IN THE UNITED STATES DISTRICT COURT
DISTRICT OF COLUMBIA

BREAD FOR THE CITY, Plaintiff, vs. DISTRICT OF COLUMBIA, Defendant.	) CIVIL NO.: 23-1945-ACR))))) September 10, 2014) Washington, D.C.) 2:00 p.m.

Transcript of Status Conference
Before the Honorable Ana C. Reyes
United States District Judge

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P R O C E E D I N G S

THE CLERK: Your Honor, we're in Civil Action 23-1945, Bread for the City versus District of Columbia.

If I can have counsel approach the podium, state your names for the record, starting with counsel for the plaintiff.

MS. VERRIEST: Good afternoon, Your Honor. Ashika Verriest, attorney for plaintiff Bread for the City for the ACLU Criminal Law Reform Project. I'm joined at counsel's table with Brian Dimmick, also at the ACLU Disability Rights Project, Scott Michelman at ACLU D.C., Michael Perloff at ACLU D.C., and Steve Holman at Sheppard Mullin.

THE COURT: All right. Welcome, everybody. Good afternoon.

MR. HEATH: Good afternoon, Your Honor, this is Brendan Heath on behalf of the District of Columbia. And with me is Adam Daniel.

THE COURT: All right. Good afternoon.

All right. So I'm going to give you my oral ruling on the motion to dismiss, which is not going to come as a galloping shock to any of you, since I told you that you should continue with discovery. And then I'm going to have some questions on where we are on discovery and on the mediation that I ordered.

All right. Plaintiff, the nonprofit Bread for the

City, has sued the District of Columbia. It alleges that the District's emergency response system dispatches trained medical professionals to address physical health emergencies, but police officers who do not have --

Hold on, do we have anyone here for the police officers today?

MR. CONTI: Yes, Your Honor.

THE COURT: Why don't you just make your appearance.

MR. CONTI: Certainly. Anthony Conti, Your Honor, on behalf of the D.C. Police Union.

THE COURT: All right. Welcome. Thank you.

-- police officers who do not have relevant medical skills or training to almost all mental health emergencies. Plaintiffs assert that this alleged practice violates both the Rehabilitation Act and Title II of the Americans with Disabilities Act.

The District has moved to dismiss under Rules 12(b)(1) and 12(b)(6). It argues both that Bread lacks standing to sue and that it has failed to state a claim. In addition, the D.C. police union has filed an amicus brief that asserts that Bread's complaint raises a political question that is outside of the Court's jurisdiction.

For the following reasons I conclude: First, that bread has plausibly alleged that it has standing; second, that

this case does not raise any political question; and third, that the complaint states plausible claims under both the Rehabilitation Act and the ADA. I will therefore deny the motion to dismiss.

Jurisdiction. I will start by addressing two threshold jurisdictional issues: First, the District's argument that Bread lacks standing to bring this case; second, the Union's argument that this case raises a nonjusticiable political question.

Beginning with the District's argument I conclude that Bread has standing to bring this suit. The District has not questioned the accuracy of any of Bread's allegations. It argues instead that even taking them all as true, Bread has not met its burden of plausibly alleging that it has, one, suffered an injury in fact, that is; two, fairly traceable to the actions of the defendant, and that; three, is likely to be redressed by a favorable decision on the merits.

The parties disagreement centers on the first requirement that Bread established an injury in fact. Bread argues that the District's use of the MPD to respond to mental health emergencies has forced it to divert resources to training and deploying its own staffers to respond to mental health emergencies at its facilities. Since it asserts MPD often escalates mental health crises and officer's presence in its facilities harms its ability to deliver services. The

District argues that Bread has chosen to spend resource us on emergency services because it disagrees with the government's policy choices and that any injury is therefore self-inflicted.

At this stage Bread has the better of the argument. The D.C. circuit has developed a two-prong test for determining whether an organization like Bread meets the injury-in-fact requirement. Quote, first, an organization must show that the challenged conduct perceptibly impairs the organizations ability to provide services, end quote. *Capital Area Immigrants' Rights Coalition versus Trump*, 471 F.Supp.3d 25 at 38 D.D.C. 2020. Citing *Food and Water Watch*, 808 F.3d 905 at 919 D.C. Circuit 2015. This initial showing must also demonstrate a direct conflict between the defendant's contact and the organization's mission. Id. Second, the organization must show that it used its resources to counteract the alleged harm. Id.

I'll start with the first prong. According to the complaint, quote, Bread's mission is to ensure under-resourced D.C. residents can access basic needs, end quote. And it achieves this mission by operating a food bank, a clothing boutique, and a primary care clinic, as well as by providing pro bono legal and social services. And that's complaint at paragraph 141.

If Bread is right about the merits, which I must

assume it is for purposes of this analysis, when a person experienced a mental health crisis at one of its facilities, which Bread alleges in paragraph 159 of its complaint happens an average of three times a month, Bread should be able to call 911 and have a trained mental health professional respond. Instead, if it calls 911 it would generally receive a police response. And it has alleged that the police response hampers its mission and its abilities to provide services in multiple ways.

First, having police present in its facilities diminishes the trust Bread clients have in Bread, and makes them uncomfortable. Complaint at paragraphs 151 and 154. It is a reasonable inference from those allegations that regular police presence in Bread's facilities would interfere with Bread's mission of delivering services to those clients. Complaint at 141.

Second, Bread alleges that when serving as first responders to mental health emergencies, police often escalate the situation in ways a trained professional would not. And that's complaint at 69 to 74, 150 and 155. Again, it is a reasonable inference that this escalation would hamper Bread's ability to provide services to its facilities while the mental health crisis is ongoing.

These allegations suffice to -- at this stage -- show that the District's policy, quote, perceptibly impairs

the organization's ability to provide services, end quote. And that there is, quote, a direct conflict between the defendant's conduct and the organization's mission, end quote. *Capital Area Immigrant's Right Coalition*, 471 F.Supp.3d at 38 cleaned up.

In particular, while the District argues that Bread has not shown that the District's policy conflicts with Bread's mission, even if it inhibits some of its activities, the D.C. Circuit has found the direct conflict requirement satisfied where, as here, the challenged conduct interferes with an organization's ability to conduct activities central to its mission. See *PETA v. U.S. Department of Agriculture*, 797 F.3d 1087, 1095, D.C. Circuit 2015.

The Supreme Court's recent decision in *FDA v. Alliance for Hippocratic Medicine*, 144 Supreme Court 1540, 2024, which the District cites in its supplemental response brief, does not change that conclusion. The Association in that case asserted that it had standing because the FDA's decision to approve the use of and later relax certain regulatory requirements related to mifepristone had interfered with the Association's operations by causing it to spend resources on research and advocacy opposing the FDA's action. Id. at 394-95. The Supreme Court explained that the Association could not spend its way into an injury without any harm to its core activities, see Id.

That's the same distinction that the D.C. Circuit case law I discussed draws. Since for the reasons already -- I've already given, Bread has alleged concrete injuries to and interference with its mission and activities. *Alliance* does not change the outcome here.

I therefore conclude that Bread's allegations satisfy the first prong of the D.C. Circuit's injury in fact test.

Bread also satisfies the second prong which requires it to, quote, show that it used its resources to counteract the alleged harm. *Capital Area Immigrant's Right Coalition*, 471 F.Supp.3d at 38 cleaned up.

The complaint alleges that to avoid the negative consequences of having MPD respond to mental health emergencies at its facilities Bread has devoted significant resources to training staff to provide emergency services which are not part of Bread's mission. Complaint at 147 and 187 to 93. It also alleges that having staff respond to emergencies keeps them from providing other clients with the basic services that are part of Bread's mission, which prevents Bread both from fulfilling its mission of providing those services and from obtaining revenue by billing for those services. Complaint 170 to 86.

All of those expenditures were allegedly, quote, in response to and to counteract the effect of defendant's

alleged unlawful acts, end quote. *PETA*, 797 F.3d at 1097. That is enough to plausibly demonstrate an injury in fact at this stage of the litigation.

Since I conclude that Bread has suffered an injury in fact for the reasons discussed above, I don't need to consider its alternative argument that the alleged flaws in the District's emergency response system have created increased demand for Bread's services.

Just to be clear, I am not holding or saying that Bread has standing simply because it thinks the district doesn't do a good enough job of addressing mental health emergencies. I agree with the District that Bread cannot create standing by voluntarily stepping into the breach. And I am not persuaded by Bread's assertion that it has standing because it's, quote, clients do not receive a timely and effective response from the District emergency response system, and therefore require this crisis response service from Bread instead. Opposition of the motion to dismiss at 10. This would be a much different case if Bread just thought the District's response was insufficient and decided to start its own substitute hotline for D.C. residents.

But that is not what Bread has alleged. According to the complaint, the District's policy has direct, concrete consequences inside Bread's facilities that interfere with Bread's mission, forcing Bread to divert resources and

response. It's on that basis that I conclude that Bread has plausibly alleged injury in fact.

As I mentioned, the District does not meaningfully dispute that if Bread has suffered an injury in fact it also satisfies the causation and redressability requirements. With good reason: Bread's injuries all allegedly stem from the District's challenged policies of using MPD officers to respond to most mental health emergencies. An injunction barring that practice would redress those injuries. That's enough to show causation and redressability at this stage. See e.g. *PETA,* 797 F.3d at 1093, note 3. The facts may or may not bear out Bread's alleged injuries, but at the pleading stage Bread has plausibly alleged that it has standing.

With respect to the Union's argument, the Political Question Doctrine prevents the Court from deciding cases that, quote, revolve around policy choices and valuable determinations -- and value determinations constitutionally committed for resolution to the halls of Congress or the confines of the executive branch. *Al-Tamimi v. Adelson,* 916 F.3d 1 at 8, D.C. Circuit 2019. In *Baker v. Carr*, 369 U.S. 136, 1962, the Supreme Court identified six factors that courts should use to identify political questions. Id. at 217. The Union mentions only one, quote, the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government, end

quote. Id. The Union claims that the Court cannot resolve the case without expressing disrespect for the D.C. government. The Union is wrong on multiple levels.

First the D.C. government is not a quote, unquote, coordinate branch of government within *Baker's* meaning. The Political Question Doctrine, as the name suggests, is about identifying questions that are better resolved by the political branches, the legislature and the executive, than by the Courts. It's not a federalism doctrine about allocating power between the federal and state or D.C. governments.

Second, the fact that this case might have important policy consequences for the D.C. government does not mean that the Court cannot hear it. The Supreme Court has recognized that, quote, not every matter touching on politics is a political question, end quote. And, quote, it goes without saying that interpreting congressional legislation is a recurring and accepted task for the Federal Courts, end quote. Japan Whaling Association v. *American Cetacean*, C-e-t-a-c-e-a-n, *Society,* 478 U.S. 221 at 229 to 30, 1986.

In deciding whether the District's emergency response system complies with federal law, the Court will simply be determining whether plaintiffs have made out a violation of the statutes enacted by Congress. The Union has not cited and I have not found any case treating of similar statutory claim as a political question. That's not

surprising because the Union's arguments would turn essentially any effort to enforce a federal statute against the D.C. government and any state government into a political question. That's not the law, so there's no justiciability problem here.

I will now turn to the District's merits argument that Bread has not stated a claim under the Rehabilitation Act or the ADA. The D.C. Circuit has explained, and the parties agree that the analysis under the two statutes is essentially the same. Except for the requirement under the Rehabilitation Act that the defendant receive federal funds, which there is no dispute Bread has adequately alleged here. E.g. Complaint at 201. So I will discuss Bread's claims together.

Under both statutes a plaintiff must show that, one, an otherwise qualified disabled person or people was or were; two, excluded from, denied the benefit of, or subject to discrimination under a program, service, or activity; three, by reason of disability. See *American Council of the Blind v. Paulson*, 525 F.3d 1256 at 1266, D.C. Circuit 2018. And *Lee versus Corrections Corporation of America*, 61 F.Supp.3d 139 at 142 to 43 D.D.C. 2014.

The District's argument focuses -- hold on one second.

The District's argument focuses primarily on the second requirement so I will start there. The parties dispute

what the relevant program, service, or activity is and its benefit. That said, they agree that these issues present mixed questions of fact and law, docket 76 at 2, docket 77 at 1 to 2. The District acknowledges that as a result I must, quote, accept all the well-pleaded factual allegations in plaintiff's complaint as true and draw all reasonable inferences in plaintiff's favor, end quote. Docket 76 at 2.

Bread supported by the United States -- do we have anyone from the U.S. here today? No, okay.

Bread supported by the United States frames the service, program, or activity as the District's emergency-response system and the benefit as timely and effective emergency assistance. E.g., Docket 77 at 10-11. I conclude that, at least at this stage, those are plausible framings.

Start with the question of the relevant program. Neither statute defines the term "program," but the D.C. Circuit has observed that the phrase, quote, any program or activity, end quote, in the Rehabilitation Act is quote, unquote, expansive. And has cited with approval various federal agencies' definition of the phrase to include, quote, anything a federal agency does, end quote. *Paulson*, 525 F.3d at 1266, note 13. Other circuits have taken similarly broad views. For example, the 6th Circuit has held that, quote, the phrase services, programs, or activities encompasses virtually

everything a public does, end quote. See e.g. *Anderson v. City of Blue Ash*, 798 F.3d 338, 356, (6th Circuit 2015).

And the Supreme Court has cautioned against defining a program or benefit, quote, in a way that effectively denies otherwise qualified handicapped individuals the meaningful access they are entitled, end quote. And observed that, quote, antidiscrimination legislation can obviously be emptied of meaning if every discriminatory policy is collapsed into one's definition of what is the relevant benefit, end quote. *Alexander v. Choate,* 469 U.S. 287 at 301, note 21 (1985).

Given those admonitions and the expansive meaning of program or service, it is plausible from Bread's allegations that the District's emergency-response system qualifies as a program or service within the meaning of the ADA and the Rehabilitation Act. Bread alleges that the emergency-response system operates a unified hotline, 911, that responds to all types of emergencies with a common purpose of providing emergency assistance. E.g. Complaint 2, at 77 to 79, 87 to 91, 118.

The District argues that the emergency-response system is better viewed as a group of related but distinct services. E.g., Docket 42-1 at 14. Probably each of the sub-units that the District describes could qualify as a program for ADA purposes, but that does not mean that the larger entity does not. *Paulson,* for example, identified,

quote, the production and design of currency as a program or activity, end quote, 525 F.3d at 1266. You could imagine discrimination claims targeted at various subparts of that overarching program, but that does not mean that the broader program is not covered by the ADA and Rehabilitation Act.

And while the District repeatedly cites the is 11th Circuit statement that, quote, the Supreme Court instructs courts to focus on narrow programs and benefits offered by a public entity when evaluating claims under the ADA and Rehabilitation Act. E.g. Docket 42-1 at 14, quoting *L.E. by and Through Cavorley versus Superintendent of Cobb County School District*, 55 F.4th 1296, 1302, 11th Circuit 2022, in context that statement -- in context that statement was a warning against framing programs in overbroad ways that mask discrimination.

In *L.E.* a suit brought by a group of students with disabilities who alleged that they had been deprived of meaningful access to in-person education, the 11th Circuit held that the district court erred by more broadly defining the benefit at issue as an education generally and then concluding that the plaintiffs had not been denied access to that broader benefit. *L.E.* 55 F.4th at 1302.

L.E. does not support defining a program narrowly even where doing so might defeat the purposes of antidiscrimination legislation. Indeed, as I already

mentioned the Supreme Court has also warned against taking too narrow a view -- too narrow of a view of the relevant program or benefit *Alexander,* 469 U.S. at 301 and 21.

So Bread has plausibly alleged that the District's emergency-response system constitutes a program under the ADA and Rehabilitation Act.

The harder question is what, if any, benefit of that program has been denied to people with mental health disabilities. Bread, again supported by the United States, describes the benefit as, quote, timely and effective emergency assistance. E.g. Docket 77 at 10 to 11.

I conclude that Bread plausibly alleges that that is a benefit for emergency-response system -- sorry, I conclude that Bread plausibly alleges that that is a benefit the emergency-response system provides, at least for residents not suffering from mental health disabilities.

Bread alleges that timely and effective emergency assistance is the program's purposes. Complaint at 77. And describes the training most emergency responders must undergo, the speed with which they respond to emergencies, and the quality of care they provide, id. at 117 to 139. Those allegations make it plausible at this stage that the emergency-response system provides the benefit Bread alleges, at least to people without mental health disabilities.

The District asserts that under *Alexander,* timely

and effective emergency assistance is too amorphous to be the relevant benefit. That argument does have some force. Alexander concluded that the seemingly similar concept of adequate health care was too amorphous to be the benefit of a state Medicaid program. 469 U.S. at 303.

The Court did so, however, only after detailed examination of the Medicaid Act in the district court's factual findings. See id. at 303 to 06. We do not have yet a factual record here.

In addition, the 2nd Circuit noted in *Wright v. Giuliani,* 230 F.3d 543 at 548 to 49, 2nd Circuit 2000, that factual development might be necessary for a district court to determine whether, quote, adequate emergency housing was too amorphous a benefit to serve as the basis of an ADA or a Rehabilitation Act claim. And the 8th Circuit found that a plaintiff stated ADA and Rehabilitation Act claims based on the alleged denial of the benefit of, quote, safe and appropriate, end quote, post-arrest transportation. *Gorman v. Bartch*, 152 F.3d 907 at 913, 8th Circuit 1998.

Without a factual record -- and particularly without the benefit of expert testimony -- I cannot say that Bread's proposed benefit is too amorphous as a matter of law.

Bread also plausibly alleges that people with mental health disabilities are denied this benefit.

To determine whether an individual with a disability

has been denied the benefits of a program, service, or activity, courts assess whether the individual has meaningful access to the program, service, or activity at issue. *Paulson,* 525 F.3d at 1267. And *National Association of the Deaf v. Trump,* 486 F.Supp.3d 45 at 57, D.D.C. 2020.

The D.C. Circuit has acknowledged that this inquiry is quote, unquote, necessarily fact-specific. *Paulson,* 525 F.3d at 1267.

Here, Bread has amply alleged the ways in which the emergency-response system fails to provide timely and effective emergency assistance for mental health emergencies. It alleges that rather than trained professionals the service usually dispatches police officers who often escalate the situation and expose the individuals in crisis to unnecessary force or legal consequences, such as involuntary confinement. Complaint at 69 to 74.

Those allegations support a reasonable inference that people with mental health disabilities do not have meaningful access to the benefits of the district's emergency-response system.

The District responds that the D.C. Circuit's decision in *Modderno v. King*, 82 F.3d 1059, D.C. Circuit 1996, forecloses Bread's argument that purportedly unequal responses to mental health emergencies, as compares to other emergencies, amounts to discrimination under the ADA and

Rehabilitation Act.

In that case the D.C. Circuit held that an insurance plan did not violate the Rehabilitation Act by placing a $75,000 lifetime benefit cap on mental health benefits without a corresponding cap on physical health benefits. Id. at 1060. The Court reasoned that differential benefits for different category of illness did not constitute, quote, discrimination within the meaning of the statute, end quote. Id. at 1060 to 62.

Bread and the United States dispute whether *Modderno* remains good law or applies outside the insurance context, but even setting those disputes aside *Modderno* does not foreclose Bread's claim at this stage for at least two reasons.

First, *Modderno* involved two different generally applicable benefits -- one for physical health care and one for mental health care -- to which all individuals had equal access. The Court reasoned that those two benefits did not need to be equal. In contrast Bread here alleges that the District's emergency-response system denies some individuals, but not others, meaningful access to a single benefit, timely and effective emergency assistance, on the basis of disability. That differential treatment of individuals based on disability is what the ADA and Rehabilitation Act forbid.

Second, *Modderno* emphasized the individuals with mental health disabilities would still, quote, benefit

meaningfully from the coverage that they did receive, end quote. Id. at 1062, note 2, quoting *Alexander,* 469 U.S. at 302. It is a reasonable inference from Bread's allegations that people with mental health disabilities do not meaningfully benefit from the District's emergency-response system.

For all those reasons I conclude that Bread has plausibly alleged that individuals with mental health disabilities are denied the benefits of the District's emergency-response system.

The first and third elements of Bread's claims showing that, one, an otherwise-qualified individual with a disability has suffered the alleged discrimination, two, by reason of her disability, follow straightforwardly from the definition of program that I've just discussed. The District argues in its motion that Bread cannot satisfy these elements because what Bread really seeks is a new program available only the people with mental health disabilities. Given that framing, the District argues that person cannot be, quote, "otherwise qualified" for the program, since only people with disabilities would qualify for such a program and, for the same reason, that any exclusion cannot be "by reason of" disability, docket 42-1 at 21-22.

Those arguments do not work when the program is framed as the District's emergency-response program as a

whole. That program is available to all members of the public, and Bread asserts that people with mental health disabilities are uniquely unable to access its benefits because of their disabilities. So I will not dismiss the complaint on this basis either.

All right. This was the part I want everyone to listen to. Not that I'm sure you weren't following closely all along.

I want to emphasize that the reasoning and conclusions I just describe are products of the procedural posture of this case. Because we're here on a motion to dismiss, I must take Bread's allegations as true and give it the benefit of all reasonable inferences. Bread may be right, but it may also be that discovery, including that expert evidence, shows that, quote, timely and effective emergency assistance, end quote, benefit is too amorphous to be workable, or it might be the District does not actually provide that benefit to anyone, or that it does in fact provide it to everyone, or that people with mental health disabilities receive enough of a benefit that they do have meaningful access to the program. It might also turn out that the program definition Bread has provided is too broad to be analytically useful or does not reflect the realities of the District's emergency services. I am not prejudging any of those issues. I'm holding only that there is enough here to

survive the motion to dismiss and get to discovery.

So for all the reasons I just gave I'm denying the District's motion. We'll issue a written order to that effect later today or tomorrow. There will not be a written opinion. The reasons for the denial are the ones I just stated on the record.

Before we wrap up I would like to thank counsel for the both sides and for the amici and United States for doing and outstanding job briefing and arguing the motion, which involved some very challenging legal issues.

All right. So thank you, everyone. That's the decision. I also want to add, especially for the police union representative, I do not take the plaintiff's complaint to allege, and I certainly do not believe that this is a criticism of the police conduct. This is, my understanding, a question of what police are trained to do and what they should be doing and not how police officers are engaging in their duties. So I don't want any of this, at least from my perspective, to be taken as a criticism of the police. I think the argument from the plaintiffs and they can correct me if I'm wrong, is that the police are being put in an untenable situation, not that the police are in some way not acting appropriately.

All right. So that's the opinion. The order will go out today or tomorrow on ECF. Having said that, can

someone tell me where we are on, A, the discovery that I have permitted so far?

MS. VERRIEST: Yes, Your Honor, the Court ordered limited discovery back in December. The District has produced several batches of documents responsive to those authorized topics. We haven't started formal discovery, but we discussed a schedule with the District on initial first steps there.

And share those dates if Your Honor would like.

MS. VERRIEST: So we talked about --

THE COURT: You should probably lower your mike a little, just so she can hear.

MS. VERRIEST: Is that better? Okay. So we talked about the District filing an answer on October 4th, Rule 26(f) conference by October 9th, 26(a) initial disclosures --

THE COURT: I'm sorry, the conference between the two of you?

MS. VERRIEST: Yes.

THE COURT: All right. Go ahead.

MS. VERRIEST: Initial disclosures October 23rd. 26(f) report October 23rd. And Rule 16(b) scheduling conference October 30th.

THE COURT: All right. One second. Are we free on October 30th, Jonathan? Looks like I'm free in the morning. Can you guys do 11:00 -- can you guys do 2:00 o'clock on the 30th of October?

MR. HEATH: That's fine with the District, Your Honor.

MS. VERRIEST: Yes, that works.

THE COURT: All right. So we'll have the conference on October 30th at 2:00 p.m. And a reminder that with your Rule 26 conference, under my standing order you need to provide three trial dates that work for both sides, along with how long the trial will work. And a further reminder that once I set the trial date, which I will at the October 30th conference, it will not move. And when I say it will not move, I don't mean it will move if we need more time, it does not mean it will move if discovery goes slower than expecting, it does not mean it will move if there's a brand new set of counsel, it means it will not move. I'm not going to care about what dates you have before the trial date, but when you guys give me trial dates make sure it's within a time period that you realistically can get done with discovery. That does not mean give me trial dates in 2030. I want a realistic expectation of when you can be ready for trial, and then give me dates, and then that trial date will not move. And I'll give a longer lecture on that at the conference.

MS. VERRIEST: Yes, Your Honor.

THE COURT: Okay.

MS. VERRIEST: That was where we are.

THE COURT: All right. Where are you guys on the

mediation and settlement negotiations that I ordered.

MS. VERRIEST: We are hopeful about the prospect of settling the case through mediation. We've agreed on protocols and topics to make that move forward as productively as possible. And we shared recommendations that the District is reviewing.

THE COURT: The District?

MS. VERRIEST: Yes.

THE COURT: How many meetings have you had so far?

MS. VERRIEST: We had a meeting in July.

THE COURT: Okay. All right. When are you expected to meet again?

MS. VERRIEST: We've proposed a few dates to the magistrate judge and are waiting to hear back on those dates. And we're working with the judge, with the Court's availability.

THE COURT: When did you propose those dates?

MS. VERRIEST: We proposed those dates I think on August 16th.

THE COURT: Okay. What month are those dates in?

MS. VERRIEST: They're in September -- the dates are September 24th and -- sorry, 24th and 25th.

THE COURT: Okay. All right. I will reach out to the mediator and make sure you guys get a response on that.

MS. VERRIEST: Thank you.

THE COURT: And then you guys are working out a process moving forward, because you know I don't just want the one mediation date.

MS. VERRIEST: Yes, we had previously agreed to a process moving forward with topics and a lot longer frame time line.

THE COURT: Okay. Great. Anything else that you want to address while we're all here?

MS. VERRIEST: Your Honor, we really appreciate the thoughtfulness with which Your Honor issued the opinion and believe that practitioners would benefit if they encounter these issues and would respectfully request a written opinion that is accessible --

THE COURT: Denied. I just gave you the oral opinion. If someone wants to read it they can order the transcript.

MS. VERRIEST: All right. Thank you, Your Honor.

THE COURT: Anything from the District?

MR. HEATH: Nothing in particular from us, just to reinforce that we talked to the plaintiffs about dates --

THE COURT: Just slow down for her.

MR. HEATH: Certainly. We talked to plaintiffs about the dates for discovery. And we look forward to having those conversations about the plaintiff in more detail about what discovery looked like here. And in particular, the

interaction between the discovery and the mediation. That's a topic that we anticipate discussing with plaintiffs and in more full detail. And will be able to report to the Court at the appropriate time.

THE COURT: Okay. All right. That sounds good. I do not want a bunch of discovery disputes in front of me between you two. So just as a reminder, before you bring a discovery dispute to me, you have to have met and conferred in person at least once. If you do have a discovery dispute, do not file an motion. Reach out to chambers and we'll set up a initial phone call. But also, if you all bring a discovery dispute to me and I find that one of you has not been unreasonable or uncompromising, or has refused a reasonable compromise, there will be a show cause order entered on sanctions. Which is all to say, do not bring a discovery dispute in front of me unless you are absolutely certain you are in the right, you are absolutely certain you've been reasonable, it is a critical, material piece of discovery, and it warrants my time. Keeping in mind that I have 200-plus other cases, any time I give to you is time I take away from those other cases. Understood?

MR. HEATH: Yes, Your Honor.

THE COURT: Okay. Anything else?

MR. HEATH: Nothing from the District, Your Honor.

MS. VERRIEST: Nothing further, Your Honor.

THE COURT: Thank you, everyone. Again, I will just reiterate, and please do pass along to Ms. Disney that I thought the briefing and the oral argument were excellent. Thank you very much.

(The proceedings were concluded at 2:40 p.m.)

I, Christine Asif, RPR, FCRR, do hereby certify that the foregoing is a correct transcript from the stenographic record of proceedings in the above-entitled matter.

_____/s/_____
Christine T. Asif
Official Court Reporter

< Dates >.
August 26:19.
July 26:10.
October 24:19, 24:20, 24:21, 24:23, 25:5, 25:9.
October 4th, 24:13.
October 9th, 24:14.
September 26:21.
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