultants, Inc.?

15 A. ADA Compliance, Inc. is a nationwide
16 accessibility consulting firm focusing on clear
17 interpretations of not only the ADA but also specific State
18 accessibility guidelines including the International Building
19 Code, the ANSI standards, the FHA and the CAFHA.

20 Q. The CAFHA?

21 A. Yeah, California has their own version of the
22 Fair Housing Act.

23 Q. I believe you're speaking of the Fair
24 Employment and Housing Act contained in the Government code?

25 A. Yes, but that's a little bit different but

1 it's --

2 Q. Okay.

3 A. -- very close.

4 Q. So what is the -- where do we find the CAFHA?

5 A. You can Google it. All information's online.

6 Q. I mean, is this some part of a statute or a
7 regulation or where did --

8 A. It's California's version of the Fair Housing
9 Act.

10 Q. Okay. So -- but it's different from the Fair
11 Employment and Housing Act?

12 A. Yes.

13 Q. Okay. Now, when you go and you look up the
14 CAFHA, where do you go to look other than Google?

15 Is there a document; is there a book?

16 A. Well, there's all sorts of published material
17 on it, PDFs and -- and full text. I've never gone to an
18 actual specific building or library to look it up. I've just
19 got it off-line, and I get my updates sent to me
20 electronically.

21 Q. I see.

22 So it's says in the second paragraph that you are
23 the founder and CEO of ADA Compliance Consultants, Inc.?

24 A. I am.

25 Q. Is that a California Corporation?

1 A. It is.

2 Q. What type of corporation is it?

3 A. It's an S corp.

4 Q. All right. So it's an S corp.

5 Are there other shareholders besides yourself?

6 A. No.

7 Q. Does ADA Compliance Consultants, Inc. have any

8 employees?

9 A. Yes.

10 Q. How many does it have?

11 A. Seven.

12 Q. And what are their job responsibilities and

13 job titles?

14 A. We have an office manager. I have an

15 assistant. I have two accessibility designers and I have two

16 accessibility inspectors and then myself as an employee.

17 Q. I see that you have a certified access

18 specialist certification?

19 A. I do.

20 Q. Does anybody else in your employ -- I'm

21 sorry -- in ADA Compliance Consultants employ have such a

22 designation?

23 A. No.

24 Q. Have you ever worked for a government agency

25 concerned with any aspect of fair housing laws?

1 A. Have I worked with?

2 Q. For a government.

3 A. No.

4 Q. Have you ever worked with a government agency
5 concerned with any aspect of fair housing laws?

6 A. Yes.

7 Q. Okay. In what capacity?

8 A. With inspections and determining if there
9 barriers truly found on the -- on the property in efforts to
10 remove the barriers.

11 Q. Have you worked with any government entity
12 concerning any aspect of reasonable accommodations?

13 A. Yes.

14 Q. Okay. And in what respect?

15 A. With respect to Title III employment -- Title
16 I employment but in a Title III environment for an employee
17 who became disabled in an accident while working for this
18 firm and they needed reasonable accommodations to -- to
19 provide her the ability to continue working there and work
20 side by side with other employees that are in her group. So
21 she was literally moved from a second floor to a first floor
22 and remodeled her office and provided her all the things that
23 she needed on the first floor to continue doing her job.

24 Q. What was the name of the employer?

25 A. I think it was CB Richard Ellis.

1 Q. Okay. Any other times you have been involved
2 with reasonable accommodations either in -- I understand what
3 you said; it's a Title I issue but in a private employment
4 situation, is that what you said?

5 A. Yes.

6 Q. Okay. Have you been involved in any other
7 reasonable accommodation consultations besides the one for CB
8 Richard Ellis?

9 A. Yes, many.

10 Q. Okay. Tell me about those?

11 A. Mainly in the -- in the course of me doing an
12 inspection report for either a State tenant or a private
13 Title II tenant I was requested and we were hired to come in
14 evaluate the physical built aspects of the building, and then
15 to design and give our opinion on what would be the best
16 course of action and the most reasonable financially to
17 provide this level of access for this individual.

18 Q. All right. So your reasonable accommodation
19 consultations have to do with barrier removal?

20 A. Yes.

21 Q. All right. What is the definition as you
22 understand it of reasonable accommodation?

23 A. Reasonable accommodation is the ability to
24 provide a method in which you can provide access to someone
25 who's disabled that works both for the disabled person and

1 either the employer or the housing owner, management or
2 landlord so that the disabled person is provided a higher
3 level of access, but it also works for both parties.

4 Q. Okay. We'll get into that in more detail
5 later.

6 You used the term disabled person several times; do
7 you have an understanding of the definition of disabled?

8 A. Yes.

9 Q. Okay. What do you understand that to be?

10 A. Someone who has a disability, has something
11 that affects at least one of their major life functions. It
12 impedes them to be able to enjoy life to the fullest like
13 other nondisabled.

14 Q. Okay. So give me some examples of major life
15 functions that you understand to be part of a disability?

16 A. Walking, hearing, sight, physical motor
17 skills, movement, strength in a hand. And it could also
18 involve mental, cognitive issues not being able to understand
19 certain things, not being able to process certain things,
20 having higher levels of stress because of some type of mental
21 disability.

22 Q. Okay. What about working?

23 A. I'm not quite sure what you're asking.

24 Q. Well, is working a major life activity?

25 A. That -- no. Working is not a major life

1 activity.

2 Q. Uh-huh.

3 A. Work is something that people engage in so
4 they can make a profit and pay their bills and live, but
5 working is not necessarily a major life activity.

6 Q. Okay. So if someone's only physical
7 impairment is that they cannot work, that person would not be
8 considered disabled?

9 MR. BURROW: Object to the form of the question as
10 being an improper and incomplete hypothetical.

11 MR. DERBY: Q. Do you understand my question?

12 A. If not being able to work is a -- is a
13 disability?

14 Q. Yes.

15 A. No, not necessarily because depending on their
16 disability, that specific person's disability, they may be
17 able to be trained to do other jobs that wouldn't be affected
18 by their physical or mental disability.

19 Q. Okay. What I was talking about was whether it
20 qualifies the disability under the same law we've been
21 talking about where you've given us the definition of
22 disability as affecting a major life activity. And then we
23 drilled down on some major life activities that you mentioned
24 and that you didn't mention working. And I'm asking about
25 working now as a major life activity, and I believe your

1 answer was, no, it's not a major life activity.

2 A. I don't believe it is and -- and everything
3 that I've seen in the Federal guidelines and California
4 guidelines work is not considered a major life function or
5 activity.

6 Q. All right. What specific California
7 guidelines have you looked at?

8 A. As far as what; in what --

9 Q. To reach a conclusion that working is not a
10 major life activity?

11 A. Well, there are people that -- well, one to
12 answer your question, there's nothing that is written that
13 states that working is part of or considered one of the
14 elements of a major life function.

15 Q. Okay.

16 A. So to answer your question another way, I've
17 never read or seen or heard from anyone that working would be
18 considered a major life function.

19 Q. Have you ever worked in a context -- excuse
20 me. Withdraw that.

21 Have you ever worked at the request of the disabled
22 community?

23 A. No.

24 Q. So your work at ADA Compliance is on behalf of
25 owners and operators, landlords, employers, people like that?

1 A. Yes.

2 Q. Okay. Let's just get some general breakdown
3 here. . . . Oops, one more thing.

4 What does it mean to be an associate member of ICSC,
5 International Council of Shopping Centers and IREM,
6 International Real Estate Management?

7 A. An associate member is someone who is a --
8 like architect or an inspector or a civil engineer. They're
9 not someone who provides services to that -- that
10 corporation, like a roofing contractor or a flooring
11 contractor or a supplier.

12 Q. Yes. So you are not yourself a real estate
13 professional, for example?

14 A. No.

15 Q. Okay. And you are not an automotive dealer?

16 A. No.

17 Q. And you are not a hotelier?

18 A. No.

19 Q. You are a certified access specialist,
20 correct?

21 A. Correct.

22 Q. And you don't own a retail store?

23 A. No.

24 Q. And do you own any rental property?

25 A. No.

1 Q. Okay. Let's go down to Rate of Fees here.
2 Relevant for us, is your work, other than your
3 testimony here today, the 250 an hour rate?

4 A. That's if I'm -- yes, that's if I'm just
5 charging by the hour.

6 Q. Right.

7 So what are our financial arrangements with Counsel
8 in this case?

9 A. The only arrangement that we have is
10 my deposition fee for the approximate two hours today.

11 Q. All right. Have you made any arrangements how
12 you're to be paid for your time in reviewing the records that
13 you brought today and also testifying at trial in a couple
14 weeks?

15 A. No.

16 Q. Okay. Is it your understanding that you will
17 be testifying at trial?

18 A. Yes.

19 Q. Okay. Have you had any written communications
20 with any of the counsel in this case?

21 A. Besides E-mails?

22 Q. Right. I didn't see any E-mails in here from
23 anybody in the documents you produced.

24 A. Yes, the only communications between Counsel
25 and I was him sending me this information to print out to

1 prepare for today.

2 Q. But you mentioned E-mails; have you had E-mail
3 exchanges with Counsel?

4 A. Yes.

5 Q. Okay. Are those here?

6 A. No.

7 Q. Why didn't you bring those?

8 A. Because I did not get them printed out before
9 coming down here.

10 Q. Well, is there a way that we can take a break
11 and have them sent electronically 'cause that was part of my
12 depo notice, and it's kind of an important part of the case?

13 A. I could -- yes, we could do that. And I could
14 call my office and have them print them and or just E-mail
15 them directly to you.

16 Q. Yeah, that would probably be the best thing;
17 just forward them to me.

18 MR. BURROW: Just for the record, I don't think
19 there's anything substantive in there. There's these
20 documents but...

21 MR. DERBY: Call me a belt and suspenders guy.

22 MR. BURROW: I might call you that and something
23 else before we're done here, Steve, so...

24 MR. DERBY: Well, it clearly says, electronic
25 documents. So let's just go off the record and get that

1 done.

2 MR. BURROW: Okay.

3 (Brief break.)

4 MR. DERBY: All right. We're back on the record.

5 Q. Mr. Taylor, and I understand you've made a
6 call to your office and you're having those E-mails sent to
7 my E-mail address; is that correct?

8 A. That's correct.

9 Q. Excellent.

10 So we will move on with other things to continue and
11 not waste your time or anybody else's.

12 You have produced a number of documents, and some of
13 these I am going to mark and some of them I am not. The
14 first thing on my stack -- and I can see these are in reverse
15 order for what you gave me -- is the 15-page Joint Statement
16 of the Department of Housing and Urban Development and the
17 Department of Justice entitled, Reasonable Accommodations
18 under the Fair Housing Act; May 17th, 2004 is the date of the
19 document.

20 This is in your file why?

21 A. I just brought that because it discusses
22 reasonable accommodation and the actual verbiage describing
23 what it is and what the action is.

24 Q. All right.

25 A. And what someone is supposed to do, whether

1 the course of action when someone makes a reasonable
2 accommodation request.

3 Q. Would you consider this document authoritative
4 on those points?

5 A. Sure.

6 Q. Do you have a reason to disagree with the
7 Department of Housing and Urban Development and the
8 Department of Justice as to the interpretation of the law
9 regarding reasonable accommodations?

10 MR. BURROW: Let me object to the form of the
11 questions as being somewhat overbroad and vague.

12 MR. DERBY: Q. Do you understand my question?

13 A. Do I disagree with the authority?

14 Q. Yeah.

15 Do you have -- so the first question was, do you
16 consider this authoritative; and you said, yes?

17 I said, do you have some reason to disagree with
18 anything stated in this document?

19 A. No.

20 Q. Okay. So here is an E-mail dated April 11th,
21 2014, from Eugenia Oliver, who is communications supervisor,
22 in response to a FOIA, Freedom of Information Act request
23 that I made for a 911 emergency tape.

24 Where did you get this document?

25 A. It would have been provided by Lance Burrow.

1 Q. Very strange. Okay.

2 MR. BURROW: Let me see it. I don't remember that.

3 That's odd.

4 MR. DERBY: Very odd. It's going to be one of those
5 I'm never going to be able to figure out.

6 MS. BELLAFRONTA: It probably won't matter.

7 MR. DERBY: No. I thought it was a FOIA request in
8 this case for a second. But then I thought, wait, I didn't
9 make a FOIA request in this case.

10 MR. BURROW: No, and it must have been in some
11 documents that you provided me at some point.

12 MR. DERBY: You know, it's probably what stuck on
13 the back of -- it's a public document. It's not
14 attorney-client or something. Whatever.

15 Q. All right. So we have a copy next of the
16 complaint for damages for violation of Fair Employment and
17 Housing Act, dated November the 3rd, 2014.

18 And did you get a copy of the amended complaint in
19 this matter?

20 A. I don't know.

21 Q. I don't see it. So we'll assume that you
22 didn't since you brought all the documents you reviewed,
23 correct?

24 A. Yep.

25 Q. All right.

1 A. Yes.

2 Q. So we're not going to be marking the complaint
3 again.

4 Next we have a transcript of the deposition of
5 Lawrence Thomas Berent on January 27th, 2016. I do not see
6 any interlineations or any notes on this document.

7 Did you make any notes or interlineations on Mr.
8 Berent's deposition transcript?

9 A. No.

10 Q. For the record, before the deposition, I did
11 identify some handwritten notes on the back of another copy
12 of the deposition, and you indicated those were for another
13 matter?

14 A. They are.

15 Q. So I returned those to you --

16 A. Yes.

17 Q. -- 'cause they have nothing to do with this
18 case.

19 All right. Next we have Plaintiff's Mandatory
20 Settlement Conference Statement for the settlement conference
21 on October 19th, and you have 16 pages. And the only
22 interlineation that I see is on page 1 the words, unduly
23 burdensome in the first paragraph are underlined; did you
24 underline that?

25 A. I did.

1 Q. Why?

2 A. Just to draw attention to a portion of that
3 code that talks about reasonable accommodation unless it's
4 unduly burdensome.

5 Q. Right.

6 And what is your understanding of that term as it
7 relates to fair housing laws?

8 A. Unduly burdensome could be a matter of
9 financial burden or it could be a burden on the way an
10 existing facility operates, how it was constructed, how it
11 was intended to be used and how employees and residents or
12 employees and ownership move about and use that facility.

13 Q. Give me an example.

14 A. Changing -- let's say you've got a program;
15 people come to a pool and they swim and they take a swim
16 class and you've got five pools in the City and only one of
17 the pools is accessible with a lift. And in order to provide
18 swim classes at any of the other four pools that are not
19 accessible to go and modify all four of those other
20 facilities to be accessible, could be an undue burden
21 financially.

22 So a reasonable accommodation would be to then
23 provide shuttling services from any of the other four pools
24 over to the fifth pool and provide that service at that pool.

25 Q. Okay. Is that something you've actually been

1 involved with or is that just an example that you read
2 somewhere?

3 A. It's just an example, but it's something that
4 I've been involved with in the past; many different cases
5 like that.

6 Q. All right. And were those in connection with
7 a Title III entity, a private entity, or a Title II entity?

8 A. Both.

9 Q. Which would be a government entity?

10 A. Yes.

11 Q. All right. Have you ever been involved in
12 reasonable accommodations related to any sort of elevator?

13 A. No.

14 MR. DERBY: All right. Continuing on, I am going to
15 mark as Exhibit 3 this Plaintiff's Mandatory Settlement
16 Conference Statement that we had been discussing previously.

17 (Document marked Plaintiff's
18 Exhibit No. 3 for Identification.)

19 MR. DERBY: All right. Next we're going to mark as
20 Exhibit 4 a four-page spreadsheet.

21 (Document marked Plaintiff's
22 Exhibit No. 4 for Identification.)

23 MR. DERBY: Q. All right. So we've marked
24 Exhibit 4, sir, can you tell us what this document is?

25 A. This is a spreadsheet provided by Lance

1 Burrow, and this is just a -- a condensed timeline of repairs
2 and monies spent by the owner of Crest on the elevator.

3 Q. All right. Did you create any part of that
4 document?

5 A. No.

6 MR. DERBY: All right. So let's -- it's already
7 Exhibit 4.

8 Next we have a one-page letter dated 8/8/2012, and
9 we'll mark this as Exhibit 5.

10 (Document marked Plaintiff's
11 Exhibit No. 5 for Identification.)

12 MR. DERBY: Q. Showing you Exhibit 5, sir, why is
13 this document in your file?

14 A. This was provided by Counsel, and it
15 apparently is a letter from the County of Santa Cruz Health
16 Service Agency concerning the plaintiff.

17 Q. All right. Did you review or rely upon this
18 letter in any way?

19 A. Did I what?

20 Q. Review or rely upon this letter in any way?

21 A. I reviewed.

22 Q. Did you rely upon it for any of your opinions?

23 A. No.

24 MR. DERBY: Okay. Next we have a two-page document
25 entitled, Reasonable Accommodation within your business.

1 Let's mark this as Exhibit 6, please.

2 (Document marked Plaintiff's
3 Exhibit No. 6 for Identification.)

4 MR. DERBY: Q. Showing you Exhibit 6, sir, is that
5 a document you recognize?

6 A. Yes.

7 Q. Did you author that document?

8 A. I did.

9 Q. And in what context did you author the
10 document?

11 A. In the context of educating my clients and any
12 others out there on reasonable accommodation within a
13 business.

14 Q. Okay. So that appears to be a blog post,
15 would I be correct?

16 A. Yes.

17 Q. Is this something that could be located on
18 your website?

19 A. Yes.

20 Q. Would it be entitled, reasonable accomodation
21 within your business?

22 A. Yes.

23 Q. And the date of this post is May the 10th,
24 2013?

25 A. Yes.

1 Q. Okay. So I wanted to read a couple of things
2 in here and sort of get where you were going with this.

3 First of all, the photograph of this lady seated in
4 a manual wheelchair at a work situation; is this someone that
5 you know?

6 A. No.

7 Q. Where did you get the picture?

8 A. Purchased photo stock.

9 Q. I see.

10 So this is not in connection with any work you did;
11 it's just something to add to the blog?

12 A. Yes.

13 Q. Gotcha.

14 All right. The paragraph on the first page below
15 the photograph reads, "Interestingly, many of you asked
16 various questions regarding reasonable accommodations for
17 disabled employees."

18 Who is the "you" in that sentence?

19 A. My clients.

20 Q. So those are the employers and the building
21 owners, people like that?

22 A. Yes.

23 Q. Have you ever answered a question for a
24 disabled person about reasonable accommodations?

25 A. Yes.

1 Q. Okay. Have you ever consultant with a
2 disabled person about reasonable accommodations?

3 A. Yes.

4 Q. In what context?

5 A. Giving them basically free advice on how to go
6 about communicating with their employer, what is the proper
7 procedure and opening up lines of dialogue.

8 Q. Okay. Did you feel qualified to give that
9 advice?

10 A. Yes.

11 Q. So the next -- or excuse me the second --
12 second sentence is, "Just so we are clear, here's this
13 disclaimer: I am not an employment lawyer nor am I a Human
14 Resources guru, but I do work side by side with many of these
15 professionals as we go through this process below."

16 So why did you put that disclaimer in this blog?

17 A. Because I don't want anyone out there reading
18 this article thinking or being under the impression that I am
19 an attorney --

20 Q. Uh-huh.

21 A. -- or some type of HR qualified HR
22 representative.

23 Q. Okay. So then you have various pieces of
24 advice for employers about reasonable accommodation requests?

25 A. Yes.

1 Q. So let's table this for a minute, and we will
2 get back to it a tiny bit later.

3 The next document is a fat stack of records from
4 Elevator Service Company of Central California, Inc., date
5 8/14/2015 by Ronsin Litigation Support Services.

6 Where did you get these documents, sir?

7 A. Provided by Lance Burrow.

8 MR. BURROW: Did you mark that as 7?

9 MR. DERBY: I'm probably going to.

10 Q. Do you understand this to be a complete set of
11 the elevator service record from Elevator Service Company for
12 the elevator at the subject premises?

13 A. Well, that would be an assumption.

14 Q. Yes.

15 I mean, you don't know, for example, that there's
16 other records you weren't given?

17 A. Correct.

18 Q. And you haven't -- have you asked for
19 additional records from Mr. Burrow or from Ms. -- I always
20 mispronounce your last name.

21 MS. BELLAFRONTO: Bellafronto.

22 MR. DERBY: Q. -- Ms. Bellafronto concerning this
23 in particular elevator?

24 A. No.

25 MR. DERBY: Have you asked -- let's open that

1 question up a little bit, and this will be Exhibit 7.

2 (Document marked Plaintiff's
3 Exhibit No. 7 for Identification.)

4 MR. DERBY: Q. Have you asked more generally for
5 any documents from either Counsel or their clients -- or
6 their client, excuse me, that they have not provided to you
7 yet?

8 A. No.

9 Q. Do you anticipate doing any further work
10 besides what you've already done to this point?

11 A. Possibly.

12 Q. Okay. What possible additional work do you
13 plan on doing?

14 A. Further investigative into the elevator and
15 any kind of work that may or may not have been; it's unknown
16 right now.

17 Q. Okay. You understand that this is my one and
18 only opportunity to take your deposition?

19 A. Yes.

20 Q. And you understand that I'm entitled to take
21 your deposition as to all your opinions and their basis
22 today?

23 A. Yes.

24 Q. And you understand that whether or not you
25 have the opportunity to offer additional opinions or

1 different opinions based upon work after today is up to a
2 judge and you may well not be able to do that?

3 A. Yes.

4 MR. DERBY: Okay. So I'm going to ask Counsel on
5 the record that if you -- if you do additional work, and if
6 you, in fact, come up with different opinions, additional
7 bases for opinions you express here today or alter an opinion
8 in any way that they give me the opportunity to depose you
9 subject to the judge's discretion to not allow that opinion.
10 All right. So --

11 MR. BURROW: Do you want me to agree to that?

12 MR. DERBY: I'm making a statement for the record so
13 that everybody knows.

14 MR. BURROW: Oh. If -- If that happens and it
15 rarely does and I don't anticipate, I will let you know.

16 MR. DERBY: Thank you.

17 MR. BURROW: I will give you an opportunity to
18 re-depose him.

19 MR. DERBY: Great.

20 So I'm still waiting for E-mails to come to my
21 E-mail box.

22 MR. BURROW: I've already gotten mine.

23 MR. DERBY: Good for you.

24 MR. BURROW: Do you have them?

25 MR. DERBY: I'm working on it.

1 MR. BURROW: Oh, you're looking.

2 MR. DERBY: Well, I'm seeing if -- with a refresh,
3 if it will come up.

4 MS. BELLAFRONTA: How many?

5 MR. BURROW: 1, 2, 3, 4.

6 MR. DERBY: All right. So Chris Taylor, you have
7 sent me, sir, three messages. One appears to just be a copy
8 of Mr. Berent's deposition and a copy of the complaint.

9 The second appears to be Plaintiff's MSC statement,
10 and the third appears to be the Taylor depo notice.

11 Q. Are these the only E-mail communications
12 you've had with Counsel?

13 A. I had -- yes. I had my assistant go into my
14 office, pull up Lance Burrow, click on from, identify every
15 single E-mail that he has sent me -- and I do not delete
16 E-mails -- and forward them to you and to Lance.

17 Q. All right. Thank you.

18 A. Uh-huh.

19 Q. Have you had any telephonic meetings or
20 communications with either Mr. Burrow or Ms. Bellafronto?

21 A. Yes, with Mr. Burrow.

22 Q. When did that take place?

23 A. There was one yesterday.

24 Q. All right. How long was it?

25 A. Approximately, 10 minutes.

1 Q. And what did you and Mr. Burrow discuss in
2 your 10 minutes?

3 A. We just discussed making sure that I reviewed
4 the information that he had sent me and giving me a little
5 bit of a heads up on what was -- the deposition was going to
6 be about today and to be prepared.

7 Q. Well, what did he tell you the deposition was
8 going to be about today?

9 A. Basically you asking me questions about this
10 case and my opinions.

11 Q. All right. Did he go over your opinions with
12 you?

13 A. No.

14 Q. Do you have opinions in this case?

15 A. I do.

16 Q. All right. So what I usually like to do at
17 this point in time is sort of move in to your opinions in a
18 little more detail. We can go about this a number of ways.
19 Let me just try to go it this way and if it doesn't work,
20 then we'll try something else.

21 Have you done any work other than reviewed documents
22 to prepare to give your opinions in this case?

23 A. No.

24 Q. Have you visited the site?

25 A. No.

1 Q. Have you inspected the elevator?

2 A. No.

3 Q. Other than reviewing the documents that you
4 brought with you here today, have you done any other work of
5 any sort in your prepare to give the opinions that you hold
6 in this case?

7 A. No.

8 Q. Okay. Have you prepared to give those
9 opinions and their basis at this time?

10 A. Yes.

11 Q. All right. So why don't we start with just a
12 listing of the opinions, and then we'll go through them in
13 some detail.

14 So first opinion?

15 A. In what context?

16 Q. Just however you want to give them to me.
17 Some people like to do it by category. Some people like --
18 some people actually come with a little list. Some people
19 just shoot from the hip; whatever you want to do --

20 A. My first opinion is --

21 Q. Uh-huh.

22 A. -- there has not been a true established open
23 line of communication between the plaintiff and the defendant
24 in regards to a reasonable accommodation request.

25 Q. Okay. What is the basis of that opinion?

1 A. I don't see any documentation provided by
2 Plaintiff showing that he either wrote or spoke and had
3 confirmation of any reasonable accommodation request given to
4 the defendant.

5 Q. You read his deposition, didn't you?

6 A. I did.

7 Q. And didn't he say in his deposition that he
8 asked repeatedly to use the elevator?

9 A. I did.

10 Q. Okay. So is there some requirement that
11 you're aware of in the context of a reasonable accommodation
12 by a landlord to a tenant where -- where the tenant must
13 submit the request in writing?

14 A. Yes.

15 Q. Okay. Where is that found?

16 A. In several different documents that talk about
17 opening up lines of communication for the purpose of
18 establishing a reasonable accommodation request.

19 Q. Okay. You're going to have to list those
20 documents for me.

21 A. Well, I can't list them right now.

22 Q. All right. Did you rely on any of these
23 documents?

24 A. I relied as far as their -- their accuracy
25 based on who produced them.

1 Q. Okay. So who produced them?

2 A. Well, one of them is the ADA, the DOJ.

3 Q. I'm sorry. When you say "the ADA," you're
4 talking about the text of the Americans with Disabilities
5 Act?

6 A. Yes.

7 Q. Okay. And where in the Americans with
8 Disabilities Act does it discuss the requirement that a
9 tenant must give or render a written request for reasonable
10 accommodations?

11 A. It doesn't say written. It says either verbal
12 or written.

13 Q. Okay.

14 A. The fact that -- that the plaintiff states
15 that he requested the use of the elevator does not prove that
16 he did. He just makes the statement that he did.

17 Q. Okay. Well, do you consider yourself
18 qualified to state whether or not the evidence is sufficient?

19 A. No.

20 Q. Let me ask you a question, take this out of
21 the context of a lawsuit. Let's say that somebody came to
22 you seeking advice. They are a tenant and they want to get a
23 reasonable accommodation from their landlord.

24 Would you tell them that they must absolute
25 positively submit that request in writing in order to have

1 any chance of getting that reasonable accommodation --

2 A. No.

3 Q. -- request?

4 All right. So an oral request is sufficient, is it
5 not?

6 A. It could be to start the dialogue.

7 Q. All right. So once a -- once an individual,
8 we'll say a plaintiff, starts the dialogue, as you say, what
9 is the landlord's responsibility after that?

10 A. To engage with that individual and start down
11 the road of discovering what exactly is your disability, what
12 exactly is your accommodation that you're asking for so that
13 both parties can engage in figuring out what's going to work?

14 Q. All right. And Mr. Berent said in his
15 deposition that he had repeatedly asked for a very specific
16 request, he wanted to use the elevator, did he not?

17 A. He did.

18 Q. And said that they refused to allow him to do
19 so, correct?

20 A. He did.

21 Q. Okay. So since you're not in a position to
22 sit as the trier of fact and decide whether Mr. Berent is
23 being honest or not about that, how then do you reach an
24 opinion that there has not been a true and established open
25 line of communication?

1 A. 'Cause I don't see any evidence to the fact
2 that -- that he did ask that and that he was denied the
3 request. There's no documentation from either side that
4 states that -- that he did say it and that they refused his
5 request.

6 Q. All right. We're going around a bit of a
7 circle here.

8 On oral request is sufficient, correct?

9 A. To start the dialogue.

10 Q. He has sworn under penalty of perjury, just
11 like you did when you started, that he repeatedly asked to
12 use the elevator, correct?

13 A. Yes.

14 Q. Okay. And so that is sufficient to start the
15 dialogue, correct?

16 A. It would be.

17 Q. All right. So what you don't see is any
18 response from the landlord, do you?

19 A. No.

20 Q. Not at all; like, they completely ignored it?

21 MR. BURROW: Well, that's argumentative.

22 MR. DERBY: Q. I mean, isn't that -- isn't that a
23 fair assumption?

24 MS. BELLAFRONTO: I'll object also that it's vague
25 and ambiguous.

1 THE WITNESS: No.

2 MR. DERBY: Okay. So let's go by step-by-step here.

3 Q. Larry Berent said that he asked to use the
4 elevator repeatedly, right, correct; yes?

5 A. Yes.

6 Q. Okay. There is no response in writing from
7 the landlord, correct?

8 A. Correct.

9 Q. You are not aware of any response from the
10 landlord, other than what Mr. Berent testified to that they
11 told him he couldn't use it?

12 A. Correct.

13 Q. So in terms of this open dialogue -- sometimes
14 called an interactive process, are you familiar with that --

15 A. Yes.

16 Q. -- verbiage?

17 Don't both parties have an obligation to engage in
18 that?

19 A. They do.

20 Q. So if I am a disabled employee or disabled
21 tenant and I ask for something, and my landlord doesn't
22 respond to me, what am I supposed to do?

23 MR. BURROW: Improper, incomplete hypothetical.

24 MS. BELLAFRONTO: Also argumentative.

25 MR. BURROW: You can answer the question, if you

1 can.

2 THE WITNESS: Why don't you rephrase it.

3 MR. DERBY: Sure.

4 Q. I am a disabled tenant. I ask my landlord for
5 a reasonable accommodation. My landlord doesn't say anything
6 to me back. There's no evidence my landlord acknowledged my
7 request in any way; what am I supposed to do?

8 MR. BURROW: Same objection.

9 MS. BELLAFRONTA: Same objection.

10 MR. DERBY: Q. Do you understand my question?

11 A. If I was the disabled resident --

12 Q. Yes.

13 A. -- and verbally requested from my landlord
14 that I need special accommodations --

15 Q. Yeah.

16 A. -- and they did not answer me back --

17 Q. Uh-huh.

18 A. -- I put it in writing.

19 Q. Okay. But that's not required, is it?

20 A. Well, obviously, it would be in this case if
21 your landlord -- if the landlord was not answering you back
22 verbally.

23 Q. Okay.

24 A. See; this plaintiff has a responsibility to
25 push this issue down the road to get -- to get some type

1 of -- at least an acknowledgment. And I don't see that he
2 did that.

3 Q. So let's go back to his deposition testimony.
4 He said that he asked repeatedly, not just once repeatedly,
5 to use the elevator, doesn't he say that?

6 A. He does.

7 Q. And he said that repeatedly his landlord told
8 him he couldn't use it. It was for management use only,
9 isn't that correct?

10 A. That's what he said.

11 Q. That's what he said. And you don't have any
12 reason to know whether that's true or false, do you?

13 A. No.

14 Q. Okay. So that's the evidence we have, and
15 that's the evidence you can base an opinion on.

16 So tell me this, with that state of the evidence,
17 how can you -- how can you fault Mr. Berent for doing
18 anything other than what he did?

19 MR. BURROW: It's argumentative. It's also an
20 improper and incomplete hypothetical.

21 THE WITNESS: Because I see people lie all the
22 time --

23 MR. DERBY: Okay.

24 THE WITNESS: -- in ADA lawsuits --

25 MR. DERBY: All right.

1 THE WITNESS: -- and they perjure themselves --

2 MR. DERBY: Uh-huh.

3 THE WITNESS: So I don't -- I'm not going to take
4 what he said under oath as truth or even accurate --

5 MR. DERBY: So what if --

6 THE WITNESS: -- just what he said.

7 MR. DERBY: Okay. So what if we flip this the other
8 way around. Now, we have the sworn testimony of the property
9 manager Brian Reed. And Brian Reed says, I swear under
10 penalty of perjury that Mr. Berent never asked me to use the
11 elevator, nor anybody else in my employ.

12 Q. Would you accept that testimony as true?

13 A. That's what he said.

14 Q. Well, would you accept it as true?

15 A. I don't know if I can.

16 Q. No.

17 A. I didn't hear it.

18 Q. Well, it seems like you're making the
19 plaintiff play on a different playing field as far as their
20 credibility than the defendant?

21 A. Not at all.

22 Q. Okay.

23 A. But I also see evidence of the landlord
24 spending thousands of dollars --

25 Q. Uh-huh.

1 A. -- trying to fix an elevator that was pretty
2 much a dead unit all the while, while the plaintiff is
3 complaining that he can't use it.

4 Q. Yes.

5 A. So why would a landlord spend thousands of
6 dollars trying to fix something that's probably dead, and
7 then just ignore a tenant. It doesn't cost the landlord
8 anything to engage in an conversation with someone to try to
9 figure out exactly what their reasonable accommodation
10 request will really entail.

11 Q. That's right.

12 And do you have any evidence that they did that?

13 A. No. And I don't have any evidence that he
14 actually requested anything.

15 Q. Okay. Well, so the plaintiff has said -- he's
16 got to push the ball down the road. He's got to make the
17 request. He made the request.

18 Do you have any evidence from any source that the
19 landlord did anything in response to that request?

20 MR. BURROW: It's improper and incomplete
21 hypothetical, and it's argumentative.

22 THE WITNESS: I can't comment on that.

23 MR. DERBY: Well, I'm asking you a question if you
24 have any evidence. You either have it or you don't.

25 THE WITNESS: There's no evidence.

1 MR. DERBY: Yeah.

2 THE WITNESS: Just like there's no evidence that he
3 actually made the request.

4 MR. DERBY: There's his testimony.

5 THE WITNESS: Okay. Well, there's the testimony of
6 Brian Reed that he did not.

7 MR. DERBY: Q. Are you aware of testimony of Brian
8 Reed that he did not?

9 A. You just stated it.

10 Q. No. I said hypothetically 'cause I was trying
11 to figure out if we're playing on the same field for
12 plaintiff and defendant 'cause that's the way the law says.
13 I mean, everybody's entitled to the same assumption that
14 they're telling the truth under oath just like you are.

15 A. Sure.

16 Q. Okay. So the only testimony we have under
17 oath is Mr. Berent's testimony.

18 And I'm asking, you have ever -- have you ever
19 spoken to Brian Reed?

20 A. No.

21 Q. All right. Have you been given any
22 information of what Brian Reed would or would not say were he
23 asked the question?

24 A. No.

25 Q. Have you seen any writings from Brian Reed?

1 A. No.

2 Q. How about from Mr. Der Torossin, the owner of
3 this particular property, have you spoken with him?

4 A. No.

5 Q. Have you spoken with Jennifer -- is it
6 Studley; she was one time involved in the management of the
7 property?

8 A. I've never heard her name, and I have not
9 spoke with her.

10 Q. Have you spoken with anybody, other than
11 briefly with Mr. Burrow about this case?

12 A. No.

13 Q. All right. So in terms of the universe of
14 evidence that we have to work with today, we have Mr.
15 Berent's sworn testimony and we have nothing else, correct?

16 A. That's correct.

17 Q. And Mr. Berent's sworn testimony says he
18 repeatedly asked to use the elevator, correct?

19 A. That's correct.

20 Q. And there's no response in evidence from the
21 landlord at all?

22 A. That's correct.

23 Q. Okay. Now, when you say, why would the
24 landlord spend all that money fixing the elevator, and you
25 said it was a dead unit, do you remember that testimony?

1 A. I do.

2 Q. What makes you think it was a dead unit?

3 A. With all my 20 years experience in inspecting
4 older elevators, especially one built and installed in 1965
5 located right on the ocean with the salt air, I've seen
6 elevators that literally have just decayed. And they may
7 still move a little bit, but they're -- they're not in safe
8 working order.

9 Q. Are you an elevator inspector?

10 A. No.

11 Q. Do you profess to have any expertise in
12 elevator or maintenance or service?

13 A. No.

14 Q. Do you consider yourself qualified to decide
15 whether an elevator is or is not safe?

16 A. No.

17 Q. Okay. So when you say, the elevator is a dead
18 unit, you're relying upon it's location close to the ocean
19 and its age?

20 A. And I'm also relying on the statements from
21 the elevator repair company, and their notes talking about
22 the door being fully rusted and having to replace a hose with
23 a solid pipe --

24 Q. Uh-huh.

25 A. -- and all of the different element that have

1 been attempted to be repaired on that elevator.

2 Q. Okay.

3 A. Those combined with my knowledge and
4 experience of what I've inspected in the past lead me to that
5 conclusion that this elevator is most likely a dead unit.

6 Q. So what you're saying is, you don't know
7 yourself whether an elevator is a dead unit, but you're
8 concluding that from the documents you've reviewed?

9 A. Yes.

10 Q. Okay. So that's another opinion; the elevator
11 was a dead unit. So you're looking at the elevator service
12 records, and anything else you've looked at?

13 A. No.

14 Q. Any other authoritative publications -- or
15 excuse me -- any other authoritative publications you've
16 relied on for the opinion that the elevator was a dead unit?

17 A. No.

18 Q. Did you see -- have you reviewed any records
19 from OSHA?

20 A. They would be included in there (indicating).

21 Q. Were you aware that there were separate
22 records from OSHA that were part of the evidence in this
23 case?

24 A. I'm only aware of the documents that were
25 provided by Lance Burrow.

1 Q. Are you aware that the OSHA supervisor Mr.
2 Gonzalez was deposed in this matter?

3 A. No.

4 Q. Were you given the deposition transcript to
5 review?

6 A. No.

7 Q. Were you given those records to review?

8 A. No, unless it's in this pile of documents that
9 I've handed over.

10 Q. So before making an opinion that the elevator
11 is a dead unit, didn't you want to see that evidence?

12 A. Oh, sure.

13 Q. Okay. And reviewing that evidence might well
14 change your opinion about whether this elevator was or was
15 not a dead unit, wouldn't it?

16 MR. BURROW: Calls for speculation.

17 THE WITNESS: I don't know.

18 MR. DERBY: All right. So now we've been through
19 the first two opinions.

20 Q. Is there anything else that you need to say in
21 order to fully elucidate your opinion that there has not been
22 a true and established open line of communication between Mr.
23 Berent and his landlord?

24 A. No.

25 Q. All right. So the elevator was a dead unit;

1 anything else we need to discuss in order to fully elucidate
2 your opinion that the elevator was a dead unit?

3 A. No.

4 Q. Okay. Do you have any other opinions in this
5 case?

6 A. No.

7 Q. Okay. So let's spend a tiny bit of time going
8 over your qualifications and some of your work-related
9 experience.

10 Now, we've discussed your CV previously, and that
11 was Exhibit 2, and I'm going to pull it back out.

12 What percentage of your current professional time is
13 spent in litigation consulting as opposed to other
14 professional work?

15 A. Maybe five percent.

16 Q. All right. And do you personally derive the
17 income from that litigation consulting or does it go to ADA
18 Consultants?

19 A. It goes to ADA Consultants.

20 Q. All right. 'Cause I noticed when you were
21 filling out my W-9, you used your own name rather than ADA
22 Consultants; that's the way you want the check made out?

23 A. Yes.

24 Q. Okay. So what percentage of your professional
25 income comes from litigation consulting?

1 A. Probably less than one percent.

2 Q. All right. So litigation consulting is
3 actually less profitable for you than your other work?

4 A. Yes.

5 Q. Okay. Has that five percent been fairly
6 steady over the last five years?

7 A. Yes.

8 Q. And do you ever consult either on behalf of a
9 person who's disabled or on behalf of an attorney
10 representing a person with a disability in litigation
11 matters?

12 A. I strictly work for defense.

13 Q. Gotcha.

14 Why is that?

15 A. Because in my experience I see a lot of abuse
16 with activists and professional plaintiffs -- plaintiffs'
17 attorneys. I -- I don't see any benefit that they bring to
18 actually make true change for the disabled community. In
19 fact, I see just the opposite in my opinion.

20 Q. All right. What government agency enforces
21 the ADA?

22 A. Well, the DOJ at the Federal level enforces
23 the ADA.

24 Q. All right.

25 A. And usually that's only if there's a large

1 action brought, and then they'll investigate. State of
2 California only enforces Title 24 of the California Building
3 Code that has adopted many but not all of portions of the --
4 the Federal ADA.

5 Q. And that's for new construction, correct?

6 A. And for existing, for remodels and TIs and
7 different things.

8 Q. TI being tenant improvements?

9 A. Yes.

10 Q. Okay. Have you ever seen a lawsuit on behalf
11 of a disabled person to remove a barrier to access that you
12 thought was meritorious?

13 A. Yes.

14 Q. So how come the conclusion that they're all
15 just everybody's wasting time?

16 MR. BURROW: That misstates --

17 THE WITNESS: I didn't say all.

18 MR. BURROW: -- his testimony.

19 MR. DERBY: Q. Oh, okay. I'm sorry. I misheard
20 you because I asked -- the first question I asked was, why do
21 you only work for defense. And you said you saw no benefit
22 to any of these disabled lawsuits.

23 MR. BURROW: Well, that misstates his testimony.

24 MR. DERBY: I didn't do it on purpose.

25 Q. Is that what you said?

1 A. I said that I see little --

2 Q. Ah, little.

3 A. Little.

4 Q. What percentage of ADA lawsuits in your
5 opinion are meritorious?

6 A. Less than one percent that I've seen.

7 Q. Okay. So 99 percent of time it's a waste of
8 time?

9 A. A waste of time for who?

10 Q. For everybody?

11 A. Not for the plaintiff's attorneys.

12 Q. Okay. So you're saying that 99 percent of the
13 time the only people who make any money on these cases or do
14 any good in the world is the plaintiffs' attorneys?

15 A. Well, in California if the defendant wins,
16 they still have to pay the Plaintiff's attorneys fees and
17 costs. But if the Plaintiff's loses, they still get the
18 defendant to pay their fees and costs. So you tell me.

19 And --

20 Q. Where do --

21 A. And how much money from the actual settlement
22 for a plaintiff actually goes towards removing barriers on
23 that specific property or person that they were suing; none.

24 Q. Have you been involved in litigation
25 consulting on a Title III case?

1 A. Yes.

2 Q. Have you been involved in litigation
3 consulting on a Title III case here in the Northern District
4 of California?

5 A. Yes.

6 Q. Okay. Have you ever acted in any sort of --
7 are you familiar with the term General Order 56?

8 A. No.

9 Q. Okay. Have you ever acted as a consultant on
10 behalf of someone who was sued in a Title III action here in
11 the Northern District where it went to a profit or site
12 inspection?

13 A. Yes.

14 Q. All right. And in that particular case, how
15 was that matter resolved?

16 A. There was a settlement. It was an agreement
17 of various barriers to be removed as part of the settlement
18 agreement.

19 Q. Okay. And did you agree that any of those
20 barriers were in fact barriers?

21 A. Yes, some of them were. Many of them were
22 very, very minor in severity. We're talking a quarter inch
23 either higher or lower on a sign in the landscape that
24 doesn't affect anyone's circulation path or mobility issues.

25 The font size of an order or menu board that is

1 literally six inches either further or closer away with
2 someone with sight impairments. The lack of a specific name
3 or some type of a word on a sign that someone who's disabled,
4 their disability had -- there was no affect of that sign
5 lacking that one word or that one letter.

6 So I see all kinds of true barriers out there, and
7 there's many things that -- that a plaintiffs -- a Plaintiff
8 can bring up that's a barrier to them. But in my experience,
9 in my opinion there are many, many things that Plaintiffs and
10 the plaintiff's attorneys will sue over that are literally
11 just little knicky knack, ticky tac, little items that truly
12 weren't a physical barrier for that disabled person.

13 It's more of a -- a deviation from the actual code.

14 Q. So give me an example of a real physical
15 barrier that you've seen in a litigation matter.

16 A. You know, a disabled parking stall location
17 not having a curb ramp in front of it with no path of travel
18 or forcing someone disabled to cross behind other people's
19 vehicles to access a sloped walk or a curb ramp.

20 You know, a running slope or a cross slope on a
21 walkway that's so severe that someone in a wheelchair would
22 start to veer off course and possibly fall off the curb or
23 run into a vehicle.

24 Q. So have you been involved in litigated matters
25 were these barriers were at issue?

1 A. Yes.

2 Q. And in those cases, did you reach the opinion
3 that those were actual barriers that needed to be remedied?

4 A. Yes.

5 And when the plaintiff never even visited the
6 property and was not actually denied access that was -- they
7 still sued the owner, and all these items had to be fixed,
8 even though the plaintiff had never been denied access.

9 Q. Okay.

10 A. One just recently, a woman in Phoenix, Arizona
11 calls my client in Gilroy, a hotel owner, and says, I'm
12 thinking about booking a room for a weekend; do you have a
13 pool lift for your pool, and do you have a pool lift for your
14 spa. And he honestly answers her and says, no, I have one
15 pool lift, but it's -- it's in the -- you know, it's in the
16 utility room being charged, but if you let me know when you
17 arrive, we'll have it set up and waiting for you.

18 She proceeds to get with her attorney and file a
19 lawsuit against my client. Never even came into the State of
20 California, never checked into the hotel, just the fact that
21 the pool lift was being charged in a utility room and it
22 wasn't literally set up during all pool open hours was enough
23 for her to file suit.

24 Q. Uh-huh.

25 A. Was she truly denied access?

1 Q. The law says yes.

2 A. How?

3 Q. We are not working from the same base, which
4 is, I'm not a CASp and you're not a lawyer. So how about, I
5 won't tell you what is or is not a barrier and you don't tell
6 me what is or is not against the law. Fair?

7 A. Fair enough.

8 Q. All right. So the question that I have,
9 and -- have you ever -- have you ever consulted in a
10 litigation matter where the issue was the denial of a
11 reasonable accommodation or something related to a reasonable
12 accommodation?

13 A. Yes.

14 Q. How many times?

15 A. Twice.

16 Q. All right. Let's talk about the first time;
17 tell me a little bit about the circumstances.

18 A. This was a gentleman who came in and
19 interviewed to be a -- a line chef assistant in a restaurant.
20 And he was walked through the entire kitchen area, was
21 introduced to the existing staff and was told what the job
22 description was. And his second day on the job, the manager
23 comes walking through the kitchen during their busiest time
24 of the day and this line chef assistant is sitting on a
25 stool. And other employees are tripping and falling and

1 trying to get around this person, and they ask the employee,
2 why are you sitting down. And he said, oh, I've got a bad
3 back. I've got to sit for at least three hours a day.

4 And so the suit -- the plaintiff claimed that he
5 wasn't allowed to sit that he had a bad back and he has an
6 issue. And the defendant claimed that he never did say
7 anything about his bad back during the interview. And how it
8 wound up was, the -- the defendant lost and that they didn't
9 make reasonable accommodation request for him to do his job.
10 Well, the job description is that you're standing and moving
11 and walking and running around, and you've got 15 other
12 people in very close quarters and really not a lot that they
13 could do to accommodate his bad back condition.

14 Q. And what was your role in that case?

15 A. I evaluated the physical built aspects of that
16 restaurant, both back in the employee area and also
17 throughout the entire common area, restrooms, bar area,
18 seating and also the exterior for all your path of travel,
19 door landing, door pressure, door hardware, signage,
20 walkways, curb ramps, disabled parking stalls, striking
21 signage, surface looks, off site path of travel connection.

22 Q. Okay. And what standards and regulations did
23 you use to make that evaluation?

24 A. Both, the -- actually, all four, the 2010
25 ADAAG, the 2013 California Building Code, the 2012 IBC,

1 International Building Code and the 2009 ANSI A117.

2 Q. 117, you said?

3 A. Yes.

4 Q. Okay. 2009.

5 Was this in California?

6 A. Yes.

7 Q. All right. Did that case go to trial?

8 A. No.

9 Q. Well, you said that the -- your client lost;
10 how did your client lose?

11 A. They basically had to pay this employee a
12 settlement amount.

13 Q. Oh, a settlement happened?

14 A. I'm -- I'm sure.

15 Q. Okay. You don't know whether or not -- that
16 case did not go to trial, correct?

17 A. Let me say this, I don't know.

18 Q. All right.

19 A. My -- my role in that ended after I performed
20 all of my inspections and evaluated the actual clear space,
21 the functioning area in that employee back in the kitchen
22 area.

23 Q. Okay.

24 A. And it was determined that it was not a
25 reasonable request to allow this person to sit for three

1 possibly more hours per day during his work shift.

2 Q. Okay.

3 A. And they did go round and round and try to
4 provide for him an area where he could sit down for maybe
5 shorter periods of time. They looked at other job
6 descriptions or job possibilities within the restaurant, and
7 he wouldn't budge. He wanted to be the line chef assistant
8 and work his way up to line chef.

9 Q. All right. But you're saying that matter was
10 settled as far as you know?

11 A. I believe so.

12 Q. All right. So you said there was two; let's
13 look into the second one.

14 A. The second one was a CFO of a large firm in
15 Northern California. She was hit by a drunk driver on a
16 weekend while she was traveling with her family. She became
17 disabled. She was a paraplegic. She went through multiple
18 weeks of rehab and different things, hospital stay. And when
19 she was released and came back to work, her office was on the
20 second floor of a two-store building less than 3,000 square
21 feet per floor, was not required to have an elevator by law
22 even brand new -- even current 2013 CBC standards. And she
23 requested special reasonable accommodations. And they worked
24 with her and they moved her office to the ground floor and
25 they made other modifications and she was happy. She

1 accepted it, and she loved it.

2 Q. Okay. So what was your role in that case?

3 A. My role was evaluating both the second and the
4 first floor for physical built and helping based on her
5 disability being in a wheelchair, we designed and created the
6 work environment for her and her, I believe, six or seven
7 people that were on her team that she would touch throughout
8 the day through work so that they could all continue to do
9 what they were doing and do it at the same level that was --
10 it was being done before she became disabled.

11 Q. All right. So let's go back to the first --
12 the line chef again. I'm just going to euphemistically call
13 this a line chef, you understand what I mean?

14 A. Yes.

15 Q. Did the line chef make a written request for
16 reasonable accommodation, to your knowledge?

17 A. I don't know. Not to my knowledge.

18 Q. But the employer did respond to his request;
19 they hired you and you looked into the situation, correct?

20 A. Yes.

21 Q. Do you believe they made an honest effort to
22 try to accommodate him?

23 A. Yes.

24 Q. And why do you think that?

25 A. Because I was part of the discussions of what

1 would it take to provide this disabled person or this
2 plaintiff different work conditions, what would it take to
3 modify this kitchen and widened this area so that this line
4 chef could sit down on a stool and not impose a safety or,
5 you know, a safety issue to other employees.

6 And through communication with the defense attorney,
7 I was made aware that there were four or five different
8 possibilities for that line chef to take other positions
9 within the firm or within the company, which he refused.

10 Q. All right. So you worked with management with
11 the employer?

12 A. Uh-huh.

13 Q. Not --

14 A. Yes.

15 Q. -- only to figure out whether the physical
16 built space would accommodate his request, but also if there
17 were other types of accommodations similar to what they did
18 with the CFO that would be possible given the situation,
19 correct?

20 A. Yes.

21 Q. How much time did you spend on that case?

22 A. Probably close to six hours.

23 Q. All right. You were paid for that time?

24 A. Yes.

25 Q. At your 250 an hour rate?

1 A. No. Typically, we give just set contract bid
2 amounts, and that is -- that encompassing everything that
3 we're going to do for them.

4 Q. Approximately, how much did you make on that
5 one?

6 A. Approximately, \$1,200.00.

7 Q. So it's about 200 an hour roughly, correct?

8 A. Correct.

9 Q. All right. So let's move on to the CFO.

10 And you were involved in the discussion whether --
11 first whether an elevator was required, correct?

12 A. Yes, and it was quickly determined that it was
13 not.

14 Q. All right. 'Cause it was less than 3,000
15 square feet, the floor?

16 A. Yes.

17 Q. So then conversation moved on to what
18 alternatives; what else could we do, right?

19 A. Yes.

20 Q. Okay. Were you part of that discussion?

21 A. Yes, to some degree. After the employer and
22 the employee had come to an agreement that, one, she wanted
23 to continue working there. And, two, it was very important
24 that she keep her -- her same position and her team stay
25 intact.

1 Q. All right. And that's when somebody came up
2 with the idea to move her to the ground floor?

3 A. Yes.

4 Q. All right. Was that your idea?

5 A. No.

6 Q. So in both of the cases in which you've been
7 previously involved there's been a disabled person who's made
8 a request and an employer who's responded, correct?

9 A. Yes.

10 Q. In both of the cases in which you've -- you've
11 been involved in litigation matters there's been a disabled
12 person making a request and the particular request that the
13 employee wanted was not possible, correct?

14 A. In one it wasn't possible.

15 Q. Right.

16 The other one it was just not required, and there
17 were other ways to accomplish the same goal?

18 A. Yes. It was common decency really.

19 Q. Right.

20 A. They relocated her to the ground level.

21 Q. So do you think with respect to the CFO, her
22 employer made an earnest and honest effort to accommodate her
23 disability?

24 A. Yes.

25 Q. Do you think with respect to the line chef

1 even though that case was settled, that the line chef's
2 employer made an earnest and honest effort to accommodate the
3 line chef's disability?

4 A. I do.

5 Q. And do you think that in this case,
6 management -- excuse me -- the landlord has made an earnest
7 and honest attempt to accommodate Mr. Berent's disability?

8 MR. BURROW: Improper, incomplete hypothetical.

9 THE WITNESS: I don't know if he ever truly made a
10 request.

11 MR. DERBY: Q. Well, you have the evidence that he
12 did; you don't know one way or the other?

13 A. We just have his statement.

14 MR. BURROW: Argumentative.

15 MR. DERBY: Q. Okay. So if he made a request, you
16 have an opinion whether or not the landlord made an earnest
17 and honest request -- excuse me -- earnest and honest effort
18 to accommodate that request?

19 A. I think if he truly did make the request, I
20 think the landlord would have at least engaged in
21 conversation, and we would have evidence of some type of
22 reasonable accommodation options, moving him to a ground
23 floor unit, something.

24 Q. And you have none of that?

25 A. We have nothing.

1 Q. Right.

2 So isn't it just as likely that the landlord simply
3 blew him off?

4 MR. BURROW: Argumentative. Assumes facts not in
5 evidence, and an improper and incomplete hypothetical.

6 THE WITNESS: I don't think that's the case with
7 what I see the landlord actively doing with spending
8 thousands and thousands of dollars trying to fix an elevator.

9 If he truly didn't care about this tenant and just
10 wanted to blow him off, I don't think he would be spending
11 all this money and going -- going through all -- jumping
12 through all the hoops to do what he had done. So in my
13 opinion from what I've seen so far, it does not appear to be
14 the case that the landlord is the type of landlord to just
15 blow this tenant off.

16 MR. DERBY: Q. And that's based upon the fact that
17 they spent money to fix an elevator?

18 A. Yes.

19 Q. That you called a dead unit?

20 A. Well, based on what I read in the documents
21 provided to me --

22 Q. Yes.

23 A. -- it appears that this elevator was very,
24 very old and rusted and lots of major components failing. So
25 in my opinion it's a dead dog. It's an elevator that's lived

1 its life span.

2 Q. Uh-huh. Do you know if the elevator was
3 maintained?

4 A. Only from the documents provided to me showing
5 replacement and repairs and attempts to keep this thing
6 operational and to try to obtain the permit to where it's
7 safe and operational.

8 Q. So do you know whether or not a permit was
9 ever obtained?

10 A. I do not. Only from the documents that were
11 provided to me, I see that the elevator was red tagged and
12 that they were applying for a reinstatement of a permit; that
13 tells me there's some major issues with that elevator.

14 Q. All right. And when did Mr. Berent first ask
15 to use the elevator according to his testimony?

16 A. I don't recall. It could be -- I don't know.

17 Q. Was it before or after the landlord spent the
18 money to try to get the elevator un-red tagged?

19 A. Well, I don't know when he asked, so I can't
20 answer really answer that.

21 Q. All right. So you have no idea of when he had
22 asked compared to when the landlord did the repairs?

23 A. I just -- I can see by the information and
24 documents provided to me that repairs were ongoing from 2009
25 all the way through 2012.

1 MR. DERBY: Okay. Let's take five minutes.

2 (Brief break.)

3 MR. DERBY: Q. All right. Mr. Taylor, ready to
4 proceed?

5 A. Yes.

6 Q. Okay. We've been going over a couple of
7 documents that you handed to us when we started the
8 deposition. Referencing Exhibit 6, which is the reasonable
9 accommodation within your business blog post that you gave us
10 this morning, on page 2 of this document you appear to be
11 giving some advice to the employer faced with a reasonable
12 accommodation request; would you -- would you agree?

13 A. I don't know what you're referring to.

14 Q. Showing you page 2.

15 A. And what part of page 2 are you referring to?

16 Q. The 1, 2, 3, 4, 5.

17 A. Okay.

18 Q. Isn't that intended to be advice to an
19 employer?

20 A. It's intended to be somewhat of an outline
21 that would start them down the road of creating their own
22 policies and procedures. And, obviously, like I disclaimed
23 at the beginning, I'm not an attorney. I'm not an HR guru,
24 but I do work with a lot of these people so this was just
25 a -- just giving them kind of a -- a starting point for them

1 to start working on their own policies and procedures.

2 Q. Okay. So some of these have bold, one is to
3 Create Consistent Procedures. You say, "Train employees on
4 what to do when they receive an accommodation request.
5 Employer should provide clear direction when handling such
6 requests. "

7 In the case of Crest Enterprises, have you reviewed
8 any policies or procedures regarding reasonable accommodation
9 requests?

10 A. No.

11 Q. Are you aware of any training of Crest's
12 employees concerning the handling of such requests?

13 A. No.

14 Q. Next on No. 3 it says, "Don't ignore the
15 request," and that's in bold. "The employer should
16 immediately create an open line of communication as soon as
17 they learn that an employee has a disability and is
18 requesting special accommodation. Let the company know that
19 the company -- or let the employee know -- excuse me -- that
20 the company provides reasonable accommodation to the disabled
21 employees and that the company takes this seriously. Get it
22 in writing. Tell the employee it is their responsibility to
23 request an accommodation in writing."

24 Now, we've already been over this, but there is no
25 such requirement for reasonable accommodation request by a

1 tenant, correct?

2 A. Correct.

3 Q. All right. So with the -- from getting -- get
4 it in writing on, would this be good advice to a landlord as
5 well as an employer?

6 A. And an employee who's making a request.

7 Q. Right.

8 Okay. So --

9 A. 'Cause then you don't have hearsay.

10 Q. Right.

11 A. I made -- you know, I made the comment -- and
12 I do want to make the comment that the plaintiff merely made
13 the statement that he wanted to use the elevator. He didn't
14 actually make a reasonable accommodation request. He did not
15 say, I -- I need to use the elevator because of my disability
16 because I have a disability. From the statements that I see,
17 he just merely stated I want to use the elevator.

18 Q. Okay.

19 A. That's not a reasonable accommodation request.

20 Q. So are you in a position as a lawyer to decide
21 what is not a reasonable accommodation request?

22 A. No, but when someone just makes the statement
23 that I want to use something and doesn't -- you know, clarify
24 exactly why, then we're all assuming, again; that's just --
25 that's just like me asking, I want to use the firehose to

1 wash my car. Well, why; why do you want to use the firehose
2 to wash your car.

3 Q. Let's go to the CFO. She's off with her
4 family; a drunk driving tragedy and ends up a paraplegic.

5 Anybody ask her whether or not she was a disabled
6 person?

7 A. Well, they found that out when they visited
8 her in the hospital.

9 Q. Right.

10 So her physical appearance was sufficient?

11 A. No, it was the doctors telling the employer
12 she will not walk.

13 Q. All right.

14 A. She's in a wheelchair now.

15 Q. So it is your understanding that in order for
16 someone to be entitled to a response from their landlord,
17 they have to present a doctor's certificate?

18 A. No, I didn't say that.

19 Q. Okay. So it's possible, isn't it, someone
20 could appear disabled and not have to show up with a doctor's
21 note to prove it?

22 MR. BURROW: Improper and incomplete hypothetical.

23 MS. BELLAFRONTA: Argumentative.

24 THE WITNESS: You want to rephrase it?

25 MR. DERBY: I'll withdraw it.

1 Q. Going back to your definition of disability
2 being an affect on a major life activity, right?

3 A. Yes.

4 Q. Yes?

5 A. Yes.

6 Q. Walking is a major life activity, we've
7 already established that, correct?

8 A. Yes.

9 Q. So if somebody has trouble walking, doesn't
10 that affect that major life activity?

11 A. You're mixing two things.

12 Q. Okay.

13 A. I could have a temporary episode of gout in my
14 knee and I can hardly walk, am I disabled; no. Would the
15 doctor say I'm disabled, would I get a temporary placard for
16 my vehicle, no. Someone could sprain their ankle playing
17 softball; are they disabled, but they're limping all over the
18 parking lot.

19 The defendant did not know that this plaintiff was
20 actually disabled because the plaintiff did not tell the
21 defendant, I am disabled, and I need to use the elevator
22 because I have a disability, and I have trouble going up and
23 down stairs.

24 Q. Okay.

25 A. From what I've seen in all the documents

1 provided to me.

2 Q. You saw that Mr. Berent walks with a cane,
3 correct?

4 A. I did not see that.

5 Q. Okay. If you go back and look at the
6 testimony, you'll see that he speaks repeatedly about his
7 cane, so --

8 A. I also see in testimony that after his left
9 hip surgery he was well enough that he did not need the use
10 of either cane.

11 Q. Okay. That was after he was evicted from
12 Crest, though, wasn't it?

13 A. It could be.

14 Q. Well -- okay. So are you aware -- this is --
15 this timing thing is getting a little confusing to me, so let
16 me see if I can sort it out.

17 Do you know without guessing whether the first time
18 Mr. Berent asked to use the elevator was before or after
19 Crest spent the money to have the elevator fixed?

20 A. I don't know.

21 Q. In earlier testimony you said that one of the
22 reasons you think that Mr. Berent didn't actually make a
23 request, despite his testimony that he did, was that they
24 spent all this money on the elevator?

25 A. No. My -- my statement was I don't feel the

1 defendant is the type of landlord to just blow off an actual
2 reasonable accommodation request due to the fact that the
3 landlord is engaged in so much effort to repair an elevator.

4 Q. See the thing I don't get, what does their
5 willingness to spend money on what you call a dead unit,
6 basically throwing money away, have to do with whether or not
7 they ignore or consider a request for reasonable
8 accommodation from a tenant?

9 A. Because most reasonable accommodation requests
10 wind up being much cheaper than what this defendant has spent
11 on just trying to repair this elevator.

12 Q. So let's talk about that for a minute.

13 The repairs were completed, and the elevator was
14 cleared for operation; you saw that in the documents,
15 correct?

16 A. I don't see that.

17 Q. Okay. Are you an expert in elevator service
18 records?

19 A. You already asked me that, and it's no.

20 Q. Well, I asked you if you were an expert in
21 elevator service, and you said, no. So I take it you're not
22 qualified to read these records and determine what did or did
23 not happen with respect to the elevator?

24 A. I see the records that have been provided to
25 me, and I see certain items were requested to be repaired.

1 Q. Yes.

2 A. And I see that those were repaired.

3 Q. Right.

4 A. And I also see that the elevator did -- still
5 did not get a clean bill of health and get its permit.

6 Q. How do you know that?

7 A. I don't see it anywhere in the documentation
8 that it was actually cleared.

9 Q. All right. So you're making an assumption
10 that you've been given all the records, right?

11 A. Yes.

12 Q. And we've already established that you weren't
13 given any of the OSHA records, right?

14 A. Yes.

15 Q. We also established that you weren't actually
16 given the deposition of Mr. Gonzalez from OSHA, right?

17 A. Yes.

18 Q. So do you have any thought that maybe there
19 might be additional information that may be -- may bear on
20 this discussion about whether or not the elevator was ever
21 cleared for service?

22 A. Possibly.

23 Q. Okay. So let's just assume for the sake of my
24 question that the elevator was put back -- was -- repairs
25 were made; the elevator was put into service; it was cleared

1 to be used. OSHA cleared it. The elevator service company
2 cleared it. Mr. Berent's steps up and says, I would please
3 like to use this elevator. And the elevator's working.

4 Do you think that's a reasonable request for him to
5 make?

6 MR. BURROW: It's an improper and incomplete
7 hypothetical, and it's also argumentative.

8 You can answer.

9 THE WITNESS: So we're assuming.

10 MR. DERBY: Uh-huh.

11 THE WITNESS: By Mr. Berent simply asking if he
12 could use the elevator --

13 MR. DERBY: Yes.

14 THE WITNESS: -- is not a reasonable accommodation
15 request. He's just asking to use an elevator. Why; why is
16 he asking to use the elevator.

17 MR. DERBY: Okay.

18 THE WITNESS: So -- but you said we're assuming that
19 the elevator was actually cleared by OSHA, was given its
20 permit, and it's actually in working order say --

21 MR. DERBY: I said, it was cleared by OSHA, and it
22 was cleared by the elevator service company to be used.

23 THE WITNESS: But we don't --

24 MR. DERBY: So we're clear.

25 THE WITNESS: But we don't know if that's actually

1 true.

2 MR. BURROW: He wants you to assume that. I made an
3 objection based on being an improper and incomplete
4 hypothetical.

5 You can certainly assume that.

6 THE WITNESS: So I --

7 MR. DERBY: Q. Can you think of a reason not to let
8 him use the elevator?

9 A. If, in fact, it's working and it's got a -- a
10 legal current permit and everything is safe on that elevator,
11 no.

12 Q. What do you know about the permit process for
13 an elevator?

14 A. Not a lot.

15 Q. Do you know the steps to getting a permit?

16 A. For an elevator?

17 Q. Yes.

18 A. Vaguely.

19 Q. Okay. Would you consider yourself an expert
20 on the steps necessary in order to permit an elevator?

21 A. No.

22 Q. Would you be qualified to render opinions
23 about what was or was not required in order to be able to use
24 an elevator?

25 A. I'm wondering why we're going round and round

1 about these assumptions about an elevator. If we truly have
2 documentations that it was, let's discuss that. But you
3 still haven't answered my question about why Mr. Berent never
4 actually gave a reasonable accommodation request.

5 Q. See, this is exactly the point.

6 A. He simply requested to use an elevator. Now,
7 we're assuming that it wasn't in working order. It was shut
8 down for everyone; that's what I've read in this document
9 that has been provided to me.

10 So if he was to ask for a reasonable accommodation,
11 then he would need to say, I need to use this elevator
12 because my hip, because I have a disability, because it's
13 difficult for me to climb stairs all the time, correct?

14 Q. So if he -- if he actually said, my hip is
15 bothering me, and I'd like to use the elevator, please --

16 A. That's from his deposition --

17 Q. I'm not asking you about his deposition --

18 A. He said that.

19 Q. -- I'm talking about a hypothetical. I'm
20 talking about the elevator's been cleared by the elevator
21 service company and cleared by OSHA. It's in use. Mr.
22 Berent says, I'd like to use the elevator, please, because my
23 hip is hurting me and I can't use the stairs.

24 Can you think of a reason why the landlord wouldn't
25 grant that request?

1 MR. BURROW: It's improper and incomplete
2 hypothetical, and it's also argumentative.

3 THE WITNESS: Again, we're going round and round.
4 We're talking about assumptions, and we're talking about
5 things that never happened.

6 MR. DERBY: Part of what experts do -- and maybe
7 because your -- your experience in litigated matters is
8 somewhat limited. Part of what experts do -- and Mr. Burrow
9 and Ms. Bellafronto will do it for you at trial too -- is ask
10 you to make assumptions. They may not comport with what you
11 understand the facts to be based upon your limited review of
12 records, but I'm entitled to ask hypothetical questions.

13 Q. So is my hypothetical clear in your mind or do
14 you want me to repeat it?

15 A. It's clear.

16 Q. Okay. Can you think of a reason why, just let
17 him use the elevator; what's the big deal?

18 MR. BURROW: Same objection. Improper, incomplete
19 hypothetical.

20 By the way, you haven't asked him to tell you what
21 assumptions I've asked him to make.

22 MR. DERBY: I'm not interest in what assumptions
23 you've asked him to make.

24 MR. BURROW: Okay.

25 THE WITNESS: So under your assumption.

1 MR. DERBY: Uh-huh.

2 THE WITNESS: No, there is no reason.

3 MR. DERBY: Q. All right. And you don't know
4 sitting here today whether the first time that Mr. Berent
5 asked to use the elevator and said he needed to use it
6 because his hip was hurting him and he couldn't take the
7 stairs was before or after Crest spent the money to have the
8 elevator put back in service?

9 A. I don't even have knowledge of him saying that
10 he wanted to --

11 MS. BELLAFRONTA: Objection. Assumes facts not in
12 evidence.

13 THE WITNESS: -- use the elevator because his hip
14 hurt.

15 MR. DERBY: I'm sorry. I didn't hear your answer.
16 Could you repeat it.

17 THE WITNESS: We -- I don't have any evidence
18 showing me that Mr. Berent asked to use the elevator because
19 his hip was hurting.

20 MR. DERBY: Okay.

21 THE WITNESS: All we have is that he just asked to
22 use it.

23 MR. DERBY: Q. All right. So does somebody have to
24 be in a wheelchair in order to have a life -- affect a major
25 life activity of walking?

1 A. Of course not.

2 Q. Somebody using a cane has a major -- has an
3 affect on a major life activity, don't they?

4 A. Yes.

5 MR. BURROW: It's an improper and incomplete
6 hypothetical.

7 MR. DERBY: Q. Do you know whether or not Mr.
8 Berent used a cane?

9 A. I see from documents provided that he has used
10 cane or canes in the past.

11 Q. All right. So do you know when Mr. Berent
12 came up to the elevator and asked to use it, asked Mr. Reed
13 or whoever to use, whether or not he was using a cane when he
14 did that?

15 A. I don't know.

16 Q. So it's possible based upon the things you
17 know and don't know that Mr. Berent walked up to the elevator
18 using a cane and it should have been obvious to anybody that
19 he was disabled?

20 MR. BURROW: Argumentative. Improper and incomplete
21 hypothetical. Assumes facts not evidence.

22 You can go ahead and answer.

23 THE WITNESS: Again, we're also assuming the level
24 of a disability or the presence of a disability by someone
25 who's not walking perfectly fine and someone that's using a

1 cane. There are people that use canes that are not disabled.

2 MR. DERBY: I see.

3 Q. And they're using a cane why?

4 A. Because they have a temporary injury or a
5 surgery that they just went through, and they're using it as
6 a temporary walking aid while they're recovering.

7 Q. I'm glad you brought that up.

8 Is your understanding that a disability in order to
9 qualify as a disability under the State and Federal laws for
10 disability -- in order for someone to be considered a
11 disabled person under the State and Federal Laws that that
12 disability be permanent?

13 A. No, of course not.

14 Q. Okay. So how long does it have to last?

15 A. There is no limit on how long it has to last,
16 but there has to be a determination by a medical doctor that
17 they have a disability. There are plenty of people that get
18 placards.

19 Q. Uh-huh.

20 A. And they're temporary placards, but they're
21 given by a doctor.

22 Q. Yes.

23 A. So...

24 Q. Do you know whether or not Mr. Berent has a
25 disability placard?

1 A. I don't see any evidence to that in any of the
2 documents --

3 MR. BURROW: Well, the question is --

4 MR. DERBY: Do you know?

5 MR. BURROW: -- I think it's time. Do you know if
6 he has one, and I think he means right now. I don't know.

7 THE WITNESS: I do not.

8 MR. DERBY: Q. Do you know if he's ever had one?

9 A. A placard?

10 Q. Yes.

11 A. I do not.

12 Q. Do you know if any medical doctor has ever --
13 has ever said that Mr. Berent has a disability?

14 A. The only documentation I've read is that from
15 the Santa Cruz Medical Health that just said that he has
16 problems with his hip. It's -- you have it.

17 Q. Yes.

18 A. It does not say that he's disabled, and it
19 also doesn't go into any type of reasonable accommodation
20 request or any kind of special request.

21 Q. Did you assume that the letter you were given
22 was the only letter in existence considering Mr. Berent's
23 disability?

24 A. I don't assume. I just go off of facts that
25 are put in front of me.

1 Q. Right.

2 And you assumed that the lawyer who hired you to
3 give opinions would give you all of the information
4 concerning Mr. Berent's disability, correct?

5 MR. BURROW: Argumentative.

6 THE WITNESS: Yes.

7 MR. DERBY: Q. What if he didn't; isn't it possible
8 that there's other evidence out there that you haven't seen?

9 MR. BURROW: Argumentative.

10 MS. BELLAFRONTA: Calls for speculation.

11 MR. DERBY: Q. Assume there was another letter from
12 the same doctor that clearly said Mr. Berent has a
13 disability, and that his disability was aggravated by having
14 to walk up the stairs, isn't that information you'd like to
15 have?

16 A. If it existed.

17 Q. All right.

18 A. And more importantly was that information
19 given to the defendant?

20 Q. Well, let's talk about that for a minute.

21 Is it your understanding that in order for someone
22 to be entitled to a reasonable accommodation based on a
23 disability they have that they provide a medical diagnosis to
24 their employer or to their landlord?

25 A. Is it my opinion that it's required?

1 Q. No, I said, your understanding. Whether
2 it's -- your opinion wouldn't haven't anything -- you say
3 you're not a lawyer, so it's a law. I just want to know what
4 you think the law is.

5 A. It's my understanding that if someone's
6 disabled and they're asking for a reasonable accommodation
7 request that they need to prove that they have a disability
8 and that they have a need for accommodations to be made.

9 Q. Okay. And tell me all the ways someone can
10 prove they have a disability?

11 A. Well, a doctor's note is a good one.

12 Q. Okay. A doctor's note.

13 Anything else?

14 A. If they have a placard or a permanent plate on
15 their vehicle.

16 Q. Okay.

17 A. If they have some type of letter or
18 documentation from a rehabilitation facility stating what
19 their injuries are or what their disability is and what the
20 possible outcome of their rehabilitation, how it may affect
21 their disability in getting better, is it a temporary
22 disability, it is a permanent one.

23 Q. You're talking about a medical record of some
24 sort?

25 A. Some type of record from someone --

1 Q. Okay.

2 A. -- who's treating that person.

3 Q. And so aside from the disabled placard, every
4 other thing that you said so far would require someone to
5 disclose their private medical information to someone who's
6 not their doctor?

7 A. I didn't say that.

8 Q. Okay. So tell me how this would work; you're
9 talking about medical records; you're talking about --

10 A. I didn't say medical records. I said a note
11 or some type of documentation from a doctor or a therapist or
12 someone stating that this person has a disability and this
13 is -- that they have -- they have limitations.

14 Q. I see.

15 And this doesn't have to have medical information on
16 it; it just has to say they have limitations?

17 A. Yeah, it's not their medical record.

18 Q. Okay. So it doesn't have to have a diagnosis
19 on it of what their condition is?

20 A. I think it needs to be clear enough that it
21 can let the -- all parties involved understand what -- what
22 is the disability or what is the problem, and what is the
23 most likely -- the time frame in which this person's going to
24 either be going through rehab or if there is no more rehab,
25 it's a permanent condition of what their limitations are.

1 Q. Okay. And aside from a disabled placard or
2 some sort of note from their doctor, is there any other way
3 that someone can prove, using your words, their disability so
4 they can get an accommodation?

5 A. There might be. I don't know.

6 Q. Okay. So you don't think that someone's
7 physical appearance could prove they were disabled?

8 A. We're walking down a slippery slope.

9 MR. BURROW: That's a very overbroad, argumentative
10 question, the way it's phrased.

11 MR. DERBY: Q. Do you understand my question?

12 A. I do understand your question.

13 Q. Okay.

14 A. And I also see people getting sued every day
15 for assuming or asking someone if they have a disability or
16 if there's something wrong. You're not allowed to do that.
17 You're not allowed to just assume or to come up and start
18 pressing people for information about an alleged disability.

19 Q. What does the Department of Justice say about
20 ways in which someone can quote, unquote, prove their
21 disability to get an accommodation?

22 A. The DOJ?

23 Q. Yes. What do they say?

24 A. They --

25 Q. In the Joint Statement of the Department of

1 Housing and Urban and the Department of Justice, what do they
2 say about proving that you have a disability?

3 A. I believe they discuss, you know, medical
4 doctor's opinions and letters and different things. I don't
5 think it -- it might not be in that document that you're
6 thumbing through. There might be -- there might be other
7 ways that they discuss, you know, how a disabled person and
8 either a landlord or employer or someone else can go about
9 identifying or communicating about the disability.

10 I know that it's not required to dive deep into all
11 the various details of their disability. Just stating that
12 they do have one, it's confirmed, and these are the
13 limitations that they exhibit; that's my opinion.

14 Q. So you wrote on your website about the changes
15 to the Federal Law regarding the definition of disability; do
16 you recall that?

17 A. I do.

18 Q. One of the things that you said -- which is
19 not your opinion, you were simply reporting what you
20 understood the law to be -- that the inquiry into whether or
21 not someone is a person with a disability should not require
22 extensive analysis; do you remember writing that?

23 A. I do.

24 Q. So what did you mean by that?

25 A. What I just said to you earlier, that it is

1 not required to dive deep into all the specific details of
2 someone's disability.

3 Q. Uh-huh.

4 A. But you're asking me that in what context; are
5 we still discussing reasonable accommodation requests?

6 Q. Sure.

7 I mean, because someone has to prove -- according to
8 you, somebody has to prove they have a disability in order to
9 get a reasonable accommodation request. So we're
10 delving into that --

11 A. So there's a big difference between letting
12 someone know that I have a disability --

13 Q. Okay.

14 A. -- and going into extreme detail, deep detail
15 about my disability and about my limitations.

16 Q. Okay. So if someone says they have a hip
17 problem and that they use a cane to walk, and you see that
18 person walk, is that enough?

19 A. Maybe; maybe not.

20 Q. Okay. Under what circumstance is that not be
21 enough?

22 A. If someone's just using a cane, maybe they've
23 got an issue where it -- it doesn't cause pain. We don't
24 know yet because we haven't engaged in conversation. And the
25 person that is limping or using a cane, this limitation may

1 be something they were born with. And it doesn't affect a
2 major life event. If they still walk. They still get
3 around. They've never known anything different. Now, are we
4 to assume that they have a major life function that's being
5 affected here. We can't assume. There are lawsuits over
6 this. So we don't assume.

7 Q. So --

8 A. So that's where the -- the conversation has to
9 be between the two parties.

10 Q. Uh-huh.

11 A. It needs to be clear. I have a disability. I
12 have a need. I'm on a second floor in a two-story apartment,
13 and my bedroom's upstairs in my two-story apartment.

14 It obviously didn't affect him enough for him to
15 come and say, can I get a ground floor unit. It obviously
16 didn't affect him much as he walked his dogs down those long
17 staircases down to the beach or whatever, so, you know,
18 it's -- it's pretty simple.

19 Q. It seems to me like you've already made up
20 your mind that Larry Berent is lying?

21 A. No. I didn't say that.

22 Q. It sure sounds like it.

23 A. Well, all I'm stating is everything that I've
24 seen so far --

25 MR. BELLAFRONTO: Objection. Argumentative.

1 Misstates the testimony.

2 MR. DERBY: Uh-huh.

3 THE WITNESS: -- is that I don't feel that the
4 reasonable accommodation request was actually triggered. I
5 don't think he actually made the request.

6 MR. DERBY: All right. So let's go back to that.

7 Q. In your two litigated matters you've
8 identified, did anybody ask your opinion whether or not the
9 line chef had made a request for reasonable accommodation?

10 A. Didn't have to.

11 Q. So the answer's no?

12 A. The answer is no.

13 Q. And that case was not litigated; it was
14 settled; it wasn't tried?

15 A. That's right.

16 Q. And in the instances of the CE -- CFO, did
17 anybody ask your opinion whether or not the CFO had made a
18 proper request for reasonable accommodation?

19 A. No, didn't have to because the conversation
20 began immediately before she was even out of the hospital.

21 Q. So the answer is no?

22 A. The answer is no.

23 Q. Have you ever qualified in any court to give
24 an opinion as to what is or is not required for a reasonable
25 accommodation?

1 A. No.

2 Q. Have you ever qualified in court to give any
3 opinions related to what is or is not a disability?

4 A. No.

5 Q. So do you profess to have any expertise in
6 whether Larry Berent's actions in this case triggered the
7 need for the employer to respond to him regarding his request
8 for reasonable accommodation?

9 A. I don't have any evidence in front of me
10 that -- that would make me believe that he even went as far
11 as to make the reasonable request. All he asked was if he
12 could use an elevator.

13 MR. DERBY: I asked if you -- repeat his -- reread
14 my question, please.

15 Withdraw it. I'm asking the question again.

16 Q. Do you profess to have any expertise in
17 whether or not Larry Berent's actions in this case were an
18 appropriate request for reasonable accommodation thus
19 triggering a response, the obligation to respond from his
20 landlord?

21 MR. BURROW: Asked and answered.

22 THE WITNESS: Do I have the expertise --

23 MR. DERBY: Yes.

24 THE WITNESS: -- to say yes or no whether or not
25 Larry Berent's actions triggered a reasonable accommodation

1 request by the landlord?

2 MR. DERBY: No.

3 Q. Do you have the expertise to state whether or
4 not Larry Berent's action in this case were sufficient to
5 constitute a reasonable accommodation request under the law
6 thus triggering the need to respond from his landlord?

7 A. I would say, yes, I do have experience. And,
8 no, I don't believe that Larry Berent's actions were
9 sufficient to trigger.

10 Q. What's the basis of your expertise?

11 A. As a 20-year accessibility specialist.

12 Q. Okay.

13 A. Knowing quite a bit about reasonable
14 accommodation requests and the process and what goes on
15 between the person who's making the request and the person
16 that they're making the request to. Everything that I've
17 seen with documentations provided to me thus far do not give
18 me enough evidence that Larry Berent actually engaged in a
19 reasonable accommodation request with the landlord.

20 Q. So I understand the basis of your opinion.
21 What I don't understand is how you feel you're qualified to
22 give it.

23 You're not a lawyer, correct?

24 A. Correct.

25 Q. Whether something is or is not a reasonable

1 accommodation is a matter of law, correct?

2 MR. BURROW: Well, that's -- that's argumentative,
3 and you're asking him to reach a legal conclusion.

4 MR. DERBY: Exactly.

5 MR. BURROW: Well, but --

6 MR. DERBY: That's my point.

7 MR. BURROW: That's an improper question.

8 THE WITNESS: So in my opinion --

9 MR. DERBY: I understand your opinion.

10 Q. I want to know the basis under which you're
11 going to be given the opportunity to give it. I don't see
12 any expertise in your background. You're an ADA consultant,
13 Title III, Title II barrier access consultant; as far as I --

14 MR. BURROW: Counsel --

15 MR. DERBY: Q. As far as I can tell -- I'll finish
16 my question in a minute.

17 As far as I can tell, you've never qualified in any
18 court to give any opinion regarding reasonable
19 accommodations, am I being unfair?

20 A. No.

21 Q. Okay. And as far as I can tell you've never
22 worked for any government agency and responsible for the
23 enforcement of reasonable accommodations in any context,
24 correct?

25 A. Correct.

1 Q. And you've never been asked by anybody to ever
2 give an opinion concerning whether or not someone had a --
3 had made a reasonable accommodation request, correct?

4 A. Correct.

5 Q. And you are not an HR professional?

6 A. No.

7 Q. Okay. And you're not a doctor?

8 A. No.

9 Q. All right. So please tell me what is the
10 basis under which you feel qualified -- I understand your
11 opinion, you said it like three times now, but what is the
12 basis under which you are qualified to give an opinion
13 whether something is or is not sufficient to constitute a
14 reasonable accommodation request under the law?

15 MR. BURROW: Okay. That's been asked and answered.

16 And he's going to be able to answer it again.

17 It is also an argumentative question, and it's an
18 improper and incomplete hypothetical.

19 You can go ahead and --

20 THE WITNESS: Based on my years of experience
21 working with professionals that deal with this every day,
22 this is what I -- this is how I feel I'm qualified to at
23 least answer the question that you're asking me; based on
24 what I've seen so far, based on all the cases that I've ever
25 worked side by side with HR professionals, attorneys, I don't

1 see anything not even remotely close to Larry Berent actually
2 requesting a reasonable accommodation request from what I've
3 seen.

4 MR. DERBY: Q. So in a nutshell, you think because
5 you've worked with other people who do have an expertise that
6 you are qualified to give an opinion in this situation?

7 A. Yes.

8 Q. Okay. And you have no expertise yourself?

9 A. With what?

10 Q. Any of the things we talked about, law; no?

11 A. I'm not an attorney.

12 Q. HR; no?

13 A. I'm not an HR.

14 Q. Fair housing; no?

15 A. I'm an accessibility inspector certified by
16 the ICC and the State of California and I deal with HUD and
17 FHA and all that on a daily basis.

18 Q. But not reasonable accommodations?

19 MS. BELLAFRONTO: Objection. Argumentative.

20 MR. DERBY: Q. Right?

21 A. Correct.

22 MS. BELLAFRONTO: And vague and ambiguous.

23 MR. DERBY: Q. Okay. And no one's ever asked your
24 opinion in any consultation -- or any litigation matter
25 whether something was or was not a request for reasonable

1 accommodation?

2 A. No.

3 Q. Okay. All right.

4 MR. BURROW: Are you done?

5 MR. DERBY: We're going to take a couple minutes.

6 MR. BURROW: Before you -- okay. Go ahead.

7 (Brief break.)

8 MR. DERBY: Okay. Mr. Taylor, just a couple of more
9 questions.

10 Q. You took the CASp exam, correct?

11 A. Yes.

12 Q. Is there any fair housing questions on the
13 CASp exam?

14 A. Yes.

15 Q. Okay. Are there any questions about
16 reasonable accommodation on the CASp exam?

17 A. Yes.

18 Q. Are there any questions about the
19 determination of what is or is not a reasonable accommodation
20 request on the CASp exam?

21 A. I don't know if there's actually a question
22 about that.

23 Q. Okay. Going to your -- back to your blog,
24 Exhibit 6, this is the second to last paragraph, it says,
25 "The entire topic of employment reasonable accommodation,

1 that's in quotes, "can be very confusing and adopting a
2 strong policy for handling accommodation requests and keeping
3 detailed records of the employer's efforts should be priority
4 one."

5 What do you mean by that?

6 A. Exactly what I just said. They need to keep
7 all notes, all conversations between an employer and employee
8 who's making a request.

9 Q. Okay. Have you seen any such notes from
10 anybody at Crest, any documentation at all of anything that
11 happened with regard to Mr. Berent's request?

12 A. I've only seen what was said handed me by Mr.
13 Burrow.

14 Q. Okay. So if it's not here, you haven't seen
15 it?

16 A. That's correct.

17 MR. DERBY: Very well.

18 Thank you for your time.

19 I believe we are at two hours and six minutes, so
20 what do I owe you?

21 MR. BURROW: Well, I want to ask him some questions
22 too, which doesn't go against your time. So --

23 MR. DERBY: I'd like to just pay up and --

24 THE WITNESS: Just round it to two hours.

25 MR. DERBY: So that's \$700.00?

1 THE WITNESS: Yes.

2 EXAMINATION BY MR. BURROW

3 MR. BURROW: Q. So, Mr. Taylor, he didn't ask you
4 about assumptions that you made or assumptions that I asked
5 you to make; do you remember what those were?

6 A. I remember a few of them, but why don't you
7 remind me of what you're --

8 Q. Well, remember I asked to -- I told you that
9 no discovery had been done by Plaintiff in this case, no
10 depositions had been taken by any of the -- of any of the
11 employer -- employers -- landlords, employees and landlord
12 himself?

13 A. I do.

14 Q. And I asked you to assume that at trial there
15 will be testimony that Mr. Berent never asked for use of the
16 elevator in conjunction with his hip?

17 A. I do.

18 Q. Okay. And did you use that assumption in
19 reaching the opinions that I asked you to reach?

20 A. I did.

21 Q. Okay. And I also note here that you read in
22 Mr. Berent's deposition that -- that in answer to a question
23 that I asked, he indicated that he first asked for the use of
24 the elevator in 2005 and 2006; did you note that date?

25 A. Yes.

1 MR. BURROW: Okay. That's all I have.

2 MR. DERBY: Off the record.

3 (The deposition concluded at 12:10 p.m.)

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DECLARATION

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I hereby declare I am the deponent in the within matter; that I have read the foregoing deposition and know the contents thereof, and I declare that the same is true of my knowledge except as to the matters which are therein stated upon my information or belief, and as to those matters, I believe it to be true.

I declare under the penalties of perjury of the State of California that the foregoing is true and correct.

Executed on the ____ day of _____2016,
at _____, California.

Christopher Taylor

1 STATE OF CALIFORNIA)
) ss.
2 COUNTY OF ALAMEDA)

3

4 I, LAURA A. DENYS, do hereby certify:

5 That Christopher Taylor in the foregoing deposition
6 named, was present and administered an oath as a witness in
7 the above-entitled action at the time and place therein
8 specified;

9 That said deposition was taken before me at said
10 time and place, and was taken down in shorthand by me, a
11 Certified Shorthand Reporter of the State of California, and
12 was thereafter transcribed into typewriting, and that the
13 foregoing transcript constitutes a full, true and correct
14 report of said deposition and of the proceedings that took
15 place;

16 That I am a disinterested person to the said action.

17 IN WITNESS WHEREOF, I have hereunder subscribed my
18 hand this 2nd day of November 2016.

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LAURA A. DENYS, CSR NO. 12357
State of California

25

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Date: November 2, 2016

Chris Taylor
C/O ADA Compliance, Consultants, Inc.
1002 River Rock Drive, # 121
Folsom, California 95630

Re: BERENT VS. CREST ENTERPRISES, LLC, et al,

Dear Mr. Taylor:

This is to inform you that your deposition conducted on October 25, 2016 has been transcribed into booklet form.

You have the right to review and sign the transcript of your testimony to ensure that it is true and correct. If you wish to avail yourself of this opportunity, the original transcript of your deposition shall be held in our offices for your review for not more than 30 days or until requested for trial. If you choose to come to our office, it would be best to call our office before your arrival so that the transcript can be readily available.

If you do not sign your deposition, please be advised that it may be used at the time of trial with the same force and effect as though it had been signed.

If you should have any questions regarding this information, please do telephone our staff to assist you.

Very truly yours,

Laura A. Denys
CSR No. 12357

cc: All Counsel

Diablo Valley Reporting Services